



**Contra
Costa
County**

To: Board of Supervisors
From: John Kopchik, Director, Conservation & Development Department
Date: November 15, 2016

Subject: Appeal of County Planning Commission Approvals of County Files LP13-2095 & LP15-2040 (Diablo MX Ranch Motocross Park)

RECOMMENDATION(S):

1. OPEN the public hearing and receive testimony on the appeals of the County Planning Commission's approval of the Diablo MX Ranch Motocross Park project.
2. CLOSE the public hearing.
3. DETERMINE that the Diablo MX Ranch Motocross Park project is categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Sections 15301 (existing facilities) and 15304 (minor alterations to land) and DIRECT the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk.
4. DENY the appeal by the Law Offices of David W. Trotter, representing project opponents, of the County Planning Commission's July 26, 2016 decision to approve a land use permit modification for the Diablo MX Ranch Motocross Park.
5. APPROVE a land use permit modification for the Diablo MX Ranch Motocross Park (County File #LP15-2040), including the permit's growth management performance

☒ APPROVE ☐ OTHER
☒ RECOMMENDATION OF CNTY ADMINISTRATOR ☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **11/15/2016** ☐ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes: SEE ADDENDUM

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
 Candace Andersen, District II Supervisor
 Mary N. Piepho, District III Supervisor
 Karen Mitchoff, District IV Supervisor
 Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: November 15, 2016

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Gary Kupp, (925)
 674-7799

cc:

standards, findings, and conditions of approval (Exhibit #17).

6. APPROVE the revised Diablo MX Ranch Motocross Park site plan received on October 8, 2015 (Exhibit #2).

RECOMMENDATION(S): (CONT'D)

7. DETERMINE that the Board's approval of the Diablo MX Ranch Motocross Park land use permit satisfies the compliance review requirements of Motocross Park Use Permit #LP95-2020, and DENY the appeal by the Law Offices of David W. Trotter, representing project opponents, of the County Planning Commission's May 12, 2015 compliance review decision on Motocross Park Use Permit #LP95-2020. (County File #LP13-2095.)

FISCAL IMPACT:

None. The applicants/owners are required to pay any additional costs above the initial application deposit associated with processing the applications.

BACKGROUND:

PROJECT INFORMATION

County Files: #LP15-2040 and #LP13-2095

Applicant/Owner: John & Lori Ramirez / James & Dorothy Schmidt

Appellant: Law Office of David W. Trotter (representing project opponents)

General Plan/Zoning: Agricultural Lands (AL) / Heavy Agricultural District (A-3)

Site Address/Location: 50 Camino Diablo Road, Brentwood, CA

Assessor Parcel Number: APN 003-020-048

California Environmental Quality Act (CEQA) Status: Categorically Exempt

Project is exempt under Class 1 and Class 4 categorical exemptions pursuant to CEQA Sections 15301 and 15304.

PROJECT OVERVIEW/HISTORY

2013 Compliance Review (County File #LP13-2095)

The Land Use Permit for the operation of the motorcycle park was approved by the County on November 2, 1998. The park operated prior to 1998 under a permit approved by the County on June 13, 1974. The property was purchased on March 28, 2014 by the current owners, James and Dorothy Schmidt and John and Lori Ramirez. The property owners intend to operate the park as a family business open to customers, as allowed by the current land use entitlement.

Condition #1 of the approved Land Use Permit #LP95-2020 (Exhibit #1) states that “...the applicant [is] to initiate and fund 5-year reviews for compliance by the Zoning Administrator in a public hearing...” The required compliance review was applied for on August 7, 2013 as Compliance Review #LP13-2095, and was determined by the Zoning Administrator on December 15, 2014 to meet the conditions as approved in 1995.

On December 24, 2014, an appeal of the Zoning Administrator’s decision to approve Compliance Review #LP13-2095 to the County Planning Commission was filed by the Law Office of David W. Trotter. Accordingly, on May 12, 2015, the Planning Commission held an appeal hearing, during which they voted to uphold the Zoning Administrator’s approval of Compliance Review #LP13-2095, and deny the appeal. On May 22, 2015, an appeal to the Board of Supervisors was filed by the Law Office of David W. Trotter on the grounds of non-compliance with the conditions of approval.

Prior to proceeding with the appeal hearing for Compliance Review #LP13-2095 before the Board of Supervisors, the applicants submitted application #LP15-2040 to modify the conditions of approval for Land Use Permit #LP95-2020 for the purpose of addressing the concerns of the appellants by reducing the park’s hours of operation and to present a more accurate site plan (Exhibit #2) that is consistent with the approved site plan that is on file (Exhibit #3). On July 26, 2016, the Planning Commission held a hearing to consider the permit modifications proposed under application #LP15-2040 and approved the modifications unanimously, which decision was subsequently appealed by the Law Office of David W. Trotter on August 1, 2016. All of the opponents’ previous and current appeal points are being addressed herein.

2015 Land Use Permit Modification (County File #LP15-2040)

The applicants propose to modify County File #LP95-2020 for the continued operation of an off-road recreational motorcycle facility and seek approval of (1) a revised site plan to show the relocation of the central oval racetrack to an area on the property consistent with the location approved by LP95-2020, (2) to modify the conditions of approval for LP95-2020, and (3) a grading permit for 15,000 cubic yards of dirt for the relocation of the oval track and for abatement of non-permitted motorcycle tracks constructed by the original property owners.

The table below summarizes key proposed changes to the land use permit.

	Existing Conditions LP95-2020	Proposed New Conditions LP15-2040
Noise Emissions	Submit a noise impact study performed by a qualified acoustical engineer. The study should be based on noise levels generated by the first	Average noise levels generated motorcycle/go cart riding and racing activities shall not exceed the community noise exposure level of 75 decibels specified by the General Plan

	<p>scheduled racing event on the oval. The study shall measure noise levels along the east boundary of the Davis property (Parcel 003-020-033). If noise levels exceed the land use compatibility standards prescribed in the Noise Element, mitigation measures shall be provided to reduce the sound levels to within appropriate levels at the Davis property line.</p>	<p>for agricultural areas, and shall not exceed those specified in the analysis of the March 8, 2016 project noise study. For formalized racing events, no more than 25 riders will be allowed on the main track at a time, and no more than 13 riders will be allowed on the oval track. The park operator shall maintain a log of riders for all formalized racing events. Race heats shall be conducted on one track at a time to avoid simultaneous heats on both tracks in order to reduce noise levels.</p> <p>All individuals motorcycles and/or go-carts using the park shall be required to meet a noise standard of not more than 96 decibels when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287. Noise measurements shall be taken on a daily basis prior to admission and use of the park for all motorcycles and/or go-carts seeking to use the park. Any measured vehicles not meeting this standard shall not be allowed admission and use of the park.</p>
Permit and Compliance Review	<p>This use is approved for 25 years with the applicant to initiate and fund five (5) year reviews for the compliance by the Zoning Administrator in a public hearing with appropriate notice to property owners within 300 feet of site and individuals expressing interest in the project. Before the end of each 5-year review period, the applicant shall submit a report detailing the steps taken to comply with the approval dictates. The first</p>	<p>The park operator and/or property owners shall submit an application for a compliance review annually for three (3) years, then every five (5) years thereafter. A report detailing the steps taken to comply with the conditions of approval shall accompany the application. The applicant is responsible for costs associated with the compliance reviews. A deposit/fee in the amount of \$1000.00 (subject to time and materials) will be filed with the compliance review application to allow for review of the conditions of approval. Compliance shall be</p>

	<p>such submittal shall be made prior to November 1, 2003. The permit shall expire November 16, 2028. The applicant is responsible for costs associated with the 5-year review.</p>	<p>determined by the Zoning Administrator in a public hearing with appropriate notice to property owners within 300 feet of the site and to any individuals or parties expressing interest in the project.</p>
Hours of Operation	<ol style="list-style-type: none"> 1. Motorcycle activity is permitted 7 days a week but limited to the hours of 8 a.m. - 7 p.m. or sundown, whichever comes first. 2. The lighted race track may be used on Friday or Saturday from 7 p.m. to 11 p.m. (Potential 4-5 times per month) 3. Motorcycle racing shall be limited to Saturdays, Sundays and holidays except that no racing or motorcycle activity shall be allowed on Thanksgiving or Christmas. 4. Racing events are permitted every weekend (potential of 8-10 times per month). 	<ol style="list-style-type: none"> 1. Recreational and practice riding activities on the main track and the lighted oval track is permitted 5 days a week (Thursday-Monday) and shall be limited to the hours of 8 a.m. - 7 p.m. or sundown, whichever comes first. 2. The lighted oval track may be used for late night recreational riding until 10 p.m., but no more than two (2) days per calendar month on a Friday or Saturday if no racing events are scheduled in the same month, and the park shall be emptied by 11 p.m. 3. Tuesdays and Wednesdays shall be "quiet days with no riding activities allowed by customers, or for the property owners' private use or otherwise. 4. All motorcycle racing events on the main track and the lighted oval track shall be allowed on one night per weekend (Saturday and Sunday) and on holidays, but not to exceed two (2) racing events per calendar month. No motorcycle activity or racing shall be allowed on Thanksgiving or Christmas. Racing hours shall be limited from 8 a.m. - 7 p.m. or sundown, whichever comes first

APPEAL DISCUSSION

On August 1, 2016, an appeal of the County Planning Commission's approval of County File #LP15-2040 was filed by the Law Office of David W. Trotter, representing project opponents, for the reasons set forth in their letter of appeal (Exhibit #4). The main points of the appeal letter are as follows and are expanded in depth within the Staff Responses.

- (1) Land Use Permit #LP95-2020 has expired due to non-operation of the park.
- (2) Project noise impacts are inconsistent with the General Plan and were not properly evaluated.
- (3) The project is not exempt from CEQA.
- (4) The subject property is smaller than it was when LP95-2020 was originally approved.
- (5) Excessive nighttime use of the lighted oval track is being allowed.

STAFF RESPONSES

(1) VALIDITY OF THE LAND USE PERMIT

The appellants assert that Land Use Permit #LP95-2020 is void and has been terminated by operation of law because the motocross park has been closed to the public for more than six months. The appellants cite Ordinance Code Section 26-2.2016, which states:

“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 will 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.”

The Land Use Entitlement Is Still In Effect And Not Expired

Once a property owner obtains a land use permit and begins operating under the permit, the property owner has a vested right to continue the use on the property. Subsequent property owners also have a vested right to continue the use on the property because a land use permit runs with the land. Courts have held that even if an ordinance provides for the automatic termination of a land use permit, the rights granted under a land use permit cannot be terminated unless the agency holds a hearing to revoke the permit. *Community Development Commission v. City of Fort Bragg*, (1988) 204 Cal. App. 3d.1124). To revoke a land use permit for non-use, an agency must find that the property owner did not intend to continue the use and did not take any steps during the period of non-use to resume the use. Inactivity is not the sole consideration. For instance, it is very

common for gas stations to close for indefinite periods of time for environmental remediation, or due to the sale of the property, and reopen at a later date. In these cases, staff typically does not hold a public hearing to seek to terminate the land use permit or require a new one in order to reopen if the intent to continue to use the property as a gas station is still apparent. If the gas station's infrastructure, such as buildings, canopies, pumps, etc., is still available, then the use is still valid.

Here, the evidence shows that even though the motocross park was not open to the public for a period of time, property owners did not intend to discontinue the use and took steps to re-open the park to the public. There was intent to continue to use the property as a motocross park since the tracks and other aspects of the motocross park remained in place, and small motocross classes were held at the park when the park was not open to the public. In addition, the applicants have been actively pursuing compliance with the conditions of approval for Land Use Permit #LP95-2020. After the property was sold at auction in May of 2012, the interim property owners requested an extension of the land use permit based on Section 26-2.2016. Although an extension under Section 26-2.2016 was not required since the intent to continue use of the park for motocross recreation was evident, a permit extension was granted.

The following timeline of events is provided as additional evidence to show that the land use permit has not expired.

- August 6, 2012—Sandhill Ranch Motocross announces that they are officially closed to the public (Exhibit #5).
- December 3, 2012—(4 months after closure) The interim property owners apply for a 6-month extension pursuant to County Code Section 26-2.2016.
- March 5, 2013—The County grants a 6-month extension for a time period extending from February 6, 2013 until August 6, 2013.
- May of 2013—(3 months into extension period) Motorcycle training classes for paying customers commence on the subject property, thus establishing that the use was resumed in a timely manner pursuant to Section 26-2.2016 (Exhibit #6, see Page 9).
- August 7, 2013—The interim property owners submit an application for the 5-year Compliance Review #LP13-2095 and pay the required fees and submit documentation confirming that the use was resumed in May of 2013 and briefly in December of 2012 (Exhibit #6, see Page 8). This action served to further validate that the use was not void, and the change in business owners/operators did not invalidate Land Use Permit #LP95-2020.
- March 28, 2014—The subject property is purchased by the current owners, James and Dorothy Schmidt and John and Lori Ramirez with the intent to operate the motorcycle park as a family business and open it to paying customers under the business name of Diablo MX Ranch (Exhibit #7).

- March 28, 2014 through December 1, 2014—The applicants take over the responsibility of completing the required 5-year Compliance Review #LP13-2095 and actively pursue compliance with the conditions of the permit by paying all required County fees and hiring various consultants, engineers, and contractors to help them bring the property into compliance with the permit. Even though the park has not been open to the public since being purchased by the applicants, Land Use Permit #LP95-2020 is considered valid by diligent and continued efforts to comply with the conditions of approval.
- December 5, 2014—A letter from appellant Linda Thuman (Exhibit #8, see Page 1) confirms that the use was reinitiated in the form of motorcycle training classes. A quote from page 1 of the Thuman letter states that, “...*it is our opinion that Sand Hill has been closed for over two years. During that time there was occasional, very quiet motorcycle classes that took place.*” The December 5, 2014 Thuman letter corroborates that the property was being used for motorcycle activities during the time in question, thus further confirming the continued intent and exercise of the land use permit.
- December 15, 2014—The Zoning Administrator finds the motorcycle facility to be in compliance with the conditions of approval with Land Use Permit #LP95-2020 and approved this 5-year compliance review.
- May 12, 2015—The Planning Commission held an appeal hearing, during which they voted to uphold the Zoning Administrator’s December 15, 2014 decision and found the motorcycle facility to be in compliance with the conditions of approval for Land Use Permit #LP95-2020.

(2) NOISE EVALUATION

A 75 decibel noise threshold for determining whether the project would have any significant noise impacts was applied to the project, because the project is located on land with a General Plan designation of "Agricultural Lands" (AL). The appellants claim that reliance on the General Plan’s 75 decibel noise exposure standard for agricultural properties is incorrect. The appellants claim that the surrounding properties are residential areas, and the project should therefore be subject to a 60 decibel noise exposure standard.

The Project And Associated Noise Emissions Are Consistent With The General Plan And Zoning

The 75 decibel noise threshold is consistent with the General Plan’s Noise Element and is the appropriate noise standard for projects in agricultural areas. The subject parcel has the General Plan land use designation of Agricultural Lands (AL), and is located within the Heavy Agricultural (A-3) zoning district. The subject property and surrounding properties are agricultural properties, and the Noise Element of the General Plan establishes an acceptable community noise exposure level of 75 decibels for agricultural

properties (Exhibit #9). The General Plan further states that “extensive recreational facilities”, such as the Diablo MX Ranch motorcycle recreation park, may be allowed in agricultural areas that are designated Agricultural Lands by issuance of a land use permit. The proposed modifications are also consistent with Section 84-38.404(20) of the Zoning Ordinance, which allows outdoor commercial recreational facilities in the A-3 zoning district with approval of a land use permit. In the case of this modification application, the continued operation of the existing outdoor motorcycle recreational facility is consistent with the intent and standards of both the Heavy Agricultural A-3 zoning district and the General Plan’s agricultural designation of the subject property.

Noise Was Properly Considered And Evaluated Pursuant To The Noise Element Of The General Plan

Staff required the property owners to provide a noise study to determine if the proposed modifications would be consistent with the Noise Element of the General Plan and to determine if any noise mitigations were warranted. The applicant’s noise study was peer-reviewed by an independent third party acoustical consultant retained by the County (Exhibit #10). The peer-review concluded that the appropriate methodology was used for project noise study and the calculated noise levels presented in the report are reasonable. The noise study concluded that the motorcycle park’s noise levels will not exceed the 75 decibel noise standard of the General Plan’s Noise Element, and noise mitigation(s) are not required for the project as proposed.

The project noise study, dated March 8, 2016 (Exhibit #11), was prepared by Wilson Irhig, an acoustical and noise consulting firm. The purpose of the study was to determine the typical noise levels to be expected from dirt bike activity at the facility and evaluate them against the 75 decibel noise exposure level cited in the General Plan for agricultural areas. The study addressed four different scenarios for motorcycle activity: weekend race days, weekend non-race practice/recreational riding, weekday practice/recreational riding, and an occasional riding event called “Friday (or Saturday) Night Under the Lights”. These four activities were determined to have the potential to produce the most intensive noise levels. The following discussion presents an overview of the noise study and its conclusions.

Noise Study Overview

Simulated race day and practice/recreational riding were conducted with the participation of approximately 50 volunteer riders over a four-hour period on January 28, 2016, and the sound levels of these activities were measured by Wilson Irhig personnel. The project opponents were solicited for permission to place noise measuring devices on their properties, but permission was not granted. Therefore, the noise levels were measured at the property lines of the subject property, which in actuality provides a more conservative measurement of the noise, since it can be reasonably assumed that any noise measurements taken farther out from the subject property boundaries would have been lower. Five measurement locations were setup around the property lines, with

measurement Location 4 generally receiving the highest sound levels (see Exhibit #12 for measurement locations).

Noise Study Results

Weekend Race Day Noise Levels: The noise study indicated that a weekend race day event would generate the loudest noise with a maximum level of 73 decibels, measured at Location 4. The other measurement locations measured noise levels between 60 to 69 decibels for a weekend race day event.

Weekend Recreational/Practice Noise Levels: The results of the analysis for a typical non-race weekend indicates that the maximum noise level at Location 4 would be 68 decibels, and the results at the other four measurement locations indicate that noise levels would range from 58 to 64 decibels.

Weekday Recreational/Practice Noise Levels: The results of the analysis for a typical weekday recreational/practice riding day indicated lower noise levels due to shorter hours of activity, with a noise level at Location 4 of 64 decibels. The noise levels at the other four measurement locations ranged from 54 to 60 decibels.

Friday Night Under the Lights Noise Levels: The results of the analysis for a “Friday (or Saturday) Night Under the Lights” event indicated a noise level of 60 decibels at Locations 1 and 5. The results at the other three measurement locations indicate expected noise levels to range from 52 to 57 decibels.

Estimated Noise Levels at Nearby Residences (see Exhibit #13 for residence locations): The neighboring residences are located farther out from the measurement locations, so the noise levels would therefore be lower at the residence locations. The noise levels were estimated to range from 58 to 61 decibels at Residence 2 for a typical weekend race day event; the noise level estimated for the other residences would range from 55 to 60 decibels. For weekend and weekday recreational/practice riding, the levels would be lower. For the “Friday (or Saturday) Night Under the Lights” event, the highest noise level is estimated to be 60 decibels at Residences 1 and 4 and even lower at the other residences. General Plan Figure 11-6 (see again Exhibit #9) establishes community noise levels ranging from 60 to 65 decibels as “normally acceptable” for residential land use categories. The results of the noise study demonstrate that the project noise impacts to the neighboring residences can be expected to range from 55 to 61 decibels for the most noise-intensive racing events, and even lower for non-race activity. Based on this data, the project conforms to noise standards of the General Plan for both agricultural and residential land uses, though as stated previously, the applicable standard in this case is for agricultural land use.

Noise Study Conclusion

The results of the noise study show that the maximum noise levels would occur during a

weekend race day scenario, due to a higher number of riders and a longer duration of riding activities than that of a typical non-race recreational/practice riding day. The predicted noise levels at all the modeled property line locations for the neighboring residences is below the Noise Element guideline of 75 decibels, which is considered “normally acceptable” for areas with a General Plan designation of Agricultural Lands; therefore, no mitigation measures for noise were recommended by the acoustical engineer.

It should also be noted that the appellants submitted a sound report dated October 20, 2015, prepared by Charles M. Salter Associates (Exhibit #14). The opponents’ sound report was also peer-reviewed (see again Exhibit #10) by Illingworth & Rodkin, Inc., the County-retained acoustical consultant who concluded that the report only presented ambient noise measurements and that the report assumes that the project is subject to a 60 decibel noise exposure level for residential land uses. As part of this appeal, the project opponents submitted a new document with comments on the project noise study (Exhibit #15); these comments have not been peer reviewed.

No Noise Mitigation Measures Are Required

The appellants have assumed that the project is subject to the General Plan Noise Element’s 60 decibel noise exposure level for residential land uses. The project is not a residential project, nor is the project site located in a residential zoning district, but rather the project site is located, and the neighboring properties, are in an agricultural zoning district and have an agricultural General Plan designation, and therefore, the 75 decibel General Plan noise exposure level for agricultural areas is the appropriate standard for the project. The proposal also includes a reduction of the hours of operation of the park. By proposing to reduce the hours of operation and reducing the days open from 7 days to 5 days per week, the intensity of the land use is lessened. Thus, the results of the sound study along with the reduced hours of operation of the park will ensure the noise levels generated by the facility, are consistent with the General Plan and thus no mitigation measures are warranted.

The Project Is Not Subject To The 60 Decibel Noise Control Program

The appellants claim that the project is subject to the 60 Decibel Noise Control special program. The “60 Decibel Noise Control” box on the Agency Comment Request form was checked by the intake planner at the time the application was submitted because the county GIS indicated the presence of a 60 decibel noise contour in the vicinity of the project area. This was to alert other agencies and departments to the presence of the 60 decibel noise contour should they have any comments or concerns regarding noise. It does not limit the project to 60 decibels. The northern frontage of the subject property is situated within the Camino Diablo Road 60 decibel noise contour, which informs the Department of Conservation and Development staff that Camino Diablo Road generates high noise levels. Pursuant to the General Plan, the 60 decibel noise contour is taken into account when considering projects proposing **new residential development**. The 60 decibel noise contour was established to identify **residential projects** that could

potentially be impacted by noise. As discussed previously, **the proposed project is not a residential project, nor is the project site located in a residential zoning district**, and the noise-generating activities of the motorcycle park will take place entirely outside the boundary of the Camino Diablo noise contour.

The Project Is Not Required To Conform To The Noise Thresholds Of The Brentwood Rod & Gun Club And Keller Canyon Landfill Projects

The appellants cite two different projects that used lower noise thresholds—the Brentwood Rod & Gun Club and the Keller Canyon Landfill projects. A lower standard of 63 decibels was proposed to be applied to the Brentwood Road & Gun Club project that was proposed next-door to the subject parcel on a property that is also zoned A-3 and Agricultural Land under the General Plan. The County applied a 63 decibel standard to that proposal because the noise from the gun club would be “impulsive gun noise.” Impulsive gun noise is a different type of noise compared to the noise generated by a motocross track. Impulsive noise is considered more annoying and startling than vehicle noise. In the case of the gun club project, a lower limit of 63 decibels was proposed based on research and studies that indicated that human ears are more sensitive to gun shot noise. But 63 decibels was not intended to supersede the noise standards of the General Plan, nor was it meant to apply to all projects in agricultural areas. In fact, the Brentwood Rod & Gun Club draft Environmental Impact Report (EIR) acknowledges that 75 decibels is the applicable noise standard for agricultural properties.

In the case of the Keller Canyon Landfill, it was determined that the maximum projected operational noise levels would be approximately 52 decibels, so it appears that the project was conditioned with a noise cap of 60 decibels (ref. LP2020-89, COA #21.2), based on the low expected noise impacts. In addition, the Keller Canyon landfill is not located in an area designated by the General Plan as "Agricultural Land."

Conversely, this project does not propose any new noise sources or changes that would intensify noise, but rather proposes to reduce noise impacts. This project is also different in that the subject motorcycle park is a long-established existing land use that was established in 1973 when there were no residences in proximity; the Rod & Gun Club, in contrast, was a new project proposed in the vicinity of existing residences that would have presented a different type of noise impact. The project proposes to only modify the conditions of approval of the existing land use permit for the park, and furthermore, the proposed modifications will reduce the daily hours of operation of the park, and will reduce the days open from 7 days to 5 days per week, which will effectively reduce the noise impacts produced by the park and establish a more restrictive permit.

Consideration of applicable noise standards is governed by the General Plan, and every project is reviewed individually. If a lower noise standard was found to be more appropriate in the case of one or two other projects, it does not imply that all subsequent projects are bound to that standard as well. In the case of this modification application, the continued operation of the existing outdoor motorcycle recreational facility is

consistent with the intent and standards of both the Heavy Agricultural A-3 zoning district and the General Plan's agricultural designation of the subject property, the application of the 75 decibel noise exposure standard for agricultural properties is appropriate.

(3) CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) STATUS AND ENVIRONMENTAL REVIEW

The appellants claim that the Class 1 exemption relied upon for the Planning Commission's approval of the project was contrary to CEQA because the project has a "reasonable possibility of resulting in a significant effect" on the environment due to extreme noise impacts.

The Proposed Grading Activities Are CEQA Class 4 Categorically Exempt

The project applicants are also seeking a grading permit for 15,000 cubic yards of dirt for the relocation of the central oval track and for the abatement of non-permitted motorcycle tracks constructed by the original property owners. This grading constitutes a minor alteration to the land that is categorically exempt under a Class 4 CEQA exemption. The grading would be conducted entirely within previously disturbed areas that have already been approved for and used for motorcycle riding.

CEQA Class 1 Categorical Exemption Applies

The CEQA Section 15301 Class 1 categorical exemption can be applied to a project involving an existing facility where "negligible or no expansion of an existing use" is proposed. The project proposes modifications to the conditions of approval of an existing land use permit. The applicants propose to operate the facility in a manner consistent with the approved entitlement. No expansion of, or intensification of the use is proposed. The motorcycle activities and proposed grading will be conducted entirely within existing disturbed areas that have already been approved for and used for motorcycle riding since approximately 1973. The environmental impacts of the motocross park were analyzed in accordance with CEQA during the review and approval process for the existing Land Use Permit #LP95-2020, during which an Initial Study was conducted that analyzed the motocross activities in terms of their effect on various environmental categories, including biological resources, wildlife, air quality, soil/geology, water quality, noise, cultural resources, and traffic. As a result, a Negative Declaration was issued indicating that the land use would not have a significant effect on the environment (Exhibit #16).

This modification application does not propose any expansion to the existing facility, nor does it propose to intensify the land use beyond what was previously approved. In fact, the proposal includes a reduction of the hours of operation of the park. By proposing to reduce the hours of operation, and to reduce the days open from 7 days to 5 days per week, thus providing two "quiet days" per week (Exhibit #17, see proposed COAs 6 & 7), the intensity of the land use is considered to be greatly lessened, primarily in terms of

noise impacts. The proposed modification application is categorically exempt, since it does not expand the current approved land use, and thereby would not increase any environmental impacts. Therefore no further CEQA review is required.

(4) REDUCED LOT SIZE

Reduced Lot Size Was Approved At Hearing In 2004

It is also noted here that the project opponents have argued that because the subject parcel is smaller than it was when the entitlement was approved in 1998, the project should again be subject to CEQA. In fact, the property is roughly half the size it was when it was originally approved for motorcycle activities in the early 1970s. The property size was first reduced by a lot line adjustment that created the abutting Harrison parcel APN #003-020-042 that was recorded on September 22, 1999 (Exhibit #18).

Subsequently, the subject parcel was further reduced by County File #LP03-2067, which approved Lot Line Adjustment #LL03-0049 that established the current configuration of the property (Exhibit #19). County File #LP03-2067 was approved at a public hearing on January 5, 2004 and found to be exempt from CEQA. Lot Line Adjustment #LL03-0049 was recorded on March 16, 2004; thus, legally creating the subject parcel in its current configuration after appropriate consideration under CEQA.

(5) NIGHTTIME USE OF THE LIGHTED OVAL TRACK HAS BEEN SIGNIFICANTLY REDUCED

The appellants have claimed that nighttime use of the lighted oval track on Friday and Saturday nights is excessive. Late-night use of the lighted oval track is proposed to be reduced from 11:00 PM to 10:00 PM, and only for two calendar days per month. Under the current permit, use of the lighted oval track can be until 11:00 PM every Friday and Saturday. Also, under the current permit, racing events can be held every weekend, and the modified permit would reduce racing events to only two calendar days per month. These are very significant reductions to the hours of operation of the park that will greatly reduce the nighttime use of the facility (see again Exhibit #17). Additionally, the overall days of operation will be reduced from 7 days to 5 days per week with two quiet days where no motorcycle activity is allowed whatsoever, and the park will now open at 9:00 AM instead of 8:00 AM. The new reduced park hours of operation are also more consistent with other motocross facilities in the region (Exhibits #20 & #25)

CONSEQUENCE OF NEGATIVE ACTION:

The applicants/owners will not be able to obtain a land use permit modification.

CHILDREN'S IMPACT STATEMENT:

None. This Board Order is for an appeal of an application to modify the conditions of approval of an existing land use permit and will not affect children's programs in the County.

CLERK'S ADDENDUM

The following people spoke in support of the land use permit: Jim Schmidt, Diablo MX Ranch; Paul Mullin, resident of Concord; Mike Northrop, resident of Concord; Leisa Nalls, resident of Emeryville; Diane Mead, California Off Road Vehicle Association; Paul Moore, Richmond Ramblers Motocross; Mike Kendizo, District 36 Mortorcycle Org; Steve Machado, resident of Dublin; Alex Edmon, resident of Discovery Bay; Jack Sanchez, resident of Antioch.

The following people spoke in opposition of the land use permit, residents of Brentwood: Linda Thuman; Jeremy Decker, Charles M. Salter Associates; Howard Bowles; Tyler Kendrick, Tess Kendrick (attachment); Rick Kendrick, Steve Glennon; Christina Coleman, Donna Kendrick.

The following did not wish to speak, but left written commentary (attached). Chair Andersen read them into the record.

By unanimous vote, accepted new material into the record from the Department of Conservation and Develoment (attached).

CLOSED the public hearing; CONTINUED the matter to December 13, 2016 at 9:30 a.m. to allow staff to return with modified and additional conditions of approval.

ATTACHMENTS

EXHIBIT #1 LP95-2020 Approved Permit and COAs
EXHIBIT #2 Proposed New Site Plan, Dated 10-8-2015
EXHIBIT #3 Current Approved Site Plan For LP95-2020
EXHIBIT #4 Trotter Letter of Appeal, Dated 8-1-2016
EXHIBIT #5 Screenshot of Sandhill Ranch Facebook Page
EXHIBIT #6 Property Owner's Statement of Use, Dated 8-2-2013
EXHIBIT #7 Schmidt Grant Deed Recorded 3-28-2014
EXHIBIT #8 Thuman Letter, Dated 12-5-2014
EXHIBIT #9 General Plan Figure 11-6 Land Use Noise Compatability
EXHIBIT #10 Peer Review of Project Noise Study, Dated 4-12-2016
EXHIBIT #11 Project Noise Study, Dated 3-8-2016
EXHIBIT #12 Noise Measurement Locations
EXHIBIT #13 Locations of Nearby Residences Identified in Project Noise Study

EXHIBIT #14 Appellants' Ambient Noise Measurements, Dated 10-20-2015
EXHIBIT #15 Appellants' Comments on Project Noise Study, Dated 7-25-2016
EXHIBIT #16 CEQA Notice of Determination and Initial Study for LP95-2020
EXHIBIT #17 Proposed New Conditions of Approval For LP15-2040
EXHIBIT #18 1999 Lot Line Adjustment Reducing Subject Parcel Size
EXHIBIT #19 LL03-0049 Lot Line Adjustment
EXHIBIT #20 Regional Survey of Motocross Park Hours of Operation
EXHIBIT #21 CPC Resoution No. 13-2016
EXHIBIT #22 CPC Staff Report, Dated 7-26-2016
EXHIBIT #23 Pertinent Maps
EXHIBIT #24 Trotter Appeal Letter, Dated 5-22-2015
EXHIBIT #25 Hours of Operation (Existing vs. Proposed)
Staff Presentation