

**Damico, Tracy**

Public  
Comment

**From:** Bradley Johnson <bjohnson@everviewlaw.com>  
**Sent:** Tuesday, April 15, 2025 10:45 AM  
**To:** Damico, Tracy  
**Subject:** Fwd: Support for kernan

**Caution:** This email was sent from an EXTERNAL source. Please take care when clicking links or opening attachments.

Begin forwarded message:

**From:** Danielle Weems <weemsdanielle@gmail.com>  
**Date:** April 15, 2025 at 9:58:14 AM PDT  
**To:** Bradley Johnson <bjohnson@everviewlaw.com>  
**Subject:** Fwd: Support for kernan

Dear Members of the Board,

I am writing to express my strong support for **Kernan Construction** and to urge you to **allow them to continue operating without restricting their hours**.

This area has been zoned as a commercial zone for **over 40 years**, and it is unreasonable to entertain complaints from people who moved into the area and now have issues with how things are run. If they find the operations of Kernan Construction disruptive, they should consider relocating. The business has been a part of our community for far too long and provides **good-paying jobs** to many families in our small county, which is struggling financially.

We need to focus on supporting our **local economy** and the businesses that help sustain it. Kernan Construction plays an essential role in keeping people employed and contributing to the tax base. The fact that a small group of people can disrupt the operations of a business simply because they complain the loudest is not fair or productive. It sets a bad tone for our country. These complaints should not dictate business operations, especially when those businesses support our community and economy.

I ask you to put the **needs of our community and economy first**, and not allow complaints of residence to control the future of an established, important business. Kernan Construction has been a vital part of this area for decades and should be allowed to operate as needed without unnecessary interference.

Thank you for your time and consideration in this matter. Please support our community and the businesses that help it thrive.

Danielle Weems

Neighbor 95 hilltop Ln

Sent from my iPhoneSent from my iPhone

Public Comment

**Damico, Tracy**

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**From:** Bradley Johnson <bjohnson@everviewlaw.com>  
**Sent:** Tuesday, April 15, 2025 9:12 AM  
**To:** Damico, Tracy  
**Subject:** Fwd: Public Comment: Agenda Item 25-468

**Caution:** This email was sent from an EXTERNAL source. Please take care when clicking links or opening attachments.

Begin forwarded message:

**From:** Yolynn StJohn <ystjohn@kernenconstruction.com>  
**Date:** April 15, 2025 at 9:08:23 AM PDT  
**To:** Bradley Johnson <bjohnson@everviewlaw.com>, "PhD Annje Dodd P.E." <Annje@northpointeureka.com>  
**Subject:** Fwd: Public Comment: Agenda Item 25-468

Sent from my iPhone

Begin forwarded message:

**From:** "Goldstein, Brita" <Brita.Goldstein@greendiamond.com>  
**Date:** April 15, 2025 at 9:00:56 AM PDT  
**To:** COB@co.humboldt.ca.us  
**Cc:** "Jackson, Peter" <PJackson@greendiamond.com>, "Goldsworthy, Elicia" <elicia.goldsworthy@greendiamond.com>, "Goldstein, Connor" <Connor.Goldstein@greendiamond.com>, ystjohn@kernenconstruction.com  
**Subject:** Public Comment: Agenda Item 25-468

To the Clerk of the Board,

I submit the following public comment on behalf of Peter Jackson, Vice President and General Manager of the California Division of Green Diamond Resource Company, regarding agenda item 25-468 "Hearing to Consider Revocation or Modification of a Conditional Use Permit Granted to Kernen Construction for a Rock Aggregate Processing and Materials Storage and Handling Yard Facility":

Public Comment: "Green Diamond supports a limited exclusion to the Hours of Operations restriction proposed for inclusion in Kernen Construction's operating permit. Kernen regularly provides specialized heavy haul equipment moving services to Green Diamond and Green Diamond contractors which often begin prior

to 7:00am. We request that an exclusion is provided to the Hours of Operation proposal to allow heavy haul trucks, dump trucks, and pickup trucks to operate prior to 7:00am for the purpose of conducting off-site services."

Thank you,



**Brita Goldstein *she/her***  
**Public Affairs Representative, RPF #3061**  
**Green Diamond Resource Company**

900 Riverside Road  
Korbel, CA 95550  
O: 707-668-3707 | C: 831-917-1704 | [greendiamond.com](http://greendiamond.com)



To: The Humboldt County Board of Supervisors

From: Linda Miller, resident of Glendale community

Date: April 14, 2025

RE: Public Hearing to Consider Revocation or Modification of a Conditional Use Permit Granted to Kern Construction for a Rock Aggregate Processing and Materials Storage and Handling Yard Facility

I want to voice my concerns regarding the Revised Conditions of Approval that will be presented to you tomorrow at the subject public hearing. I'm trying to give you some background since I was not able to submit written testimony prior to the Agenda being published on Friday; please see my last paragraph below.

First, I want to say that I do not want to shut down Kern Construction or see people lose their jobs. In addition, I do appreciate the products and services that the company provides to the County.

However, I have lived in Glendale since 1996, and the increased activities since the original permit was signed in 2001 have harmed my neighbors' and my quality of life due to noise, dust, and truck traffic. In addition, the repeated degradation of the environment due to violations of the company's permit and other local and state laws is very difficult to watch since it has taken place next to two Coho streams and in the floodplain between these streams. Kern's consultants say that it is not a floodplain (not within the FEMA 100-yr Flood Zone); however, it does flood on an occasional basis (relatively frequently).

Please approve the Revised Conditions for noise and hours of operations, with the following exception: the company should be allowed to do equipment maintenance at any hour, as long as it does not exceed the noise limits condition or disturb neighbors. I think most of us are willing to compromise on this.

Please approve the revised Conditions Nos. 1, 2, 3, and 4. These seem very reasonable. Condition Numbers 2 and 3 seem very appropriate and reasonable to mitigate the company's permit violation of grading and placing a new berm within the Streamside Management Area (25' from riparian veg dripline) of Noisy Creek.

On page 7 of the 2001 existing CUP, it states, "The processing operator shall adhere to the approved operations plan and mitigation monitoring program". This essentially means that the entire Operations Plan is a part of the existing "Operation Restrictions" in the CUP and is legally enforceable. In the Operations Plan, it states that weigh logs for each truck load being dumped on the property be inspected for any hazardous substances or waste (see under "Materials

Screening Process", page 17.1 of the Operations Plan. The County has never received these logs. There needs to be documentation for these inspections provided to the County. I hope that one of you will insist on this at tomorrow's hearing.

Dust has not been adequately addressed by the Company. Please ensure that adequate dust control/abatement measures are included and adhered to, as this is both a health and a nuisance issue in Glendale and is currently not adequately addressed.

Since the company has a track record of violations, please add to the conditions significant consequences if they violate any of the Conditions of Approval. We are quite disappointed that the County has backed down from the permit revocation and restoration of the northern yard, as it had proposed for the December 3rd hearing.

From our perspective, it does not seem that there have been any real consequences for the grading violations, destruction of riparian vegetation during bird nesting season, building an unpermitted berm, and adding fill that raised the base elevation between two Coho-bearing streams in an area that floods on a relatively frequent basis. There should be real consequences for any company repeatedly violating its permit. Otherwise, it sets a bad example for other companies.

The Revised Conditions of Approval seem woefully inadequate for the egregious violations that the company perpetrated last September when they knew it was wrong. Please see the list of violations and pattern of disregard for permits and laws – page 4 of Attachment 14 in your packet.

Finally, I am very disappointed that the County Planning staff did not share the revised proposal with our residents' community (the original complainants in this case) prior to April 11, 2025 - the Friday before the public hearing. Since we had been meeting with the Planning staff regularly for almost two years to try to reach a suitable resolution to our complaints, we had understood and expected that they would let us know of any settlement agreement with enough time to plan our response. We had requested a meeting multiple times for this reason. We were only told of the revised settlement agreement the Friday before the hearing, which meant that we were not able to submit written testimony for the public hearing. As you know, the two-minute limit for speaking testimony at the public hearing is quite limited. We believe that this really limited our ability to present our case for why we think the Revised Conditions of Approval are inadequate. In addition, it is quite intimidating to give a spoken testimony in the chamber when it is filled with Kern employees. I hope that you can understand this.

Thank you very much for taking my comments. I will see you all tomorrow.

Sincerely,

Linda Miller

Glendale

(Liscom Hill Road)



Everview

**Everview Ltd.**

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VIA ELECTRONIC MAIL

April 14, 2025

Humboldt County Board of Supervisors  
County of Humboldt  
825 5<sup>th</sup> Street, Rm. 11  
Eureka, CA 95501

**Re: Notice of Potential Conditional Use Permit Revocation**  
**CUP-00-27, APN 516-141-003, 516-141-005, 516-141-017, 516-151-016**  
**April 15, 2025 Board Hearing Agenda Item H.1**

Honorable Supervisors:

This firm represents Kernen Construction ("Kernen") in connection with the use permit revocation proceeding initiated by the Humboldt County Planning Department against Kernen (the "Proceeding"). The Proceeding pertains to Kernen's conditional use permit CUP-00-27, which authorizes aggregate processing and material handling and storage activities at Kernen's facility located at 2350 Glendale Drive in the unincorporated Blue Lake area (the "Facility").

Kernen's use permit to operate the Facility, CUP-00-27, was granted in 2001 and Kernen now possesses a vested right to continue operating the Facility. Over the last nearly 24 years, Kernen has invested millions of dollars in the Facility and now employs nearly 100 employees. In light of these facts, California statutory, judicial, and constitutional law places significant and important constraints on the County's ability to revoke the use permit, including a requirement to show that "in fairness and in justice there is not another way reasonably to correct the nuisance". (*Leppo v. City of Petaluma* (1971) 20 Cal.App.3d 711 (*Leppo*)).

The purpose of this letter is to outline for the Board's reference the several legal standards that apply to the Proceeding. We note that the County staff report for the Proceeding fails to describe these legal standards:

This letter proceeds as follows:

1. Due Process Requirements
2. Legal Grounds for Permit Revocation Generally
3. Limits on the County's Power to Revoke or Modify a Permit
4. Assessment of the Alleged Grounds for Revocation in Light of Applicable Law
5. Conclusion





## 1. Due Process Requirements

### A. General Requirements

Once a permittee has incurred substantial expense and acted in reliance on a conditional use permit, the permittee acquires a fundamental vested property right in the permit and is entitled to the protections of due process before the permit may be revoked. (See, e.g., *Avco Community Developers v. South Coast Regional Commission* (1976) 17 Cal.3d 785; *Bauer v. City of San Diego* (1999) 75 Cal.App.4th 1281, 1294 (*Bauer*); *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1562.)

In considering whether a vested use permit should be revoked, a local government acts in the capacity of a quasi-judicial capacity, and the local government consider revocation only after providing notice to the permittee and a hearing providing the permittee the opportunity to respond to cited evidence. (*Bauer, supra*, 75 Cal.App.4th at p. 1294.) Further, the local government may only act on the basis of evidence substantially supporting a finding of revocation. (*Ibid.*; citing *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 391-393, n. 5.)

### B. Fair and Impartial Tribunal

In considering revocation of a vested use permit, due process requires that a local government do so before a fair and impartial hearing body or officer. (See *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017.) A hearing officer or hearing body (or any member of the body) is disqualified by the objective appearance of bias. The "fair and impartial" requirement also extends to the local government's own legal counsel – specifically, the local government's legal counsel cannot advocate on behalf of enforcement or assist in preparation of the enforcement case and advise the hearing officer or hearing body on the case at the same time. (See *Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81; *Sabey v City of Pomona* (2013) 215 Cal.App.4th 489, 498 [a partner from a law firm may not act as an advisor to a decision-making body when another partner from the same law firm acts as an advocate in the same contested matter].)

### C. Evidence

A local government may only revoke a vested use permit on the basis of evidence that substantially supports revocation. (*Bauer, supra*, 75 Cal.App.4th at p. 1294.; citing *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 391-393, n. 5; *Trans-Oceanic Oil Corp. v. Santa Barbara* (1948) 85 Cal.App.2d 775, 795-796; *Benetatos v. City of Los Angeles* (2015) 235 Cal.App.4th 1270.) "Substantial evidence" means evidence that is "of ponderable legal significance, which is reasonable in nature, credible and of solid value." (*JKH Enterprises, Inc. v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1057-1058, citing *Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633; *Mobile v. Janovici* (1996) 51 Cal.App.4th 267, 305, fn. 28.) Substantial evidence does not include inferences that are not supported by evidence, or speculation or conjecture. (*Kuhn*, p. 1633.)

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## 2. Legal Grounds for Permit Revocation Generally

County Code Section 312-14.2 outlines the grounds for revocation of a use permit. This section reads as follows, in relevant part:

### 14.2 REVOCATION

14.2.1 **Grounds for Revocation.** A development permit or variance may be revoked or modified by the Board of Supervisors after a Public Hearing, upon finding that:

14.2.1.2 The permit or variance granted is being, or recently has been, exercised contrary to the terms or conditions of such approval, or in violation of any statute, Code section, law or regulation.

14.2.1.3 The use for which the permit or variance was granted is so conducted as to be a nuisance.

The County's October 24 2024 Notice of Permit Revocation letter (the "Notice") identifies sections 14.2.1.2 and 14.2.1.3 as the potential grounds for revocation here.

#### A. Exercise of Permit Contrary to Law

With respect to section 14.2.1.2, exercise of a use permit contrary to its terms or conditions or in violation of any statute, law or regulation may provide a basis for revocation of the permit. However, while any decision to revoke a use permit must necessarily rest on the facts of the case at hand, the County's pattern and practice of interpreting and enforcing this provision in other cases is relevant. Selective enforcement is unlawful and could violate Kern's right to equal protection. (See, e.g., *Squaw Valley Dev. Co. v. Goldberg* (9th Cir. 2004) 375 F.3d 936; *Genesis Environmental Servs. v. San Joaquin Valley Unified Air Pollution Control Dist.* (2003) 113 Cal.App.4th 597.)

County records, requested by this firm pursuant to the Public Records Act<sup>1</sup>, show that the County has never attempted to revoke or radically rewrite a use permit for an operating business in response to an alleged grading violation or in response to neighbor noise complaints.

#### B. Nuisance

With respect to section 14.2.1.3, relating to nuisance, state law generally allows local governments to declare what constitutes an actionable "nuisance", and to abate nuisance conditions. (See Gov. Code § 25845; County Code § 351-3 [Definition of Nuisance].) In this regard, County Code Section 351-3 defines a "nuisance" broadly to include any condition declared by the state or County to be a nuisance, any condition constituting a public nuisance, any condition that may be dangerous or detrimental to public health or safety, any unlawful encroachment on public property, and any unlawful use of buildings or property.

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<sup>1</sup> These records were requested by letters dated November 8, 2024 and November 21, 2024. The County's responses to these records requests are hereby incorporated by reference as if attached hereto.



The California Civil Code, further, defines a “nuisance” in relevant part as “anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life . . .” (Civ. Code § 3479.) A “public nuisance” is defined as “one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.” (Civ. Code § 3480.)

Except in rare emergency circumstances that do not exist this case (see, e.g., *Leppo, supra*, 20 Cal.App.3d 711), local governments must provide full due process to parties subject to a nuisance abatement action. (*D & M Fin. Corp. v. City of Long Beach* (2006) 136 Cal.App.4th 165, 174, (citing *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 US 306, 314).)

This means that, among other things, due process requires that a local government’s decision to shut down a legitimate business on the basis of nuisance be based on substantial evidence that the property or business is a nuisance within the legal meaning of that term. (*Leppo, supra*, 20 Cal.App.3d 711; *Armistead v. City of Los Angeles* (1957) 152 Cal.App.2d 319 [disapproved on other grounds by *Mobile v. Janovici* (1996) 51 Cal.App.4th 267]; *Pinheiro v. Civil Serv. Comm’n for County of Fresno* (2016) 245 Cal.App.4th 1458.)

### **3. Limits on the County’s Power to Revoke or Modify a Permit**

The County’s power to revoke or limit a use permit, even where facts show the permit may have been exercised contrary to law or in such a manner as to constitute a nuisance, is subject to important limits.

#### **A. Vested Rights**

Kernen’s use permit, CUP-00-27, has been utilized and is vested under state constitutional vesting principles. (See, e.g., *Avco Community Developers v. South Coast Regional Commission* (1976) 17 Cal.3d 785; *Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359.) Consequently, the County may not revoke Kernen’s use permit without a valid evidentiary basis and without affording Kernen its full right to due process. (*Kerley Industries, Inc. v. Pima County* (9th Cir. 1986) 785 F.2d 1444, 1446 [once granted, a use permit cannot be taken away arbitrarily, for improper reasons, or without appropriate procedural safeguards].)

#### **B. Reasonable Correction Requirement**

Even where a local government determines that a use permit is being exercised contrary to law or in a manner that constitutes a nuisance, the local government must identify reasonable ways to correct a condition short of shutting down a legitimate business or revoking its use permit. (*Leppo, supra*, 20 Cal.App.3d at p. 718.) This is one of the reasons that the County Code contains a process to abate violative conditions through issuance of a notice of violation and imposition of administrative penalties. (See County Code § 352-8.) The purpose of these provisions is to provide the party in violation an opportunity to correct identified problems.

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#### 4. Assessment of the Alleged Grounds for Revocation in Light of Applicable Law

##### A. Hours of Operation

At the December 3, 2025 meeting, Director Ford stated that “the hours of operation, we do not consider at this point, in violation of the permit” and, further, “[s]o the hours of operation, we are not bringing that forward as a violation of the CUP.”

Notwithstanding this unambiguous statement, Staff now recommend drastically limiting Kern’s hours of operation, including entirely eliminating the ability to operate at night as needed to serve Caltrans and other public works projects. This recommendation is illegal, as discussed below.

To begin, no hours of operation are specified in the current use permit conditions of approval. Rather, Condition B.1. to CUP-00-27 states as follows:

The processing operator shall adhere to the approved operations plan and mitigation monitoring program, as applied to the site proper, and other support and ancillary uses and facilities (i.e., stockpiles, and the maintenance of access road drainage culverts).

(CUP-00-27, Condition B.1.) The “approved operations plan” (“Operations Plan”) states, with respect to hours of operation, as follows:

Materials handling and processing rock aggregates would normally be conducted from 7:00 a.m. to 6:00 p.m. on weekdays and from 7:00 a.m. to 5:00 p.m. on Saturdays. The hours will be reduced in the winter months when construction projects are not as active as they are during the summer months.

(Operations Plan, p. 12.) It is this language, which is incorporated by reference in adopted Condition B.1., that governs Kern’s hours of operation at the Facility, not the summary language in the Agenda Item Transmittal or Executive Summary. (See *County of Imperial v. McDougal* (1977) 19 Cal.3d 505 [prohibiting the arbitrary addition or modification of permit conditions].) Under the plain language of the Operations Plan, only “materials handling and processing rock aggregates” are constrained to the stated hours; by implication, all other activities, such as vehicle maintenance, office work, site maintenance and so forth, are unconstrained and can occur outside the stated hours.

Staff have presented no substantial evidence that would support any modification of Kern’s existing operating hours, much less a modification that would eliminate Kern’s ability to serve Caltrans and other public works projects that require nighttime operations. In fact, Staff have presented no rationale at all for their proposed modification. The Board can only modify Kern’s vested use permit on the basis of substantial evidence. Given that none exists supporting Staff’s recommendation to modify Kern’s hours of operation, the Board cannot modify Kern’s operating hours. (See *Bauer, supra*, 75 Cal.App.4th at p. 1294; *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 391-393, n. 5.)

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**B. Noise**

Staff recommend modifying the existing use permit's noise conditions. There are no specific allegations in the Staff Report or the attached agenda materials that indicate that noise generated by Kern's operations either (1) exceed the existing noise limit in the vested use permit; or (2) constitute a nuisance. While staff have included with its agenda materials for this Proceeding a "Table of Complaints Received", the table itself includes the note that "some of these have been documented to be unfounded or attributed to other parties." Staff do not discuss which, if any, of the "complaints" are actually credible.

By contrast, staff notably failed to discuss the only substantial evidence in the record on this issue – the Noise Monitoring Study that NorthPoint Consulting Group submitted to the County on August 23, 2024 and which shows that Kern's operations comply with the existing permit condition.

With regard to the new noise standard recommended by staff – 70 dBA – staff have failed to offer any kind of evidence or explanation for this standard. The General Plan, for example, uses three noise metrics: (1) the Community Noise Equivalent Level ("CNEL"), which describes average noise exposure at the community level over a period of time; (2) the Day-Night Average Level ("Ldn"), which reflects noise exposure over an average day, with greater weight given to noise occurring during the evening and night; and (3) Maximum Noise Level ("Lmax"), which is used to regulate short-term noise levels. (Humboldt County General Plan, Chapter 13 (Noise Element), pp. 13-1 – 13-2.) The CNEL and Ldn metrics are generally identical. Notably, the General Plan does not base County noise regulations on the weighted decibel scale ("dBA").

With respect to noise limits for industrial land uses, the General Plan states that CNEL/Ldn values up to 70 are "Clearly Acceptable" and that values between 71 and 80 CNEL/Ldn are "Normally Acceptable". (Humboldt County General Plan, Chapter 13 (Noise Element), pp. 13-6.) Kern's existing use permit limits its noise levels to "60 Ldn at nearby residential properties", which means that the existing noise condition is more restrictive than the General Plan. Even so, the Noise Monitoring Study submitted by NorthPoint Consulting Group showed that Kern's operations complied with this standard.

The Board can only modify Kern's vested use permit on the basis of substantial evidence. Given that none exists supporting Staff's recommendation to modify the existing noise condition, the Board cannot modify Kern's existing noise condition. (See *Bauer, supra*, 75 Cal.App.4th at p. 1294; *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 391-393, n. 5.)

Apart from the complete absence of substantial evidence supporting a modification to the existing noise standard, the new noise condition recommended by staff – "70 decibels (dBA) at nearby residential properties" which "may be measured and collected using a decibel sound meter, or a sound meter app using Android or iPhone devices" is highly problematic and would set a terrible precedent for the County and all industrial businesses operating within the County. First, the dBA metric is an instantaneous metric based on an acute noise source that does not take into account environmental noise. Second, the recommended noise limit – 70 dBA – is extremely low. A loud voice, a flushing toilet, even some dishwashers can register 70 dBA. Third, staff recommend legitimization of "a sound meter app using Android or iPhone devices" even though such devices are not professional sound meters. Taken together, this condition invites neighbors to selectively "measure"



noise on their phones and complain to the County. In other words, this condition invites more unsubstantiated complaints.

**C. Soil Screening Protocol**

Staff asserts that Kernen has violated permit Condition B.8. because “a screening program with testing and record keeping of imported soil and materials has not been submitted to the County”. (Proposed Finding 3(f).) This allegation is false and misleading.

We begin, as staff should have also, with the actual language of Condition B.8.:

The applicant/operator shall have a screening program to ensure that hazardous, designated, contaminated soil or unauthorized wastes are not received. The program shall include screening criteria, laboratory testing by a certified lab when necessary, and record keeping. The program shall be designed and enforced to the satisfaction of the Division of Environmental Health.

There are three problems with staff's allegation. First, this condition does not require Kernen to “submit” any screening program to the County. Even if the condition could be read to impose such a requirement, the Operations Plan that was approved in connection with the existing use permit already includes a “Materials Screening Process” that was reviewed by staff. Further, staff can point to no time in the last 24 years since the use permit was originally approved that the County ever requested anything further from Kernen to satisfy this condition.

Second, the condition does not require Kernen to “submit” any soil test results to the County.

Third, when Kernen did submit soil test results to the County, at staff's request, in August 2024, the data showed that the tested material was clean and free of contaminants.

The Board can only modify Kernen's vested use permit on the basis of substantial evidence. Given that none exists supporting Staff's allegation that Kernen violated Condition B.8, the Board lacks a legal basis to act in this regard. (See *Bauer, supra*, 75 Cal.App.4th at p. 1294; *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 391-393, n. 5.)

**D. Alleged Grading Violations**

Lastly, staff asserts that Kernen violated County Code by failing to obtain grading permits prior to installing a stormwater catchment basin and a flood protection berm. This is again false.

Staff fail to inform the Board of two facts: first, the County approved a comprehensive grading permit for the northern yard in 2004. This grading permit includes the right to grade the entire yard, even into the Streamside Management Area (“SMA”), to stockpile soil, scrap metal and other materials anywhere on the northern yard; and to install stormwater protection measures, including berms, anywhere on the northern yard.

Second, existing Condition A.11 further authorizes stormwater protection measures. This condition reads as follows:



*Response to Notice of Potential Conditional Use Permit Revocation*  
April 14, 2025

The applicant shall file an erosion control plan with monitoring guidelines with the Building Inspection Division. Per Department of Fish and Game recommendations, the applicant shall incorporate retention areas where all surface runoff will be directed and/or extend the series of berms throughout the site to provide for containment of sediment and contaminated materials.

Both of the "violations" alleged by staff are approved by the above existing condition – the stormwater basin is a "retention area" and the berm is an extension of the "series of berms throughout the site".

Staff have failed entirely to explain why the 2004 grading permit and Condition A.11 do not authorize the grading "violations" alleged in the staff report. In short, staff have failed to present substantial evidence of a violation. As noted, the Board can only modify Kernen's vested use permit on the basis of substantial evidence. Given that none exists supporting Staff's allegations, the Board lacks a legal basis to act in this regard. (See *Bauer, supra*, 75 Cal.App.4th at p. 1294; *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 391-393, n. 5.)

**5. Conclusion**

The facts relating to Kernen's operation of the Facility do not support revocation of its use permit, and even if they did, the County has failed to show that there are no means short of revocation that could resolve the problems at hand.

The Board can – and must – find that staff have failed to present substantial evidence supporting revocation or modification of Kernen's use permit.

We and NorthPoint are happy to further discuss any of the information provided in this letter and the attached memorandum. I can be contacted via email at [bjohnson@everviewlaw.com](mailto:bjohnson@everviewlaw.com).

Sincerely,



Bradley B. Johnson, Esq.  
Everview Ltd.

cc: Annje Dodd, Ph.D., NorthPoint  
Praj White, NorthPoint  
Scott Farley, Kernen Construction  
Yolynn St. John, Kernen Construction

**Damico, Tracy**

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**From:** Cindy Trobitz-thomas <ctrobitz1@gmail.com>  
**Sent:** Monday, April 14, 2025 7:34 PM  
**To:** Bohn, Rex; Bushnell, Michelle; Wilson, Mike; Arroyo, Natalie; Madrone, Steve; Ford, John; Johnson, Cliff; Dorris, Joshua; Damico, Tracy  
**Subject:** Proposed Kernan Settlement Concerns

**Caution:** This email was sent from an EXTERNAL source. Please take care when clicking links or opening attachments.

As a resident of the Glendale Community, I have been working with the County Planning Department for nearly 2 years regarding Kernan Construction issues. The process began when Glendale Community members each filed a complaint regarding CUP violations (hours of operation, noise, etc.) to the County. Meetings with the Planning Department began Sept 25, 2023 with over 10+ subsequent meetings. Through the process we were assured any settlement the County made with Kernan Construction would be shared with us prior to Supervisor review and approval. We were surprised to finally get a meeting with the Planning Department Staff the Friday before the Public Hearing. The Staff report had been prepared and was ready for distribution that afternoon and we were not able to adequately get together our own testimony or hearing testimony by more neighbors, and to build an adequate Community response. As you know, the two minute limit for speaking testimony at the public hearing is quite limited. We believe this limits our ability to present our case for why we think the Revised Conditions of Approval are inadequate, it is quite intimidating to give spoken testimony in the Chamber when it is filled with hostile Kernan employees. Thank you.

Cindy Trobitz-Thomas  
707 502-7248 (cell)  
707 822-4342 (landline)



## Damico, Tracy

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**From:** Bradley Johnson <bjohnson@everviewlaw.com>  
**Sent:** Tuesday, April 15, 2025 8:12 AM  
**To:** Damico, Tracy  
**Subject:** Fwd: Letter for Kernan

**Caution:** This email was sent from an EXTERNAL source. Please take care when clicking links or opening attachments.

Begin forwarded message:

**From:** Danielle Weems <weemsdanielle@gmail.com>  
**Date:** April 15, 2025 at 7:57:19 AM PDT  
**To:** Bradley Johnson <bjohnson@everviewlaw.com>  
**Subject:** Letter for Kernan

Dear Members of the Board,

I am writing to express my strong support for **Kernan Construction** and to urge you to **allow them to continue operating without restricting their hours**.

This area has been zoned as a commercial zone for **over 40 years**, and it is unreasonable to entertain complaints from people who moved into the area and now have issues with how things are run. If they find the operations of Kernan Construction disruptive, they should consider relocating. The business has been a part of our community for far too long and provides **good-paying jobs** to many families in our small county, which is struggling financially.

We need to focus on supporting our **local economy** and the businesses that help sustain it. Kernan Construction plays an essential role in keeping people employed and contributing to the tax base. The fact that a small group of people can disrupt the operations of a business simply because they complain the loudest is not fair or productive. It sets a bad tone for our country. These complaints should not dictate business operations, especially when those businesses support our community and economy.

I ask you to put the **needs of our community and economy first**, and not allow complaints of residence to control the future of an established, important business. Kernan Construction has been a vital part of this area for decades and should be allowed to operate as needed without unnecessary interference.

Thank you for your time and consideration in this matter. Please support our community and the businesses that help it thrive.

Danielle Weems

Neighbor 95 hilltop lm  
Sent from my iPhone  
Sent from my iPhone

On Dec 3, 2024, at 12:32 AM, Bradley Johnson <[bjohnson@everviewlaw.com](mailto:bjohnson@everviewlaw.com)> wrote:

I will be traveling and in hearings Monday, December 2 through Wednesday, December 4 and will be checking email intermittently. For urgent matters, please contact James Anderson at [janderson@everviewlaw.com](mailto:janderson@everviewlaw.com).

## Damico, Tracy

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**From:** Bradley Johnson <bjohnson@everviewlaw.com>  
**Sent:** Tuesday, April 15, 2025 8:12 AM  
**To:** Damico, Tracy  
**Subject:** Fwd: Support for Kern Construction

**Caution:** This email was sent from an EXTERNAL source. Please take care when clicking links or opening attachments.

Begin forwarded message:

**From:** Deborah Egbert <scottndebegbert@yahoo.com>  
**Date:** April 14, 2025 at 6:28:59 PM PDT  
**To:** Bradley Johnson <bjohnson@everviewlaw.com>  
**Subject:** Support for Kern Construction

To Whom it May Concern,

My name is Deborah Egbert, I am a Registered Dental Hygienist, and live and work in McKinleyville, CA. It has come to my attention that there is a movement to try and restrict the business operations of Kern Construction. This is very concerning to me on many fronts. For one, they have been in operation at that location for a very long time, why now is this such an issue? Is it because people bought homes in an area where a commercial business operates? This should not be a reason to restrict operations, they knew the business was there when they moved in. The second concern is not only for the employees but the whole community. Kern employs almost 100 people who live in our community and put money back into our community, in addition to paying taxes. Lastly, it sets a precedent to others that you can move into an area, complain enough, and force businesses out. It's a slippery slope, where does it stop? We have lost enough businesses in this area, in my opinion, we can not afford to lose anymore. I am in support of Kern Construction, and hope you make the right decision, and let them continue to operate as they are.

Thank you,  
Deborah Egbert, RDH

Sent from Yahoo Mail for iPhone

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25-468

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From Artie and Julie <jjonte1234@yahoo.com>

Date Mon 4/14/2025 4:09 PM

To COB <COB@co.humboldt.ca.us>

Caution: This email was sent from an EXTERNAL source. Please take care when clicking links or opening attachments.

Dear Board of Supervisors,

My name is Julie Jonte and I am submitting this letter in regard to 25-468.

I have lived at 236 Liscom Hill Road since January 1990.

I appreciate all the hard working employees at Kerman Construction and understand that their work contributes much to our community. I am glad Kerman Construction helps our economy here in Humboldt.

However since the original Kerman permit was granted in 2001 there has been an increase in noise, dust, and truck traffic.

Please approve the revised conditions for noise and hours of operation. Of course Kerman should be granted permission to do equipment maintenance at any hour so long as it does not exceed the noise limits or disturb the neighborhood.

Please approve conditions 1, 2, 3, and 4.

I want Kerman Construction to thrive, but at the same time I want to live in a healthy and safe environment with less noise, dust, and pollution. I believe that we can have a healthy, thriving community with the revised conditions.

Thank you,

Julie Jonte  
236 Liscom Hill Road,  
McKinleyville, CA  
Sent from my iPad