

April 21, 2022  
Humboldt County Planning Commission

**RE: Motorsports at the Humboldt County Fairgrounds**

Dear Commissioners:

This is in response to the Humboldt County Fair Association seeking a modification to their Conditional Use Permit. The application ID is PLN-2022-17561. It is obvious the MND and supplemental MND are intended to circumvent CEQA and not comply with it. The MND is grossly insufficient and the mitigation methods are increasingly absurd. I have summarized the reasons the modification cannot be made. If the modification is made in light of the facts I will be seeking a judicial remedy.

1. The original MND/Permit is invalid. The suggestion of raising any limit makes the MND little more than a declaration of noncompliance. What follows is from 2022 CEQA Statutes and Guidelines.

Chapter 2.6: General

§ 21080. DIVISION APPLICATION TO DISCRETIONARY PROJECTS; NONAPPLICATION;  
NEGATIVE DECLARATIONS; ENVIRONMENTAL IMPACT REPORT PREPARATION

(g) Nothing in this section shall preclude a project applicant or any other ntyperson from challenging, in an administrative or judicial proceeding, the legality of a condition of project approval imposed by the lead agency. If, however, any condition of project approval set aside by either an administrative body or court was necessary to avoid or lessen the likelihood of the occurrence of a significant effect on the environment, the lead agency's approval of the negative declaration and project shall be invalid and a new environmental review process shall be conducted before the project can be reapproved, unless the lead agency substitutes a new condition that the lead agency finds, after holding a public hearing on the matter, is equivalent to, or more effective in, lessening or avoiding significant effects on the environment and that does not cause any potentially significant effect on the environment.

2. The original MND/ permit should have never have been approved as it directly conflicts with the General Welfare, Nuisance, General Plan Consistency, and Zoning Consistency Standards. The Project is contrary to the public health, morals, or welfare. The fair grounds is zoned City of Ferndale-Public Facility and in addition to the Counties Permit a Permit from the City of Ferndale must also be required. The MND states the county property is not subject to Ferndale's noise ordinance claiming exemption under the superiority clause. (Lawyer vs. The City of Redding) They also claim exemption from the state coastal regulations because the property is located within Ferndale City Limits. I have consulted directly with the Coastal Commission and was told "the reason Ferndale is outside the Coastal Commission jurisdiction is that when the Commission was formed the City asserted that "the City does not need help protecting its resources and its General plan was deemed sufficient in doing so". Logically, based on these two claims, the Humboldt County Fair Grounds is subject to Ferndale's General Plan and thus in Ferndale's Jurisdiction. Simplified: The Fair grounds is not an island outside of the law. Despite the clear jurisdiction being the City of Ferndale, the City refuses to take action to protect the community. Again this is the City of Ferndale's officials way of allowing their associates to conduct environmentally unfriendly events rather than regulating them and protecting the community as it should.

The following is from the California-The Conditional Use Permit: Planners training series handbook.

It is often the case that local agencies follow a general set of standards in considering a conditional use permit. These standards are generally acceptable since it is a near impossibility to devise standards to cover all possible situations in which a use permit can be issued (Tustin Heights Association v. Board of

Supervisors (1959) 170 Cal.App.2d 619). There are several cases in which these standards have been upheld.

**General Welfare Standard:**

"The establishment, maintenance or conducting of the use for which a use permit is sought will not, under the particular case, be detrimental to the public welfare or injurious to property or improvements in the neighborhood" (Hawkins v. County of Marin (1976) 54 Cal.App.3d 586).

**Nuisance Standard:**

"Any use found to be objectionable or incompatible with the character of the city and its environs due to noise, dust, odors or other undesirable characteristics may be prohibited" (Snow v. City of Garden Grove) (1961) Cal.App.2d 496).

**General Plan Consistency Standard:**

"Although use permits are not explicitly made subject to a general plan meeting the requirement of state law, that condition is necessarily to be implied from the hierarchical relationship of land-use laws.

Thus, use permits are struck from the mold of the zoning law, the zone law must comply with the adopted general plan, and the adopted general plan must conform with state law; the validity of the permit process derives from compliance with this hierarchy of planning laws (Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176).

**Zoning Consistency Standard:**

"To obtain a use permit, the applicant must generally show that the contemplated use is compatible with the policies in terms of the zoning ordinances, and that such use would be essential or desirable to

the public convenience or welfare, and will not impair the integrity character of the zoned district or be or be detrimental to the public health, safety, morals or welfare" (O'Hagen v. Board of Zoning Adjustment (1971) 19 Cal.App.3d 151)

3. This modification to increase a noise limit is not minor as this supplemental MND suggest. DeciBell is a logarithmic scale. Without this understanding one might assume an increase from 90-99dB is a 10% increase. It is in fact almost 10X Louder. 99dB will cause permanent hearing damage to anyone in the proximity to the motorcycle.

4. I live in close proximity to the racetrack and because of my condition the noise produced is a violation of my Civil Rights. I have an auditory processing Condition that meets the standard of a disability. By increasing the ambient noise in my neighborhood the Motorsport events are in direct violation of my rights under ADA. (Disability rights aspects of ambient noise for people with auditory disorders under the Americans with Disabilities Act, Daniel Fink, 174<sup>th</sup> Meeting of the Acoustical Society of America, Proceeding on Meetings on Acoustics, December 2017)

5. The mitigation methods described are insufficient in reducing the Environmental impact to a less than significant level. There are absolutely no specifications for any of the mitigation methods. Simply describing Hay Bale walls, noise monitoring, and special exhaust systems is beyond vague. Due to the sheer ambiguity of the described mitigation this modification cannot be considered.

6. The HCFA have established grounds for revocation of the permit and not modification. County code outlines the grounds for revocation. First among these is the outright fraud concerning "Magic Mufflers."

14.1.1 The permit or variance was obtained or extended by fraud, material omissions or misstatements of fact. (Former Section INL#317-42(a); CZ#A315-25(A)(1))

The Following is from an email sent to me by Councilman Stephen Avis in early November of 2020. He sent this after meeting with Board President Andy Titus in which inevitably led to them sabotaging the Friends of Ferndale's effort to stop motorcycle racing from happening in our community.

"Andy Titus is asking the HCFA Board to approve seeking a continuation of our appeal, giving us time to work out details. He agrees that qualified sound engineers are necessary for accuracy.

The County, Friends of Ferndale and the HCFA will discuss a way forward and seek approval from each group's membership on the details of how to proceed including the need for an EIR instead of a mitigated negative declaration or significantly improved mitigation measures that prove effective.

NOTE: Motorcycles in the 2017 races had no mufflers of any sort. It will be very interesting to actually hear how much noise reduction is possible with the proposed mitigation and with additional measures as appropriate. "

The HCFA now recognizes the mufflers required to reduce the CNEL to 63db do not exist. The emphasis and effort devoted to misleading our local representatives constitutes fraud and is grounds for revocation

14.1.2 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 regulations . (Former Section INL#317-42(c); CZ#A315-25(A)(2); Amended by Ord. 2214, 6/6/00

It is in clear violation of Ferndale's noise ordinance. They are modifying the permit to change a condition of approval.

14.1.3 The use for which the permit or variance was granted is so conducted as to be a nuisance. (Former Section INL#317-42(d); CZ#A315-25(A)(3); Ord. 894, Sec. 6, 12/19/72; Amended by Ord. 1726, Sec. 5, 3/4/86

The noise and dust produced by motorsports are an obvious nuisance.

14.1.4 The use for which such permit or variance was granted has ceased to exist or has been suspended for one (1) year or more. (Former Section INL#317-42(b); Amended by Ord. 2214, 6/6/00)

Events have been delayed for well over a year and while the HCFA might suggest the pandemic was the reason discussion in their board meetings, holding the Fair despite the pandemic, and the suggestion of

the delay being due to event organizers concerns over noise limit prove the delay was unrelated to the pandemic. This is grounds for revocation.

8. Changing a condition of approval, raising the limit, because they are unable to comply is not logical. The American Motorcycle Association does not set standards limiting noise in residential areas. The only standards to consider are those in Ferndale General plan based on the Noise Control Act of 1972. It doesn't matter if they are unable to attract event organizers with the current noise limit.

9. The HCFA has continually argued the need for addition revenue as justification to permit motorsports events. The HCFA does not need the money. After being gifted large sums of pandemic related funds the HCFA has close to \$1 million in reserve. Regardless, If motorcycle racing is the only way to preserve the fair than they need to close the doors. Furthermore, Due to the emphasis on revenue being the motivating factor the the superiority clause cannot be applied.

10. The motorsport community needs to realize they are not losing a track, they are just not gaining one. There is no relevant history of motorsports in Ferndale. Under CEQA relevant history is in the last three years. It doesn't matter that there were a few auto races in the 1950's.

11. The HCFA and associates will say and do what ever they can to have this approved. Once approved they only need to monitor and annually report the results. This reporting is not intended to limit the noise produced but to allow the HCFA to exceed limits and take a continuous improvement approach.

12. In the original MND they claimed modern advance mufflers would reduce the exhaust noise of the average motorcycle 20 dB. These systems, they claimed, will further reduce the CNEL to 63 dB. Thus the impact on the local environment due to noise was deemed less than significant. They claim have discovered recently "that no such exhaust system exist." Further more, The motorcycles used in testing to establish the CNEL baseline had modern efficient mufflers. This claim of a significant reduction in noise due to the requirement of special exhaust systems is unfounded. Whittchurches CNEL calculations are incorrect. They suggested holding races earlier in the day to avoid the penalties applied in the evening hours. The calculation was still based on a 24hr. period. Their calculations must be ignored altogether.

13. The HCFA has proven that revenue is the priority and they completely disregard the Health/Safety/Welfare of the community. The recent Fair was held during the height of the pandemic. They did not follow any of the Safety precaution they agreed to follow.

The following is from a letter from Ferndale City Councilman Stephen Avis concerning the issue.

"I am appalled that during a special meeting on Monday, the Humboldt County Fair Association Board of Directors opted to hold a county fair in the face of a major health emergency. The Delta variant pandemic is worse than the original version of COVID-19. Cases in Humboldt County are exploding and much higher than last year at this time To encourage people to gather as if all is "normal" is beyond belief.

It is selfish and reckless that this organization is endangering unvaccinated children just before school goes back into session. It is terrifying to think what will happen in hospitals as this presumed super spreader events draws to a close.

Outdoor events, held in July when caseloads were lower, still became super spreader events. Now that the Delta variant is raging like a forest fire through the county, it is easy to see what

will happen.

Today's TS headline indicates a 400% increase in cases. This will be multiplied with each day that the fair is in operation. Our clinics and hospitals have limited capacity and staff will become overwhelmed.

I call on the HCFA Board of Directors to proceed with aspects of the fair including horse racing and Jr Livestock Auction without the public in attendance but cancel any activities that would draw the public to the fairground. The risk to our schools, our children, the unvaccinated and even those who are vaccinated is huge. I encourage public health officials and the Board of Supervisors to evaluate the risks and do what they can to avoid a catastrophe."

Fair Board President Andy Titus expressed his concerns that a fair during the pandemic would put the community at risk and "he wouldn't be able to live with himself if someone died as a result of the fair." There were deaths in Ferndale due to infection related to the event.

The HCFA has shown little to no concern for the Health/ Safety /Wellbeing of our community. The Counties support of the HCFA (and the associations gross negligence) demonstrates the county is at a minimum complicit.

14. The County has failed to adequately correspond with appropriate reviewing agencies. The major issues are noise/dust but the Air Resource board was not consulted.

15. Conditional use permits stem from police power. They are based on reducing impact on the surrounding community. The County of Humboldt uses MND's and conditional use permits as a means of allowing noise pollution and not reducing it. The County should not even consider a permit for a project that conflicts this severely with the California Environmental Quality Act. If the permit modification is approved and the County Supervisors continue to ignore their responsibility to protect the community legal action will be taken based on the reason's cited here as well as all previous complaints made to the City of Ferndale, County planners, and the Board of Supervisors.

Deny the modification to avoid legal action,

-Arne R.W. Petersen  
Mechanical Engineer, MBA