



Memorandum

OFFICE OF THE COUNTY

COUNCIL

RICHARD E. WINNIE
COUNTY COUNSEL

DATE: June 30, 2008

TO: Jana Beatty Weldon, Senior Planner

FROM: Brian E. Washington, Assistant County Counsel

SUBJECT: Threshold of Significance for Noise Impacts in AMP EIR

I write this memorandum in response to your question regarding the appropriate threshold of significance for analyzing noise impacts in the Altamont Motorsports Park Rezoning Environmental Impact Report ("EIR"). You may give a copy of this memorandum to Impact Sciences.

Question Presented

Does the County Noise Ordinance or the 1996 Conditional Use Permit ("CUP") provide the appropriate noise level threshold of significance for assessing noise impacts in the Altamont Motorsports Park Rezoning Environmental Impact Report ("EIR")?

Summary

The noise standard set forth in the 1996 CUP (95 dB(A)) is the more appropriate threshold of significance for measuring noise impacts at the raceway. During the entire history of the operation of the raceway, the CUP noise standard has governed operations. When asked to apply the Noise Ordinance statute to the raceway, the Department of Environmental Health, pursuant to procedures provided for in the Noise Ordinance, concluded that the Noise Ordinance standards should not apply. Therefore, pursuant to the CEQA Guidelines, the CUP standard should apply.

DISCUSSION

I. Background

Beginning in the 1960s, various entities have operated the raceway currently operated as Altamont Motorsports Park pursuant to County-issued CUPs. The County issued the most recent CUP in 1996, Condition 12 of which allowed continued operation of the raceway for a 10-year period provided noise impacts did not exceed a 95 dB(A) limit. Pursuant to a March 26, 2008 Board of Supervisors order, the raceway operators (referred to as "AMP") have been allowed to continue to operate under the terms of the CUP through October 2008.

On September 15, 2005, AMP filed an application to renew its CUP application, and submitted a revised application on January 21, 2006. In the Fall of 2006, County Planning staff reviewed the original and revised applications, and concluded that a

rezoning would best address certain community concerns with AMP. The AMP rezoning is the subject of the EIR under preparation.

From early 2006, when the Planning Department first considered the AMP conditional use permit renewal application, to the present date, the County has received numerous complaints about the operation of the Raceway. One complaint asserted that the race track operations violated the County's Noise Ordinance, set forth in Chapter 6.60 of the Alameda County Ordinance Code. Specifically, neighboring property owners argued that the race track operation violated the "receiving land use" standards set forth in the Noise Ordinance.

Section 6.60.040 of the Noise Ordinance provides that noises above certain standards measured at receiving uses constitutes a violation:

6.60.040 Exterior noise level standards.

A. It is unlawful for any person at any location within the unincorporated area of the county to create any noise or to allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person which causes the exterior noise level when measured at any single- or multiple-family residential, school, hospital, church, public library or commercial properties situated in either the incorporated or unincorporated area to exceed the noise level standards as set forth in Table 6.60.040A or Table 6.60.040B following:...." [The table is attached as Attachment 1.]

In addition to the standard measured from receiving uses, the Noise Ordinance was amended in 2004 to provide that certain "plainly audible" noises constituted violations of the Noise Ordinance. See § 6.60.050. The amendment, however, only applied to the urbanized western portion of the County and therefore did not apply to the raceway. § 6.60.050.E.3

In response to the complaints regarding the Noise Ordinance, AMP asserted that the Noise Ordinance 65 dB(A) standard did not apply. Nonetheless, to preserve its rights, AMP applied for a variance pursuant to § 6.60.110, which provides in part:

A. The owner or operator of a noise source which the director has determined violates any of the provisions of this chapter may file an application with the director for variance from strict compliance with any particular provision of this chapter where such variance will not result in a hazardous condition or a nuisance and strict compliance would be unreasonable in view of all the circumstances.

...

Factors which the director must consider shall include but not be limited to the following:

1. Uses of property within the area affected by the noise;
2. Factors related to initiating and completing all remedial work;
3. Age and useful life of the existing noise source;
4. The general public interest, welfare and safety;
5. Conditions, policies, or guidelines imposed by other agencies or other commissions including the planning commission conditions and planning commission or ALUC policies and guidelines.

The Director of Environmental Health reviewed AMP's variance request, and twice granted variances. In issuing the variance on June 25, 2007, the Director of Environmental Health concluded:

In re-issuing the temporary variance, the Department emphasizes that the re-issuance merely allows the raceway to continue to operate at the noise levels authorized and regulated by the Community Development Agency's 1996 permit while LMA/AMP's application for rezoning is pending. As such, the temporary variance does not change the noise standard that has applied to the raceway since 1996.

(June 25, 2007 Letter from Ariu Levi regarding "Application of Lakeside Motorsports for Temporary Variance from Alameda County Noise Ordinance.")

II. CEQA Standard for Thresholds of Significance

As you know, neither the CEQA statutory language, nor the CEQA Guidelines provide specific guidance as to when an environmental effect crosses the line into the realm of significance. The CEQA Guidelines do, however provide general principles for determining thresholds of significance:

(a) Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.

(b) Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be

adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence.

14 CCR § 15064.7

Courts and commentators emphasize that the “[t]he lead agency has discretion to formulate standards of significance for use in an EIR, which requires the agency to make a policy judgment about how to distinguish adverse impacts deemed significant from those deemed not significant.” *Practice Under the California Environmental Quality Act*, § 13.8 (2d ed Cal CEB 2008); *see also, Eureka Citizens for Responsible Government v. City of Eureka*, 147 Cal.App.4th 357 (2007); *National Parks & Conserv. Ass’n v. County of Riverside*, 71 Cal.App.4th 1341 (1999) (finding County appropriately applied higher noise level threshold of significance based on specific evidence distinguishing noise impacts in different areas of park, rather than blanket application of statutory noise standards). This discretion reflects the reality that “[a]n ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting.” 14 CCR §15604(b).

III. Conclusion

In this regulatory setting, using the CUP noise standard for the threshold of significance constitutes the more logical choice. The consistent use of the CUP 95 dB(A) standard for raceway operations provides the basis for drawing a distinction between the factual evidence specific to this project and the regulatory standard found in the Noise Ordinance. Indeed, the Director of Environmental Health came to this same conclusion when he exercised his authority to grant AMP a variance under the Noise Ordinance to operate at a maximum of 95 dB(A). Although arguably, the County’s discretion in setting thresholds of significance is broad enough to encompass using the Noise Ordinance (65 dB(A)) standard, it would make an illogical choice here. The standard has never been applied to the Raceway, and when the County was asked to apply the standard to the Raceway, it declined to do so.

Moreover, it is appropriate to note that given the Noise Ordinance’s ambiguous applicability to the racetrack, applying the Table 6.60.040A noise level standards to AMP would likewise run contrary to the CEQA Guideline’s command to avoid “ironclad definition[s] of significant effect[s].” (14 CCR § 15064(b).) As noted above, AMP has asserted that the Noise Ordinance does not apply to the Racetrack at all. Although § 6.60.040 suggests broad application of the Table 6.60.040A noise level standards, the County never applied the § 6.60.040 to the Racetrack prior to receiving complaints in 2006. When the complaint was received, the Office of the County Counsel reviewed the Noise Ordinance language, including § 6.60.050, which was added in 2004. Section 6.60.050 established that certain “plainly audible” noises constituted violations, but provided language specifically excluding the eastern part of the County and activities governed by conditional use permits from its coverage. § 6.60.050.E. The Table 6.60.040A standards, however, could be interpreted to apply to the race track because

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§ 6.60.040 contains no exceptions for the eastern county or conditional use permit-regulated activities. Thus, when the County received complaints raising the applicability of the Noise Ordinance, the Office of the County Counsel advised that the racetrack CUP was not necessarily exempt from the § 6.60.040 standard and that the variance procedure should be used to determine the appropriateness of applying the standard.

Given this history, the Noise Ordinance (65 dB(A)) standard appears to be a poor choice for analyzing significant impacts under CEQA. The 95 dB(A) standard established by the CUP is the most appropriate standard for use as a threshold of significance.