



# COUNTY OF HUMBOLDT

For the meeting of: 7/19/2022

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File #: 22-938

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**To:** Board of Supervisors

**From:** Planning and Building Department

**Agenda Section:** Public Hearing

**SUBJECT:**

Appeals filed by *Arne Petersen* and *Friends of Ferndale for a Livable Community* of the Conditional Use Permit Modification approved by the Planning Commission on May 19, 2022, authorizing an increase in event-related noise levels from the two (2) motorcycle racing events allowed to occur annually at the Humboldt County Fairgrounds.

**RECOMMENDATION(S):**

That the Board of Supervisors:

1. Open the public hearing on the two appeals and receive the staff report, testimony by the appellants and applicant, and public; and
2. Close the public testimony portion of the hearing; and
3. Deliberate on the Appeal of the Use Permit Modification, Supplemental to the previously adopted Mitigated Negative Declaration, Substitute Mitigation Measures, and Mitigation Monitoring & Reporting Program (Attachment 1); and
4. Close the public hearing; and
5. Adopt the resolution (Resolution 22-\_\_ ) (Attachment 1) which does the following:
  - a. Finds the project exempt from CEQA under CEQA Guidelines section 15304(e)
  - b. Approves the revisions to the Mitigation Monitoring and Reporting Program
  - c. Makes the findings to deny the Appeal submitted by *Arne Petersen*
  - d. Makes the findings to uphold the Appeal by *Friends of Ferndale for a Livable Community*
  - e. Makes the findings to approve the requested modification to the Conditional Use Permit
  - f. Approves the Conditional Use Permit modification permitting operation of a one-time racing event as a pilot/trial, authorizing an increase in noise levels during the pilot/trial event, and prohibiting further racing events until a separate modification of the permit has been granted and accompanied by further environmental review
  - g. Directs the Planning and Building Department to file a Notice of Exemption for the project in accordance with Section 15061(2) of the CEQA Guidelines.
6. Direct the Clerk of the Board to give notice of the decision to both appellants, the Planning and Building Department, and any other interested party.

SOURCE OF FUNDING:

Appellant fees, Current Planning (1100277).

DISCUSSION:

This is a *de novo* hearing for a Conditional Use Permit Modification for the Humboldt County Fair Association and consideration of two appeals of the Planning Commission's May 19, 2022 unanimous (6-0) approval of the Conditional Use Permit Modification to authorize up to two motorcycle racing events per year at the Humboldt County Fairgrounds. An appeal was timely filed on June 2, 2022, by Arne Peterson, and a second appeal was timely filed on June 3, 2022, by Friends of Ferndale. The original Conditional Use Permit for five (5) concerts and two (2) motorcycle racing events per year was approved on November 10, 2020, by the Board of Supervisors after an appeal of the Planning Commission's approval of the Use Permit was filed by Friends of Ferndale.

Conditional Use Permit Modification

The modification of the approved permit was requested because the approved permit places limitations on event-related noise levels, including a 90-decibel instantaneous noise limit applied to all motorcycles participating in racing events. In their modification request, HCFA is seeking authorization to raise the 90-decibel motorcycle noise limit to 99 decibels to be consistent with common national testing standards for competition established by the American Motorcyclist Association (AMA). Measurement of engine noise using a noise meter is customary at sanctioned racing events and is ordinarily performed at a distance of 20 inches from the exhaust pipe. Since receiving the original approval HCFA has been unable to attract any racing events because the 90-decibel limit differs considerably from the tailpipe test noise levels typically measured from motorcycles featuring extensive exhaust system treatments.

While raising the individual motorcycle noise limit from 90 to 99 decibels will result in a considerable increase in event-related noise, the increase is necessary to enable the project objectives to be achieved while ensuring the related mitigation measures correctly reflect the tailpipe noise levels that can be expected following comprehensive exhaust system treatments. The increase in event-related noise will not cause the project to exceed the applicable local threshold of significance, as the compatibility standards of the Noise Element include explicit exceptions for scenarios where noise is generated on a temporary and infrequent basis, such as temporary events.

*90dB limit was applied in error by staff*

After further review, it has been determined that the 90dB tailpipe noise limit was applied in error and resulted from an incorrect assumption and flawed interpretation of the applicants' noise study. The noise study performed by Whitchurch Engineering relied on data collected from a racing simulation performed at the Fairgrounds racetrack during the afternoon on July 3, 2018. The simulation used 3 motorcycles to simulate racing conditions on the track. Noise data collected from this exercise was then mathematically adjusted to estimate what noise levels would be experienced during a real event with heats featuring up to 18 riders racing simultaneously. No tailpipe noise testing was performed during the noise study, instead measurements were collected from the closest receptors. In applying the 90-decibel permit condition, staff incorrectly assumed that motorcycles without exhaust system

treatments would not produce engine noise levels exceeding 105 decibels when measured 20 inches from the tailpipe. The 105dB assumption seemed fitting since it was the noise limit included in the 2020 American Flat Track Rulebook and is referenced in the noise study. The noise study estimates that up to 20 decibels of noise reduction can be achieved through incorporating extensive exhaust system treatments. In setting the 90dB limit, staff conservatively assumed that 15 decibels of noise reduction would be achieved through requiring all bikes feature these specialized exhaust systems. Back calculating from the data collected during the racing simulation, the applicant's engineer has determined that the average tailpipe noise levels (at 20 inches) of the three bikes used during the simulation was 123.6dB. This is detailed in a letter from Whitchurch Engineering dated July 13, 2021. This 18.6dB difference (between staff's assumption and the levels experienced during testing) helps illustrate why adjustment of the instantaneous noise measurement condition and mitigation measure is necessary.

### *Local Noise Standards*

The Noise Element of the 2017 Humboldt County General Plan has been utilized for evaluating potential noise impacts from the project. The Noise Element includes an inventory of prominent noise sources and identifies the County Fairgrounds as a stationary noise source for the Ferndale Community. The Noise Element contains compatibility standards for both long-term and short-term noise sources, as well as exceptions. The short-term noise standards establish a series of limits for daytime and nighttime noise based on zoning, with exceptions provided for certain land uses where noise limit exceedances are expectable. Excepted activities include: operation of portable generators during emergencies, use of chainsaws, landscaping equipment, power tools, heavy equipment, emergency vehicles, and ***“temporary events in conformance with an approved Conditional Use Permit.”***

### CEQA

The requested modification to the permit is subject to review for compliance with the California Environmental Quality Act (“CEQA”). A Mitigated Negative Declaration was previously prepared and circulated in conjunction with processing of the original Conditional Use Permit request. The principle environmental impacts from the project surround the potential noise generated during these temporary events. The Initial Study and Mitigated Negative Declaration was adopted by the Board of Supervisors during approval of the project (SCH #20200070478). Because the modification involves changes to mitigation measures included in the adopted MND, a Supplemental Mitigated Negative Declaration (SCH# 2022040045) has been prepared for adoption.

While raising the individual motorcycle noise limit from 90 to 99 decibels will result in a considerable increase in event-related noise, the increase is necessary to enable the project objectives to be achieved while ensuring the related mitigation measures are feasible. The increase in event-related noise will not cause the project to exceed the applicable local threshold of significance, as the compatibility standards of the Noise Element include explicit exceptions for scenarios where noise is generated on a temporary and infrequent basis, such as temporary events.

### *Appeals Received*

The draft findings in Attachment 1 contains more detailed discussion and rebuttal of the issues raised by both appellants. They are summarized and discussed below. Note: in recent weeks both appellants were contacted and invited to meet with county staff to see whether there was interest in delaying the appeal hearing to allow exploration of potential compromises and revisions to the permit request. Appellant #1 rejected the invitation to meet and representatives from Appellant #2 met with staff on July 11, 2022.

Appellant #2 - Friends of Ferndale for a Livable Community

Friends of Ferndale (FOF) filed an appeal on June 3, 2022, alleging that there is a fair argument that the increase in noise will cause a significant impact under CEQA and that an EIR should be required. FOF also alleges that the Planning Commission's findings were not supported by substantial evidence and therefore represent an error and an abuse of discretion.

Appellant #2 - Summary Response:

During recent meetings with authorized representatives from the applicant and Appellant #2, a compromise was reached. The applicant has expressed they are willing to agree to modify the permit to limit motorcycle racing to a one-time pilot/trial event. The modification would also include raising the tailpipe noise limit from 90 to 99 decibels. One (1) additional day of racing could occur if exclusively featuring motorcycles with electric engines. The applicant is willing to forgo holding additional events until such time as a subsequent permit modification and additional environmental review is performed. 24-hour noise monitoring will be performed by an independent acoustical engineer during the one-time event. Results will be shared with County staff, HCFA, and Friends of Ferndale, and discussed at a Community Meeting held no later than 3 months after the event.

This approach forms the basis for the staff recommendation. Revisions have been made to the recommended conditions of approval and substitute mitigation measures have been developed which reflect this approach. They are both included with and referenced by the Findings found in Attachment 1. Support for this approach is described in the July 13<sup>th</sup> letter from Appellant #2 found in Attachment 6.

Since this change would result in a single event it can be exempted from CEQA, using Categorical exemption 15304 (e) a minor temporary use of land having no permanent effects on the environment.

Appellant #1 - Arne Petersen

Arne Peterson, MBA, filed an appeal on June 2, 2022, arguing that the project should be denied because it directly conflicts with the General Welfare, Nuisance, General Plan Consistency and Zoning Consistency Standards. Mr. Petersen also argues that the HCFA is subject to the jurisdiction of the City of Ferndale. Mr. Petersen further argues that the mitigation measures described in the IS/MND to attenuate noise are not feasible, that the noise from motorcycle racing would violate his civil rights, and that the potential adverse impacts due to noise would be significant under CEQA.

Appellant #1 - Summary response:

Government Code sections 53090 and 53091 exclude cities and counties from requirements to comply

with other cities' and counties' building and zoning ordinances. The Third District Court of Appeal held in *Lawler v. City of Redding*, 7 Cal. App. 4th 778 (1992) that cities and counties enjoy intergovernmental immunity with respect to building and zoning regulations, including their respective general plans. In 1985, the Attorney General clarified that intergovernmental immunity may be conferred to a lessee if the lessee's endeavors further the powers and duties of government entity. 68 Cal. Op. Att'y Gen. 114.

Though it is customary that city and county-owned properties need not comply with local land use regulations, counties and cities are free to apply and enforce their own rules to these lands. For these reasons, a Conditional Use Permit was previously processed to provide a forum for public review and discussion of the new concert and motorsports activities proposed. The requested permit modification is being handled in the same fashion. The Humboldt County General Plan and Zoning Regulations are being used as the basis for review of the project.

Given that the applicant has now agreed to modify the permit to only permit motorcycle racing as a one-time pilot/trial, potential for impacts to the public health, safety, and welfare or material injury to properties and improvement in the vicinity are considerably lessened. Monitoring data collected during the trial event will provide key insight into how noise during motorcycle racing events compares to local thresholds of significance. This will be valuable during subsequent permitting and environmental review.

#### CONCLUSION / STAFF RECOMMENDATION

Staff recommends that the Board of Supervisors adopt the resolution to deny the appeal submitted by Arne Petersen and approve the appeal submitted by Friends of Ferndale and approve the requested modification of the permit subject to recommended conditions and substitute mitigation measures.

#### FINANCIAL IMPACT:

The cost of this appeal has been borne by the appellants and the current General Fund allocation to Current Planning (1100277). There will be no effect on the General Fund.

#### STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by facilitating the establishment of local revenue sources to address local needs .

#### OTHER AGENCY INVOLVEMENT:

City of Ferndale

#### ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. Approve the appeal(s) and deny the project. In the event the Board of Supervisors finds evidence in public testimony or from other sources compelling to deny the permit modification request, the Board should state the basis for that conclusion and continue the item to August 9, 2022, so that a resolution can be prepared expressing those findings, approving the appeal and denying the permit modification.

2. Deny the appeal(s) and approve the project subject to additional restrictions. The Board may wish to deny the appeal and still choose to place further limitations on the permit scale and scope or operation of events, in consideration of public comments and concerns received. Under this scenario, any motion to approve the project should include language outlining the terms of any additional restrictions or requirements being incorporated into the conditional approval of the permit request.

3. Continue the appeal hearing to August 9, 2022, and request that the applicant and appellant(s) engage in further discussion in pursuit of reaching agreement on a possible compromise and potential revisions to the permit modification request, requirements, and mitigations.

ATTACHMENTS:

1. Draft Board Resolution, Findings, Substitute Mitigation Measures, Revisions to the Mitigation Measures, Monitoring, and Reporting Program, and Recommended Conditions of Approval
2. Maps, Site Plan
3. Appeal filing from Arne R.W. Petersen, M.B.A.
4. Appeal filing from Friends of Ferndale, including letters from RWG Law
5. Peer Review of the Noise Analysis” performed by Illingworth&Rodkin, Inc., dated July 1, 2022
6. Letter from Friends of Ferndale received July 13<sup>th</sup>, 2022, supporting permitting compromise
7. Draft Supplemental Mitigated Negative Declaration
8. Planning Commission Staff Report from meeting of May 19, 2022
9. Public comments

PREVIOUS ACTION/REFERRAL:

Board Order No.: [Click or tap here to enter text.](#)  
Meeting of: July 19, 2022  
File No.: 22-762