

# **EXHIBIT 24**

**Trotter Letter of Appeal, Dated  
5/22/2015**



CONTRA COSTA

2015 MAY 22 PM 12: 21

APPLICATION & PERMIT CENTER

LP13-2095

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Michael P. Verna  
Robert I. Westerfield  
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Of Counsel  
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May 22, 2015

**HAND-DELIVERED**

Community Development Division  
Contra Costa County Department of  
Conservation and Development  
30 Muir Road  
Martinez, California 94553

Attn: Aruna Bhat, Deputy Director

**Re: John and Lori Ramirez (Applicants)/James and Dorothy Schmidt (Owners),  
County File No. LP13-2095  
Site Address/Location: 50 Camino Diablo Road, Unincorporated  
Brentwood, CA (APN 003-020-048)**

**Appeal By Twenty-Three Camino Diablo and Walnut Avenue Homeowners  
and Residents to the Contra Costa County Board of Supervisors of the  
County Planning Commission's May 12, 2015 Decision Allowing Off-Road  
Motocross Operations, Finding Applicant to be in Compliance with Land  
Use Permit No. LP95-2020 Conditions of Approval, and Approving Revised  
Site Plans dated October 31, 2014**

Dear Ms. Bhat:

This appeal letter is submitted on behalf of our clients, who include Linda and Gary Thuman; Ron, Tracy and Cassidy Harrison; Cole, Linda and Chuck Harrison; Rick and Donna Kendrick; Rick and Diana Klinger; Christina Morain and Steve Glennon; Howard Bowles; Dave, Brenda and Elione Chapman; Harvey and Gail Webb; Cliff Chatterton; Jerry Glenn; and Ernie Moore (collectively, "Appellants").

Appellants hereby appeal from the above-referenced decision of the County Planning Commission, resulting from a 5-2 vote of the Commission members at the conclusion of the Commission's May 12, 2015 Five-Year Compliance Review hearing for the proposed Diablo MX Ranch Motocross Park located at 50 Camino Diablo (the "project"). Appellants' homes and

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residential properties are located nearby, and in some cases immediately adjacent to, the west, northwest, east and south sides of the proposed motocross site.

Enclosed herewith please find a \$125.00 check covering the required appeal filing fee.

A statement of the specific grounds and reasons for this appeal is set forth in the remainder of this letter. Appellants have not seen or received any written confirmation of the Planning Commission's decision from the County. Accordingly, Appellants reserve the right to further augment the presentation of grounds and reasons for their appeal before and at the hearing before the County Board of Supervisors. Appellants appeal from the Planning Commission's decision on the following grounds:

**1. The 1998 use permit has terminated by operation of law. If the Applicant and Owner now wish to operate a motocross park on the property, then under the terms of the Contra Costa County Code they must apply for and obtain a new use permit – which they have not done.**

This issue is governed by County Code Section 26-2.2016, which provides:

**“If a use is established according to the terms and conditions of a permit and the use is discontinued for any reason for a period of six months, the permit shall become void and the use shall not be resumed.** Upon application during the six months period by the owner and upon a showing of good cause the director of planning may grant an extension **not to exceed a total of six months**” (emphasis added).

The County issued Land Use Permit dated November 2, 1998 to Tom Anderson (Application LP95-2020) to operate a motorcycle racetrack on Assessor's Parcel No. 003-020-039. According to the May 12, 2015 Staff Report (hereinafter, “Staff Report”), “[t]he property was sold in 2013, at which time the motorcycle park use ceased operation for six months, during which time a six-month extension of the land use was approved and the use was resumed.” See Staff Report, p. 2.

There are a number of factual errors and concerns here. First, Anderson was forced to sell the property during the **summer of 2012 – not in 2013**, as represented in the Staff Report. Any statement or suggestion that the use of the property for a motorcycle racetrack or park ceased in 2013 is in error.

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In other documents, County staff have taken the position that the “last date of operation” of the motocross park was August 6, 2012. To Appellants’ knowledge, the only evidence in the County’s files supporting this determination is a reference on the former owner’s (i.e., Anderson’s) Facebook page. See Staff Report, Ex. 4. It also now appears that the subsequent owner, the law firm of Glynn & Finley LLP, requested a six-month extension of the use permit by letter dated December 3, 2012, which the County granted on March 5, 2013. See Staff Report, Ex. 5. Assuming that this extension was timely and proper, to avoid having the use permit lapse, operations of the motorcycle park had to resume **by no later than August 6, 2013.**

Significantly, this is also what the County told Appellants. In the summer of 2013, Appellants began contacting the County planning staff to ask questions about the status of the 1998 land use permit. On July 10, 2013, County Planner Gary Kupp sent the following e-mail to Appellant Linda Thuman:

“It was determined that the motocross land use ceased on Aug. 6, 2012. They are allowed **by code** 6 months of inactivity, in this case until Feb. 6, 2013. Since they made a timely extension request, they were granted the 6 month extension until Aug. 6, 2013. **So with the extension, they are allowed a year of inactivity**” (emphasis added).

(A true and correct copy of Mr. Kupp’s July 10, 2013 e-mail is attached as **Exhibit 1** hereto.) Mr. Kupp’s e-mail is entirely consistent with the clear and unambiguous text of Section 26-2.2016. The applicant was entitled to a single year of inactivity, not more than that.

The Staff Report states (at p. 2) that “the use was resumed.” Again, however, no evidence in support of this statement has been provided by the County. Photographs taken by Ms. Thuman in August 2013, and previously submitted to the County, include a “Sand Hill Motorcycle Park Closed” sign, a “For Sale” sign and other obvious evidence of inactivity. **In the absence of any evidence that the motorcycle park had resumed operations prior to August 6, 2013, the 1998 land use permit expired and became “void” as a matter of law under County Code Section 26-2.2016.**

The Staff Report tries to get around this by asserting – contrary to the plain language of Section 26-2.2016 – that “discontinued” as used in that section refers to a “change in use, not the **inactivity** of an approved land use.” See Staff Report, p. 4.

However, the notion that “discontinued use” means a “change in use” is a complete distortion of the English language. It is also inconsistent with Mr. Kupp’s July 10, 2013 e-mail to Linda Thuman, which specifically states that the property owner was to be allowed only “a

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year of **inactivity**.” Mr. Kupp’s e-mail appears to be supported by a clear and straightforward interpretation of the ordinance. By contrast, the position now articulated in the current Staff Report is not supported by the text of the County’s ordinance, which makes clear that if the use is discontinued “for any reason” the permit is deemed to be void.

Under the staff’s logic, operations under a use permit could end for a period of years, yet the use permit would remain valid as long as the empty buildings and structures on the property were not removed. But that is not what the County Code says. In granting and enforcing the use permit at issue here, the County (including its planning staff) “is bound by the terms of the ordinance until the ordinance is amended through proper legislative procedure.” (*Johnston v. Board of Supervisors* (1947) 31 Cal.2d 66, 74; *City and County of San Francisco v. Superior Court* (1959) 53 Cal.2d 236, 250-251 (same).) Put another way, the County cannot place an interpretative “gloss” on the language of Section 26-2.2016, as suggested in the Staff Report, when it is so clearly erroneous and contradicted by the language itself.

At the May 12, 2015 Planning Commission hearing, County staff also suggested that the 1998 use permit remains valid because the Community Development Department had not previously taken action to formally revoke the permit. But this argument ignores the well-settled rule that a public entity, such as the County, lacks the power to waive or consent to a violation of its zoning laws. (*See, e.g., City of Fontana v. Atkinson* (1963) 212 Cal.App.2d 499, 507-508; *Western Surgical Supply Co. v. Affleck* (1952) 110 Cal.App.2d 388, 392-393.) Indeed, the failure of the County staff to properly enforce Section 26-2.2016 according to its terms does not preclude the people of this State – Appellants herein included – from seeking to enforce the County Code now, or in the future. (*See, e.g., Caminetti v. State Mut. Life Ins. Co.* (1942) 52 Cal.App.2d 321, 326, accord, *Western Surgical, supra*, 110 Cal.App.2d at 392-393.)

Finally, the Staff Report states (at p. 4) that on March 28, 2014, the property was purchased by the current Applicants and Owners who now intend to operate a motocross facility. The Staff Report goes on to state that: “Even though the park has not been open to the public since being purchased by the Schmidts and Ramirez, the land use is still valid since the applicants have been actively pursuing compliance with the conditions of the permit.” **This statement is contrary to the record, and the plain language of Section 26-2.2016.** In any event, the 1998 land use permit expired and became void **no later than August 6, 2013.** Nothing that the Schmidts and Ramirez did, or could have done in March 2014, after they purchased the property, operated to revive the 1998 land use permit. Nor was the County free to grant yet another “extension” of the land use permit to the Applicants. County Code Section 26.2-2016 makes crystal clear that the “director of planning” may only grant a single, one-time

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extension “not to exceed a total of six months.” The Applicants are out of time and have no rights under the now void 1998 permit.

There are, moreover, sound public policy reasons to apply Section 26.2-2016 according to its terms. The process by which a use permit was approved in 1998 was less than rigorous. The motocross project was approved based on an Initial Study which concluded that the proposed project would result in “insignificant” increases in existing noise levels and “insignificant” exposure of people to severe noise levels. See Staff Report, Ex. 6. That was a dubious conclusion in 1998, and it remains seriously flawed today.

It is also worth noting that in processing the current application for a five-year compliance review, County staff has found that the County’s “60 dBA Noise Control” special program applies to this application. (See Exhibit 21 to the Staff Report, a true and correct copy of which is attached as **Exhibit 2** to this appeal letter.) 60 dBA is generated by typical speech or a conversation between friends. See County General Plan, Noise Element, Figure 11-3, at p. 11-6. (Pertinent excerpts from the County’s Noise Element are attached as **Exhibit 3** hereto.) Prior motocross park nuisance litigation and other published scientific reports indicate it is extremely doubtful that the operation of a motocross park at this location has ever met, or can meet, a 60 dBA standard. Both the Planning Commission, and the Zoning Administrator at the previous December 15, 2014 public hearing, heard testimony from the Appellants that operation of the motocross park has routinely interfered with efforts to carry on a conversation both inside and outside of their homes.

**2. The Diablo MX motocross project is subject to, and not exempt from, the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000, et seq.**

Appellants made the same legal and factual arguments in their December 24, 2014 letter appealing from the Zoning Administrator’s decision. At the outset, it should be noted that the Staff Report failed to address the CEQA case law and arguments directly or on their legal merits – a point which Appellants made before the Planning Commission. For the benefit of the Board of Supervisors, Appellants’ position is again briefly restated below.

**First:** CEQA applies to the current proceedings before the County because the 1998 land use permit is no longer valid. Any consideration of the Applicant’s proposal to resume motocross operations at the property requires the filing of a new application for a use permit, and constitutes a new “project” within the meaning of CEQA. At a minimum, the County is required to prepare an Initial Study and Environmental Checklist (see Public Resources Code §

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21080(c)(2), and CEQA Guidelines, §§ 15063 and 15365). Indeed, CEQA and case law interpreting it require the County to prepare a full Environmental Impact Report (“EIR”) where, as here, there is substantial evidence supporting a “fair argument” that the project has potentially significant environmental impacts. (See Public Resources Code § 21151; *Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California* (1993) 6 Cal.4<sup>th</sup> 1112, 1123.) It is well settled that the “fair argument” standard sets a “low threshold” for requiring the preparation of an EIR. (See, e.g., *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.)

**Second:** Even if one assumes that the 1998 permit is effective (i.e., not void under County Code Section 26.2-2016 despite all evidence to the contrary), the County’s recent action on the proposed Diablo MX motocross facility is still a “project” that is subject to CEQA today.

CEQA generally applies to “discretionary projects proposed to be carried out or approved by public agencies.” Public Resources Code § 21080(a). CEQA specifically applies to an activity for issuance of a permit or entitlement for use of the project involving an exercise of discretion by the agency. (See Public Resources Code § 21065, defining “project”, and CEQA Guidelines, § 15352(b), defining “approval”.) Section 15378(a) of the CEQA Guidelines amplifies this point, with a broad definition of “project” as meaning “the **whole of an action**, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment” (emphasis added). The term “project” is “given a broad interpretation in order to maximize protection of the environment.” (*McQueen v. Board of Directors of the Midpeninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1143.) Put another way, an agency must fully analyze each “project” in a single environmental review document. It cannot segment or divide the project, and not analyze all of its impacts, without running afoul of CEQA. (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.)

Does the Applicant seek the issuance of a new permit by the County? Yes, absolutely. The noticed Agenda for the December 15, 2014 Zoning Administrator hearing described the project as including “a request for a grading permit to grade 12,800 cubic yards for track renovations” – i.e., roughly the equivalent of **1,280 truckloads of dirt**. The Staff Report presented to the Planning Commission glossed over this fact, but it remains unchallenged. Has the County analyzed the potential environmental impacts of those grading operations? Apparently not, since the County is taking the position that the project is “exempt” from CEQA and that the requested grading permit is “ministerial.” But the Staff Report does not address the potential environmental impacts of moving and off-hauling that much dirt. This is contrary to CEQA principles.

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Leaving aside the grading permit, the County has expressly reserved the power to exercise its discretion and impose other “discretionary conditions” in the future with respect to the Diablo MX project. This is something that the Staff Report completely failed to acknowledge. Again, this is a significant flaw in the staff analysis of the CEQA issue.

The fact that the County has retained planning “discretion” really cannot credibly be denied. The Staff Report (at p. 12) states that under Condition of Approval No 17, the applicant cannot use the oval track “until the Community Development Division has a chance to review the [required noise impact] study **and implement any noise mitigation measures that may be required based on the results of the study**” (emphasis added). Put another way, the County is retaining its full planning discretion to impose further necessary and appropriate conditions on this project.

The existence of that discretion is yet another reason why CEQA applies to the current Diablo MX motocross project. The statements by the Zoning Administrator at the December 15, 2014 hearing in announcing her decision, to the effect that the “County has no discretion”, are disingenuous. They cannot be squared with the presentation in the Staff Report, or the express language of Condition of Approval No. 17.

The Staff Report asserts (at p. 7) that requiring this project or the current applicant to comply with CEQA “would essentially be a form of double jeopardy.” But this is not a criminal proceeding. The applicant is subject to the use permit conditions and all applicable laws, including CEQA. Rather than “double jeopardy”, the core issue is what CEQA requires with respect to projects where, as here, the County clearly has **retained planning discretion** to impose further conditions and mitigation measures by virtue of Condition of Approval No. 17, and the applicant has in fact applied for additional permits. If the former owner of the property had done the required noise study previously or completed the necessary grading shortly after the 1998 use permit was approved, perhaps CEQA would not be triggered here. But that was not the situation before the Planning Commission, or before the Board of Supervisors now.

**Third:** The requirement under CEQA that agencies analyze the potential environmental impacts of the “whole of an action” is a critical element of CEQA compliance. It is one which the County unfortunately has not met in this case. The County may or may not have complied with CEQA prior to approval of the 1998 land use permit, but that is not germane here. What is relevant is that **the Diablo MX project circa 2014-2-15 is not the same as the project approved by the County back in 1998.**



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Again, the Staff Report (at p. 2) confirms this fact. It recommends that the Zoning Administrator “APPROVE the **revised site plans, received on October 31, 2014**” (emphasis added). Clearly, the current project description has changed since 1998, including among other things the following project modifications: (1) “relocation of the oval track”, acknowledged at page 2 of the Staff Report; (2) changes in track layout; (3) changes in the pit parking area; (4) the project site has been reduced by 50 percent, from approximately 80 to approximately 40 acres, significantly reducing the extent of previous buffer zones between the motorcycle tracks and adjacent homes; (5) additional grading is now required, requiring a grading permit as previously discussed; (6) the very noisy motorcycle park operations are now in closer proximity to adjacent single family homes and properties, which impacts must be analyzed; and (6) the elevations on site have been changed, including the cutting down of hilly terrain and removal of trees. Those changes and their potential environmental impacts were not analyzed in 1998. They must be properly analyzed now in accordance with CEQA standards.

At the May 12 Planning Commission hearing, County staff tried to characterize the changes in the location of the oval track as “consistent” with the 1998 use permit approvals. But such statements are belied by the record in this case, and specifically by a comparison of the 1996 site plan (Staff Report, Ex. 10) with the October 2014 proposed site plan (Staff Report, Ex. 11). (Copies of the 1996 and 2014 site plans clearly depicting the changed location and reconfiguration of the newly proposed oval track are attached as **Exhibit 4** and **Exhibit 5** hereto, respectively.) The changes in the project description mandate further environmental review under CEQA.

**Final point on the CEQA issue:** The Staff Report states that Appellants submitted “no evidence of data that demonstrate that the approved land use is adversely impacting the environment.” This is contrary to the record.

Appellants presented evidence and testimony at the December 15, 2014 Zoning Administrator hearing, and again before the Planning Commission, that these and other changes to the project raised a number of potentially significant environmental impacts. This included testimony regarding impacts with respect to (1) noise, first and foremost; (2) air quality and pollution impacts from motorcycle exhaust; (3) noxious fumes and odors permeating and invading adjacent residential properties and homes; (4) threats to wildlife species of special concern including eagles, woodpecker and other birds, San Joaquin kit fox, bobcats and badgers which have returned to the property and populated the surrounding area since the shutdown of motocross operations in 2012; (5) impacts of groundwater pumping and the use of up to 40,000 gallons per day by the project, for dust control and other purposes, on Appellants’ groundwater use and rights to extract water from the same aquifer, and other potential hydrologic impacts; (6)

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erosion of soil on the project's barren slopes and potential impacts of such erosion on Kellogg Creek; and (7) potential safety hazards on Camino Diablo from the tracking of mud from motorcycles and other vehicles involved in racing and other motocross activities on the property. None of these impacts resulting from changes in the project have been adequately addressed by the County in a CEQA compliant manner.

**3. The applicant is not in compliance with all of the conditions of approval imposed by the County in connection with the 1998 use permit issuance (File No. LP95-2020). The Planning Commission's findings of such compliance are contrary to the evidence.**

This appeal point specifically applies to Conditions of Approval Nos. 1, 2, 4, 5, 6, 11, 13, 17, 18 and 20. The reasons why the applicant is not in compliance with the conditions of approval are set forth in further detail in Appellant Linda Thuman's December 5, 2014 letter to the Zoning Administrator (see **Exhibit 6** enclosed herewith), which is incorporated by reference herein.

**4. The proposed motocross project imposes severe and unmitigated noise impacts on adjacent residents, including Appellants, which are contrary to, and inconsistent with the County's General Plan, including the Noise Element.**

County staff have made a number of questionable assertions. First, the May 12 Staff Report states (at p. 13) that "[n]oise was analyzed in the Initial Study." However, there is no evidence that a noise study or analysis was actually conducted back in the late 1990's. Given the inherently noisy nature of the proposed motorcycle park use, this statement by staff must be viewed with some considerable skepticism.

Also on page 13, the Staff Report states that the Appellants have provided "no data or evidence that the [motorcycle] park activities are in violation of the General Plan . . . ." However, Appellants have previously provided the County with video evidence, documents, and oral testimony regarding the significant and unavoidable impacts that operation of a motocross park and racing events would have on their quality of life and property rights.

For example, the Harrison family – whose property is right next door to motorcycle trails that run within a few feet of their property line – testified eloquently at the December 15, 2014 hearing about the impacts of the motocross facility on their quiet enjoyment of their property. They also testified about the safety risks of nearby, high-volume motorcycle noise on horses and equestrians (including Cassidy Harrison) who cannot use the corral for calf-roping activities

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because motorcycles on the adjacent track have startled horses and raised fears that horses will “bolt” and buck them off, resulting in potentially serious injuries to both horse and rider.

And Appellants Rick and Donna Kendrick provided testimony that a star-gazing party in their backyard was thoroughly disrupted by nighttime racing activity on the motocross property. It was so noisy that the astronomer who had been invited to speak about the stars could not be heard by those in the Kendrick backyard over the motorcycle noise emanating from 50 Camino Diablo – despite his use of a microphone.

The Zoning Administrator ignored that evidence in issuing her December 15, 2014 decision; and ultimately, the Planning Commission’s 5-2 majority failed to rectify the situation in upholding the Zoning Administrator’s decision. The Planning Commission’s decision is inconsistent with, and contrary to, the Noise Element of the County General Plan.

The County is required by California law to have a Noise Element as part of its General Plan. See Gov. Code § 65302(f). This statute requires the County to “identify and work toward mitigation of noise problems in the community.” See Ex. 3 (County General Plan at p. 11-1). Moreover, the Noise Element recognizes the obvious fact that “residential areas” are particularly “noise-sensitive” (*id.* at p. 11-2), and that “noise can affect adversely the enjoyment of quiet activities in open space” (*id.* at p. 11-3). The Planning Commission’s decision ignored that there will be severe “noise problems” associated with the project, and did nothing to address or mitigate those impacts.

The Noise Element recognizes that the effects of noise on people include nuisance and annoyance; interference with activities such as speech, sleep and learning; and physiological effects such as anxiety or hearing loss (*id.* at p. 11-5). Appellants provided substantial testimony and evidence that the motocross park will subject them to these adverse impacts. In her haste to find the Applicant to be “in compliance”, this evidence was disregarded by the Zoning Administrator. So did the Planning Commission majority.

Finally, the Noise Element includes a discussion of noise exposure that includes a 5 to 10 dBA “penalty” (i.e., a required **reduction** in noise levels) applicable to noisy nighttime activities after 7:00 p.m. and before 7:00 a.m. (*id.* at pp. 11-5 and 11-6). However, the County has sanctioned use of the lighted racetrack for motorcycle racing until 11:00 p.m. on Friday and Saturday nights! (See Condition of Approval No. 5.) Appellants have repeatedly and vociferously complained that the project will routinely exceed accepted land use compatibility and community standards during evening and nighttime hours, in violation of the Noise Element and general principles of nuisance law.

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The Planning Commission, Zoning Administrator and County planning staff have failed to address and respond to these concerns, and to impose necessary and appropriate mitigation measures to protect the health and welfare of the public and homeowners living in close proximity to the project site. Appellants respectfully submit that the Board of Supervisors has the authority and the duty to ensure that this project is not allowed to operate in a manner that will be inconsistent with California law and the General Plan.

**5. The Planning Commission's decision fails to provide any rational direction or process guidance, or technical criteria to be followed in connection with the "noise impact study" required by Condition of Approval No. 17.**

The May 12 Staff Report appears to miss the point being raised by Appellants here. The County staff apparently feel they are "bound" by the language of Condition of Approval No. 17 (see Staff Report, p. 14). However, this condition is less than clear; and for that reason, the Planning Commission could and should have appropriately interpreted that condition and provided explicit direction to staff, the applicant and Appellants regarding how the noise impact study should be carried out.

Such direction would have been particularly appropriate, given the fact that the applicant expects that the County will be "hir[ing] the necessary acoustical consultant to complete the sound study." See Applicant's Staff Report, Ex. 12, at p. 1. Since County staff apparently will be responsible for oversight of the required noise impact study, it is appropriate for the Board of Supervisors to provide such direction now. The Planning Commission discussed this issue during their deliberations. However, the Commission majority ultimately declined to come to grips with this issue and to "leave it up to the Board."

In any event, appropriate direction from the Board of Supervisors would include, at a minimum, the following:

**(a) The taking of ambient noise measurements.**

Unless ambient noise measurements while racing activities are not taking place are required as part of the "impact study", the County will not have any baseline data for purposes of comparison. The Staff Report indicates (at p. 13) that the operation of the motorcycle park must comply with the "land use compatibility standards prescribed by the Noise Element." Requiring the collection of ambient baseline data would be entirely consistent with the County's Noise Element.

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**(b) Direction regarding applicable noise standards.**

The Staff Report remains unclear as to the applicable noise standards which are to be adhered to in this case. For example, it is not clear that the noise impact study must account for the required noise penalty [i.e., reduction in noise levels] set forth in the Noise Element applicable to nighttime noise levels. But clearly, that study should meet the Noise Element standard, given Condition of Approval No. 5's authorization of nighttime racing until 11:00 p.m. on Friday and Saturday nights.

**(c) Fair and open process, including prior notice to Appellants.**

Moreover, there is a need for better direction regarding a fair process to govern the noise impact study activities going forward. As a matter of due process, it is important – and just plain fair – for prior notice to be given to Appellants of the date of the first race, open communication, and cooperation with Appellants to ensure that proper noise measurement protocols are followed and reliable data is collected in the field by acoustical experts under a fair and scientific process that is not skewed in favor of the applicants.

Such advance notice is particularly appropriate given the applicant's assurances to the County that they will "notify the Community Development Department a minimum of 30 days in advance of the opening of the oval for any racing events." See their March 28, 2014 letter to Gary Kupp (Staff Report, Ex. 12); see also, Use Permit Condition of Approval No. 2. If the applicant is going to be giving notice to the County, this Commission can reasonably direct staff to provide notice to the Appellants **at the same time**.

It should be noted that the County fostered such an open and fair process when it conducted noise studies in connection with the proposed Brentwood Rod and Gun Club project back in 2001 and 2002 – a project that impacted many of the same properties owned by Appellants here.

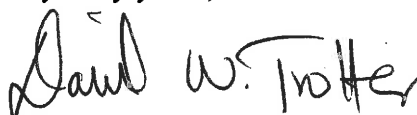
Finally, we note that it may also be appropriate for the County to permit the first race to be conducted during the pendency of any future appeal to the Board of Supervisors in this matter. As a matter of good public policy, it would better to have the results of any noise impact study in hand before final action is taken on this project, rather than after.

Appellants reserve the right to raise other grounds and reasons for its appeal in future submissions to the County Board of Supervisors, and/or staff at the Community Development Division.

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On behalf of Appellants, we appreciate the Board of Supervisors' thoughtful reconsideration of this matter, and the issues raised by this appeal.

Very truly yours,

  
DAVID W. TROTTER

Enclosures

cc: Supervisor Mary Piepho (w/encls.) – via U.S. mail  
Appellants (w/encls.) – via e-mail and U.S. mail

To: Gary Kupp  
Subject: Re: Sand Hill

thanks Gary. Sorry to be such a pain, appreciate your patience! Linda

From: Gary Kupp <Gary.Kupp@dcd.cccounty.us>  
To: Linda Thuman <lthuman7151@sbcglobal.net>  
Sent: Wednesday, July 10, 2013 10:20 AM  
Subject: RE: Sand Hill

Linda:

It was determined that the motorcross land use ceased on Aug 6, 2012. They are allowed by code 6 months of inactivity, in this case until Feb 6, 2013. Since they made a timely extension request, they were granted the 6 month extension until Aug 6, 2013. So with the extension, they are allowed a year of inactivity. Hope this helps. Don't know if the property was sold or not.

Gary Kupp, Planner  
CONTRA COSTA COUNTY  
Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
(925) 674-7799—Direct  
(925) 674-7205—Main  
(925) 674-7258—Fax

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From: Linda Thuman [mailto:lthuman7151@sbcglobal.net]  
Sent: Wednesday, July 10, 2013 9:04 AM  
To: Gary Kupp  
Subject: Re: Sand Hill

thanks Gary, sorry about that, I thought it went out in December. do you know how I can find out if it has been sold?

Linda

From: Gary Kupp <Gary.Kupp@dcd.cccounty.us>  
To: Linda Thuman <lthuman7151@sbcglobal.net>  
Sent: Monday, July 8, 2013 12:55 PM  
Subject: RE: Sand Hill

February 6, 2013 to August 6, 2013= six months

Gary Kupp, Planner  
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EXHIBIT 1

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**From:** Linda Thuman [mailto:lthuman7151@sbcglobal.net]  
**Sent:** Monday, July 08, 2013 11:11 AM  
**To:** Gary Kupp  
**Subject:** Re: Sand Hill

Hi Gary,

I thought it was a 6 month extension, what did I miss? Has it sold?

thanks  
Linda

**From:** Gary Kupp <Gary.Kupp@dcd.cccounty.us>  
**To:** Linda Thuman <lthuman7151@sbcglobal.net>  
**Sent:** Monday, July 8, 2013 8:30 AM  
**Subject:** RE: Sand Hill

Linda, the extension was granted until August 6, 2013. Beyond that, they would need a new use permit.

Gary Kupp, Planner  
CONTRA COSTA COUNTY  
Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
(925) 674-7799—Direct  
(925) 674-7205—Main  
(925) 674-7258—Fax

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**From:** Linda Thuman [mailto:lthuman7151@sbcglobal.net]  
**Sent:** Friday, July 05, 2013 10:02 AM  
**To:** Gary Kupp  
**Subject:** Sand Hill

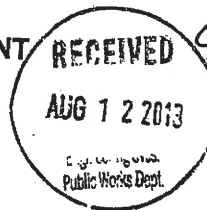
Hi Gary,

Hope you had a nice 4th! I think the last time we talked was just before Christmas and you said you were planning on issuing the 6 month extension letter to the owners of Sand Hill on December 26. So it has been 6 months & I just wanted to check on the status so I can update the neighbors. It is my understanding that if Sand Hill was not operating during that 6 month period that they would have to go through the entire application process again. So we are hoping that is where Sand Hill is now, no motocross unless they go through the entire application process again.

thank you  
Linda Thuman



CONTRA COSTA COUNTY  
 DEPARTMENT OF CONSERVATION AND DEVELOPMENT  
 COMMUNITY DEVELOPMENT DIVISION  
 30 Muir Road  
 Martinez, CA 94553-4601  
 Phone: 925-674-7205  
 Fax: 925-674-7258



Seen 8/12/13  
 (4)



## AGENCY COMMENT REQUEST

We request your comments regarding the attached application currently under review.

Date \_\_\_\_\_

### DISTRIBUTION

#### Internal

- Building Inspection
- Advance Planning
- Trans. Planning
- ALUC Staff
- APC Floodplain Tech
- Grading Inspection
- Housing Programs
- Telecom Planner
- HCP/NCCP Staff
- County Geologist

#### Health Services Department

- Environmental Health
- Hazardous Materials

#### Public Works Department

- Engineering Services (Full-size)
- Flood Control (Full-size)
- Traffic
- Special Districts

#### Local

- Fire District EAST CONTRA COSTA

Sanitary District \_\_\_\_\_

- Water District CCWD

City of \_\_\_\_\_

School District(s) \_\_\_\_\_

LAFCO \_\_\_\_\_

Reclamation District # \_\_\_\_\_

East Bay Regional Park District \_\_\_\_\_

Diablo/Discovery Bay/Crocker CSD \_\_\_\_\_

- MAC/TAC BYRON

Improvement/Community Association \_\_\_\_\_

#### Others/Non-local

CHRIS - Sonoma State \_\_\_\_\_

CA Fish and Wildlife, Region 3 - Bay Delta \_\_\_\_\_

#### Additional Recipients

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Please submit your comments to:

Project Planner Gary Kupp

Phone # (925) 674-7799

E-mail gary.kupp@dcd.cccounty.us

County File # LP13-2095

Prior to September 3, 2013

\*\*\*\*\*

We have found the following special programs apply to this application:

Active Fault Zone (Alquist-Priolo)

Flood Hazard Area, Panel # \_\_\_\_\_

60-dBA Noise Control

CA EPA Hazardous Waste Site

\*\*\*\*\*

**AGENCIES:** Please indicate the applicable code section for any recommendation required by law or ordinance. Please send copies of your response to the Applicant and Owner.

Comments:  None  Below  Attached

5-YEAR COMPLIANCE REVIEW OF LP95-2020 (ATTACHED). PLEASE SUBMIT ANY COMMENTS, QUESTIONS, OR CONCERNS REGARDING COAS.

Applicant has complied w/coas by PWD of LP95-2020

Print Name Jocelyn LaPocque

Signature Jocelyn LaPocque DATE 09/25/13

Agency phone # (925) 317-2215

CONTRA COSTA COUNTY  
 2013 SEP 26 P 4

EXHIBIT 2

Dina Garcia

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## **11. NOISE ELEMENT**

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### **11.1 INTRODUCTION**

Section 65302 (f) of the California Government Code requires that a noise element be prepared as a part of all city and county general plans. This State law requires that a jurisdiction's noise element identify and work toward mitigation of noise problems in the community. This Noise Element analyzes and quantifies, to the extent practical as determined by the legislative body, current and projected noise levels for all of the following sources:

- o Highways and freeways;
- o Primary arterials and major local streets;
- o Passenger and freight on-line railroad operations and ground rapid transit systems;
- o Commercial and general aviation, heliport, helistop, and military airport operations; aircraft flyovers, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation;
- o Local industrial plants including, but not limited to, railroad classification (switching) yards; and
- o Other ground stationary noise sources identified by local agencies as contributing to the community noise environment.

Noise contours are shown for many of these sources and stated in terms of the day/night average sound level (DNL or  $L_{dn}$ ). The noise contours are to be used to guide land uses, as specified in the Land Use Element, so that the exposure of community residences to excessive noise is minimized.

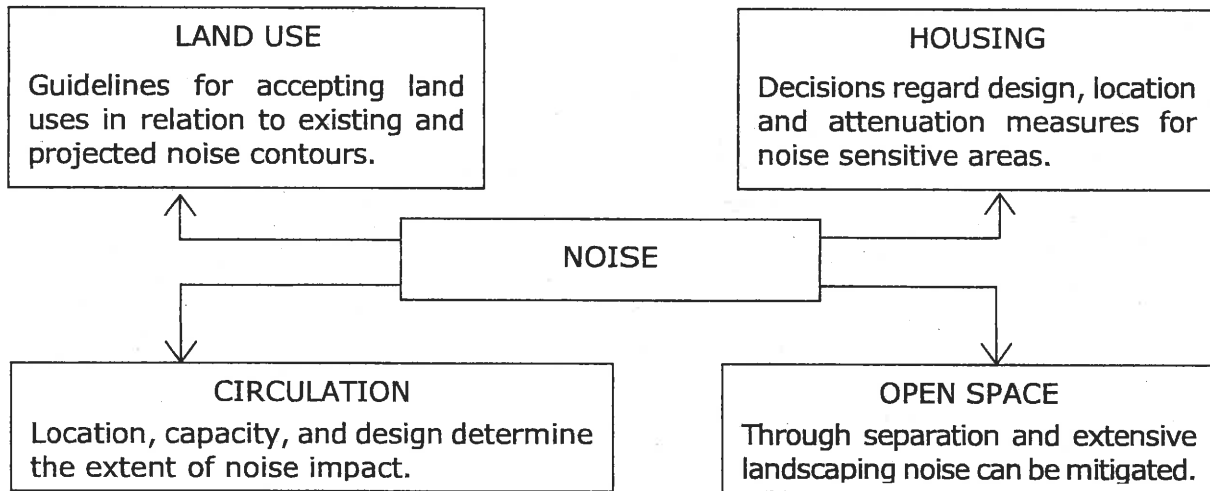
According to the Code, noise elements shall also include implementation measures and possible solutions that address any existing and perceivable noise problems. The adopted Noise Element shall serve as a guideline for compliance with the State Noise Insulation Standards. (Title 24, Part II, CCR.)

This Noise Element follows the guidelines established by the California Department of Health Services entitled, "Guidelines for the Preparation and Content of the Noise Element of the General Plan." The State Guidelines define noise metrics, discuss the process of Noise Element development, and present land use compatibility guidelines based on various noise levels. The contents of the State's guidelines document were reviewed in preparation of this Element and the relevant portions are incorporated into this document.

### **11.2 RELATIONSHIP TO OTHER GENERAL PLAN ELEMENTS**

The General Plan elements are important tools used by elected officials to provide policy guidance and assist in decision making. All of the elements of the General Plan are related and interdependent to some degree. However, the Noise Element is most closely related to the Land Use, Housing, Circulation, and Open Space Elements, as shown in Table 11-1.

**TABLE 11-1 RELATIONSHIP OF NOISE ELEMENT TO OTHER GENERAL PLAN ELEMENTS**



The major objective of a noise element is to provide guidelines to achieve noise land use compatibility. The Land Use and Noise Elements, therefore, are related closely. By identifying noise-sensitive land uses and establishing compatibility guidelines for land use and noise, the Noise Element will influence the general distribution, location, and intensity of future land use. Effective land use planning can alleviate noise problems.

Residential areas are one of the noise-sensitive land uses. Therefore, the Housing Element is directly affected by the Noise Element. The Housing Element policies and programs should include safeguards against noise intrusion. The implementation of Land Use/Noise Compatibility Guidelines can reduce noise impacts in residential locations. In addition, proper noise mitigation measures during housing construction can guard against adverse noise impact.

A city's circulation system is one of the major sources of continuous noise. Therefore, the existing and future circulation system identified in the Circulation Element will influence greatly the Noise Element. Circulation routes such as freeways, highways, and truck routes should be located to minimize the noise impact on noise-sensitive land uses. The location and design of transportation facilities and possible mitigation of noise from existing and planned facilities will greatly influence the overall noise environment within the City.

Since noise can affect adversely the enjoyment of quiet activities in open space, the Noise Element is also related closely to the Open Space Element. Inversely, open space can be used as a noise buffer between incompatible land uses. This technique can reduce community noise levels and also provide usable open space for recreation.

The goals, policies and implementation measures contained in this Element are intended to guide planning for public and private projects that are subject either to approval of the County Planning Agency or to review by County staff, although they may be under the jurisdiction of other public agencies operating in the County. Such goals, policies and implementation measures are further intended to be in accordance with the other elements of the General Plan, as well as with other planning documents. This Element completely supersedes the 1975 Noise Element.

**11.3 ACOUSTICAL STANDARDS**

Many governmental agencies have promulgated noise standards for various types of projects. In general, these standards are intended to protect persons from excessive

## 11. Noise Element

exterior and interior noise. Most of these standards address vehicular traffic noise while others address rail, aircraft, or fixed sources.

The Department of Housing and Urban Development (HUD) has developed noise policies for Federal housing projects. These HUD policies are contained in The Noise Guidebook. The policies contained in the guidebook discuss various outdoor noise environments and recommend acceptable interior and exterior noise level goals.

The State of California has adopted Title 21 and Title 24, Part 2, of the California Code of Regulations. Title 21 limits airport noise near residential communities to minimize existing and future land use conflicts. Title 24, Part 2, is concerned with transportation and industrial noise sources and specifically regulates the maximum allowable interior noise level for hotels, motels, and multi-family housing. Title 24, Part 2, also establishes standards for sound isolation of party walls, corridor walls, and floor/ceiling assemblies in multi-family residential construction.

The Federal Highway Administration (FHWA) and California Department of Transportation (Caltrans) have similar policies for new roadway construction and roadway expansion. These policies contain maximum acceptable noise levels in areas adjacent to vehicular traffic. These policies also have guidelines for determining when noise barriers should be constructed.

The County's Airport Land Use Commission (ALUC) oversees development near airports. The ALUC has a plan which contains goals and policies. These policies are considered when a project is proposed near an airport or heliport in the County. In addition to a noise element, counties and cities can also adopt noise ordinances. A noise ordinance is intended to regulate sources such as amplified music, construction and mechanical equipment.

### 11.4 NOISE ELEMENT ORGANIZATION

The Noise Element is divided into six remaining sections. These sections define noise problems; quantify the noise problems; set up goals and policies; and, finally, provide implementation measures to minimize or eliminate the noise problems.

### 11.5 FUNDAMENTAL CONCEPTS OF ENVIRONMENTAL NOISE

#### BACKGROUND

Three aspects of community noise are important in determining subjective response:

- o The level of the sound (i.e., magnitude or loudness);
- o The frequency composition or spectrum of the sound; and
- o The variation in sound level with time.

Airborne sound is a rapid fluctuation of air pressure and local air velocity. Sound levels are measured and expressed in decibels (dB) with 0 dB roughly equal to the threshold of hearing.

The frequency of a sound is a measure of the pressure fluctuations per second, measured in Hertz (Hz). Most sounds do not consist of a single frequency, but are comprised of a broad band of frequencies differing in level. The characterization of sound level magnitude with respect to frequency is the sound spectrum. A sound spectrum is often described in octave bands that divide the audible human frequency range (i.e., from 20 to 20,000 Hz) into ten segments. Figure 11-1 shows a range of sound spectra for various types of sound over the audible hearing range.

Figure 11.1 Range of Sound Spectra

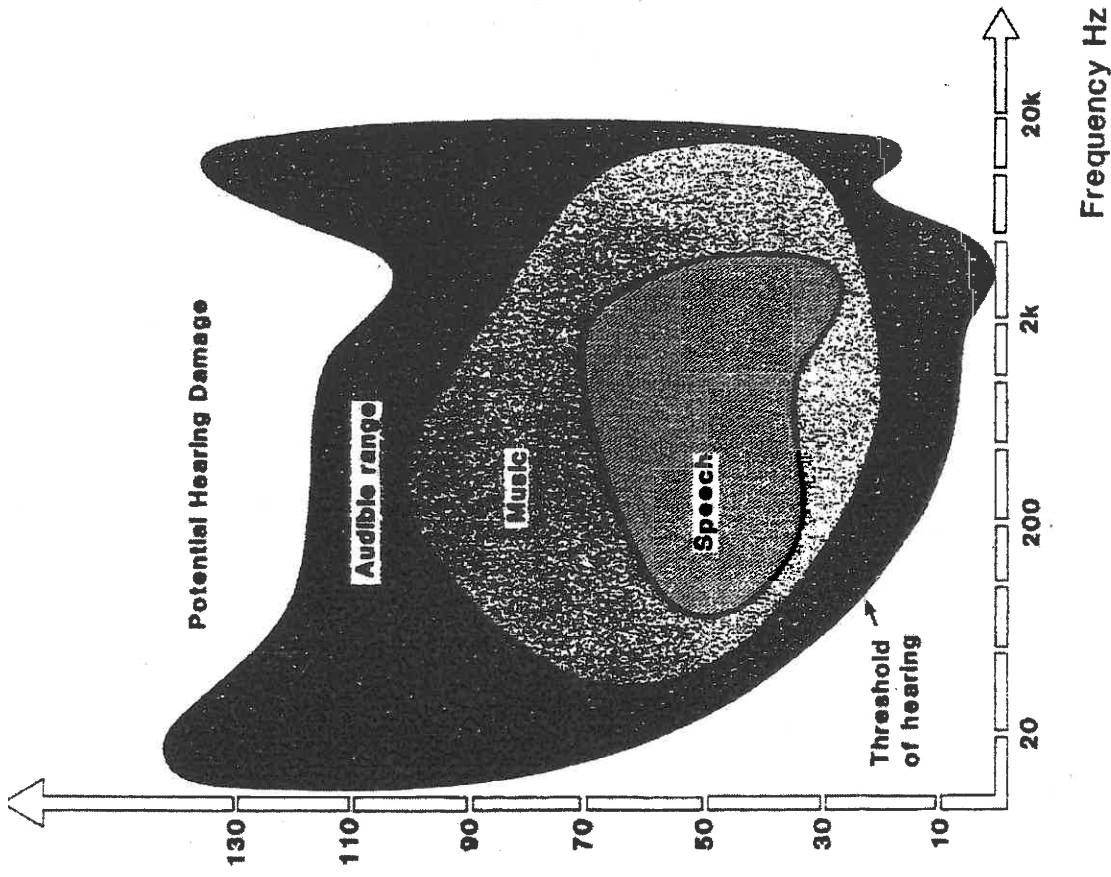
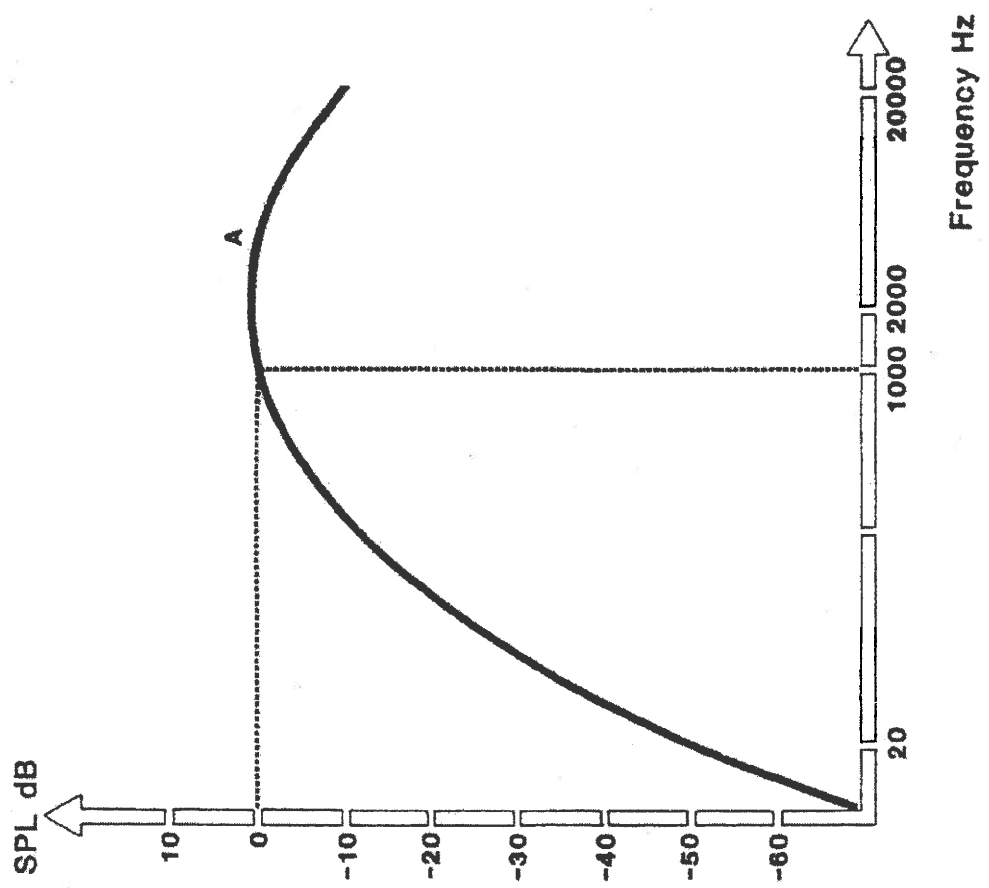


Figure 11.2 A-Weighting Network



### FREQUENCY WEIGHTING

Many rating methods exist to analyze sound of different spectra. Generally, the simplest method is used so that measurements may be made and noise impacts readily assessed using basic acoustical instrumentation. This method evaluates all frequencies by using a single weighting filter that progressively de-emphasizes frequency components below 1000 Hz and above 5000 Hz. This frequency weighting, shown in Figure 11-2, reflects the relative decreased sensitivity of humans to both low and extremely high frequencies. This weighting is called A-weighting and is applied by an electrical filter in all U.S. and international standard sound level meters. Some typical A-weighted sound levels are presented in Figure 11-3.

### NOISE EXPOSURE

Noise exposure is a measure of noise over a period of time, whereas the noise level is at an instant in time. Although a single sound level may describe adequately community noise at any moment, community noise levels vary continuously. Most community noise is produced by many distant noise sources that produce a relatively steady background noise having no identifiable source. These distant sources change gradually throughout the day and include traffic, wind in trees, and distant industrial activities. Superimposed on this slowly varying background is a succession of identifiable noise events of brief duration. These include nearby activities, such as single vehicle passbys or aircraft flyovers.

A single number called the equivalent sound level ( $L_{eq}$ ) is used to describe the average noise level over a period of time (i.e., the total sound energy divided by the duration). Thus, the  $L_{eq}$  is the constant sound level that would contain the same acoustic energy as the varying sound level, during the same time period.

In determining the daily measure of community noise, it is important to account for the difference in human response to daytime and nighttime noise. Nighttime exterior background and household noise levels are generally lower than in the daytime. People are more sensitive to noise at night than during other periods of the day and exterior noise intrusions become more noticeable.

To account for human sensitivity to nighttime noise, the DNL ( $L_{dn}$ ) descriptor was adopted by the Environmental Protection Agency to describe community noise exposure from all sources. The DNL is called the day-night sound level and represents the 24-hour A-weighted equivalent sound level with a 10-dB penalty added to the "nighttime" hourly noise levels (HNL) between 10:00 PM to 7:00 AM.

DNL and CNEL levels are typically computed by energy summation of HNL values, with the proper adjustment applied for the period of evening or night. The CNEL is computed identically to the DNL but with the addition of a 5-dB penalty to the evening HNL (i.e., 7:00 PM to 10:00 PM). The CNEL value is typically less than 1 dB above the DNL value. Figure 11-4 shows the adjustments applied for the DNL and CNEL measures. Noise exposure measures such as  $L_{eq}$ , HNL, DNL, and CNEL are all A-weighted, with units expressed in decibels.

### SUBJECTIVE RESPONSE TO NOISE

The effects of noise on people can be classified into three general categories:

- o Subjective effects of annoyance, nuisance, dissatisfaction;
- o Interference with activities such as speech, sleep, and learning; and
- o Physiological effects such as anxiety or hearing loss.

Figure 11-3 Typical Sound Levels Measured in the Environment and Industry

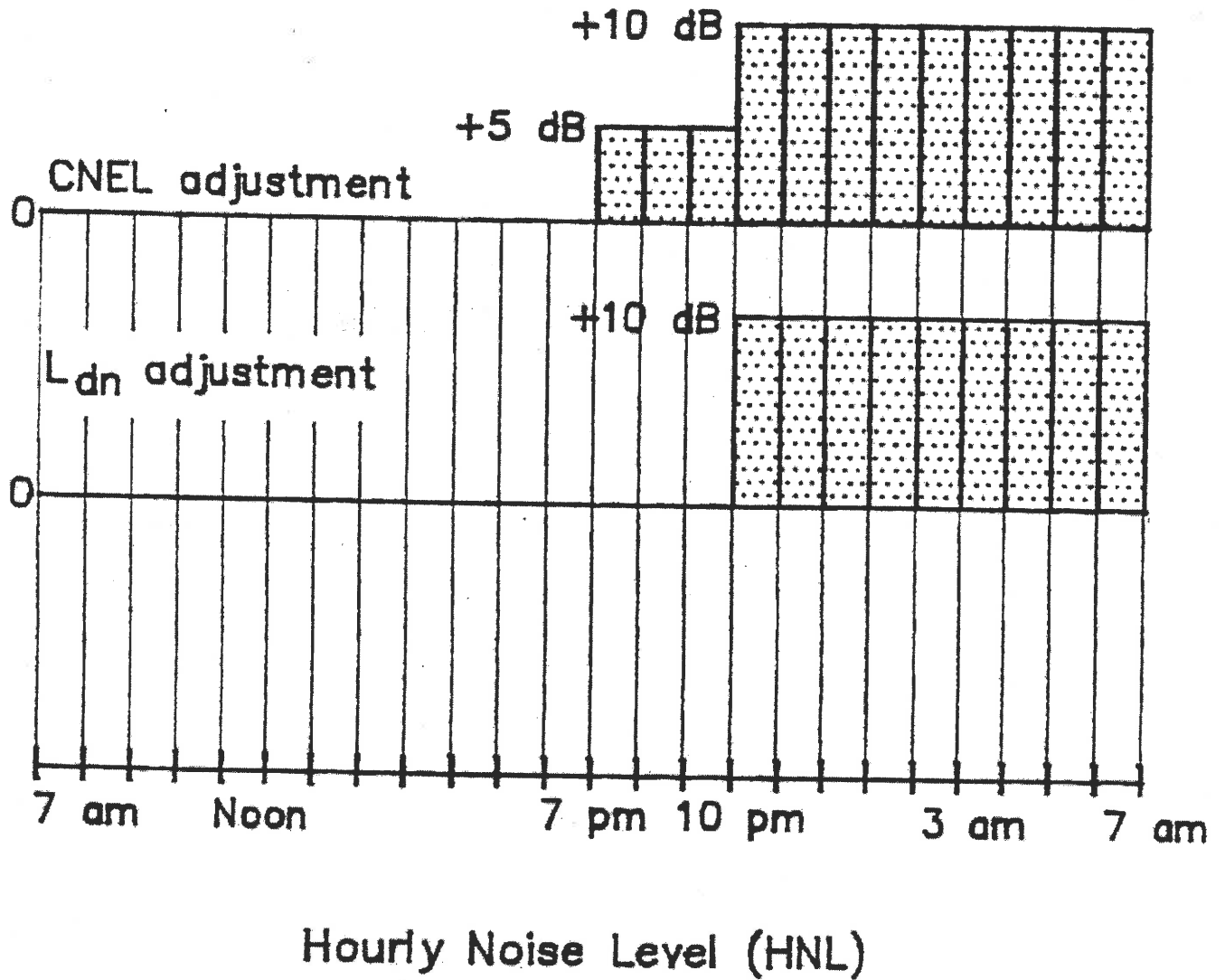
A-WEIGHTED  
SOUND PRESSURE LEVEL,  
IN DECIBELS

	140	} THRESHOLD OF PAIN
	130	
CIVIL DEFENSE SIREN (100') JET TAKEOFF (200')	120	
RIVETING MACHINE	110	
DIESEL BUS (15')	100	ROCK MUSIC BAND PILEDRIVER (50') AMBULANCE SIREN (100')
BAY AREA RAPID TRANSIT TRAIN PASSBY (10')	90	BOILER ROOM
PNEUMATIC DRILL (50')	80	PRINTING PRESS PLANT
SF MUNI LIGHT-RAIL VEHICLE (35') FREIGHT CARS (100')	70	GARBAGE DISPOSAL IN THE HOME INSIDE SPORTS CAR, 50 MPH
VACUUM CLEANER (10') SPEECH (1')	60	DATA PROCESSING CENTER
AUTO TRAFFIC NEAR FREEWAY	50	DEPARTMENT STORE
LARGE TRANSFORMER (200')	40	PRIVATE BUSINESS OFFICE
AVERAGE RESIDENCE	30	LIGHT TRAFFIC (100')
SOFT WHISPER (5')	20	TYPICAL MINIMUM NIGHTTIME LEVELS--RESIDENTIAL AREAS
RUSTLING LEAVES	10	RECORDING STUDIO
THRESHOLD OF HEARING	0	MOSQUITO (3')

(100') = DISTANCE IN FEET  
BETWEEN SOURCE  
AND LISTENER



Figure 11-4 Hourly Noise Levels and Annual Metrics





## 11. Noise Element

The sound levels associated with community noise usually produce effects only in the first two categories. No universal measure for the subjective effects of noise has been developed, nor does a measure exist for the corresponding human reactions from noise annoyance. This is primarily due to the wide variation in individual attitudes regarding the noise source(s).

An important factor in assessing a person's subjective reaction is to compare the new noise environment to the existing noise environment. In general, the more a new noise level exceeds the prior existing level, the less acceptable it is. Therefore, a new noise source will be judged more annoying in a quiet area than it would be in a noisier location.

Knowledge of the following relationships is helpful in understanding how changes in noise and noise exposure are perceived.

- o Except under special conditions, a change in sound level of 1 dB cannot be perceived;
- o Outside of the laboratory, a 3 dB change is considered a just-noticeable difference;
- o A change in level of at least 5 dB is required before any noticeable change in community response would be expected; and
- o A 10 dB change is subjectively heard as an approximate doubling in loudness and almost always causes an adverse community response.

### COMBINATION OF SOUND LEVELS

Because we perceive both the level and frequency of sound in a non-linear way, the logarithmic decibel scale is used to describe sound levels. The frequency scale is also measured in logarithmic increments. Decibels, measuring sound energy, combine logarithmically. A doubling of sound energy (for instance, from two identical automobiles passing simultaneously) creates a 3-dB increase (i.e., the resultant sound level is the sound level from a single passing automobile plus 3 dB). The rules for decibel addition used in community noise prediction are:

- o If two sound levels are within 1 dB of each other, their sum is the highest value plus 3 dB;
- o If two sound levels are within 2 to 4 dB of each other, their sum is the highest value plus 2 dB;
- o If two sound levels are within 5 to 9 dB of each other, their sum is the highest value plus 1 dB; and
- o If two sound levels are greater than 9 dB apart, the contribution of the lower value is negligible and the sum is simply the higher value.

## 11.6 NOISE IN CONTRA COSTA COUNTY

### OVERVIEW

In Contra Costa County, traffic along freeways (e.g., Interstate 80, Interstate 680, State Route 24, and State Route 4), and major arterials (e.g., Willow Pass Road and Ygnacio Valley Road) are the primary sources of vehicular traffic noise.

Rail operations also contribute to the noise environment in the County. The Atchison Topeka and Santa Fe (ATSF) and Southern Pacific (SP) railroad corridors in the County are primarily freight lines. These lines generate high noise levels during passbys and their trains are required to sound their whistles when crossing roadways at-grade. The Bay Area Rapid Transit (BART) system is an electrically driven passenger line. BART passbys

## **11. Noise Element**

are typically less noisy than the freight trains. BART trains do not have at-grade crossings.

Existing air traffic activity also contributes to the noise in Contra Costa County. Buchanan Field, near Concord, is the primary source of aircraft noise. Other sources of aircraft noise are local emergency airports and military helicopter activity.

The remaining noise sources are industrial plants such as oil refineries and materials processing plants. The Camp Parks Reserve Forces Training Area (RFTA) near San Ramon also is a noise source. Typical operations at Parks RFTA include small caliber weapons training, helicopter overflights, and vehicular activity.

### **ONGOING PROBLEMS**

There are many areas within the County that have existing noise problems. Buchanan Field is a constant source of noise complaints. According to the County, it generated 375 complaints in 2003. Interstate 80, 680 and Route 4 also generate complaints. However, these complaints typically are handled by the California Department of Transportation. Rail switching yards in Martinez and Richmond are also noisy and have generated complaints. Industrial noise generation continues to be a concern.

Loud music, parties, sporting events at high schools, outdoors music at nightclubs, and, in the past, livestock, has also been the source of complaints to the County.

### **FORESEEABLE FUTURE PROBLEMS**

Potential foreseeable future problems will be similar to many current problems. For example, residential land uses still will remain in relatively close proximity to some industrial noise sources. Currently, residential development is being built or proposed near Camp Parks RFTA. Although adequate setbacks and noise mitigation are usually incorporated into these projects, occasional complaints can be expected. Similarly, loud parties, outdoor music, and other industrial sources will continue to generate sporadic complaints. Activities at Buchanan Field are not anticipated to decrease in the future and may even increase. This activity would be expected to generate future complaints. Gas wells located in East County may be a source of future complaints. These wells generate a high-frequency hissing sound.

In preparing this Noise Element, all the existing noise complaints and potential future ones were considered in the development of goals and policies. The purpose of these goals and policies is to protect future residents from the negative impact of noise and, if possible, minimize and reduce the number of complaints the County receives.

## **11.7 NOISE CONTOURS**

### **METHODOLOGY**

Existing and future traffic noise levels are based on calculations using the Federal Highway Administration Traffic Noise Prediction Model (FHWA RD-77-108), continuous 24-hour noise measurements, and short-term 15-minute measurements along freeways and major arterials in the County. The FHWA method predicts the average hourly noise level along a roadway based on the number of vehicles, the speed of the vehicles, and the percentage of medium and heavy trucks.

The 24-hour average noise level (DNL) along a roadway, was calculated from the continuous 24-hour noise measurements. Along some roadways, however, only a 15-minute noise measurement was made. To calculate the DNL, the 15-minute measurement results were compared to the noise level measured during the same time

## 11. Noise Element

period at a 24-hour noise measurement location on a nearby or similar roadway. The difference between the measured hourly noise levels and the DNL then was calculated for the 24-hour measurement location and the same offset was applied for the 15-minute measurement location.

To determine the 24-hour noise level where no measurements were taken, the peak hour  $L_{eq}$  was calculated using the FHWA method and traffic volumes provided by the County. The DNL was determined in a manner similar to that of the short-term measured roadways. By comparing the peak-hour noise level ( $L_{eq}$ ) and the DNL from 24-hour noise measurements made in the vicinity of the roadway, a peak hour  $L_{eq}$  to DNL offset was determined. This offset was applied to the calculated peak hour level to determine the DNL at the non-measured location.

### NOISE CONTOUR MAPS/TABLES

#### Roadways/Rail Lines

Existing and future DNL noise contours have been prepared for freeways, major arterials, and railways in the County. The contours were prepared on USGS quad maps. A reduced set of the future contours are provided in this document (see Figures 11-5A through 11-5V). Table 11-2 summarizes the information contained in the future noise contours. A complete set of full size existing and future noise contours is available for public review at the Community Development Department offices.

#### Airports/Heliports

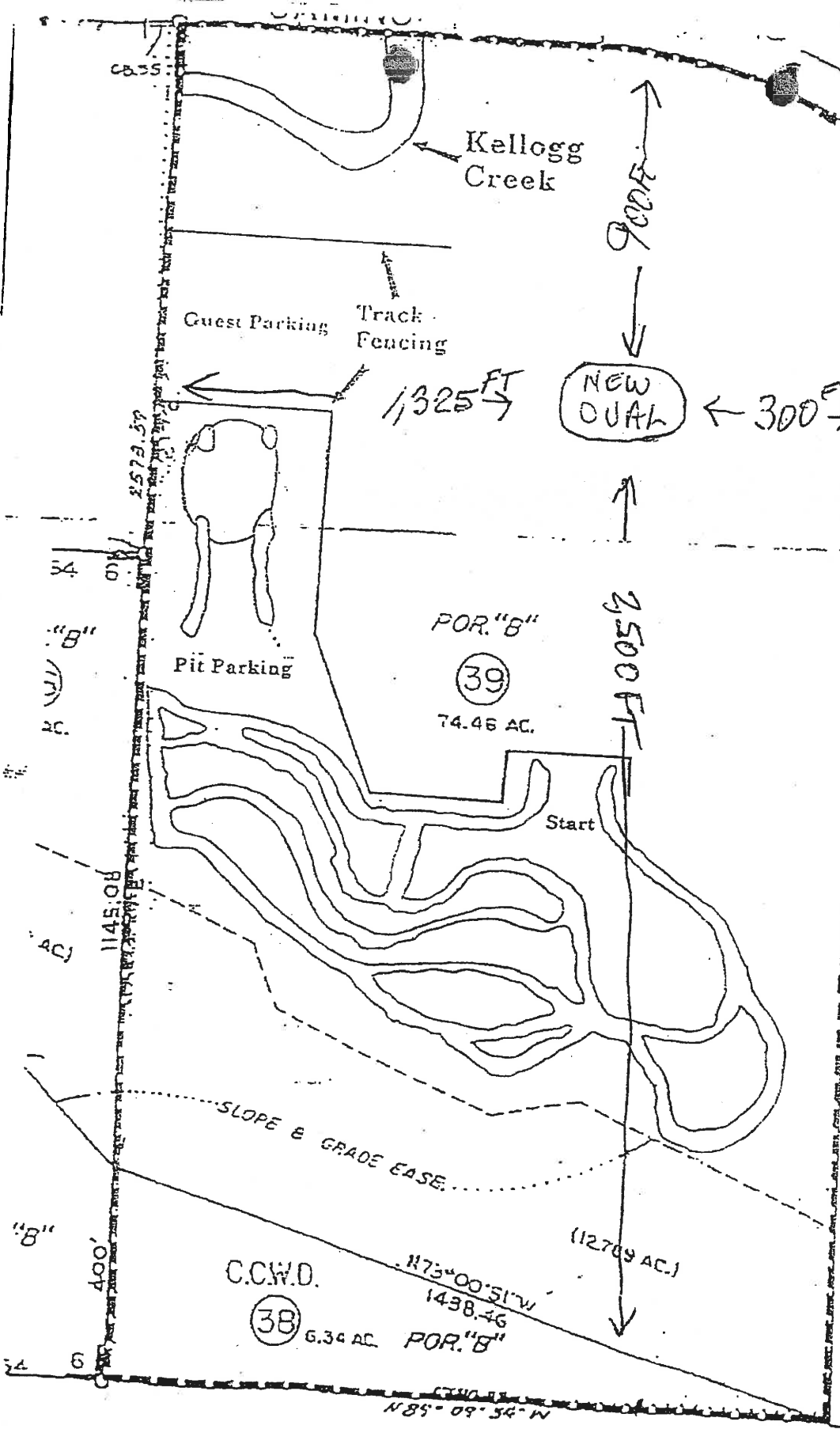
Existing and future CNEL noise contours are provided for Buchanan Field and Byron Airport. These contours were taken from the Airport Land Use Compatibility Plan adopted by the Contra Costa County Airport Land Use Commission in December of 2000.

### USE OF MAPS/TABLES

Noise contours are typically used for planning purposes in conjunction with new residential development. Since the actual full-size contour maps for roadways and rail lines are not contained in the Noise Element, Table 11-2 has been prepared. These tables and maps are designed to help planners, developers, and consultants identify a parcel or proposed residential project that is potentially impacted by noise. The table is intended to be used as follows:

- Step 1. Determine distance of the project site from a major noise source such as a roadway, airport, or rail line.
- Step 2. If the noise source is a roadway or rail line: from Table 11-2, determine the distance from the rail line or roadway centerline to the future 60 DNL contour.  
If the noise source is an airport, determine if the project is within the 60 CNEL contour.
- Step 3. If the project is within the future 60 DNL or CNEL contour, an acoustical study should be initiated.

Noise contours do not always account for the acoustical shielding provided by site geometry or terrain. Therefore, these contours may overestimate the noise exposure of a particular site. However, noise contours should only be used as a screening tool. Site-specific noise levels and other acoustical issues should be addressed in the acoustical study for the project.



Detailed  
Plan  
LP 952020

96/OCT-21 PH 12:34  
COMMUNITY  
DEVELOPMENT DEPT

DOHERRA COSTA

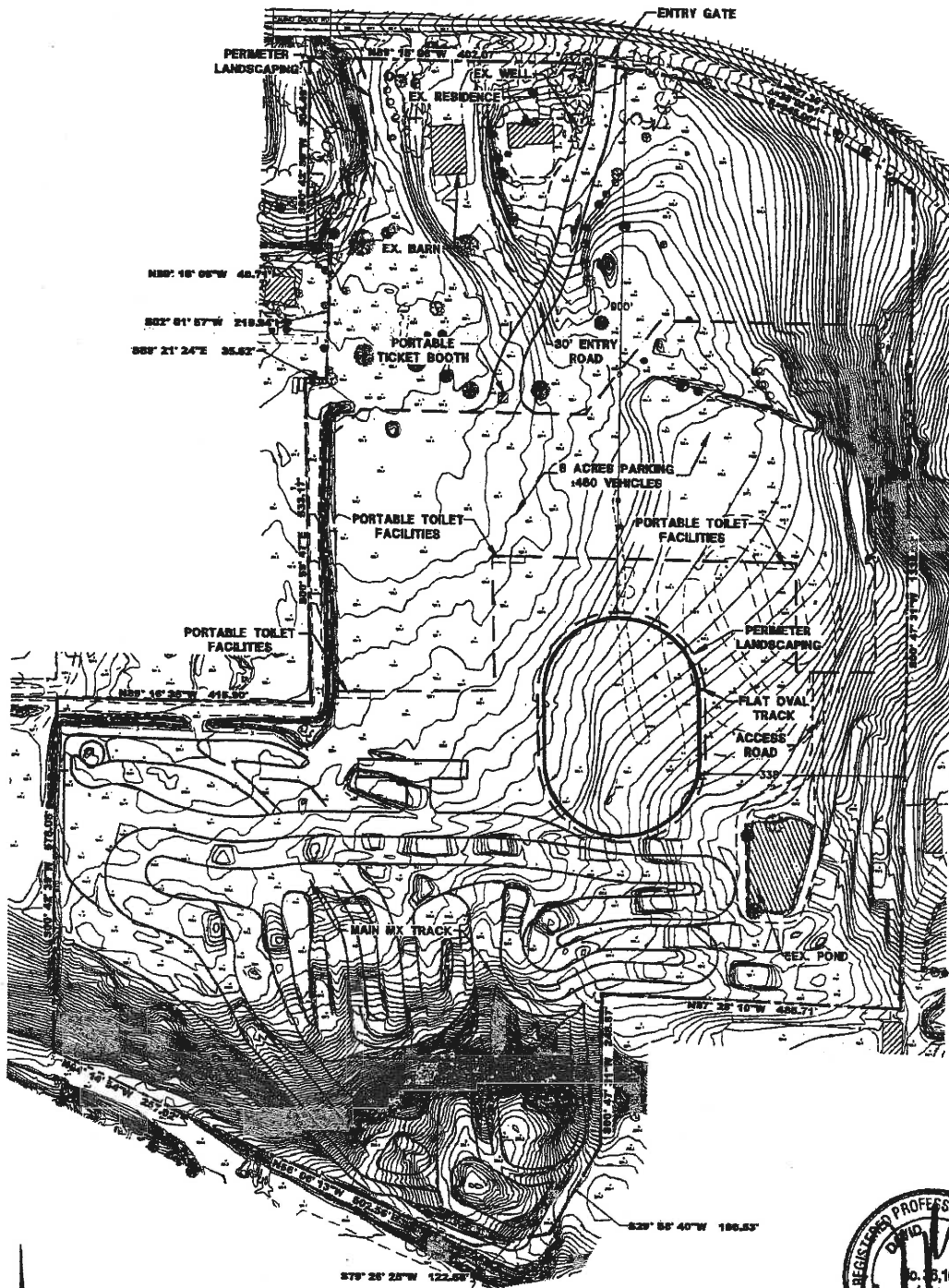
EXHIBIT 4

PROPOSED SITE PLAN  
**50 CAMINO DIABLO ROAD**  
 DIABLO MX RANCH LLC

BRENTWOOD CALIFORNIA

OCTOBER, 2014

CENTRAL CALIFORNIA COUNTY  
 OCT 31 2014  
 Dept of Conservation & Development



**WOOD RODGERS**  
 DEVELOPING SUSTAINABLE DESIGN TELEPHONE  
 4801 HABERSHA DR. STE 100 TEL 925-847-0000  
 PLEASANTON, CA 94588 FAX 925-847-0000

**EXHIBIT 5**

December 5, 2014

Dear Zoning Administrator,

We are the neighbors of 50 Camino Diablo in Brentwood California. That property has been known historically as Sand Hill Motocross Ranch and currently as Diablo MX Ranch. For purposes of this document we will identify it as Sand Hill/Diablo MX.

We have had an opportunity to read the Staff Report prepared by the Department of Conservation and Development and disagree with many of the items, most of which are identified as "In Compliance."

The items are as follows:

California Environmental Quality Act (CEQA) Status: It states "Exempt" and we would like to know know why. We have asked before and have not received a response. (See attached letter to Tomi Riley dated October 6, 2014)

Under "Recommendation 1" It states that the applicants are in compliance. They are not in compliance and have never been in compliance. These non-compliant Conditions of Approval (COA's) will be identified below.

Under "Recommendation 2" It states, "Approve revised site plan submitted October 31, 2014..." On the original permit, COA #1, it states "subject to revised site plan dated/received October 21, 1996. On the original permit COA #5 states, "All activities approved by this permit shall be restricted to the existing track and motocross areas as indicated on the plan submitted with the application with the exception of minor changes subject to Zoning Administrator review and approval." A revised site plan submitted 16 years later is not a minor change. We have been told in person by Senior Planner Will Nelson that they had to adhere to the site plan dated October 21, 1996. Through Public Document Request we asked for the original application and any changes, addendum's or revisions. Suddenly we are presented with a map dated 1998 that is being presented as a site plan. No received date stamps from county on this previously unknown document. Again this is not a minor change. (See attached Request for Public Document)

Under "Recommendation 3" It states "Grant planning clearance for issuance of a business license..." As we brought up in the meeting in your presence on December 1, it is our opinion that Sand Hill has been closed for over two years. During that time there was occasional, very quiet motorcycle classes that took place. During that time we advised the county that the site was not in compliance and now we are asking if they had a business license to operate during that time at that location. (During that time we were told that constituted being open for business. For over six months there has been no training. Now we are told that pursuing compliance ((cleaning up property)) fulfills that requirement. If that is the case why did they have to conduct training classes in the first place?) (See attached emails & pictures)

Under "Background" It state that compliance reviews were conducted in 2003 and 2009. We asked for proof that the property was in compliance during those reviews and did not receive and proof that it was in compliance. (See attached letter to Tomi Riley dated Oct 26, 2014)

Under "Background" it also states that the land use permit is still valid even though the

EXHIBIT 6

applicants have not been operating it as a business because they have been pursuing compliance. COA #1 specifically states that the COA's are to be met in a timely manner, not 16 years later.

Under "Background" paragraph two it states, "since there is no evidence of the (sound) study being conducted in the past..." Again, out of compliance as stated on COA #1 which specifically states that the COA's are to be met in a timely manner, not 16 years later. Also under "Background" it states there is no official record of complaints made to Code Enforcement... While we didn't want to bring up old history there is a significant history regarding complaints against Sand Hill as documented in the lawsuit of Carol Davis vs. Tommy Anderson and Thomas Smith (C98-03060). That lawsuit specifically states, "Contentious public hearings occurred before the County Planning Commission and Board of Supervisors in 1996 and early 1997. These hearings received extensive press coverage." It also states that because of concerns of plaintiff and neighbors certain limiting conditions were imposed... As newer residents moved in it appeared that Sand Hill had reduced their hours and ridership was declining and since Tom Anderson was here first no complaints were made that we are aware of at the 5 year review hearings. (See attached Davis v Anderson lawsuit)

Also under "Background" paragraph three it states that we question the validity of the permit originally approved as a 80 plus acre site now reduced to an approximate 40 acre site. The county states this reduction was properly noticed and approved at public hearing in 2004. It may have been approved as a lot line adjustment but not properly investigated as the sound/safety/liability buffer for a motocross race track. Was this specifically noticed as a reduction in the size of a motocross race course?

It appears this may not have been carefully investigated prior to approval or someone should have realized the liability that was created by losing what was in effect a buffer for the motocross tracks. Per the staff report this was noticed and approved on January 5, 2004. Paul Bergstrom rode off a Sand Hill course on March 11, 2004, onto what is now the Harrison property, received significant injuries and successfully sued both Sand Hill for over two million dollars and received a settlement from what is currently the Harrison property for about \$750,000. At that time the Harrison property belonged to the Brentwood Rod and Gun Club. (See attached Paul Bergstrom vs. Sand Hill Ranch lawsuit) A perfect example of why a buffer is essential to this property not only for noise but for safety. We have attached a proposal from a motocross course that includes buffer information. The course is 75 acres, the property is 437 acres. The proposed buffer is, "at least 25 feet high by 70 feet wide.." that is around the course area. "A perimeter vegetated buffer area with an average width of 1,000 feet and minimum width of 500 feet..." That appears to be for the actual perimeter of the property. (See attached proposal from Snohomish County and lawsuit article re motorcyclist)

Now we get to the actual COA's:

COA #1: The staff report states they are in compliance. We disagree. County states they are in compliance but they have to remove two unapproved tracks to conform to original site plan dated October 21, 1996. The county also states, "In order to get the site into better conformance with the approved site plan, the applicants were required to submit new site plans that better reflect the original approval." How do they know what the original approval is supposed to reflect, where they involved in the original? It appears from the lawsuit between Davis and Anderson the original approval reflected concerns of the neighbors. "Because of concerns of

Plaintiff and her neighbors expressed to the county, and in compromise of the conditions sought in the original applications of Anderson and Smith, certain limiting conditions were imposed..." We do not believe the intent of the permit was to expose neighbors to even more noise from the motocross tracks. (See attached lawsuit of Davis and Anderson)

COA#1: This COA also talks about the new owner/applicants applying for a grading permit to move the oval track, which was never in compliance with the 1996 site plan. There is no permit for the track which is a condition of COA#4. These new owner/applicants have already done significant grading, tree removal, course modification, retaining wall construction and building remodeling without a permit. All of these issues have been reported and/or asked about. (See attached Req for Public Doc's, emails and citizen access documents)

COA#2: The staff report says they are in compliance. They are not in compliance. Talks about reconstruction of (unpermitted) oval track and notification to Community Development 30 days prior to any racing event. The track is not permitted, the track never conformed to October 21, 1996 site plan and had this process occurred 16 years ago or been investigated at any of the compliance reviews we would not be bringing it up at this time. (Refer to attachments from COA#1)

COA#3: Staff report states they are in compliance. We agree that they were in compliance as of 2012. After two requests for public documents we received satisfactory documentation.

COA#4: Staff report states they are in compliance. They are not in compliance. States the applicants shall have permits for all structures related to motorcycle activities. On the permit it specifically states "the racetrack." A request for public documents resulted in nothing on file. (attachment on COA#1) This racetrack has never been permitted and never been in compliance. There is also no pond indicated on the original site plan. The applicant/owner did a huge amount of grading, fencing and construction to build the current very large pond. There is no permit for the pond we are aware of.

COA#5: Staff report states they are in compliance. They are not in compliance. They have never been in compliance. If they were in compliance why is there a need for a new site plan? The new site plan includes things that were not on the original site plan such as the pond. The new site plan shows the track much closer to the Harrison property line. COA #5 states that minor changes are to be approved by the Zoning Administrator. This is a major change(s).

COA#6: Staff report states they are in compliance. They are not in compliance. Our public document requests specifically asked for the original application, site plan and any changes or addendum's. We were never given what they identify here as Exhibit 4. This is also the only document that is not date stamped as to when it was received and/or approved by the county. We specifically asked for a 1998 map but were told the 1996 map was the site map. On the county staff report under COA#5 it specifically states, "conform to the approved October 21, 1996 site plan..." Exhibit 4 also states hours start at 7am. COA#1 states "Any expansion or CHANGE in hours of operation, additional types of racing or other uses WILL require the approval of a new Land Use Permit." The hours on the approved permit start at 8am. (See emails.)

COA#7: Staff report states they are in compliance. We state they are not in compliance and have not been for 16 years. Again there is NO timeliness to this, again a violation of COA#1. (See



request for public document.)

COA#8: Staff report states they are in compliance. We can agree to this although we have asked about a designated helo landing area to minimize sound, dust and debris as medical helicopters land on a routine basis. We have been told by fire department staff that when Sand Hill was up and running it was their number one response location.

COA#9: Staff report states they are in compliance. Not in compliance, have not been in compliance for 16 years. Again there is NO timeliness to this, again a violation of COA#1. There has never been a permit for lights on the racetrack, should have been addressed 16 years ago.

COA#10: Staff report states they are in compliance. They do not have any signs up, how could they be in compliance? They did put up signs without approval and had to take them down. If they had met with the county as directed on COA #18 perhaps they would not have again violated the permit.

COA#11: Staff report states they are in compliance/ongoing. However on the staff report it states dust control for parking area. On the permit it states when there are 25 or more present the dust control will include the entire site to avoid dust impacts on nearby properties. We want to ensure proper dust control.

COA#12: Staff report states they are in compliance. As this has to do with fee's to Contra Costa County we are fairly confident the county has made certain of their compliance.

COA#13: Staff report states they are in compliance. As this has to do with safety helmets releases, minors accompanied by adult, etc they cannot be in compliance until they are open. We have had historic problems with motorcycles from Sand Hill riding on Camino Diablo and Walnut Blvd. The applicant was told of those concerns and said that would not be a problem. Since that time on more then one occasion unlicensed bikes from Sand Hill/Diablo MX have been seen on Camino Diablo and Walnut Blvd.

COA#14: Staff report states they are in compliance. This is regarding Contra Costa County Water (CCW) easement access. We can only assume they would have access.

COA#15: Staff report states they are in compliance. As this has to do with fee's to Contra Costa County we are fairly confident the county has made certain of their compliance.

COA#16: Staff report states they are in compliance. This is a historical problem as it relates to musical concerts and dances. There used to be Rave parties held at Sand Hill. Traffic on Camino Diablo would be completely blocked by these parties which would also impact traffic on Vasco Rd. While they may not allow concerts or dancing, the loud music played by customers was/is not enjoyed by the neighbors.

COA#17: Staff report states they are in compliance. They are not in compliance and have never been in compliance. THIS IS A HUGE ISSUE. There is no evidence a sound study was ever done. How are we supposed to know what is an acceptable noise level? When we are in our homes with double paned windows with all windows and doors closed we still have to turn up the volume on whatever we are listening to try and drown out the dirt bikes. That to us is

UNACCEPTABLE. We cannot enjoy being outside with friends and family when the motocross is running. Where are our rights to peace and quiet? We believe Sand Hill/Diablo MX is a "Nuisance" property. There is also case law supporting our position. (See attached letter to Supervisor Piepho for details on Nuisance Property and previous case law.)

COA#18: Staff report states they are in compliance. They are not in compliance, the previous owners (attorneys) were not in compliance and according to the county Tom Anderson was not in compliance. The staff report says they are in compliance because they "notified" the county in a timely manner. Nowhere is COA#18 does it say "notify" it specifically states the new owner is to "meet" with the Zoning Administrator(ZA). This same violation was brought up when the attorneys owned the property as they did not meet with the ZA either. We were told at that time the condition was met through a letter. What is the point of having COA's when things like this happen repeatedly? The "disclosure of deed restrictions," COA #18 also states," You are purchasing a property with a permit for a motocross trails park. This permit carries with it certain conditions that must be met by the owner of the property. The permit (LP95202) is available from the current owner or from Contra Costa County Community Development Department. A new owner is required to meet with the Zoning Administrator within 30 days of purchasing the property to discuss the terms of the permit and County requirements and expectations." If the attorney's did not disclose this then the current owners should follow-up with them. If it was disclosed it appears that the current owners decided they did not need to follow the Conditions of Approval as they did not meet with the county and did significant work, grading, construction of a pond, concrete work, signage, fencing, tree removal, retaining walls and remodeling without obtaining permits. If there is a concern of detrimental reliance on the part of the county we believe that is not the case. Previous potential buyers were well aware of the conditions attached to this property. They talked to the neighbors and the county prior to attempting to buy the property and as a result did not buy the property. (John Taylor)

COA#19: Staff report states they are in compliance. We do not believe they are in compliance. As a result of unpermitted grading there are drainage problems on adjoining parcels, specifically the Harrison & Alamillo properties.

COA#20: Staff report states they are in compliance. They are not in compliance. The driveway into the motocross is not in compliance. This was brought up previously and nothing was done. The driveway is not 20 foot wide paved with tapers and flares....in accordance with Caltrans Highway Design....(See Coa#20)

COA's 20 through 29: Staff report states they are in compliance. Without consulting with a specialist in this area we are in general agreement. We still have questions as to which driveway is for the development, if it meets criteria and how many driveways there are supposed to be for that property.

We have attached copies of several letters of concerns:

Letter to Supervisor Piepho delivered in person during meeting on May 7, 2014

Letter to Chief of Staff Tomi Riley, dated Oct 6, 2014

Letter to neighbors at 50 Camino Diablo, dated November 20, 2014

In closing we would like to reiterate that our concerns have not changed. We have stated since 2012 that we do not believe this property has ever been in compliance with the Conditions of Approval on

the Land Use Permit. As stated in COA#1, failure to comply in a timely manner may lead to revocation. Any change in hours will require a new land use permit. It has been closed for over two years. That is a significant change in hours.

(R1)

**Record ID: CDLP13-02095**

A notice was added to this record on 2011-04-28.  
 Condition: USE PERMIT STATUS Severity: Notice  
 Total conditions: 3 (Notice: 3)

[View notice](#)

Menu Help

**Description of Work:** 5-year COA Review of LP95-2020 and public Zoning Administrator hearing, as required by COA #1 for review of motorcross land use.

**File Date:** 08/07/2013

**Parcel No:** 003020048

**Application Status:** Under Appeal

**Application Detail:** Detail

**Application Type:** Planning/Land Use Permit/History/NA

**Address:** 50 CAMINO DIABLO, BRENTWOOD, CA 94513

**Owner Name:** GLYNN & FINLEY LLP

**Owner Address:** 100 PRINGLE AVE STE 500, WALNUT CREEK, CA 94596-7328

	Condition Name	Status	Apply Date	Severity	Action By
<b>Condition Status:</b>	<u>USE PERMIT STATUS</u>	Applied	04/28/2011	Notice	
	<u>MOTO CROSS USE PERMIT</u>	Applied	02/02/2012	Notice	
	<u>NTC fees due</u>	Applied	05/21/2014	Notice	
	<u>Work without Permits</u>	Complied	05/22/2014		

Contact Info:	Name	Organization Name	Contact Type	Relationship	Address
	<u>John &amp; Lori Ramirez</u>	<u>Diablo MX Ranch</u>	Applicant	Business Owner	50 Camino Diablo Road, Brentwood, CA 94513
	<u>Diablo MX Ranch</u>		Payer	Business Owner	50 Camino Diablo Road, Brentwood, CA 94513
	<u>James &amp; Dorothy Schmidt</u>		Owner	Property Owner	5387 Milo Hae Place, Koloa, HI 96756
	<u>Bowles &amp; Verna LLP</u>		Payer		2121 N. California Blvd., STE 875, Walnut Creek, CA 94596

Workflow Status:	Task	Status	Status Date	Action By
	<u>Assignment</u>	Assigned to Planner	08/09/2013	Will Nelson

<a href="#">Application Distribution</a>	Complete	09/25/2013	Gary Kupp
<a href="#">30-Day Review</a>	Complete	04/29/2014	Gary Kupp
<a href="#">CEQA Determination</a>	Exempt	04/29/2014	Gary Kupp
<a href="#">Staff Report</a>	Complete	11/18/2014	Gary Kupp
<a href="#">Hearing Notice</a>	Public Notice Sent	11/18/2014	Gary Kupp
<a href="#">Hearing Process</a>	Approved with Modifications	12/15/2014	Gary Kupp
<a href="#">Appeal - Reconsideration</a>	Appealed	12/24/2014	Gary Kupp
Entitlement Decision			
COA Review			
Vesting Map			
PW COA Review			
Mit. Monitoring Program			

Application Comments: [View Comment](#) [Date](#)  
ID

<b>Application Spec Info.:</b>	
Total Parcel Size:	<u>0</u>
Proposed Number of Units:	<u>0</u>
Proposed Building Square Footage:	<u>0</u>
Acres:	<u>0</u>
Estimated Project Value:	
Is a Notification Fee required?:	<u>Yes</u>
Is a Fish & Game Posting/Admin Fee required?:	<u>No</u>
Is the Environmental Health Fee required?:	<u>No</u>
Is a Late Filing Fee required?:	<u>No</u>
Project Description:	<u>5-year COA Review of LP95-2020 and public Zoning Administrator hearing, as required by COA #1.</u>
Area:	<u>Byron</u>
Substandard Lot:	<u>No</u>
X-Ref Files:	-
X-Ref Files 2:	-
X-Ref Files 3:	-
X-Ref Files 4:	-
X-Ref Files 5:	-
Account Balance:	<u>-5281.43</u>
Account Percent:	<u>128</u>
Billing Account Number:	<u>45480</u>

Total Fee Assessed: \$7,169.00

Total Fee Invoiced: \$7,169.00

Balance: \$0.00

Initiated by Product: AV360

Department of  
Conservation and  
Development

30 Muir Road  
Martinez, CA 94553-4601

Phone: 855-323-2626

Contra  
Costa  
County



**John Kopchik**  
Director

**Aruna Bhat**  
Deputy Director

**Jason Crapo**  
Deputy Director, Chief Building Official

**Robert T. Calkins**  
Deputy Director

PAYER: Bowles & Verna LLP  
2121 N. California Blvd., STE 875  
Walnut Creek CA 94596

APPLICATION #: CDLP13-02095

TYPE: Land Use Permit

Payment Type: Check  
Check Nbr: 98401

ACCOUNT ITEM LIST:

Item #	Description	Total Fees	Current Paid	Total Paid
0047	Appeal (\$125)	\$125.00	\$125.00	\$125.00
0047	Appeal (\$125)	\$125.00	\$0.00	\$125.00
052B	Notification Fee (\$30)	\$30.00	\$0.00	\$30.00
ADJ0029	Fee Adjustment	\$1,000.00	\$0.00	\$1,000.00
ADJ0029	Fee Adjustment	\$1,359.00	\$0.00	\$1,359.00
CTRT	Consultant Contract	\$4,530.00	\$0.00	\$4,530.00
Total Fees:		\$7,169.00	Paid:	\$7,169.00
			Balance:	\$0.00

ISSUED BY: SMURAOKA  
DATE: 05-22-2015

APPLICATION DESC: 5-year COA Review of LP95-2020 and public Zoning Administrator hearing, as required by COA #1 for review of motorcross land use.  
SITE ADDRESS: 50 CAMINO DIABLO, BRENTWOOD, CA 94513  
PARCEL: 003-020-048  
NOTES:

Receipt Number: 150005922