

EXHIBIT 4

**Trotter Letter of Appeal, Dated
8/1/2016**

Law Offices of
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August 1, 2016

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 Nos. LP15-2040
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 July 26, 2016 Decision Modifying
Conditions of Approval of County File No. LP95-2020 for the Proposed
Diablo MX Ranch Motocross Park**

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 Chatteron; Jerry Glenn; and Ernie Moore (collectively, "Appellants").

Appellants hereby appeal from the above-referenced decision of the County Planning Commission at its July 26, 2016 meeting concerning the proposed Diablo MX Ranch Motocross Park located at 50 Camino Diablo (the "project"). Appellants' homes and residential properties are located nearby, and in some cases immediately adjacent to, the west, northwest, east and south sides of the proposed motocross site.

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APPLICATION & PERMIT CENTER

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.¹ Appellants have not seen or received any written documentation from the County confirming the Planning Commission's July 26, 2016 decision. 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. Appeal Ground One: The Diablo MX project is not exempt from CEQA. The Class I exemption from CEQA for "negligible or no expansion of an existing use" is not properly applied to this proposed use.

The Staff Report prepared in advance of the July 26, 2016 Planning Commission hearing ("7/26/2016 Staff Report") states that the Diablo MX project is "categorically exempt" from the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000, *et seq.* under a Class I exemption (CEQA Guidelines Section 15301) applicable where "negligible or no expansion of an existing use" is proposed. See 7/26/16 Staff Report at p. 4. In reliance on this "exemption", the Planning Commission approved the Applicants' modified project without subjecting the project to any CEQA-compliant environmental review.

The Planning Commission's finding that the project was exempt from CEQA, and direction to staff to file a Notice of Exemption ("NOE") for the Project, is unlawful and not supported by the record in this matter for at least two reasons.

First: The proposed Diablo MX motocross facility is not an "existing use" because the 1998 use permit has terminated by operation of law. The County cannot lawfully apply a Class I exemption to a "discontinued" use under a "void" use permit, and its filing of a NOE is contrary to law as well.

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).

¹ On May 22, 2015, Appellants filed an appeal from the Planning Commission's May 12, 2015 decision, on a 5-2 vote, finding the Applicants to be "in compliance" with the conditions of approval set forth in Land Use Permit No. LP95-2020. That appeal is still pending before the County Board of Supervisors, and Appellants' May 22, 2015 appeal letter was attached as Exhibit 2 to the 7/26/2016 current Staff Report. **Accordingly, Appellants also incorporate herein by reference the points raised in their May 22, 2015 appeal letter, which is already in the County's files.**

A chronology on this point is briefly set forth below.

The County issued a 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, "5/12/2015 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 5/12/2015 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.

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 5/12/2015 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 5/12/15 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, that is also what the County told Appellants more than three years ago. 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 5/12/2015 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.

What are the ramifications of these facts to the claim that the project is exempt from CEQA? Simply put, 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. And it inexorably follows that the County cannot lawfully apply a Class I exemption to a “discontinued” use under a “void” use permit. The County’s filing of a NOE is contrary to law as well.

Before the Planning Commission, County staff have tried 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 5/12/2015 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 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 that has been articulated by staff to justify a categorical exemption from CEQA now 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 July 26, 2016 Planning Commission hearing, County staff also suggested that the 1998 use permit remains valid because the Community Development Department has 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 5/12/2015 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. In the same vein, the 7/26/2016 Staff Report goes on to state (at p. 11) that: “Even though the park has not been open to the public since being purchased by the applicants, the County deems the land use to be valid since the applicants have been actively pursuing compliance with the conditions of approval for land use permit #LP95-2020.” But 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 Ramirezes 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 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.

Second: The Class I exemption is expressly subject to exceptions under the CEQA Guidelines. (See CEQA Guidelines Sections 15300.2 and 15301, attached as Exhibit 2 hereto.) The exception applies with full force here. The Planning Commission’s reliance on the Class I exemption in approving modified project conditions of approval was contrary to CEQA.

The “Discussion” note at the end of Section 15301 makes clear that the exemption for “existing facilities” does not and cannot apply to a project which “has a reasonable possibility of resulting in a significant effect.” To the same effect, see CEQA Guidelines Section 15300.2, which provides that “[a] categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment. . . .”

That is precisely the situation here. There is more than just a “reasonable possibility” that the proposed Diablo MX motocross facility will have significant adverse environmental impacts on neighboring residents, including the Appellants here, due to extreme noise impacts and interference with their quiet enjoyment of their own properties that will result if the Diablo MX motocross facility is permitted to re-open. In fact, Appellants have repeatedly presented substantial evidence on this point before the Planning Commission. Some of that evidence is summarized at pages 9-11 of their May 22, 2015 appeal letter and is incorporated by reference herein.

Appellants have also questioned, and by this appeal challenge, the County’s determination that the Applicants’ proposed “[g]rading for 15,000 cubic yards of direct” is exempt from any CEQA review. As contended by staff. (See 7/26/2016 Staff Report at p. 1.)

What are the legal consequences of all this? First, and at a minimum, the County was required here to prepare an Initial Study and Environmental Checklist (see Public Resources Code § 21080(c)(2), and CEQA Guidelines, §§ 15063 and 15365) addressing the environmental impacts of the Diablo MX project. Staff has been reluctant to go down that road – but that reluctance does not support non-compliance on the County’s part.

Moreover, an Initial Study is just the starting point for compliance with the County’s legal obligations. That is because both 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.4th 1112, 1123.) Indeed, 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.)

Appellants have also already submitted more than ample scientific and expert testimony and reports showing that this project will have potentially significant environmental impacts – requiring the preparation of an EIR under the low “fair argument” threshold mandated by CEQA. These include two reports by a leading noise consulting firm, Charles M. Salter Associates, Inc. (“Salter”).

During the summer of 2015, Salter took ambient measurement in the vicinity of the proposed Diablo MX motocross project. In its October 20, 2015 letter report, Salter confirmed that the baseline ambient noise levels in the vicinity of Appellants’ homes in the absence of the motocross park are very low. (A copy of Salter’s October 22, 2015 report was attached as Exhibit 13 to the 7/26/2016 Staff Report, and is incorporated by this reference herein.) Among other things, Salter found that “[i]n general, the measured daytime ambient noise levels were between 40 and 45 dB (L50).” (See Salter 10/22/2015 report at p. 6.) Put another way, this is a very quiet rural residential setting.

Salter also measured **very high noise levels on the afternoon of August 2, 2015, when three motorcycles were observed using the Applicants’ property. At that time, “the typical maximum noise levels” from just three “motocross motorcycles” were measured to be approximately 80 dB to 85 dB.**” (See Salter 10/22/2015 report at p. 7 (emphasis added).) Imagine what the maximum noise levels would have been on Appellants’ property had there been dozens of motocross bikes operating simultaneously, not just three! In any event, the measured and apparent ~40 dB variance between the ambient noise levels with and without motocross bikes on the 50 Camino Diablo property is itself strong evidence that this project “has a reasonable possibility of resulting in a significant [noise] effect” within the meaning of CEQA. This scientific evidence and expert testimony also demonstrates that the project, if approved, will have potentially significant environmental impacts, triggering the ironclad requirement that an EIR be prepared.

But there is more. Salter has also prepared a thorough critique of the noise study subsequently prepared by the Applicants’ consultant, Wilson Ihrig (“WI”), on March 8, 2016. A true and correct copy of Salter’s July 25, 2016 analysis of the WI study is attached as **Exhibit 3** hereto. Among other things, Salter has concluded that:

- (a) The Diablo MX noise analysis conducted by WI used an industrial/agricultural DNL 75 dB standard to assess the impact on surrounding properties. This ignores the reality that the neighboring and surrounding properties are primarily single-family homes – including several in a County-approved residential subdivision – for which a residential 60 dB DNL standard should be used. (See Ex. 3 at pp. 1-2.) [Note: More on this point at pages 7-10, below.] A 60 dB noise standard is consistent with the Noise Element of the County’s General Plan. See, e.g., Policy 11-2, which states that “[t]he **standard for outdoor noise levels in residential areas is a DNL of 60 dB.**” (County General Plan at p. 11-37; emphasis added.)

- (b) The WI noise study failed to assess the projected significant increase in ambient noise levels that will adversely impact the neighboring homes and residential properties. The approach used is contrary to other numerous policies embodied in the Noise Element of the County's General Plan. (See Ex. 3 at pp. 2-3.)
- (c) The WI report failed to address several noise concerns such as maximum motorcycle noise levels that are likely to be generated by the project, cumulative noise load from daily motocross activities and special events, public address (PA) loudspeaker noise, and night time noise and sleep disturbance impacts. (See Ex. 3 at pp. 4-5.)
- (d) The WI report very likely underestimated the potential future noise levels in several respects identified by Salter in its report. Salter has measured the actual maximum noise levels at another commercial motocross/motorcycle facility in operation in Northern California. These ranged from 75 dB to 95 dB at 100 feet; even at 500 feet the noise levels were as high as 80 dB. As Salter noted, the proposed Diablo MX motocross tracks are located within 100 feet of neighboring residential properties. (See Ex. 3 at p. 5.) People living in those single family homes can expect to experience extremely loud and noxious sound levels – levels that are several orders of magnitude above the current, quiet ambient environment (in the ~45 DB range) that are not burdened by the daily operation of a motocross park.
- (e) There has been no independent, third party confirmation that the simulated "racing" activity measured by WI was in fact representative of the actual, likely or worst case racing conditions if Diablo MX is permitted to go into operation at the site. As Salter correctly observed, **"motorcycle noise levels can vary considerably with speed and acceleration, and engine load. It is unclear how 'competitive' the simulated race conditions were."** (See Ex. 3 at p. 5; emphasis added.) This is yet another reason why an EIR that is **independently commissioned and under the control of the County's consultants, rather than the Applicants**, should be required in this case.

Salter is the leading noise consulting firm in the United States, if not the entire world. Appellants urge the Supervisors to give thoughtful consideration to the points raised by Salter in the technical reports previously submitted to the County, but disregarded by the Planning Commission in its most recent action.

2. Appeal Ground Two: The Board of Supervisors should reject the Planning Commission and County's staff's discriminatory application of a 75 dB noise standard to the Diablo MX project.

Reliance on an elevated 75 dB elevated noise standard, rather than a 60 dB standard, is another critical weakness of the Planning Commission's decision. It is worth noting that in processing the previous application for a five-year compliance review, County staff found that the County's "60 dBA Noise Control" special program applied. (See Exhibit 21 to the 5/12/2015 Staff Report, a true and correct copy of which is attached as **Exhibit 4** hereto.) 60 dBA is

generated by typical speech or a conversation between friends. 75 dBA is much noisier – more than twice as loud, and comparable to the noise generated by a pneumatic drill at 50 feet or freight cars at 100 feet. See County General Plan, Noise Element, Figure 11-3, at p. 11-6. Significantly, a 10 dB increase in noise levels “almost always causes an adverse community reaction.” See Noise Element at p. 11-8. Here, the expected difference in ambient sound levels if the proposed motocross facility goes into operation is considerably more than that. See Ex. 3 (7/25/2016 Salter letter.) CEQA requires that these impacts be properly evaluated in an EIR.

Moreover, any use of a 75 dB noise standard is **inconsistent with, and contrary to previous actions by the County with respect to the 50 Camino Diablo property, and other projects on Agriculturally zoned lands in Contra Costa County.** This differential treatment of Applicants is discriminatory and simply wrong – and also can and should be remedied through compliance with applicable CEQA standards.

In this regard, Appellants wish to bring the following documents to the attention of the Board of Supervisors:

(a) Exhibit 5: Excerpts from Illingworth & Rodkin Noise Assessment for the Brentwood Rod and Gun Club Initial Study (December 22, 1999).

As the Supervisors may recall 15 years ago the Brentwood Rod & Gun Club was proposing to relocate its gun club operations to the 50 Camino Diablo property – the **same property at issue here.** Thus, it is significant that in assessing the noise impacts of the proposed gun club, I&R stated that:

“The Contra Costa County General Plan has adopted the following goals and policies which are relevant to the proposed project.

“Goal 11-B: To maintain appropriate noise conditions in all areas of the county.

“The standard for outdoor levels in residential areas is a DNL of 60 dB.

“Policy 11-6: If an area is currently below the maximum ‘normally acceptable’ noise level, an increase up to a maximum shall not be allowed necessarily.

“Implementation Measure 11-B: “Evaluate the noise impacts of a proposed project [based] upon existing land uses . . . and the potential for adverse community response, based on a significant increase in existing noise levels.”

(See Ex. 5 at p. 15; emphasis added.)

I&R’s references to what the County General Plan required back in 1999 – and still requires today – were absolutely correct. It is simply inappropriate for the County to just look at the zoning designation. A proper environmental evaluation requires that the County look at the “existing land uses” around a project, and then based on those uses assess whether or not the project has the potential for adverse community response. **This language in the County’s Noise**

Element is also very much in line with what CEQA requires here. The record in this case is clear that the existing land uses around the proposed Diablo MX project are **primarily residential, not agricultural.** The fact that the proposed project wishes to invade a quiet residential neighborhood cannot be ignored for purposes of review of its environmental impacts, as much as the Applicants may want that to happen.

By coincidence, the County recently retained I&R to conduct a “peer review” of the WI noise study and the August 2015 ambient noise study prepared by Salter. (A copy of I&R’s April 12, 2016 peer review letter was attached as Exhibit 10 to the July 26, 2016 County Staff Report.) Significantly, I&R acknowledged that the points previously made by Salter “relating to the [Diablo MX] project’s potential to generate noise levels above ambient conditions and whether or not the project would result in a substantial increase in noise above ambient conditions would . . . **be applicable if the project were undergoing CEQA review.**” (See I&R peer review letter at p. 2 (emphasis added).) I&R was able to ignore the serious questions raised by Salter only because it was told by County staff that “the proposed project is not subject to CEQA.” (*Id.*) But that position is open to serious doubt for the reasons set forth in this letter. Ultimately, I&R’s rather wishy-washy statements in the peer review exercise are fundamentally inconsistent with its 1999 forthright interpretation of the noise standards governing a proposed project (the gun club) located adjacent to residential uses, and right next door to the proposed motocross park now.

(b) Exhibit 6: Excerpts from County’s Draft Environmental Impact Report for the Brentwood Rod and Gun Club Project.

As the Board of Supervisors may recall, it ultimately required that the gun club project was subject to CEQA, and ordered the preparation of an Draft Environmental Impact Report (“DEIR”). The DEIR assessed the impact of the gun club project based on the **residential uses of the adjacent property owners**, which were correctly referred to as “nearby sensitive receptor locations.” (See Ex. 6 at p. 4.2-2; emphasis added.)

Significantly, the DEIR did not rely on an LDN of 75 dBA as governing the assessment of noise impacts. Rather, the DEIR was clear that a 75 dBA standard was “more relevant to **stationary noise sources**”, and was not adequate to assess annoyance from sources of impulsive noise impacts, such as gunshots. (See Ex. 6 at p. 4.2-7; emphasis added.) The noise generated by motorcycles is not “stationary” – and it will have some impulsive qualities as motocross bikes rapidly accelerate move around on the various tracks on the 50 Camino Diablo property.

Finally, it is highly significant that the DEIR instead used an LDN of **63 dBA** to evaluate the likely noise impacts of the proposed gun club project. (See Ex. 6 at p. 4.2-7.) Of course, this standard is very consistent with the County General Plan standard of 60 dB for outdoor noise levels in residential areas (per Noise Element Policy 11-2). It is not at all consistent with the 75 dBA standard that the County now seeks to apply to the proposed Diablo MX project. The County has no good or defensible justification for such disparate and prejudicial treatment of Appellants and other adversely impacted neighbors of the proposed motocross facility.

(c) Exhibit 7: Excerpts from County's Noise Control Conditions of Approval for the Keller Canyon Landfill Project.

Finally, in approving the Keller Canyon Landfill (which is similarly located on Ag-zoned lands), the County imposed stiff noise mitigation and monitoring conditions. The County applied a 60 dBA daytime noise standard (and a 50dBA evening and nighttime threshold) at the landfill property boundary to protect adjacent homeowners in the Pittsburg area. (See Ex. 7 at p. 32.)

The County documents highlighted above raise a number of serious questions. These questions were posed by Appellants at the July 26, 2016 hearing, but the Planning Commission and County staff failed to confront them.

Why would the County apply more stringent residential noise standards to the Gun Club project (63 dBA), and to projects in other parts of the County on Ag-zoned lands (60 dBA), and not apply those same standards here to the Diablo MX project?

Why the apparent double standard and inconsistent treatment?

We respectfully submit that such differential treatment is questionable, if not unlawful on the facts of this case. It is already quite clear that the proposed Diablo MX project will never, and cannot meet, a 60 dB or 63 dB noise threshold based on the data already in hand, without fundamental changes in how the facility is operated. And Appellants have presented substantial evidence from Salter studies, which strongly suggest that WI underestimated the project's likely noise impacts on adjacent homeowners and the project will likely exceed the 75 dB standard as well.

3. Appeal Ground Three: The Board of Supervisors should impose more stringent and meaningful noise mitigation conditions on the proposed Diablo MX project.

Finally, the County should have insisted on a properly calibrated noise monitoring program as a condition of approval of the Diablo MX project, along the lines of the Keller Canyon project approvals? Proposed Conditions of Approval Nos. 8 and 9 are woefully inadequate by comparison. Moreover, the Applicants are still being allowed to operate and remain at night up until 11:00 p.m., during evening hours that are likely to interfere both with sleep patterns and the rights of neighboring homeowners to quiet enjoyment of their property.

The County's Noise Element includes (at pp. 11-5 and 11-6 of the General Plan) 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. However, the County has continued to sanction use of the lighted racetrack for motorcycle racing until 10:00 p.m. on Friday and Saturday nights! 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.

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.

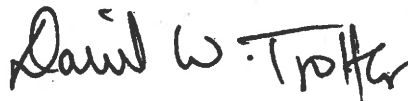
4. Conclusion.

For all of these reasons, Appellants respectfully request that the Board of Supervisors uphold their appeal, overturn the Planning Commission's decision, and direct staff to rescind the NOE and to take all steps necessary for full compliance with CEQA.

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.

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.)

EXHIBIT 1

{00190390.DOC; 1}

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

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

EXHIBIT 1

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) 674-7285—Main
(925) 674-7258—Fax

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

EXHIBIT 2

{00190390.DOC; 1}

Title 14. California Code of Regulations
**Chapter 3. Guidelines for Implementation of the
California Environmental Quality Act**

Article 19. Categorical Exemptions

Sections 15300 to 15333

15300. Categorical Exemptions

Section 21084 of the Public Resources Code requires these Guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15300.1. Relation to Ministerial Projects

Section 21080 of the Public Resources Code exempts from the application of CEQA those projects over which public agencies exercise only ministerial authority. Since ministerial projects are already exempt, categorical exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances. The inclusion of activities which may be ministerial within the classes and examples contained in this article shall not be construed as a finding by the Secretary for Resources that such an activity is discretionary.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15300.2. Exceptions

(a) **Location.** Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) **Cumulative Impact.** All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) **Significant Effect.** A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) **Scenic Highways.** A categorical exemption shall not be used for a project which may result in

ATTACHMENT 1

damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

Note: Authority cited: Section 21083, Public Resources Code; References: Sections 21084 and 21084.1, Public Resources Code; *Wildlife Alive v. Chickering* (1977) 18 Cal.3d 190; *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896; *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 925; *City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810; *Association for the Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720; and *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464

Discussion: In *McQueen v. Mid-Peninsula Regional Open Space* (1988) 202 Cal. App. 3d 1136, the court reiterated that categorical exemptions are construed strictly, shall not be unreasonably expanded beyond their terms, and may not be used where there is substantial evidence that there are unusual circumstances (including future activities) resulting in (or which might reasonably result in) significant impacts which threaten the environment.

Public Resources Code Section 21084 provides several additional exceptions to the use of categorical exemptions. Pursuant to that statute, none of the following may qualify as a categorical exemption: (1) a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources within a scenic highway (this does not apply to improvements which are required as mitigation for a project for which a negative declaration or EIR has previously been adopted or certified); (2) a project located on a site included on any list compiled pursuant to Government Code section 65962.5 (hazardous and toxic waste sites, etc.); and (3) a project which may cause a substantial adverse change in the significance of a historical resource.

15300.3. Revisions to List of Categorical Exemptions

A public agency may, at any time, request that a new class of categorical exemptions be added, or an existing one amended or deleted. This request must be made in writing to the Office of Planning and Research and shall contain detailed information to support the request. The granting of such request shall be by amendment to these Guidelines.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15300.4. Application By Public Agencies

Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each of the exempt classes, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes. Public agencies may omit from their implementing procedures classes and examples that do not apply to their activities, but they may not require EIRs for projects described in the classes and examples in this article except under the provisions of Section 15300.2.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15301. Existing Facilities

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

Examples include but are not limited to:

(a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;

(b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;

(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety).

(d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than:

(1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or

(2) 10,000 square feet if:

(A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and

(B) The area in which the project is located is not environmentally sensitive.

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities, or mechanical equipment, or topographical features including navigational devices;

(g) New copy on existing on and off-premise signs;

(h) Maintenance of existing landscaping, native growth, and water supply reservoirs (excluding the use of pesticides, as defined in Section 12753, Division 7, Chapter 2, Food and Agricultural Code);

(i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;

(j) Fish stocking by the California Department of Fish and Game;

(k) Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt;

(l) Demolition and removal of individual small structures listed in this subdivision;

(1) One single-family residence. In urbanized areas, up to three single-family residences may be

demolished under this exemption.

(2) A duplex or similar multifamily residential structure. In urbanized areas, this exemption applies to duplexes and similar structures where not more than six dwelling units will be demolished.

(3) A store, motel, office, restaurant, or similar small commercial structure if designed for an occupant load of 30 persons or less. In urbanized areas, the exemption also applies to the demolition of up to three such commercial buildings on sites zoned for such use.

(4) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

(m) Minor repairs and alterations to existing dams and appurtenant structures under the supervision of the Department of Water Resources.

(n) Conversion of a single family residence to office use.

(o) Installation, in an existing facility occupied by a medical waste generator, of a steam sterilization unit for the treatment of medical waste generated by that facility provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

(p) Use of a single-family residence as a small family day care home, as defined in Section 1596.78 of the Health and Safety Code.

Note: Authority cited: Section 21083, Public Resources Code; References: Sections 21084, Public Resources Code; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307.

Discussion: This section describes the class of projects wherein the proposed activity will involve negligible or no expansion of the use existing at the time the exemption is granted. Application of this exemption, as all categorical exemptions, is limited by the factors described in section 15300.2. Accordingly, a project with significant cumulative impacts or which otherwise has a reasonable possibility of resulting in a significant effect does not qualify for a Class 1 exemption.

15302. Replacement or Reconstruction

Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

(a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50 percent.

(b) Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.

(c) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.

(d) Conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15303. New Construction or Conversion of Small Structures

EXHIBIT 3

{00190390.DOC; 1}

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25 July 2016

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Subject: **Proposed Diablo MX Motocross Facility
Comments on Wilson Ihrig Noise Study**
CSA Project: 15-0428

Dear Mr. Trotter:

This letter summarizes comments of Charles M. Salter Associates, Inc. (Salter) on the Wilson Ihrig (WI) noise study report dated 8 March 2016 for the proposed Diablo Motocross facility (Diablo MX) at 50 Camino Diablo in Contra Costa County (County). Our comments follow-up the initial Salter ambient noise report dated 20 October 2015. In summary, there are several deficiencies in the WI noise study that should be rectified to properly assess the expected noise impact of the Diablo MX project.

SUMMARY

Our analysis focuses on the following deficiencies in the WI noise study:

1. The Diablo MX noise analysis used an industrial/agricultural DNL 75 dB¹ noise standard for the surrounding properties. The nearest neighboring properties are single-family homes, at which the residential DNL 60 dB standard should be used.
2. Regardless of the noise standard used, the County's policy is to limit noise increases in quiet areas. Noise Element Policy 11-6 states that "*If an area is currently below the maximum "normally acceptable" noise level, an increase in noise up to the maximum should not be allowed necessarily.*" The Diablo MX noise analysis failed to assess the projected significant increase in ambient noise that is expected to impact the neighboring homes.
3. The WI analysis failed to address several noise concerns such as maximum motorcycle noise levels, cumulative noise from daily activity and special events, PA loudspeaker noise, and nighttime noise impact or sleep disturbance. Additional details are provided below.
4. The WI analysis likely underestimated the potential future noise levels by failing to address several conditions and providing no third-party confirmation of the racing simulations. Detailed comments are provided below.

¹ DNL (Day-Night Average Sound Level) – A descriptor for a 24-hour A-weighted average noise level. DNL accounts for the increased acoustical sensitivity of people to noise during the nighttime hours. DNL penalizes sound levels by 10 dB during the hours from 10 PM to 7 AM. DNL is sometimes written as the symbol L_{dn} .

dB (Decibel) – A unit that describes the magnitude of a sound with respect to a reference sound level near the threshold of hearing. Decibels are based on a logarithmic scale. All sound levels listed in this report are A-weighted, a standard weighting that accounts for the sensitivity of human hearing to the range of audible frequencies.

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THE WRONG NOISE CRITERION WAS USED

For their evaluation of motocross noise, WI used a General Plan land-use compatibility guideline of DNL 75 dB based on the A3-Heavy Agriculture zoning. The General Plan does list an "Industrial, Manufacturing, Utilities, Agriculture" land-use category. However, the actual land-use of the nearest neighboring properties is rural single-family residential. This land-use, "Residential – low density" has a "normally acceptable" noise limit of DNL 60 dB.

Furthermore, the County Community Development Division's "Agency Comment Request" and compliance review document for the proposed Diablo MX project identifies a "60-dBA Noise Control" standard (see Enclosure 1). It appears that the County intends to apply a 60 dB standard for planning purposes. This would be consistent with the County's "Residential – Low Density" land-use category, which has a "normally acceptable" limit of DNL 60 dB.

Based on the County standard and the actual use of the surrounding lands, it would have been more appropriate to apply the DNL 60 dB standard to the Diablo MX project, and WI should have done so in its noise study. We note that the Diablo MX noise levels that WI measured and projected, up to DNL 73 dB, far exceed the DNL 60 dB land-use compatibility standard.

For reasons discussed below, we believe that the WI study understated the likely noise levels and impacts on residents living nearby. But even if one applies the WI noise data and the appropriate DNL 60 dBA noise standard, the proposed Diablo MX project would result in a substantial increase in environmental noise and a significant adverse noise impact on the neighboring community.

EXPECTED INCREASES IN AMBIENT NOISE LEVELS WERE NOT STUDIED

WI only compared their projected Diablo MX noise levels to a DNL 75 dB criterion. However, to comprehensively study the potential noise impact of the proposed Diablo MX project, the proper and commonly applied methodology also includes a comparison of projected future noise levels to the existing ambient noise levels. WI did not do this. Following this more rigorous approach would be consistent both with the County General Plan and with CEQA Guidelines² for the evaluation of community noise.

The Noise Element of the current County General Plan (2005 to 2020) contains the following goals, policies, and implementation measures that apply to the project.

Goal 11-A: To improve the overall environment in the County by reducing annoying and physically harmful levels of noise for existing and future residents and for all land uses.

Goal 11-B: To maintain appropriate noise conditions in all areas of the County.

Goal 11-C: To ensure that new developments will be constructed so as to limit the effects of exterior noise on the residents.

Goal 11-D: To recognize the economic impacts of noise control and encourage an equitable

² For example, CEQA Appendix G Section XI. Noise requires that the following question be asked: "Would the project result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project."

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distribution of these costs.

Goal 11-E: To recognize citizen concerns regarding excessive noise levels, and to utilize measures through which the concerns can be identified and mitigated.

Policy 11-2: The standard for outdoor noise levels in residential areas is a DNL of 60 dB. However, a DNL of 60 dB or less may not be achievable in all residential areas due to economic or aesthetic constraints...

Policy 11-6: If an area is currently below the maximum "normally acceptable" noise level, an increase in noise up to the maximum should not be allowed necessarily.

Implementation Measure 11-a: Continue to require a review and analysis of noise-related impacts as part of the existing project development review procedures of the County.

Implementation Measure 11-b: Evaluate the noise impacts of a proposed project upon existing land uses in terms of the applicable Federal, State, and local codes, and the potential for adverse community response, based on a significant increase in existing noise levels.

Implementation Measure 11-d: Noise mitigation shall be incorporated into the design and construction of new projects or be required as conditions of project approval.

In particular, Policy 11-6 states that it is not necessarily acceptable to allow ambient noise levels to be raised to the maximum limit of the "normally acceptable" land-use standard. Implementation Measure 11-b also requires that the "potential for adverse community response, based on a significant increase in existing noise levels" be studied. Therefore, the expected increase in noise and other pertinent factors (e.g., actual neighboring land-uses) should be considered in the noise study for the proposed Diablo MX project. To put noise increases in context, the County's Noise Element (Page 11-8) also discusses how noise increases are perceived by people, as listed below:

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.

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

Based on the County's Noise Element policies, the proposed Diablo MX project should be considered to have a substantial impact on the neighboring community if it raises ambient noise levels by more than 5 dB. This is consistent with common practice and in-line with standards used by several municipalities and consulting firms in this field of study. The WI noise study ignored these County policies and guidelines for the evaluation of expected increases in ambient noise.

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WI measured ambient noise levels at five (5) locations on the site at 50 Camino Diablo and stated the levels in one section of their report (see Section 3.2 of the WI report). They also calculated projected Diablo MX noise levels at those same measurement locations and reported the levels in a separate section of the report (see Section 6 of the WI report). But, WI did not compare these two sets of data. To put these levels in context, both ambient and projected Diablo MX facility noise data from the WI report are summarized in **Table 1** below.

Table 1. Summary Comparison of WI Measured Ambient and Projected Diablo MX Noise Levels (L_{dn} , dB)

Property Line Location	WI Measured Ambient Noise Levels	WI Projected Diablo MX Noise Levels	Expected Increase in Noise Level
1 (East)	48 to 54	Up to 61	Up to +13 dB
2 (Southeast)	49 to 56	Up to 69	Up to +20 dB
3 (South)	47 to 56	Up to 64	Up to +17 dB
4 (West)	53 to 56	Up to 73	Up to +20 dB
5 (Northwest)	47 to 48	Up to 60	Up to +13 dB

If WI's data is accepted without revision (see subsequent sections of this report), Table 1 shows that Diablo MX noise would increase community noise at adjacent properties by up to 20 dB. This equates to a four-fold increase in perceived loudness. In our professional judgement and per the County Noise Element guidelines (Page 11-8), such an increase would certainly be expected to result in an "adverse community response".

In addition, the WI report state (in Section 7) that projected Diablo MX noise levels are expected to be between DNL 55 dB and DNL 61 dB at neighboring homes (i.e., at the buildings, not the property line). Again, if WI's data is accepted without revision, and assuming similar ambient noise levels at the nearby homes, these noise levels from the project would still increase ambient noise by more than 10 dB at the neighboring homes. This would be perceived as a doubling of loudness and also be expected to trigger an adverse community response (per County Noise Element Guidelines, Page 11-8).

In summary, the WI study indicates that ambient noise levels would be increased by up to 20 dB at the property line and by approximately 10 dB at the neighbors' homes. These changes in ambient noise would be considered significant per the County General Plan Noise Element and common practice. Therefore, projected Diablo MX noise should be deemed to have a significant impact requiring mitigation. For reasons discussed below, we believe that the WI study understated the likely noise levels and impacts on residents living nearby. But even if one applies the WI noise data, the projected Diablo MX motocross noise levels would result in environmentally significant impacts, for which further environmental review and mitigation measures should be required under CEQA and County noise standards.

THE IMPACT OF MAXIMUM MOTOCROSS NOISE LEVELS WAS NOT CONSIDERED

The WI report does not address momentary maximum noise levels (L_{max}) that are generated by motorcycles. These levels would be higher than the reported "average" noise levels reported by WI. Though the County does not specifically regulate such L_{max} levels, it is an important step in the analysis

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of potential noise impact on the community, particularly where the racing tracks are located near adjacent residential property lines.

The WI report does not list the maximum noise levels that they measured. This omission should be rectified.

In a previous project, Salter measured maximum noise levels from motorcycles on a commercial course in Northern California. We found that motorcycle noise varies considerably with vehicle speed, acceleration, hill grade, and direction. Normalized to a distance of 100 feet, we measured maximum noise levels between 75 dB and 95 dB. At other distances, these maximum motorcycle noise levels would be as listed in **Table 2** below.

Table 2. Potential Maximum Motorcycle Noise Levels Based on Measurements at Another Northern California Facility

Distance (ft)	Maximum Motorcycle Noise Levels (L_{max} in dB)
100	75 to 95
175	70 to 90
315	65 to 85
560	60 to 80
1000	55 to 75
1800	50 to 70

The WI report, in Appendix Tables A-1 and A-2, indicates that hourly average ambient noise levels at the 50 Camino Diablo site are typically 45 dB (approximate). By comparison, maximum motorcycle noise levels between 75 dB and 95 dB would be substantially louder than the typical background noise, by 30 dB to 50 dB. There are areas where the proposed Diablo MX motocross tracks would be within 100 feet of neighboring residential properties. At such locations, the noise impacts at these residential properties would be significant and severe. And even at greater distances, the noise levels in Table 2 show that maximum motorcycle noise would likely be substantially greater than the ambient noise level even more than one quarter mile away. This clearly demonstrates the potential impact that motorcycle noise would have on the nearby residential properties. Therefore, such intermittent but severe noise levels should be assessed as part of a thorough environmental Diablo MX noise analysis, complaint with CEQA Guidelines and City Noise Goals.

NO CONFIRMATION THAT THE SIMULATED "RACING" ACTIVITY WAS REPRESENTATIVE OF ACTUAL, LIKELY, OR WORST-CASE CONDITIONS

To develop estimates of race day and practice events, WI and the operators of the proposed Diablo MX facility conducted simulated activities on-site with volunteers. The project applicants and WI did not provide advance notice of their "racing simulation," nor did they give us access to the site so that we could monitor those activities as they were occurring. Thus, there are no independent, third party, observations to confirm that the simulated race and practice events were representative of actual race and practice conditions. As stated above, motorcycle noise levels can vary considerably with speed and acceleration, and engine load. It is unclear how "competitive" the simulated race conditions were. An

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independent observer, familiar with actual racing conditions should have been present to comment on whether the simulation was representative of future conditions.

In addition, we do not know how loud the motorcycles used in the simulation were. The report proposes a mitigation measure that all bikes used on-site meet the State regulation for a maximum of 96 dB at 20 inches from the exhaust at the specified engine RPM. However, WI did not test the motorcycles used in the simulation with regard to this State limit. If the simulation bikes were notably quieter than the limit would allow, then the "racing simulation" would be methodically invalid and not representative of the potential actual, likely, or worst-case conditions which may occur on the site if the project is approved.

QUESTIONABLE ASSUMPTIONS REGARDING MODELED MOTORCYCLE QUANTITIES AND ACTIVITIES WERE USED

To estimate future Diablo MX noise levels, WI made assumptions of how many riders would be on each track under each condition. Their modeling efforts accounted for the following riders:

- For a race, 15 riders on the MX track
- For weekend practice, 10 riders on the MX track and 5 riders on the oval track
- For weekday practice, 5 riders on the MX track and 3 on the oval track
- For the nighttime events, 7 riders on the oval track

These assumptions are questionable and could have underestimated the actual noise impacts to adjacent residences. We note that during their volunteer simulation, the Diablo MX property was able to accommodate 25 riders simultaneously on the motocross track and 10 riders on the oval track. These actual numbers of motorcycle riders exceed all of the calculation assumptions used in the WI noise study.

For an appropriate evaluation of potential noise impact, the analysis should be based on the likely "worst-case" conditions by using a conservative estimate of the maximum number of riders that could be reasonably expected at the facility.

QUESTIONABLE ASSUMPTIONS REGARDING MODELED HOURS OF USE WERE USED

To calculate projected Diablo MX facility daily average noise levels, WI also made certain assumptions for how long the tracks would be used each day. WI limited the number of hours per day of motocross activity as listed below:

- On a race day, 7 hours of racing
- For weekend practice, 4 hours of riding on the MX track and 2 hours of riding on the oval track
- For weekday practice, 1.5 hours of MX track use and 1 hour of oval track use
- For the nighttime event, 4 hours of riding on the oval track

In calculating daily average noise levels (DNL), a longer duration of loud activity would result in higher daily average levels. Therefore, it is methodically important that the noise analysis accurately reflect the amount of time that motocross activity may be permitted at each track. In their noise analysis, WI assumed rather limited total durations of track use, particularly for practice days. Again, WI has provided no confirmation that future use of the facility is properly reflected in their analysis.

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We note that Exhibit 1 to the County's 12 May 2015 staff report Exhibit 1, which states previous conditions of approval, indicates that the facility would be allowed to operate from 8 am to 7 pm daily and from 7 pm to 11 pm at the lighted track on Friday and Saturday nights. Thus, the potential hours of operation would allow for 11 hours (or more on Friday or Saturday) of activity. Therefore, the assumed hours of activity in the WI report are questionable. For an appropriate evaluation of potential noise impact, the analysis should conservatively assess the maximum hours of such motocross activities at the facility. The WI noise analysis failed to do this.

Based on the WI noise data and assumed hours of operation, we estimated the noise levels (DNL) that would occur if the typical motocross activities occur for 11 hours per day, which would be permitted based on the staff report's condition regarding normal hours of operation. We estimate that the worst-case DNL levels would be greater (compared to Table 4 of WI report) by the following amounts for each typical motocross activity:

1. Weekend Race Day: 2 dB louder, and up to DNL 75 dB
2. Weekend Practice: 4 dB louder, and up to DNL 73 dB
3. Weekday Practice: 7 dB louder, and up to DNL 72 dB

These estimated worst-case noise levels are notably higher than those stated in Table 4 of the WI report. For an appropriate evaluation of potential noise impact, the analysis should be based on the likely "worst-case" conditions by using a conservative estimate of the hours of activity that could be reasonably expected at the facility.

THE CUMULATIVE EFFECT OF "NIGHT UNDER THE LIGHTS" NOISE WAS NOT CONSIDERED

In WI's prediction of daily average noise levels, the "Night Under the Lights" levels are generally the quietest of all conditions. However, in a proper DNL analysis, the daily average noise levels of such an event cannot be evaluated separately while ignoring the daytime activities that could occur on the same day (e.g., race or practice). Therefore, the WI noise study did not assess the cumulative effect of 15 hours of daytime and evening/night activities, and thus, has significantly underestimated the actual, cumulative noise levels.

Based on the WI noise data and assumed hours of operation, we estimated the noise levels (DNL) that would occur if the typical motocross activities occur for 11 hours per day and the Friday under the Lights events occur on the same day, which would be permitted. We estimate that the worst-case DNL levels would be greater by the following amounts for each day of cumulative motocross activity as compared to the night event alone (see Table 4 of WI report):

1. Friday Practice + Night Event: up to 16 dB louder
2. Saturday Race + Night Event: up to 19 dB louder

These estimated worst-case noise levels are significantly higher than those stated in Table 4 of the WI report for the Friday under the Lights event. A proper evaluation of noise impact cannot ignore the cumulative effects of various activities that would occur on the Diablo MX site. The WI noise study does not address this cumulative noise impact and is therefore deficient.

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NIGHTTIME NOISE IMPACT ON ADJACENT RESIDENCES WAS NOT CONSIDERED

The proposed Diablo MX project plan includes nighttime activities during the weekend "Night Under the Lights" events. These events would allow motorcycle activities to continue until 11 pm. Beyond calculating daily average noise levels, the WI noise study provides no evaluation of the potential impact of noise at night. Nighttime activities should be addressed carefully due to the sensitivity of neighboring residents and the potential for sleep disturbance.

An appropriate nighttime noise analysis should evaluate the average and maximum noise levels expected during nighttime hours. Noise levels at the property line, outside neighboring homes, and inside homes (with windows in the typical seasonal position) should be evaluated. The potential for sleep disturbance should be addressed and appropriate mitigation proposed, as needed. The WI noise analysis does not do any of this.

Industry references³ indicate that sleep disturbance can begin with intruding noise levels exceed 35 dB to 45 dB. If, on average, sleep disturbance is expected when noise levels exceed 40 dB, then motocross noise should be reduced to 40 dB or quieter inside neighboring homes. With windows open, outdoor noise would need to be limited to 55 dB outdoors at each neighboring home. Based on our previous motocross noise measurements (see above), maximum motorcycle noise levels could be between 50 dB and 70 dB at a distance of 1,800 feet. There are several homes within that distance around the site. Again, the WI noise analysis fails to account for these expected and significant impacts on adjacent residences, nor does it suggest any relevant mitigation measures.

NOISE IMPACT ON ADJACENT RESIDENCES FROM THE PA SYSTEM WAS NOT CONSIDERED

In their noise study, WI assumed that the public address (PA) system would generate a noise level of 90 dB at 50 feet from the Diablo MX loudspeaker. However, WI did not predict or quantify the expected PA noise levels as neighboring property lines. PA could be clearly audible at times. Therefore, we recommend that noise mitigation be incorporated to control PA system noise to meet the project criteria. This could include the following measures:

- The direction of the speaker(s) could be specified (e.g., away from nearby properties)
- Control of loudspeaker dispersion/coverage pattern to reduce stray noise emission to neighbors
- Maximum noise limits at the property lines
- Limits to the type and frequency of use (see below)

The WI study assumes that the PA would be used only on race days for 15 seconds at a time, 8 times per hour for announcements. If the PA were used for a more continuous use, such as music or ongoing race commentary, conceptually, noise exposure from the PA would increase. The noise study should evaluate such effects before the project is approved to determine if limits on the type/frequency of use are appropriately incorporated as mitigation or a condition of approval.

* * *

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³ For more information see: World Health Organization, Guidelines for Community Noise, 1999 (Section 3.4 page 46), U.S. Environmental Protection Agency, Public Health and Welfare Criteria for Noise, 1973 (Page 7-13), or ANSI S12.9-2008 Part 6 "Quantities and Procedures for Description and Measurement of Environmental Sound - Part 6: Methods for Estimating of Awakenings Associated with Outdoor Noise Events Heard in Homes."

This concludes our current comments on the WI Noise Study Report for the proposed Diablo MX project. Should you have any questions, please call.

Sincerely,

CHARLES M. SALTER ASSOCIATES

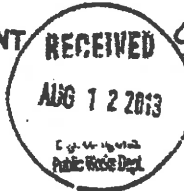


Jeremy L. Decker, PE
Principal Consultant

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Audiovisual
Telecommunications
Security

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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
 8/13
 (M)



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/Crookett CSD

MACITAC BYRON

Improvement/Community Association

Others/Non-local

Please submit your comments to:

Project Planner Gary Kupp

Phone # (925) 674-7779

E-mail gary.kupp@cdcd.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 LP15-2020 (ATTACHED).

PLEASE SUBMIT ANY COMMENTS, QUESTIONS, OR CONCERNS REGARDING COAS.

Applicant has complied w/coas by PWD of LP15-200

Print Name Joseph LaPogue

Signature Joseph LaPogue DATE 09/12/13

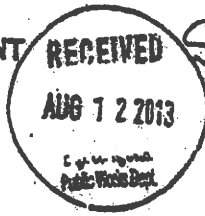
Agency phone # (925) 477-2215

Duracki

EXHIBIT 2

EXHIBIT 4

{00190390.DOC; 1}



AGENCY COMMENT REQUEST

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

Date _____

DISTRIBUTION

Internal

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

Health Services Department

Environmental Health Hazardous Materials

Public Works Department

Engineering Services (Full-size) Traffic
 Flood Control (Full-size) 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/Crockett CSD _____
 MACTAC BYRON
 Improvement/Community Association _____

Others/Non-local

CHRIS - Sonoma State _____
 CA Fish and Wildlife, Region 3 - Bay Delta _____

Additional Recipients

CONTRA COSTA COUNTY
 2013 SEP 26 PM 1:11
 DISTRICT

Please submit your comments to:

Project Planner Gary Kupp
 Phone # (925) 674-4119
 E-mail gary.kupp@cdcd.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/coas by PWD of LP95-200

Print Name Jocelyn LaPoque
 Signature Jocelyn LaPoque DATE 09/27/13
 Agency phone # (925) 919-2215

EXHIBIT 2

Dunneal can comment on...

EXHIBIT 5

{00190390.DOC; 1}

**BRENTWOOD ROD AND GUN CLUB INITIAL STUDY
NOISE ASSESSMENT
COUNTY FILE # LP992027**

December 22, 1999



Prepared for:

Contra Costa County Community Development Department
c/o Darwin Myers, Contract Planner

Prepared by:

Richard B. Rodkin, PE

ILLINGWORTH & RODKIN, INC.

Acoustics · Air Quality

85 Bolinas Road, Suite 11

Fairfax, CA 94930

(415) 459-5507

INTRODUCTION

This report assesses the significance of noise from the Brentwood Rod and Gun Club and its proposed site on Camino Diablo in Contra Costa County (Figure 1). The significance of potential noise impacts is assessed by comparing noise levels anticipated to be generated by the Gun Club with the guidelines set forth in the Contra Costa County Noise Element of the General Plan and existing ambient noise levels in the area. Guns were test fired at the site and noise levels were monitored at sensitive receptors to provide an accurate basis for the assessment. Technical terms are defined in Table 1.

In summary, predicted noise levels would comply with applicable County guidelines and more restrictive significance thresholds with an adequate margin of safety. Overall ambient noise levels would not increase substantially at the nearby sensitive receptors, and the noise impacts resulting from this project are less than significant. The firing of shotguns, at the proposed location and orientation, would be clearly audible above the background noise at the two nearest residences to the east and may result in some disturbance and associated complaints. However, the potential for disturbance at these residences can be controlled with the implementation of individual or combined measures.

DISCUSSION

Criteria

The California Environmental Quality Act (CEQA) asks the following questions regarding potential noise effects from a project. Would the project result in:

- (a) exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies;
- (b) exposure of persons to or generation of excessive ground-borne vibration or ground-borne noise levels;
- (c) a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project;
- (d) a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project;
- (e) for a project located within an airport land use plan or where such a plan has not been adopted within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels;

- (f) for a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?

Checklist items (b), (e), and (f) are not relevant to this assessment. Checklist items (a), (c), and (d) are relevant and these checklist items are addressed in the following discussion.

The Contra Costa County General Plan has adopted the following goals and policies which are relevant to the proposed project:

Goal 11-B: To maintain appropriate noise conditions in all areas of the county.

Policy 11-1: New projects shall be required to meet acceptable exterior noise level standards as established in the Noise and Land Use Compatibility Guidelines contained in Figure 11-6[2].

Policy 11-2: The standard for outdoor noise levels in residential areas is a DNL of 60 dB.

Policy 11-6: If an area is currently below the maximum "normally acceptable" noise level, an increase in noise up to a maximum shall not be allowed necessarily.

Implementation Measure 11-B:

Evaluate the noise impacts of a proposed project upon existing land uses in terms of the applicable federal, state, and local codes and the potential for adverse community response, based on a significant increase in existing noise levels.

Goal 11-C: Encourage use of the following mitigation measures to minimize noise impacts of proposed development projects:

(1) **Site Planning**

Proper site planning is the first mitigation measure that should be investigated to reduce noise impacts. By taking advantage of the natural shape and terrain of a site, it often is possible to arrange the buildings and other uses in a manner that will reduce, and possibly eliminate, noise impact.

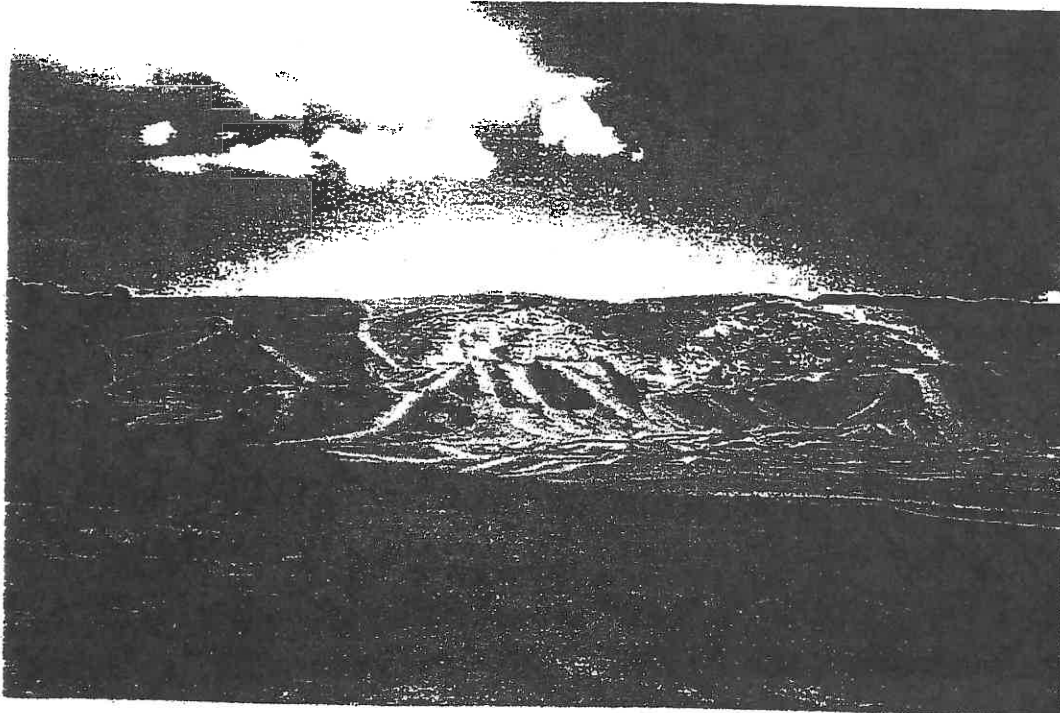
(2, 3, 4): Not applicable

There has been extensive research on the relationship of annoyance caused by noise from firearms and other impulsive sounds. A list of references is included at the end of the report. Based on a review of this research, we conclude that for relatively low and moderate levels of noise, the A-weighted average sound level (L_{eq}) of shooting sounds is about 8 to 13 dB lower than that of equally annoying road traffic noise. Overall, a correction of 10 dBA seems appropriate. An hourly L_{eq} of 50 dBA, or an L_{dn} of about 50 dBA, are therefore suggested as significance

EXHIBIT 6

{00190390.DOC; 1}

Draft
ENVIRONMENTAL IMPACT REPORT
for the
BRENTWOOD ROD AND GUN CLUB
SCH# 2000012092



Prepared for:
Contra Costa County
Community Development Department
651 Pine Street
Martinez, CA 94553

December 2002
Volume 1

ATTACHMENT 3

4.2 NOISE

This section evaluates noise impacts from the construction and operation of the proposed Brentwood Rod and Gun Club.

ENVIRONMENTAL SETTING

Noise Terminology

Noise is often defined as unwanted sound. Sound is easily measured with instruments, but the human variability in subjective and physical responses to sound complicates the understanding of its impact on people. People judge the relative magnitude of sound by subjective terms such as "loudness" or "noisiness."

Impulsive noise consists of one or more bursts of sound energy, each of duration of less than about 1 second. The International Organization for Standardization (ISO) defines a sound from gunfire as "highly impulsive sound". Impulsive noise is generally considered more annoying than continuous noise associated with vehicle pass-by or mechanical noise.

Sound-pressure level (L_p) is measured and quantified in terms of a logarithmic scale in decibels (dB). Research on human hearing sensitivity has shown that a 3 dB increase in the sound is noticeable and a 10 dB increase would be perceived as twice as loud (Yerges 1978). The human hearing system; however, is not equally sensitive to sound at all frequencies. Therefore, a frequency-dependent adjustment called "A-weighting" has been devised so that sound may be measured in a manner similar to the way the human hearing system responds. The A-weighted sound level is often abbreviated "dBA" or "dB(A)." Figure 4.2-1 provides typical A-weighted sound levels of various noise sources.

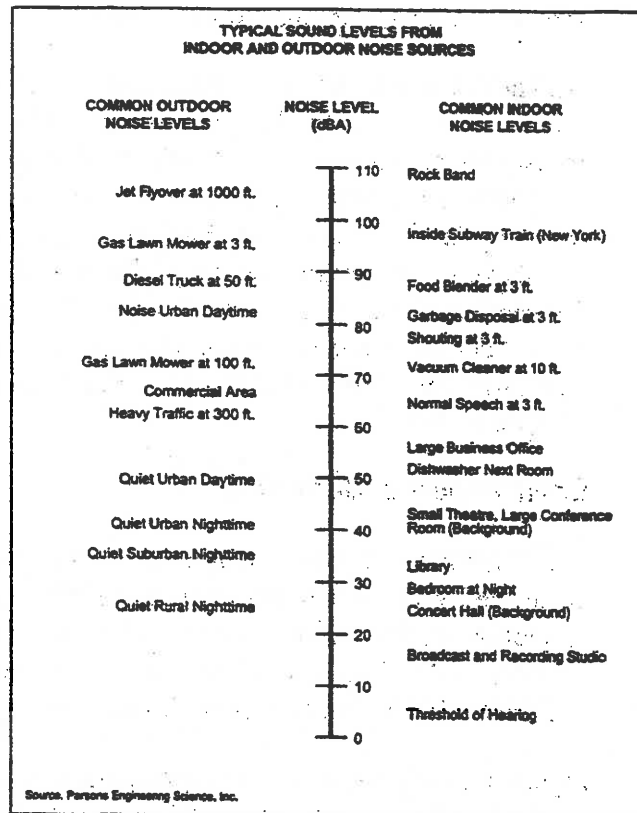


Figure 4.2-1 Typical A-Weighted Noise Levels

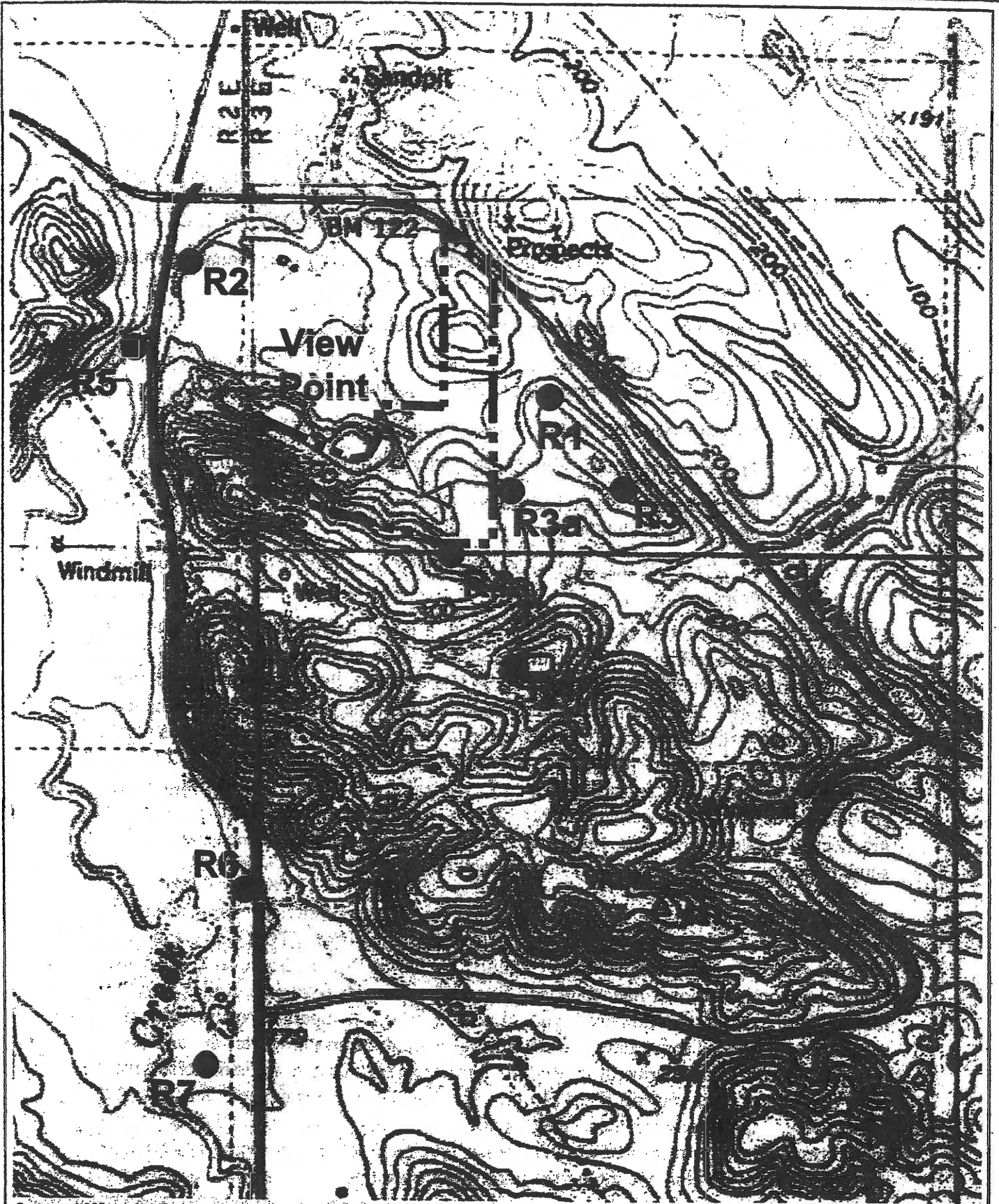
Community noise levels usually change continuously during the day. Community noise also exhibits a daily, weekly, and yearly pattern. Several descriptors have been developed to compare noise levels over different time periods. The most common descriptors are the energy equivalent sound level (L_{eq}) and day-night average sound level (L_{dn}). The L_{eq} is the equivalent steady-state A-weighted sound level that would contain the same acoustical energy as the time varying A-weighted sound level during the same time interval. The L_{dn} is the averaged A-weighted sound level over a 24-hour period with a 10 dB adjustment added to the sound level between 10:00 PM and 7:00 AM. This time weighting is applied in an effort to account for the assumed increased sensitivity to noise intrusions during the nighttime hours.

Another descriptor often used, especially for impulsive noise, is the maximum noise level (L_{max}). The L_{max} is the highest instantaneous sound level measured during a single noise measurement interval no matter how long this sound may persist and whether the noise source is ambient or project related. L_{max} can be measured using several different sampling time intervals. "Fast" detector time, 0.125 second, is typically used for impulsive noise measurement; whereas "Slow" detector time, 1 second, is generally used for vehicular noise. Since the gun shot duration is shorter than one second, using the "Slow" detector time would miss the actual L_{max} ; thus measuring much lower noise levels than using "Fast" detector time. The L_{max} in this section refers to the L_{max} with a "Fast" detector time.

Environmental Setting

The immediate surrounding areas of the proposed project site consist of the Los Vaqueros Watershed on the west and south, FTG Quarry and motocross park on the north, and several residences on the east and south. Farther north of the project area are agricultural uses. Los Vaqueros Watershed is under the jurisdiction of the Contra Costa Water District (CCWD). Activities in this area include picnicking, hiking on trails, and fishing.

Figure 4.2-2 show the project area and nearby noise sensitive receptor locations. Noise measurements were conducted both by Illingworth & Rodkin (1999 and 2000), who completed the noise assessment for the original Initial Study, and by Parsons.



Source: USGS quad, Brentwood, CA; Byron Hot Springs, CA

Contra Costa County
Brentwood Rod and Gun Club

NOISE MEASUREMENT LOCATIONS

Figure 4.2-2

BRENTWOOD ROD AND GUN CLUB
DRAFT EIR

The following is the list of the noise sensitive receptor locations:

- R1: East residence in Initial Study Noise Assessment (300 feet from boundary of proposed gun club property) (APN 003-020-014-1, Cook)
- R2: West residence in Initial Study Noise Assessment (1,200 feet from boundary of proposed gun club property) (APN 003-020-036-1, Davis)
- R3: Western façade of Dunster Residence (700 feet from boundary of the proposed gun club property) (APN 003-020-012)
- R3A: Eastern boundary of the proposed gun club site
- R4: Northern façade of Bowles residence (950 feet from boundary of the proposed gun club property) (APN 003-030-027-1)
- R4A: Southern boundary of the proposed gun club site
- R5: Trail entrance (1,000 feet from boundary of proposed gun club property)
- R6: Los Vaqueros Watershed gated entrance (2,700 feet from boundary of proposed gun club property)
- R7: CCWD corporate yard (4,000 feet from boundary of proposed gun club property)

The residences located east of the gun club have a direct line-of-sight to the gun club boundary, as shown in Figure 4.2-3. This photo was taken at the eastern boundary of the gun club, looking toward the eastern residences (R1 and R3); the viewpoint for the photo is shown in Figure 4.2-2). Terrain located further south of the project site blocks the line-of-sight from a residence (Receptor R4) to the gun club. The actual shooting areas would not be visible from adjacent residences. The skeet and trap fields are located at the base of the hill that forms the southeastern edge of the property, and the rifle and pistol ranges are located at the bottom of the canyon on the southwestern portion of the site. In geometrical relation to the skeet and trap fields, the residences located on the east and south of the gun club are elevated by approximately 100 feet.

The noise environment of the proposed site includes motorcycle noise when the motocross park is operating, occasional construction noise from FTG Quarry and other adjacent quarries, vehicular noise from Camino Diablo and Walnut Boulevard, and blade-flop noise from occasional helicopter and fixed-wing aircraft flyovers. Kellogg Quarry located northeast of the proposed gun club site typically operates overnight. The motocross park opens seven days a week during daylight hours; however, the use of the park is intermittent. Hingworth & Rodkin, Inc. reported that the ambient noise levels near the project area ranged from 40 to 50 dBA at two residences, R1 and R2, respectively. The measurements were made when there were no activities in the motocross park. The measured ambient noise levels could be considered typical of a rural setting, provided that the motocross park is not operating.

Table 4.2-1

Land Use Compatibility for Agricultural Areas

Acceptability	Noise Exposure (L_{dn} or CNEL, dB)
Normally Acceptable	Up to 75 dB
Conditionally Acceptable	70-80 dB
Normally Unacceptable	75-85 dB
Clearly Unacceptable	Greater than 85 dB

Source: Contra Costa County General Plan Noise Element Figure 11-6, Land Use Compatibility for Community Noise Environments

In the Noise Element, an L_{dn} of 75 dBA is considered "Normally Acceptable" for agricultural land use. However, an L_{dn} of 75 dBA would be more relevant to stationary noise sources and applying this limit to evaluate impulse noise impacts without some adjustment would not adequately assess annoyance due to the impulsive gun noise.

Additional Criterion for Impulse Noise

Many publications and research studies show that more stringent noise requirements should apply to gun noise because human ears tend to respond more sensitively to impulse noise. ISO and American National Standards Institute recommend a 12-dBA penalty to account for impulse noise (ISO 1988). Therefore, the L_{dn} of 63 dBA was used for the evaluation of impacts. This criterion can be considered as an "absolute criterion", because it would apply to the assessment regardless of the ambient noise levels.

Perception Criterion

People have different sensitivities to changes in noise levels, but it is generally known that human ears would notice a 3-dBA difference in noise. As a particular noise from a source increases by more than 5-dBA, a normal person would clearly respond (Yerges 1978). Most people perceive a 10-dBA difference in noise levels as a doubling in loudness (Yerges 1978, Harris 1979). Because many people perceive firearms use as being dangerous, they tend to react more acutely to firearms noise, as compared to roadway noise. A fairly stringent criterion for perception of firearms noise is therefore warranted.

The perception criterion can be considered as a "relative criterion", because the allowable noise levels would widely fluctuate depending on the surrounding ambient conditions. For example, the allowable L_{max} at R3 would be 50 dBA

EXHIBIT 7

LAND USE PERMIT 2020-89
CONDITIONS OF APPROVAL
KELLER CANYON LANDFILL

Approved by the:
CONTRA COSTA COUNTY BOARD OF SUPERVISORS
JULY 24, 1990

As Amended or Modified by the:
CONTRA COSTA COUNTY BOARD OF SUPERVISORS
November 1, 1994 (Amendment 1)
June 25, 2002 (Amendment 2)
December 16, 2014 (Permit Review Modification)
September 22, 2015 (Permit Review Modification)

ATTACHMENT 4

controlled and equipment shall be fitted with spark arrestors so potential for causing fires is minimized. Equipment shall not be left idling when not in use. Maintenance records shall be kept on all pieces of Landfill equipment. The records are subject to review by Contra Costa Environmental Health. Equipment shall be stored, serviced, and repaired in a maintenance area designated in the Development and Improvements Plan and approved by the County Conservation and Development Department.

21. NOISE CONTROL

- 21.1 **Noise Control Objective.** The Landfill operator shall manage the facility in a manner that minimizes noise impacts to area residents.
- 21.2 **Noise Monitoring Program.** The Landfill operator shall prepare and implement a noise monitoring and abatement program, which shall be approved by the County Department of Conservation and Development and Contra Costa Environmental Health. The program shall monitor noise levels at sensitive receptor locations, one West of Bailey Road and South of West Leland Road, one near Bailey north of West Leland, and another in the Jacqueline Drive area south of West Leland Road. The Director of Conservation and Development may specify other monitoring locations. Noise monitoring reports shall be submitted to the County Conservation and Development Department on a quarterly basis unless otherwise specified by the Director of Conservation and Development. If the monitoring noise levels at the Landfill boundary line or other monitored location exceed 60 dBA during daylight hours, or 50 dBA during the evening or at night, the County may require the operator to institute additional noise reduction measures to bring noise emanating from the Landfill to the forementioned levels or less.
- 21.3 **Toe Berm.** See Condition 22.3.
- 21.4 **Mitigation/Lift-Level Berms.** See Condition 22.4
- 21.5 **Construction Hours.** See Condition 32.1.
- 21.6 **Truck Noise Suppression.** The Landfill operator shall require transfer trucks and other waste hauling vehicles using the facility to be equipped with factory approved noise suppression equipment, including engine compartment insulation. The Landfill operator shall request the California Highway Patrol actively enforce muffler and vehicle noise standards as required in the California Vehicle Code if, for any reason, noise from heavy trucks becomes a source of complaints in the project area, whether project-related or not. Transfer trucks and other waste hauling vehicles with faulty mufflers shall be denied access to the landfill after one warning by a landfill operator at the

landfill entrance.

- 21.7 Landfill Vehicles. The Landfill operator shall provide Landfill equipment with the best available noise suppressing equipment to minimize sound generation.
- 21.8 Gas Flare Muffling. If flaring is used to dispose of Landfill gas, the flares shall be contained in noise and glare-reducing housing. The housing shall be subject to the approval of the Contra Costa Environmental Health and Conservation and Development Departments and the Bay Area Air Quality Management District.

22. VISUAL QUALITY

- 22.1 Visual Quality Objective. The Landfill developer shall construct and operate the facility in such a manner that the high visual value of the surrounding area is maintained.
- 22.2 Landscape Plan. The Landfill developer shall prepare and implement a site Landscaping Plan. The plan shall enhance the site's visual values as open space and its functional values as wildlife habitat. It shall minimize the visual impacts of the landfill operations and appurtenant facilities through revegetation and landscape screening. The plan shall show the plant species, size, and locations to be used to blend in with the existing natural vegetation. Natural, drought tolerant species shall be used, in accordance with State and local water conservation landscaping requirements. A landscape maintenance program shall be part of the plan. A Weed Monitoring and Control Program shall be included, containing a listing of noxious weeds, a monitoring program, and abatement measure options. A Landscape Plan shall be included in the Development and Improvements Plan. The Landscape Plan shall assure no visual impact on the Cities of Concord and Clayton consistent with the Environmental Impact Report.
- 22.3 Toe Berm. The Landfill developer shall install the first phase of the toe berm prior to other landfill construction and development of the Landfill. Other sections of the toe berm shall be installed in stages (see condition 32.4). The toe berm shall be contoured to blend with existing topography. It shall be designed to screen the landfill access road. It shall be revegetated immediately with native grasses and other vegetation to blend in with the surrounding area.
- 22.4 Mitigation Berms. The Landfill developer shall install landscaped mitigation berms (lift-level peripheral berms) at the face of each lift in areas visible off the Landfill site, before beginning refuse disposal on the lift. The berms shall be

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

Maureen Toms
Deputy Director

PAYER:

APPLICATION #: CDLP15-02040

TYPE: Land Use Permit

Payment Type: Check
Check Nbr: 1028

ACCOUNT ITEM LIST:

Item #	Description	Total Fees	Current Paid	Total Paid
0047	Appeal (\$125)	\$125.00	\$125.00	\$125.00
048F	Fish & Wildlife Fee (\$75)	\$75.00	\$0.00	\$75.00
052B	Notification Fee (\$30)	\$30.00	\$0.00	\$30.00
CTRT	Consultant Contract	\$2,220.00	\$0.00	\$2,220.00
HSDR	Environmental Health Fee (\$57)	\$57.00	\$0.00	\$57.00
LPS0029	LUP-Other	\$2,700.00	\$0.00	\$2,700.00
Total Fees:		\$5,207.00	Paid:	\$5,207.00
			Balance:	\$0.00

ISSUED BY: FLEE

DATE: 08-02-2016

APPLICATION DESC: The applicant requests approval to modify Land Use Permit LP95-2020 with modifications to the conditions of approval for the motorcross land use.
 SITE ADDRESS: 50 CAMINO DIABLO, BRENTWOOD, CA 94513
 PARCEL: 003-020-048
 NOTES: PYMT FOR APPEAL

Receipt Number: 160009405