

**CITY OF COLORADO SPRINGS PLANNING COMMISSION  
RECORD-OF-DECISION**

**NEW BUSINESS CALENDAR**

**DATE:** January 16, 2014

**ITEM:** 6

**STAFF:** Erin McCauley

**FILE NO.:** CPC CU 13-00077

**PROJECT:** Whistling Pines West – 4750 Peace Palace Point

**STAFF PRESENTATION**

Ms. Erin McCauley, City Planner II, presented PowerPoint slides (Exhibit A) and recommended approval subject to conditions.

Commissioner Henninger inquired of a pathway on the back side of the site and if it will be retained. Ms. McCauley stated that it appears that social trail was created illegally because those bikers and runners have been trespassing.

Commissioner Gonzalez inquired of improvements for the drainage channel. Ms. McCauley stated there were no improvements required for this development plan. City Engineering staff are present if there are questions.

Commissioner Shonkwiler inquired if the site is within the floodplain. Ms. McCauley showed a slide where a sliver of one corner of the lot is within the floodplain, but the proposed building site is not.

**APPLICANT PRESENTATION**

1. Mr. Steve Hammers, Hammers Construction, reviewed the history of selecting this site. He constructed the first Whistling Pines East gun club in the eastern part of the community for the same owners. He felt it was difficult to find a second site that would meet the owners' strict requirements. The existing access easement was analyzed prior to purchase of the site. This site is being proposed at the maximum noise guidelines for residential areas at 45 dB(A). Mr. Hammers explained in detail the safety features of the interior construction. Hours of operation will be Monday 9am-8pm, Tuesday closed, Wednesday-Saturday 9am-9pm, and Sunday 9am-6pm. He addressed potential odors and stated that the building will include an air handling system that exceeds Occupational Safety and Health Administration (OSHA) standards in which all air is filtered by a HEPA filter system within 60-90 seconds. Safety is the foremost concern of

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the owners; each staff member is an experienced shooter and the range will be monitored by staff at all times. The interior will include bullet-proof windows for staff to observe range activities and address shooters' questions as needed. This is a membership-based club that would attract serious and safe shooters. Any member exhibiting unsafe practices may be immediately dismissed and may also suffer membership revocation. Further, a weapon cannot be out of its case until the person is inside the range area, itself. He then addressed the noise and stated two sound tests were conducted. He displayed the range from the homes and measured 700-750 feet from the nearest residential structures. The range was designed to handle the sound of semi-automatic weapons, but those firearms will not be shot within the building. Periodic impulsive noises are allowed, but must meet a stricter standard; the applicant's goal is to meet the 45 dB(A) maximum allowed at night in residential zones. A sound study was conducted at the current facility in the eastern portion of the county. That study found that noise could be heard at a 60 dB(A) level across the street. That building was constructed without any sound mitigation.

Commissioner Gonzalez inquired if the 45 dB(A) maximum would be reached at the applicant's property line or the nearby residential property line. Mr. Hammers stated it would be at the top of the ridge nearest the residential property line. He deferred to the sound engineer.

Commissioner Sparks inquired of the maximum height proposed for this building. Mr. Hammers stated it is a 45-foot maximum height, but that is reached only at the top of the tower. The actual height is 40 feet, 8 inches.

Commissioner Markewich inquired if there are doors on the north side of the building. Mr. Hammers stated there are no doors on the north wall. The doors at the second level and on the west side are Sound Transition Classification (STC) 50 rated to remove sound (the higher the number the greater the sound mitigation), but will not be open at all times. An air lock system within the range prevents sound from traveling between the ranges and lessens the noise between the range and the retail space.

Commissioner Gonzalez inquired if there is protection from accidental discharges within the building. Mr. Hammers stated there is bullet-proof glass between the range and the retail space, and range staff will ensure no live ammunition would be in firearms when they or their clients are handling them outside of the firing ranges.

2. Mr. Jeff Kwolkoski, Wave Engineering, provided his educational and professional qualifications and background. He stated the noise level is measured at the residential property line to ensure it meets the 45 dB(A) during the evening hours.
3. Mr. William Louis, attorney for the applicant, stated Commissioner Shonkwiler raised two issues: 1) a minimum standard required by City Code, and 2) what the client is willing to agree to that exceeds City requirements. Mr. Louis explained the property immediately to the north is zoned PIP (Light Industrial). The minimum standard would be to meet the higher volume of noise allowed for a light industrial use. As a condition, his client is willing to stipulate measuring the

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sound maximum of 45 dB(A) at the residential property lines prior to obtaining a Certificate of Occupancy (CO). His client is willing to concede that .460 Weatherby Magnums or .50 caliber rifles are not allowed unless noise mitigations are installed, and a City representative and homeowners association (HOA) representative may be present to monitor the testing to ensure accuracy.

Mr. Jeff Kwoikoski returned to the podium and explained the methodology he utilized in the first sound study. During September 2013, ambient noise levels were documented for existing conditions. He entered the hill behind the property during different times of the day. He found noise sources were a mix of occurrences during the day, and the noise levels in this area were pretty constant from HVAC exhaust fans running in the industrial area and reached 48-50 dB(A) during the day. The sound study did not only predict firearm noise, but also included the ambient noise with expectation of firearms firing simultaneously.

Commissioner Gonzalez inquired how ambient noise compared to gunshot noise. Mr. Kwoikoski explained that if the background ambient noise is 45 dB(A), noise from gunshots could bring it up to 46 dB(A). If the ambient noise is rated at 50 dB(A) and gunshot noise is 45 dB(A), then the ambient noise will dominate. Subtracting the ambient noise, the goal is to reach a gunshot noise of less than 45 dB(A); he goal is to isolate and enforce the noise from the gunshots.

Commissioner Walkowski inquired about the duration of the noise study. Mr. Kwoikoski stated short snapshots of time are needed to measure gunshots (short bursts of noise) to avoid measuring longer times that would include the ambient noise with gunshot noise. If low enough, the gunshot sound will be very muffled and masked by the ambient noise.

Commissioner Markewich inquired if Mr. Kwoikoski was involved in the sound study at the applicant's current facility. Mr. Kwoikoski stated yes, he visited the Whistling Pines East Range and the Trigger Time Building in the Longmont area (page 243 of the agenda).

Commissioner Walkowski inquired how sound behaves when located near an upward or downward slope. Mr. Kwoikoski stated to a certain extent sound could build and rise to the top of the ridge. That condition was taken accounted for in his study.

Commissioner Shonkwiler inquired of rooftop mitigation. Mr. Kwoikoski stated the proposal is to install a steel deck on steel joists with thick foam insulation.

Commissioner Donley inquired of the type of firearms used during the sound study at the existing facility. Mr. Kwoikoski stated a .300 Winchester Magnum was fired along with several unidentified handguns.

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### CITIZENS IN FAVOR

Mr. Stuart Agres, resident of Peregrine, is looking forward to this facility. He is a member of Whistling Pines East Club. His family owns a ranch and needed to learn how to shoot for security reasons so he could use a firearm in a safe manner.

### CITIZENS IN OPPOSITION

1. Letter was received after the printing of the agenda and was distributed to the Planning Commission (Exhibit B).
2. Mr. Bruce Hutchison, Pinecliff Homeowner Association (HOA) President, stated there are 300 homes representing about 70% participation in this voluntary HOA. The HOA is not anti-gun, but is opposed to gunshot noises in the neighborhood. He clarified that the HOA did not stay neutral as noted in the agenda because letters were submitted during August 2013 and on December 23, 2013 (refer to pages 86 and 98 of the agenda). He was concerned with home values reduced due to "intolerable" gunshot noises from 9am-8pm. The HOA is willing to remove their opposition if the applicant agreed to install additional noise mitigation to ensure no gunshot noises are heard in the neighborhood.
3. Ms. Linda Mulready stated she owns a firearm, but does not want the noise in the neighborhood. She began the PowerPoint slides (Exhibit C). She felt the application does not meet the review criteria regarding compatibility with the residential neighborhood.
4. Ms. Gail Morrison, resident of Pinecliff neighborhood, continued the PowerPoint slides and paraphrased comments from City staff, City Council and neighbors in various locations around the nation regarding complaints of loud noises and scared children and animals who live within 600 feet of a gun range. Her property is within 500 feet of the proposed building. She felt the residences are being caught off-guard by immeasurable factors such as gunshots that were not considered when purchasing their homes.
5. Mr. Angus Morrison, resident of Pinecliff neighborhood, continued the PowerPoint slides and felt his educational and professional experience allowed him to understand and critique the sound study. He referenced page 200 of the agenda.
6. Mr. John Wei, resident of Pinecliff, continued the PowerPoint slides.
7. Ms. Patty Carbone, resident of Pinecliff, continued the PowerPoint slides. She read a statement into the record (Exhibit D).
8. Ms. Jennifer Russell, resident of Pinecliff, showed pictures of their extensive upgrades to their home and lot. She is a proponent of gun rights, but not at the expense of the neighborhood.



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9. Mr. Charles Adams, resident of Pinecliff, addressed possible noise pollution caused by the shooting range. He served in one of the U.S. Army's artillery units. He felt no materials can muffle the sound of large caliber firearms. He was concerned that should another fire similar to Waldo Canyon Fire threaten the area, he would hate to see this gun range that houses live ammunition be threatened by fire and cause damage to surrounding neighbors.
10. Mr. Dick Bursell, resident of Pinecliff, presented PowerPoint slides and highlighted excerpts from the agenda (Exhibit E). He referenced pages 244-250 of the agenda because that resident was unable to attend today's meeting. Mr. Bursell wanted the slide quoting C.R.S. 25-12-109 on the record and specifically noted. He also questioned the validity of the sound study.
11. Mr. G.W. Flanders and Ms. Kalima Masse, owners of the property directly to the north of (above) the proposed site, distributed a letter in opposition and displayed slides (Exhibit F). Mr. Flanders objected that a Land Suitability Analysis was not required for this site and stated the application should be denied because it does not meet the Hillside Overlay criteria.

Commissioner Gonzalez inquired if this proposal complies with the hillside overlay criteria. Ms. McCauley stated yes, it does. Ms. McCauley stated that the land suitability information and data was included in the application but was not labeled with that title. The grading will not disturb any of the surrounding significant features and the building site is flat. A specific report labeled 'Land Suitability Analysis' was deemed not necessary.

Commissioner Donley inquired when Mr. Flanders acquired the property. Mr. Flanders stated he acquired the property five years ago in its current condition.

Commissioner Donley inquired if he will develop this site at some time in the future. Mr. Flanders stated his hope is to develop residential uses on the steeper portion with multi-generational homes and multi-family uses.

Commissioner Donley inquired how Mr. Flanders accesses the bottom portion of his lot. Mr. Flanders stated there used to be access, but today's applicant has removed that access through their platting. Commissioner Donley felt this was not relevant to today's discussion.

Commissioner Shonkwiler inquired about the size of his property. Mr. Flanders stated it is four or five acres.

Commissioner Shonkwiler inquired of the allowed uses on Mr. Flanders' land. Ms. McCauley clarified that multi-family residential is not an allowed use on Mr. Flanders' R-1 6000-zoned land. That zone is restricted to single-family residential requiring a minimum of 6,000 square feet per lot. Any other more intense residential use would require a use variance application.

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Ms. McCauley clarified that a land suitability analysis is required at the time of platting. A document entitled 'Land Suitability Analysis' could have been required to meet the Hillside Overlay requirements, but was deemed unnecessary for this application.

Commissioner Shonkwiler requested clarification of Mr. Flanders' concerns regarding drainage and grading within his letter. Mr. Steve Kuehster, City Engineering, stated the applicant's building is proposed to be one foot above the floodplain. Commissioner Shonkwiler inquired if Mr. Flanders' statement was incorrect. Mr. Kuehster stated yes, his statement was incorrect.

12. Ms. Marcia Oltrogge stated the proposed facility will threaten the tranquility of the neighborhood. She and her neighbors are in it for the "long haul" and questioned if the applicants are too.
13. Mr. Patrick Bollar, owner of adjacent lot and the shared driveway, stated he is in favor of the gun club but he is here today representing his 65 employees. A few of his employees stated they will leave their employment if the gun club is approved. He was concerned about the shared bridge and parking lot that may not accommodate the expected 50-60 persons per day. Mr. Bollar was interested in purchasing the property before the applicant acquired it.

### APPLICANT REBUTTAL

1. Mr. Louis reiterated his client will stipulate to a condition that no .50 caliber or .640 Weatherby Magnum firearms with or without suppressers will be allowed to be discharged in this facility. Those firearms are not currently being discharged at his current facility. Mr. Louis stated the applicants are in it for the "long haul" as well due to the million-dollar investment of this site.

Commissioner Markewich inquired if the 45 dB(A) would be measured at the property line or at the ridgeline. Mr. Louis stated the intent was to measure at the property line, but he is conferring with the sound engineer.

2. Mr. Bob and Mrs. Joyce Holmes visited the Trigger Time gun club location in south Denver. They stood in the parking lot and the noise was barely audible. There have been no complaints filed from the residential neighbors, which was confirmed by the HOA president of that neighborhood. He stated many clients complained of the long drive to their east location and the search began for a west side location while meeting a low decibel level with the aim of being good neighbors. Mrs. Holmes addressed the noise disturbance to wildlife in the area. She stated her dog is able to sleep inside the shooting range offices at their current location that has no sound mitigation. Traffic is never an issue at their current club because only 17 possible lanes can be used at one time with reservation times strictly enforced. Mr. Holmes addressed the slides by Mr. Bursell and stated they offer classes for those high-power firearms on rare occurrences due to the amount of paperwork and background checks required by the citizen. He offered to work with the neighbors to show them their proposal will not interfere with their quality of life.

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Mr. Louis clarified that it would be more difficult to reach the 45 dB(A) at the residential property lines compared with the top of the ridge.

Commissioner Shonkwiler inquired if the applicant would consider lowering the dB(A) maximum from the industrial standard to the commercial standard. Mr. Hammers agreed that at their property line they could reduce the dB(A) from an industrial to a commercial noise level at 60 dB(A) during the hours of 7am-7pm.

Commissioner Sparks inquired of the possible threat of fire while housing live ammunition. Mr. Holmes stated they will stock ammunition, which does not explode during a fire but rather burns. The Fire Department was contacted and he had no concern.

Commissioner Gonzalez inquired of the shared access. Mr. Hammers stated their attorney researched the previously-approved access agreement and found that the neighboring property owner has the ownership requirement, and the applicant has legal access to it. The applicant intends to contribute toward the maintenance of the access.

Mr. Kwoikoski stated that they have used the best building and strategy practice to ensure there are no negative impacts upon the surrounding property owners. He stands behind his findings.

Commissioner Walkowski inquired about the process to measure gunshots to ensure 45 dB(A). Mr. Kwoikoski stated he would request a variety of firearms be shot within 15 seconds of each other so he could measure any change in volume.

Commissioner Walkowski inquired who would be the monitoring body/agency for this sound test prior to issuing the CO. Ms. McCauley stated it would be her or another professional from her office.

Commissioner Markewich asked the applicant to reiterate his promise to personally monitor the noise tests along with the closest neighbors, as he previously testified he would. Mr. Holmes also agreed to consider increased noise mitigation if the sound of shots was heard.

Mr. Louis offered that an additional condition of approval could require the testing parameters provided to City staff prior to the issuance of a CO. Land use is about striking a balance between competing uses, he explained; every application will have some negative impact. The standard he is concerned with is whether the neighbors' quality of life will be impacted. Today, he said, we've heard only opinion that naturally comes from fear of the unknown. Thus, the applicant has hired a professional sound study and the neighbors have done nothing but criticize that study. His client objects to the hearsay by the neighbors. The opinion of decreased property values is not a valid criterion for a land use application. The issue is not whether the use is allowed, but whether the applicant has mitigated any possible negative impacts upon surrounding property owners. His client has mitigated those impacts beyond the City's requirements. He addressed Mr. Flanders' accusation that as a matter of law today's application should've been denied because it does not comply with the hillside overlay. Mr. Louis stated Mr.

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Flanders purchased his adjacent property through the tax sale process, and buyers understand that land is purchased as-is. In between the time the dirt was moved it was twice subdivided. Mr. Flanders cannot move any dirt on his site until a grading plan is approved to City standards.

### **STAFF REQUESTED TO SPEAK**

None

### **DECISION OF THE PLANNING COMMISSION**

Commissioner Donley inquired how enforcement would be handled should the gun club choose to allow larger caliber firearms at a future time. Mr. Wysocki stated if noise complaints are filed, then the City would verify noise complaints with permission from the property owners to traverse the ridge. Typically a courtesy letter is submitted to the owner. Actual enforcement then refers back to the State Statute.

Commissioner Donley observed that he would trust staff to coordinate the testing regime. Limiting the firearms will be difficult. It is important to note that on the previous agenda item, the zoning was PBC and was used as a justification for a higher dB(A) allowed in that zone.

Commissioner Henninger stated the site matches the industrial zone and its surrounding area. He had consternation understanding the City's position of transition from the proposed use through an existing vacant lot to the top of the hill with residential uses. He felt it will be a challenge to meet the 45 dB(A) maximum. He respects the property owners' right to develop and the home owners' concerns of this use.

Commissioner Markewich understands the neighbors' concerns that loud popping noises would negatively impact their lives. The applicant is willing to install further noise mitigation than required by the standard city code, to be a good neighbor. He also stated that he felt that the topography, noise abatement and distance from the facility would protect the residential neighborhood.

Commissioner Walkowski needed confirmation that the applicant agreed to the 45 dB(A) maximum. Mr. Louis confirmed that the applicant is willing to comply with the 45 dB(A) requirement.

Commissioner Walkowski felt there is uncertainty to the measurement of gunshots. It could be a quality of life issue for the homeowners with audible but not measureable gunshots.

Commissioner Sparks stated there are many uses allowed in this zone; whereby many uses may not be willing to submit to a 45 dB(A) maximum. She felt this is a proper infill use.

Commissioner Gonzalez appreciated the neighbors' comments and listened to issues he may not have identified. He appreciated the work and research of the applicant while addressing the neighbors' concerns to the extent possible. His personal opinion isn't part of the criteria for land use applications. He felt this application is in compliance with the Comprehensive Plan. The intent of the Zoning Code is

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to permit this use based upon conditional use review criteria. He felt it was best said by Mr. Louis that land use, especially infill, is competing with existing uses. He does not feel the sound of the gun club will be completely muffled by neighbors along the ridge and he feels there may be some neighbors who feel they are substantially injured. He felt a more stringent dB(A) is justified for this zone and industrial area. Establishing a measurable level of gunshots from the top of the ridge is reasonable. Should the gun club not meet that measurable level, then the applicant is willing to install further noise mitigation. He felt this application will remove some of the uncertainty of vacant infill. He also felt this application will not substantially injure the residential owners. He suggested an HOA representative, the developer with his experts, and City staff be included in the testing of the dB(A) at the top of the ridge.

Commissioner Shonkwiler desired a 60 dB(A) closer toward the building since there is vacant land zoned for residential uses closer than the residential neighbors on the ridge.

Commissioner Markewich agreed.

Commissioner Gonzalez stated he would agree if the adjacent vacant site owned by Mr. Flanders was flat or developable. Yet, given the strict standards of the hillside overlay, he felt the highest and best use of that property is open space.

Commissioners Donley and Henninger agreed.

Moved by Commissioner Henninger, seconded by Commissioner Shonkwiler, to approve **Item 6-File No. CPC CU 13-00077**, the conditional use for Whistling Pines West, based upon the finding that the request complies with the conditional use review criteria found in City Code Section 7.5.704, development plan review criteria in City Code Section 7.5.502.E and the Hillside development plan review criteria found in City Code Section 7.3.504.D.3, subject to compliance with the following condition:

Condition of Approval:

Prior to the issuance of the Certificate of Occupancy, noise levels measured in accordance with City Code Section 9.8.103 shall be demonstrated not to exceed 45dB(A) **at the property lines of the south residential platted lots in Pinecliff.**

Moved by Commissioner Donley, seconded by Commissioner Shonkwiler, for an amendment to the condition of approval to include, **“City Staff will review and approve a testing regime for measuring the 45 dB(A) analysis.”** Revised conditions shown below:

Condition of Approval:

- Prior to the issuance of the Certificate of Occupancy, noise levels measured in accordance with City Code Section 9.8.103 shall be demonstrated not to exceed 45dB(A) **at the property lines of the south residential platted lots in Pinecliff.**
- **City Staff will review and approve a testing regime for measuring the 45 dB(A) analysis.**

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Motion for an amendment carried 5-2 (Commissioners Henninger and Sparks opposed with Commissioners Ham and Phillips absent).

**Motion now includes the amendment.**

Commissioner Sparks was sensitive to burden the staff since there is no sound engineer employed at the City.

Commissioner Donley felt the City can accomplish this condition and felt the application meets the conditional use review criteria and the Comprehensive Plan criteria.

Commissioner Markewich suggested the developer provide a good faith agreement with the HOA regarding the sound study.

Commissioner Walkowski did not support the motion due to the possible injury to the existing homeowners.

Motion passed 6-1 (Commissioner Walkowski opposed and Commissioners Ham and Phillips absent).

January 16, 2014

Date of Decision



Edward Gonzalez, Planning Commission Chair

# Whistling Pines West

CPC CU 13-00077

Erin McCauley

Planner II

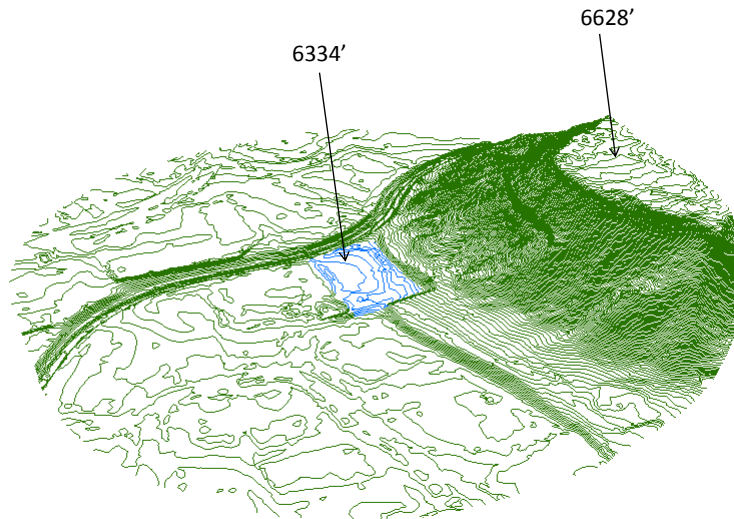


## Whistling Pines West 4750 Peace Palace Point

- 2.50 acres
- Zoned PIP-2 HS
- Lot 1 Garden of the Gods Business Park Fil. No 12
- Adjacent to Douglas Creek



# Topography



# Site, North View





## Site, North West View

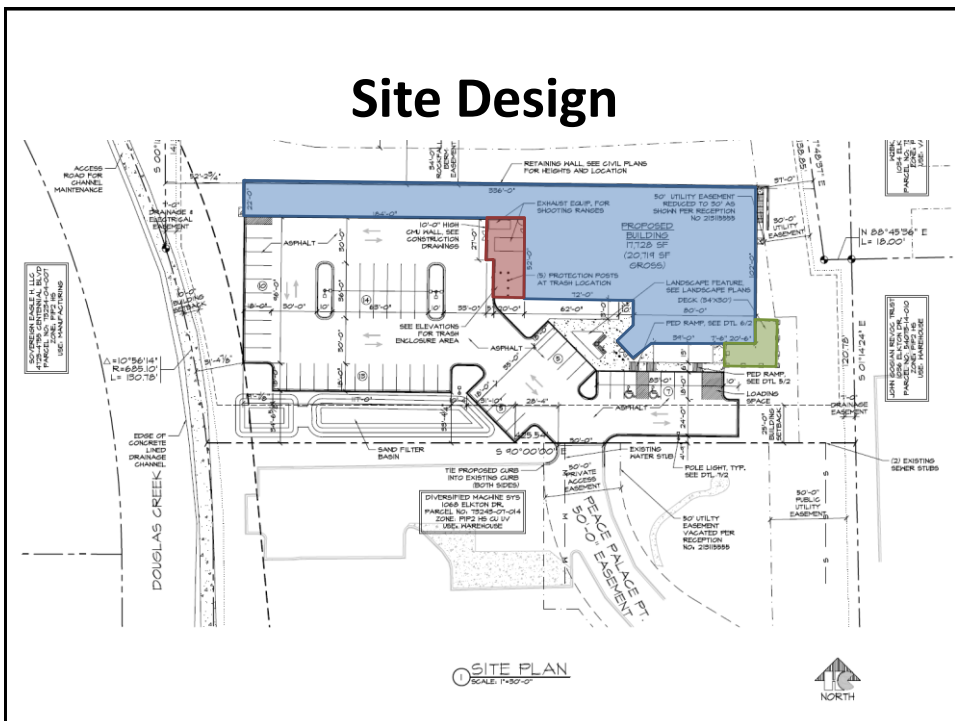


## Site, East View

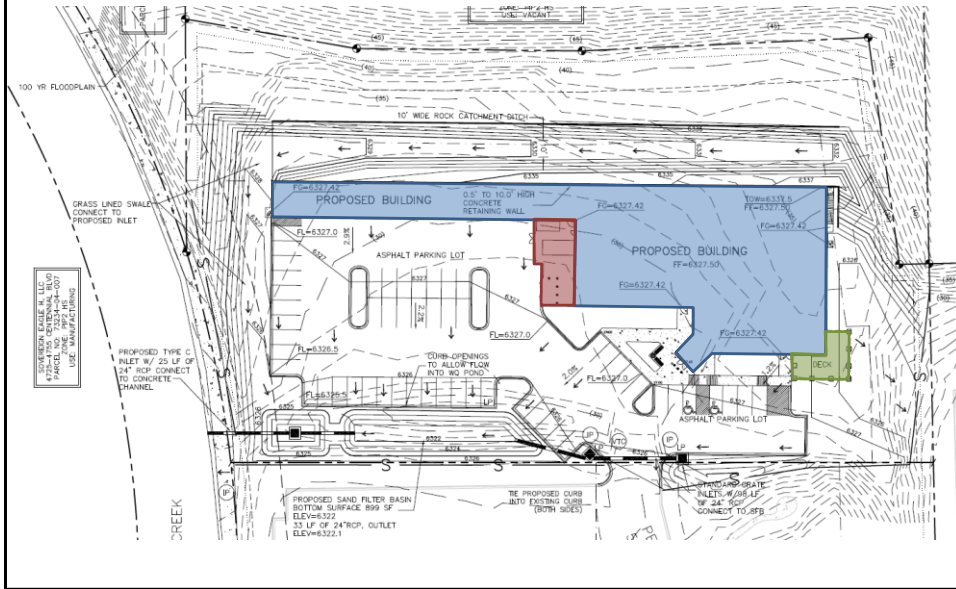


# Whistling Pines West

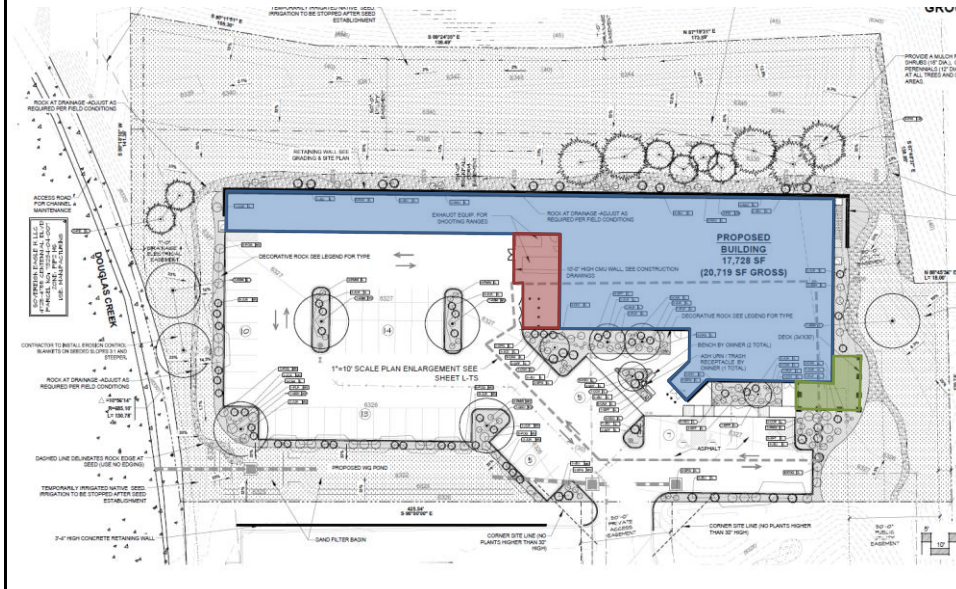
- Conditional Use
  - Indoor Sports and Recreation
  - 17-Lane Indoor Shooting Range
    - 5 Rifle Lanes
    - 12 Pistol Lanes
  - 20,719 sq. ft. Building (Gross)
    - 6,007 sq. ft. Retail
    - 1,272 sq. ft. Office
    - 1,728 sq. ft. Storage



# Site Design

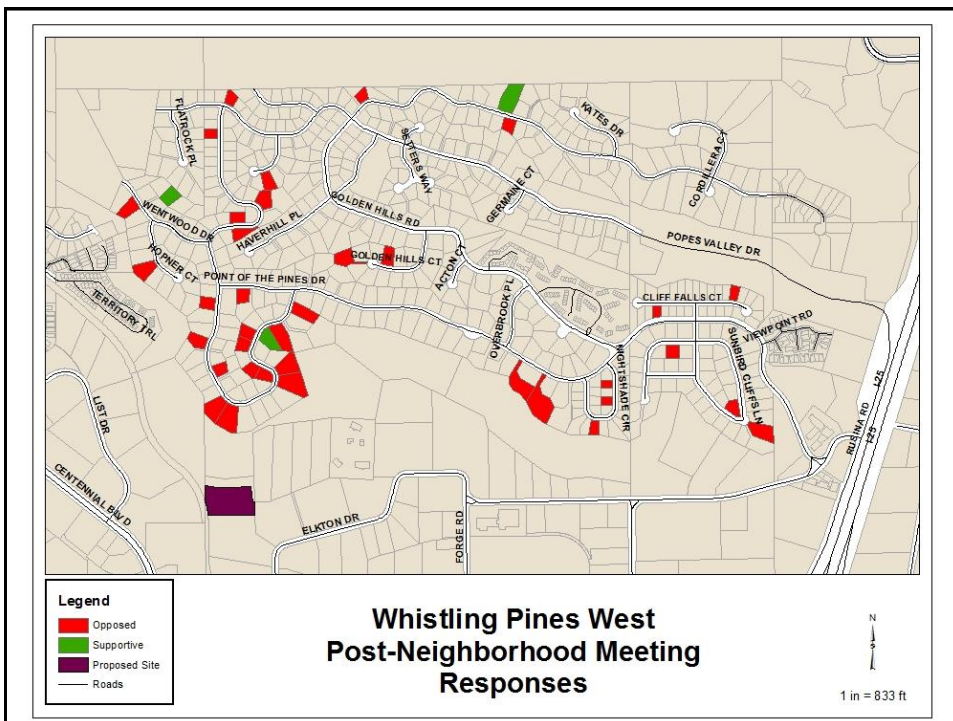


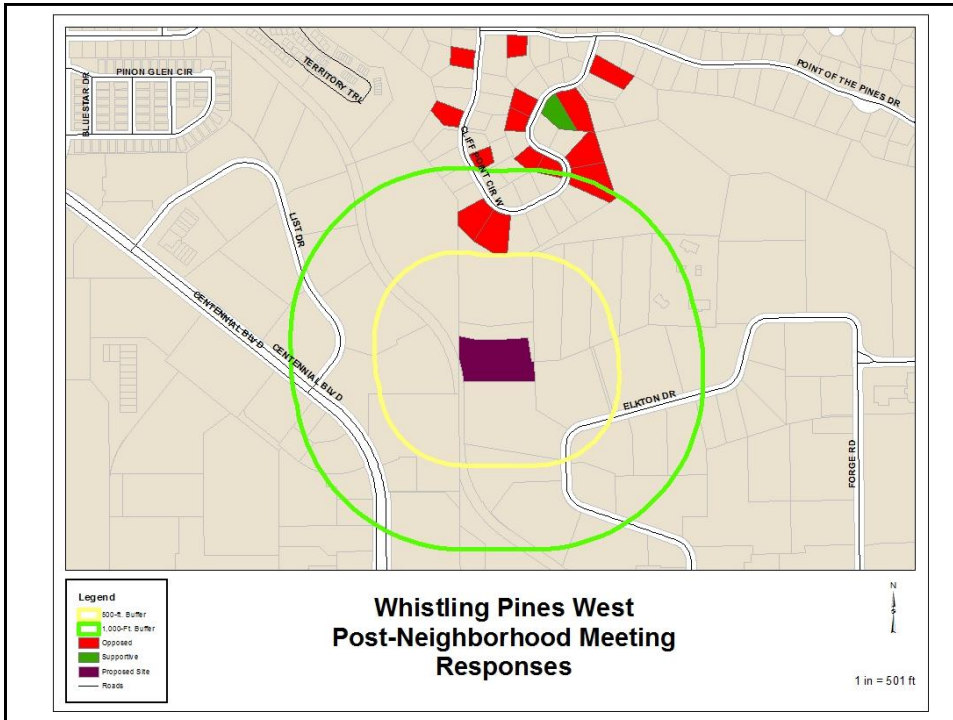
# Site Design



# Public Process

- **Pre-Application Stage** (*January 2013 – March 2013*)
  - Meeting between Applicant and Staff
  - Meeting amongst HOA Representatives, Applicant, Owner & Staff
- **Internal Review** (*August 2013 – September 2013*)
  - Public Notification
  - Buckslip Agencies
- **Neighborhood Meeting** (*December, 2013*)
  - Presentation by Applicant, Sound Engineer, Action Target Representative, Owners
  - Q&A Session





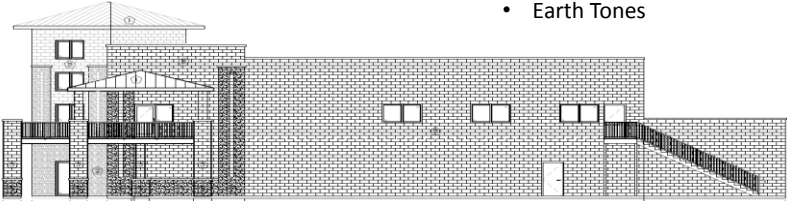
## Main Post-Neighborhood Meeting Concerns

- Noise
  - Noise Study
  - Building Design and Construction
  - C.R.S. §25-12-109
- Safety
  - Interior Building Design and Armor Systems
  - Range Safety Protocols
  - Range Rules
- Health Hazards
  - Ventilation
  - No potential for environmental contamination



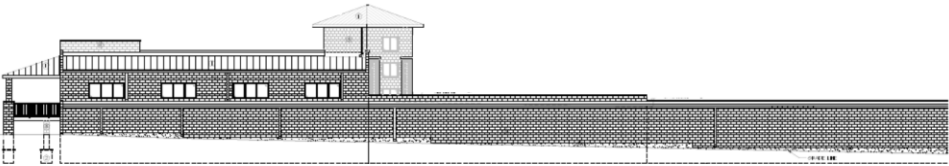
**Exterior Building Design**

- Split-Stone CMU block
- Smooth-Face CMU block
- Painted Concrete Wall
- Standing Seam Metal Roof Panels
- Earth Tones



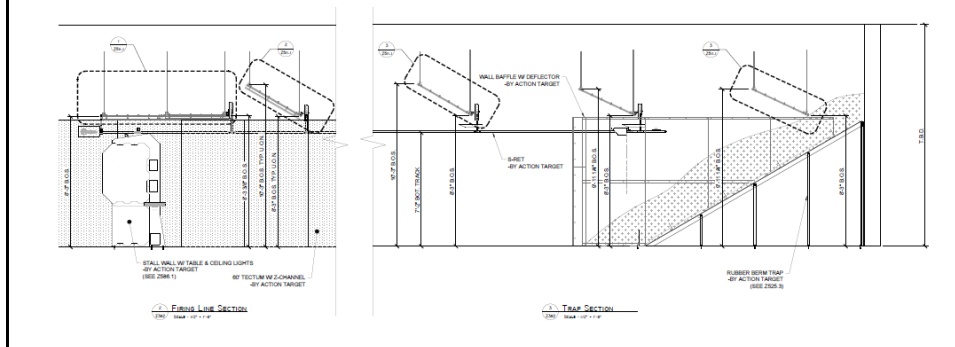
**Exterior Building Design**

Continued from previous slide



## Interior Building Design

- 8' Safety Ceiling
- Angled Ceiling Baffles
- Firing Line Stall Walls
- Wall Baffles with Deflectors
- 8' Rubber Berm Trap



## Review Criteria

- **Conditional Use**
  1. Surrounding Neighborhood: That the value and qualities of the neighborhood surrounding the conditional use are not substantially injured.
  2. Intent of the Zoning Code: That the conditional use is consistent with the intent and purpose of this Zoning Code to promote public health, safety and general welfare.
  3. Comprehensive Plan: That the conditional use is consistent with the Comprehensive Plan of the City.
- **Development Plan**
  1. Will the project design be harmonious with the surrounding land uses and neighborhood?
  2. Will the proposed land uses be compatible with the surrounding neighborhood? Will the proposed development overburden the capacities of existing streets, utilities, parks, schools, and other public facilities?
  3. Will the structures be located to minimize the impact of their use and bulk on adjacent properties?
  4. Will landscaping, berms, fences and/or walls be provided to buffer the site from undesirable views, noise, lighting or other off site negative influences and to buffer adjacent properties from negative influences that may be created by the proposed development?
  5. Will vehicular access from the project to streets outside the project be combined, limited, located, designed and controlled to channel traffic to and from such areas conveniently and safely and in such a manner which minimizes traffic friction, noise pollution and promotes free traffic flow without excessive interruption?
  6. Will all the streets and drives provide logical, safe and convenient vehicular access to the facilities within the project?
  7. Will streets and drives within the project area be connected to streets outside the project area in such a way that discourages their use by through traffic?
  8. Will adequately sized parking areas be located throughout the project to provide safe and convenient access to specific facilities?
  9. Will safe and convenient provision for the access and movement of handicapped persons and parking of vehicles for the handicapped be accommodated in the project design?
  10. Will the design of streets, drives and parking areas within the project result in a minimum of area devoted to asphalt?
  11. Will pedestrian walkways be functionally separated from vehicular traffic and landscaped to accomplish this? Will pedestrian walkways be designed and located in combination with other easements that are not used by motor vehicles?
  12. Does the design encourage the preservation of significant natural features such as healthy vegetation, drainage channels, steep slopes and rock outcroppings? Are these significant natural features incorporated into the project design?
- **Hillside Development Plan**
  1. Does the plan meet the spirit and intent of the hillside design manual?
  2. How will the streetscape retain a hillside character after the street is constructed? Is terrain disturbance minimized?
  3. Have visual impacts on off site areas been reduced or reasonably mitigated?
  4. Have the significant natural features and the significant vegetation been placed in preservation area easements?
  5. Have geologic, soil and other natural hazards been identified and evidence of mitigation techniques been provided?

## Staff Recommendation

- Approve the Conditional Use for Whistling Pines West, subject to the following condition:

***Prior to the issuance of the Certificate of Occupancy, noise levels measured in accordance with City Code Section 9.8.103 shall be demonstrated not to exceed 45 dB(A).***

## Questions?





## Koehn, Alayna

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**From:** McCauley, Erin  
**Sent:** Thursday, January 09, 2014 2:06 PM  
**To:** Koehn, Alayna  
**Cc:** Wysocki, Peter; Smith, Marc  
**Subject:** FW: Whistling Pines response to Mr. Morrison's letter

Hi Alayna,

Would you mind forwarding this to the Planning Commissioners? This is in response to the email I handed out this morning.

Thanks!

Erin McCauley AICP LEED AP BD+C  
Planner II  
Land Use Review Division  
Planning & Development Team  
30 S. Nevada Avenue, Suite 105  
Colorado Springs, CO 80903  
(719) 385-5369 - phone  
(719) 385-5167 - fax  
[emccauley@springsgov.com](mailto:emccauley@springsgov.com)

Please consider the environment before printing this email.

-----Original Message-----

**From:** Robert Holmes [mailto:[robert.holmes@me.com](mailto:robert.holmes@me.com)]  
**Sent:** Thursday, January 09, 2014 1:33 PM  
**To:** McCauley, Erin  
**Cc:** Jeremy Hammers; Joyce Holmes  
**Subject:** Whistling Pines response to Mr. Morrison's letter

Erin,

I have read Mr. Angus Morrison letter and to make our response brief, I have put answers to his concerns below:

1. The 750 foot building to building number is from a range finder that I own. I went to the Whistling Pines property, stood at the marker for the NE corner of the building, and ranged the closet residence on the bluff overlooking our property. It was actually, 254 yards which is over the 750 feet listed. So, the 750 building to building number used is less than the actual 762 feet, building to building. This number can be easily verified by anyone with a rangefinder.
2. The "closer than 500 feet" number referenced by Mr. Angus Morrison is the property line to property line distance on a flat map. It should be noted that the bluff is 271 feet higher than the proposed gun club and if one uses the right angleTheorem;  $C^2 = A^2 + B^2$ , the property line from the club to the nearest residence property line (line of sight) is more than 500 feet.

3. Trigger Time Gun Club in Longmont has 7 indoor 100 yard rifle lanes. This can be verified by viewing their website: <http://www.triggertimegunclub.com/the-club/ranges/rifle-range>.
4. The sound study was coordinated with the Trigger Time staff and they were shooting high powered rifles during the sound test. Members were shooting multiple high powered rifles and the members were not asked the caliber as not to alarm them in any way.
5. As stated by Mr Morrison, "the region surrounding Trigger Time is essentially flat with appreciable noise attenuation by the numerous physical structures in proximity to the gun club". The closest " numerous physical structures" are actually family residences and there have been no complaints from those residential neighbors about the noise from the Trigger Time gun club. By the way, those residences are right across the street, not over 750 feet away.
6. Both Robert and Joyce Holmes have stated they will not open the club until they are sure that the sound levels meet the City's ordinances. Our expectation is that we would be allowed to stand on the closest neighbors deck with sound measuring devices and our human ears while we have pistols and rifles test firing inside the range before we officially open. If in the very unlikely event we do not meet the City's ordinances, we will increase the sound mitigation and / or restrict the caliber of rifles allowed on the range.

I hope this helps Mr. Morrison's concerns,

Sincerely,

Robert and Joyce Holmes

# Noise Complaints

Exempted w/ County Ranges

## 25-12-109 Exception – sport shooting ranges – legislative declaration – definitions

(1) The general assembly hereby finds, determines, and declares that the imposition of inconsistent, outdated, and unnecessary noise restrictions on qualifying sport shooting ranges that meet specific, designated qualifications work to the detriment of the public health, welfare, and morale as well as to the detriment of the economic well-being of the state. The general assembly further finds, determines, and declares that a need exists for statewide uniformity with respect to exempting qualifying shooting ranges from the enforcement of laws, ordinances, rules, and orders regulating noise. As the gain associated with having a uniform statewide exemption for qualifying sport shooting ranges outweighs any gains associated with enforcing noise regulations against such ranges, the general assembly further declares that the provisions of this section, as enacted, are a matter of statewide concern and preempt any provisions of any law, ordinance, rule, or order to the contrary.

(2) As used in this section, unless the context otherwise requires

(a) "Local government" means any county, city, city and county, town, or any governmental entity, board, council, or committee operating under the authority of any county, city, city and county, or town.

(b) "Local government official" means any elected, appointed, or employed individual or group of individuals acting on behalf of or exercising the authority of any local government.

(c) "Person" means an individual, proprietorship, partnership, corporation, club, or other legal entity.

(d) "Qualifying sport shooting range" or "qualifying range" means any public or private establishment, whether operating for profit or not for profit, that operates an area for the discharge or other use of firearms or other equipment for silhouette, skeet, trap, black powder, target, self-defense, recreational or competitive shooting, or professional training.

(3) Notwithstanding any other law or municipal or county ordinance, rule, or order regulating noise to the contrary

(a) A local governmental official may not commence a civil action nor seek a criminal penalty against a qualifying sport shooting range or its owners or operators on the grounds of noise emanating from such range that results from the normal operation or use of the qualifying shooting range except upon a written complaint from a resident of the jurisdiction in which the range is located. The complaint shall state the name and address of the complainant, how long the complainant has resided at the address indicated, the times and dates on which the alleged excessive noise occurred, and such other information as the local government may require. The local government shall not proceed to seek a criminal penalty or pursue a civil action against a qualifying sport shooting range on the basis of such a noise complaint if the complainant established residence within the jurisdiction after January 1, 1985

(b) No person may bring any suit in law or equity or any other claim for relief against a qualifying sport shooting range located in the vicinity of the person's property or against the owners or operators of such range on the grounds of noise emanating from the range if

- (I) The qualifying range was established before the person acquired the property;
- (II) The qualifying range complies with all laws, ordinances, rules, or orders regulating noise that applied to the range and its operation at the time of its construction or initial operation.
- (III) No law, ordinance, rule, or order regulating noise applied to the qualifying range at the time of its construction or initial operation.



REP C.R.S. - 25-12-109 - Gun Range  
Exemptions from  
local "home rule"  
authority on  
ordinances.

<b>DISTRICT COURT</b> <b>CITY AND COUNTY OF DENVER, COLORADO</b>	
Plaintiffs:  <b>CITY AND COUNTY OF DENVER</b> , a home rule municipal corporation of the State of Colorado; and <b>WELLINGTON E. WEBB</b> , as Mayor of the City and County of Denver	<b>▲ COURT USE ONLY ▲</b>
Defendants:  <b>STATE OF COLORADO</b> and <b>BILL OWENS</b> , in his official capacity as Governor of the State of Colorado	Case Number:  <b>03 CV 3809</b>  <b>Courtroom 18</b>
<b><u>ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT</u></b>	

In the 2003 legislative session, the General Assembly passed Senate Bills 24 and 25. Both bills were signed into law by Governor Owens on March 18, 2003. The bills contained sweeping legislative declarations that identify control of firearms as a state interest and seek to preempt conflicting local laws. Senate Bill 24 addresses primarily a uniform system for issuing permits for carrying concealed handguns, while Senate Bill 25 addresses other aspects of firearms regulation.

The City and County of Denver is a home rule city created and organized under Article XX, Section 6 of the Colorado Constitution (the "home rule amendment"). Under the home rule amendment, a home rule municipality has the supreme power to legislate in matters of local concern. Historically, Denver has had a range of ordinances controlling various aspects of the possession, use and sale of firearms in the city.

In this action, Denver seeks a declaratory judgment that specified Denver ordinances are not preempted by state law and, alternatively, that Senate Bill 24 and 25 are unconstitutional under the home rule amendment to the extent that they seek to preempt local laws. The City seeks an injunction against state "enforcement" of Senate Bills 24 and 25 and asks that the Court enjoin the state from interfering with Denver's enforcement of its ordinances.

After the State's motion to dismiss for lack of standing was denied, the case was set for trial. Prior to the trial date, the parties reached agreement that there are no disputed issues of material fact and that the case could be decided as a matter of law on cross motions for summary judgment. Therefore, the trial date was vacated, and each party filed a motion for summary

judgment. Those motions have been fully briefed, and oral argument was heard on September 24, 2004. As directed at oral argument, the parties have submitted supplemental filings specifying the relief they request. The City has also tendered to the Court copies of certain amended ordinances which had not been provided earlier.

The City's complaint addressed 15 specific ordinances and two regulations. Complaint, ¶ 7. One of those ordinances has since been repealed, and another has been amended. The State now concedes that nine ordinances and the two regulations do not conflict with state law.<sup>1</sup> Although they overlap to some extent, the remaining ordinances can be divided into five topical categories: (1) concealed handguns/firearms in vehicles; (2) open carrying of firearms; (3) assault weapons/Saturday night specials; (4) safe storage/juveniles; and (5) firearms in city parks. In summary, the State argues that all of the City's ordinances in these areas are preempted by the State's interest and participation in the field of firearms regulation. The City's position is that each ordinance must be examined separately and that the disputed ordinances either do not conflict with state law or address matters of purely local concern.

I agree with the City that the ordinances must be examined and analyzed individually. They address disparate topics which require distinct analysis under the home rule jurisprudence of Colorado. For example, the weighing of the factors to be considered in determining whether a matter is of purely local, purely state or mixed concern is quite different for ordinances controlling firearms in automobiles as compared to ordinances prohibiting firearms in City-owned parks. Therefore, I will address and state my conclusions with regard to each discrete area separately.

### HOME RULE PRINCIPLES

Article XX, Section 6 of the Colorado Constitution grants home rule status to municipalities opting to adopt home-rule charters.

It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal

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<sup>1</sup> The ordinances conceded by the State, either in briefing or at oral argument are as follows:

§14-92, Firearms in Vehicles, Presumption of Possession  
§38-117(c), Display and Flourishing of Weapons  
§38-121, Firing and Discharge of Firearms  
§38-122(a) Restrictions on Display of Firearms in Store Windows  
§38-123, Identification and Records of Weapons Sales  
§38-124, Sale of Weapons to Intoxicated Persons  
§38-125, Reports of Gun Sales (repealed)  
§42-137, Security Guard Prohibited from Carrying Firearms Unless Licensed  
§59-80(6)(c)(1), Sale of Firearms in Residential Zone Districts (conceded at hearing)  
Manager of Aviation's Rules 10.33, 20.09, 20.10, Firearms on Airport Property (conceded at hearing)  
Career Service Rules 15-110 and 16-50, Possession of Firearms by Employees



matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.

The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters.

Article XX, Section 6, Colo. Const.

The home rule amendment, added to the Constitution in 1912, abrogated Dillon's Rule which stated that municipal corporations owe their origin to and derive their powers and rights from the legislature. The effect of the amendment was to grant home rule municipalities "every power theretofore possessed by the legislature to authorize municipalities to function in local and municipal affairs." City and County of Denver v. State, 788 P.2d 764, 767 (Colo. 1990) (quoting Four-County Metro. Capital Improvement Dist. v. Board of County Comm'rs., 369 P.2d 67,72 (Colo. 1962)). Although the legislature continues to exercise supreme authority over matters of statewide concern, a home rule city is not inferior to the General Assembly with respect to local matters.

In determining the relative authority between the General Assembly and home rule municipalities there are three broad categories of regulatory matters to consider: 1) matters of local concern; 2) matters of statewide concern; and 3) matters of mixed local and statewide concern. Id.; Trinen v. City and County of Denver, 53 P.3d 754, 758-759 (Colo. App. 2002); City of Commerce City v. State, 40 P.3d 1273, 1279-1280 (Colo. 2002); City and County of Denver v. Qwest Corp., 18 P.3d 748, 754 (Colo. 2001). These categories are described in more detail below.

In matters of local concern, a home rule municipality has plenary authority. Qwest Corp., 18 P.3d at 754. While the state may legislate in areas of local concern, see City and County of Denver v. State, 788 P.2d at 767 (Colo. 1990), home rule ordinances or regulations control in the event of a conflict with state legislation. Id.; City of Commerce City, 40 P.3d at 1279; City and County of Denver v. State, 788 P.2d at 767. By contrast, the General Assembly has exclusive authority to legislate in areas of statewide concern. That is, the state legislature may adopt legislation, and home rule municipalities are without power to act unless authorized by the constitution or by state law. See, Trinen, 53 P.3d at 758; Qwest Corp., 18 P.3d at 754; City and County of Denver v. State, 788 P.2d at 767. If the matter is one of mixed local and statewide concern, home rule provisions and state statutes may coexist when the measures can be harmonized. In the event of a conflict, however, the state statute supersedes the home rule provision. Trinen, 53 P.3d at 758; Qwest Corp., 18 P.3d at 754; Town of Telluride v. Lot Thirty-Four Venture LLC, 3 P.3d 30, 37 (Colo. 2000); City and County of Denver v. State, 788 P.2d at 767. Even when a home rule city has considerable local interests at stake, a particular issue may be characterized as one of mixed concern for purposes of determining a home rule municipality's authority when sufficient state interests also are implicated. Town of Telluride, 3 P.3d at 37; but see J. Coats dissent in City of Northglenn v. Ibarra, 62 P.3d 151,165 (Colo. 2003)(the General Assembly cannot make a matter of local concern any less so by imposing its own regulatory scheme, even where it has legitimate statewide concerns).

Therefore, determining whether the state laws enacted by Senate Bills 24 and 25 preempt the disputed Denver ordinances depends on whether they address matters of local, statewide, or mixed local and statewide concern. The Colorado Supreme Court has repeatedly announced certain tests to determine whether a matter is local, state or mixed. These categories, however, are not mutually exclusive. They do not provide perfectly distinct descriptions of competing governmental interests. They often merge imperceptibly, City and County of Denver v. State, 788 P.2d at 767, thereby making the tests for identifying the category imprecise and easier to state than to apply. The tests include:

#### *Totality of the Circumstances*

To determine whether a state or home rule municipality's rules govern, the Court must consider the totality of the circumstances to make its conclusion that a particular subject matter is one of local, statewide, or mixed concern. City of Commerce City, 40 P.3d at 1279-1280; Town of Telluride, 3 P.3d at 37. This analysis involves consideration of both fact and policy, Qwest Corp., 18 P.3d at 754-755, directed toward weighing the respective state and local interests implicated by law. Town of Telluride, 3 P.3d at 37. The determination is *ad hoc*, taking into consideration the facts of each case. City and County of Denver v. State, 788 P.2d at 767-768.

#### *Legislative Declarations*

The General Assembly's declaration that an issue is a matter of statewide or local concern is not conclusive, but should be afforded deference in recognition of the legislature's authority to declare public policy of the state in matters of statewide concern. Town of Telluride, 3 P.3d at 37 (citing City and County of Denver v. State, 788 P.2d at 768 n. 6 (noting that General Assembly's declaration is not binding)). It is not up to the courts to make or weigh policies. Id. at 38. Thus, when sufficient state interests are implicated, an issue that also implicates local interests is still a matter of mixed local and statewide concern. Id.

#### *Key Factors*

Finally, in determining whether a state interest is sufficient to justify home rule preemption, a variety of factors should be considered. These factors are intended to assist the Court in measuring the importance of the state interests against the importance of the local interests in order to make an ad hoc decision as to which law should prevail. They include: 1) the need for statewide uniformity of regulation; 2) the impact of the measure on individuals living outside the municipality (extraterritorial impact); 3) historical considerations concerning whether the subject matter is one traditionally governed by state or local government; 4) whether the Colorado Constitution specifically commits the particular matter to state or local regulation; and 5) whether there is a need for governmental cooperation to facilitate the laws concerning the subject matter in question. City of Northglenn, 62 P.3d at 156; City of Commerce City, 40 P.3d at 1280; City and County of Denver v. Qwest Corp., 18 P.3d at 754-55; Town of Telluride, 3 P.3d at 37; City and County of Denver v. State, 788 P.2d at 768.

The parties agree that regulation of firearms is generally a matter of mixed concern. See Plaintiff's Response to Defendants' Motion at p. 2; Defendants' Motion for Summary Judgment at pp. 5-6. In Trinen v. City and County of Denver, 53 P.3d 754 (Colo. App. 2002), which upheld as constitutional a former version of the City's ordinance concerning firearms in vehicles,



the parties agreed that the matter was of mixed local and state concern. However, the City argues in this case that the specific ordinances at issue here address matters of strictly local concern where the City's interests should outweigh the insubstantial state interests shown. This highlights the need to analyze each separate ordinance individually.

### PREEMPTION PRINCIPLES

If a matter is of mixed concern, the next inquiry is whether the local and state laws are in conflict, or whether they can be read harmoniously to effectuate the interests of both governments. *See Trinen*, 53 P.3d at 758. Conflicts between local and state laws may arise either expressly or by mere implication. Express conflicts exist when an ordinance or local regulation authorizes what state legislation forbids or forbids what state legislation authorizes. *City of Commerce City*, 40 P.3d at 1284. An implied conflict arises when a local ordinance and a state law prevent each other from effectuating their purposes without necessarily legislating on the same subject matter. *See e.g., City of Northglenn*, 62 P.3d at 156; *Town of Telluride*, 3 P.3d at 37. Should a home rule ordinance or regulation conflict with state law in an area of mixed concern, the local law will be preempted.

Although state laws prevail in the event of a conflict in an area of mixed concern, courts should first look to determine whether the ordinance and state law can coexist. Understanding that laws must be read to accomplish the purpose for which they were enacted, courts must examine the context of the legislation to determine whether the local and state laws can be harmonized in an area of mixed local and statewide concern. This includes, but is not limited to, examining the title of the specific statute, the language of its provisions and its statement of purpose. *Trinen*, 53 P.3d at 759.

It is noted that the State's interest in regulation of firearms is based in part on a desire to protect the constitutional right of a person to keep and bear arms. *See C.R.S. §§ 18-12-201(e), 29-11.7-101(a)(b) (2003)*. This right, however, is not absolute and does not automatically preempt firearm regulation. Contrary to the declarations in Senate Bill 25, the right to bear arms has not been held by the courts to be a fundamental right. *See Trinen*, 53 P.3d at 757 (citing *People v. Young*, 859 P.2d 814 (Colo. 1993)). Moreover, the right is specifically limited where the constitutional provision states that "nothing herein contained shall be construed to justify the practice of carrying concealed weapons." *See Art. II, §13, Colo. Const.* Firearm regulations promulgated by the State or a local municipality under the home rule amendment may coexist with the constitutional right to keep and bear arms so long as such regulations are a reasonable exercise of the governments' police powers. *See, e.g., Robertson v. City and County of Denver*, 874 P. 2d 325 (Colo. 1994) (upholding Denver's assault weapons ban); *Trinen*, 53 P. 3d 754; *People v. Pflugbeil*, 834 P.2d 843 (Colo. App. 1992) (order depriving mental patient of right to weapons).

Recognizing these general principles, I now turn to the five subject areas remaining in dispute.

## CONCEALED HANDGUNS/FIREARMS IN VEHICLES

Senate Bill 24 establishes statewide uniform standards for issuance of permits for the carrying of concealed handguns. C.R.S. §18-12-201 et. seq. (2003) The City does not challenge that aspect of the bill and has amended its ordinances accordingly. However, the bill also addresses where a permit holder may carry a concealed handgun and when handguns may be carried without a permit. The City contends that its ordinances on these topics should not be preempted. There are two subsets of issues in this category, but they must be treated together since the statutes and ordinances are intertwined: (1) where concealed handguns may be carried with a permit; and (2) having firearms in automobiles without a permit.

In general, both state law and Denver's ordinances prohibit carrying a concealed handgun without a permit unless the gun is in an automobile or being used for hunting. However, the differences in the details between state and local laws apparently give rise to the dispute between the parties in this area.

Section 38-117(a) of the Denver Revised Municipal Code ("DRMC") provides:

It shall be unlawful for any person, except a law enforcement officer in the performance of duty, to wear under their clothes, or concealed about their person any dangerous or deadly weapon, including, but not by way of limitation, any pistol, revolver, rifle, shotgun . . . or other dangerous or deadly weapon.

As amended on July 12, 2004, subsection (f) of § 38-117 provides that it is not an offense if the person carrying the concealed weapon holds a valid permit and is carrying the handgun in compliance with state or local law. Subsection (f) also provides that it is not an offense if:

The person is carrying the weapon concealed within a private automobile or other private means of conveyance, for hunting or for lawful protection of such person's or another person's person or property, while traveling into or through the city to or from another jurisdiction, regardless of the number of times the person stops in the city or the other jurisdiction, and the weapon is not an explosive device, incendiary device, or a bomb.

DRMC §38-118 supplies affirmative defenses to charges brought under §38-117(a) if the weapon is carried by a person:

- (1) In a private automobile or other private means of conveyance for lawful protection of their or another's person or property, when there is a direct and immediate threat thereto, while traveling away from the area of their residence or business;



- (2) In their own dwelling, or place of business, or on property owned or under their control at the time of the act of carrying such weapon. . . .

As enacted by Senate Bill 24, C.R.S. §18-12-204(2)(a) (2003) states that “a permittee, in compliance with the terms of a permit, may carry a concealed handgun as allowed by state law.” C.R.S. §18-12-204(3)(a) provides that:

A person who may lawfully possess a handgun may carry a handgun under the following circumstances without obtaining a permit and the handgun shall not be considered concealed:

- (I) The handgun is in the possession of a person who is in a private automobile or in some other private means of conveyance and who carries the handgun for a legal use, including self defense; or
- (II) The handgun is in the possession of a person who is legally engaged in hunting activities within the state.

In C.R.S. §18-12-214(1)(a) (2003), also added by Senate Bill 24, state law authorizes a person with a permit to carry a concealed handgun in “all areas of the state, except as specifically limited in this section . . . a local government does not have authority to adopt or enforce an ordinance or resolution that would conflict with any provision of this part 2.” In subsection (2), that statute provides that a permit for a concealed handgun does not authorize the permittee to carry the concealed handgun into a place where the carrying of firearms is prohibited by federal law, on public school property or in a public building with security personnel and electronic weapons screening devices in place and operational. Otherwise, state law, like the Denver ordinance, prohibits the carrying of a concealed handgun without a permit, with few exceptions. C.R.S. §18-12-105(1) and (2) (2003).

Generally, the parties agree that the matter of concealed carry of firearms is one of mixed local and state concern. See Plaintiffs' Response to Defendants' Motion for Summary Judgment at p. 2; Defendants' Motion for Summary Judgment at pp. 5-6. As stated above, in a mixed area, a local ordinance can exist alongside a state statute as long as there is no conflict between them. The City argues that there is no conflict between its ordinances, as amended, and the State statutes on concealed carrying. The State responds that the City's affirmative defense of self-defense is more restrictive than the State statute because it requires that the person with the gun be under a “direct and immediate threat.” The State also argues that the City's ordinance, even as amended, allows for a future conflict where it states that a permittee has not committed an offense as long as he or she is “carrying a handgun in conformance with any applicable state or local law.” DRMC §38-117(f)(1). The State postulates that the City in the future may pass a local law prohibiting permittees from carrying concealed weapons into City buildings even where there are no security personnel or metal detectors.

I agree with the State in part. The State's interest in the concealed carry of firearms is significant. The State has historically regulated the lawful carry of concealed weapons, see C.R.S. §18-12-105, and through Senate Bill 24 (C.R.S. §§18-12-201 *et. seq.*), it stepped in to provide a comprehensive permitting scheme for the lawful possession of concealed handguns throughout Colorado. The city effectively acquiesced to the State's authority in this area by its decision not to challenge the state's imposition of uniform permitting standards and by its repeal or modification of ordinances that expressly conflicted with the new state law. Thus, state law now provides the overriding authority concerning concealed carry of handguns and establishes a degree of uniformity for obtaining permits and identifying those instances when a permit is not required. This legislation enables a permit holder to have consistent expectations about the lawful possession of concealed handguns when present anywhere in the state. Accord, City of Commerce City, 40 P.3d at 1281 (state's baseline regulations for automated ticketing procedures provided needed degree of uniformity that allowed citizens to develop basic expectations about how they will be ticketed). This appears to be the ultimate purpose of the permitting scheme and Senate Bill 24.

In this context, the City's argument that §38-117(f) should survive because it seeks to prohibit carrying a concealed weapon without a permit only in vehicles used strictly for local travel is unavailing. At argument, the City's counsel confessed that such a restriction presents a virtually insurmountable enforcement problem anyway. Moreover, C.R.S. §18-12-105.6 was amended by Senate Bill 25 to permit carrying a weapon in a private automobile for hunting or self defense "within a jurisdiction." This is in direct conflict with §38-117(f)(2) which would prohibit carrying a weapon in an automobile while traveling entirely within the City and County of Denver.

Given the State's detailed regulatory scheme for concealed carry of handguns, I find and conclude that the portion of DRMC §38-117(f)(2) which reads "while traveling into or through the city to or from another jurisdiction, regardless of the number of times the person stops in the city or the other jurisdiction" is in conflict with state law and is preempted by state law. Further, I find that DRMC §38-118(a)(1) is in conflict with state law where it includes the phrase "when there is a direct and immediate threat thereto." In all other respects, the City's ordinances, as amended, do not conflict with state law in this area and may coexist with state law.

I reject the State's argument that including "local law" in DRMC §38-117(f) creates a conflict with state law. The potential that the City might, sometime in the future, pass a local law in conflict with state statutes is not a reason to invalidate the ordinance now. A local law passed in the future may be read to harmonize with the state regulatory scheme. Any specific local law will need to be evaluated in context if and when it is enacted in the future.

The other conflict pointed out by the State is that state law allows guns carried lawfully in automobiles to be loaded or unloaded whereas the city ordinances require that they be unloaded except when carried for self-defense. Compare C.R.S. §§18-12-204 and 214 with DMRC §38-118(b) (3) and (4). However, the cited ordinance applies to open carry of firearms, not concealed carry without a permit. Since I conclude below that regulation of open carry is a matter of local concern, that ordinance is not preempted by the state's concealed carry statutes.



## OPEN CARRYING OF FIREARMS

Section 38-117(b) of the Denver Revised Municipal Code makes it unlawful for any person “to carry, use or wear any dangerous or deadly weapon, including, but not by way of limitation, any pistol, revolver, rifle, shotgun . . . or any other dangerous or deadly weapon.” It is not an offense if the person has a permit and is carrying a concealed handgun or if the person is carrying the weapon in a private automobile for hunting or self defense. Section 38-117(f)(1) and (2). Affirmative defenses to a charge of openly carrying a firearm are listed in §38-118(a) and (b) and include carrying the weapon in a person’s own dwelling, place of business or own property, carrying the weapon in defense of home, person or property when there is a direct and immediate threat, for use on a hunting trip or target shooting, transportation as a collector or licensed dealer, and moving personal property from an old residence to a new residence.

State law contains no restriction on the open carrying of firearms, nor does state law expressly permit the open carrying of firearms. In Senate Bill 25, the legislature enacted C.R.S. §29-11.7-103 (2003) which purports to be a broad preemption of all local gun laws which are more restrictive than state law:

**Regulation -- type of firearm -- prohibited.** A local government may not enact an ordinance, regulation, or other law that prohibits the sale, purchase, or possession of a firearm that a person may lawfully sell, purchase, or possess under state or federal law. Any such ordinance, regulation, or other law enacted by a local government prior to the effective date of this section is void and unenforceable.

Also included in Senate Bill 25 was a provision stating that a local government may enact an ordinance prohibiting the open carrying of a firearm in a building or specific area as long as signs are posted at the public entrances to the building or specific area. C.R.S. §29-11.7-104 (2003).

The City argues that its ordinance regulates open carrying of firearms but does not prohibit it and is therefore not in conflict with state law. Alternatively, the City argues that open carrying of firearms is a matter of purely local concern in that the unique circumstances of Denver make its local interests far outweigh any state interest in allowing open carrying of guns.

The State argues that the open carrying of firearms is a mixed state and local issue, that the State has preempted the field by enacting C.R.S. §29-11.7-103 and that the City has the option of protecting its local interests by posting signs as allowed in C.R.S. §29-11.7-104.

I reject the City’s argument on statutory construction. Although the legislative history lends some support to the position, the plain language of C.R.S. §29-11.7-103 is clear and unambiguous. Under these circumstances, a court should not resort to legislative history. Town of Telluride, 3 P.3d at 37. To hold that the ordinance only *regulates* the open carrying of

firearms when on its face, it *prohibits* such open carrying except in certain limited circumstances, would be an unnatural construction of both the statute and the ordinance.

However, I agree with the City's argument that open carrying is a matter of purely local concern, at least insofar as Denver is concerned. Denver is by far the most densely populated area of Colorado. See Appendix B to Plaintiffs' Brief in Support of Motion for Summary Judgment. Denver also suffers rates of violent crime far in excess of statewide averages. *Id.*, Appendix C. These unique factors predominate over any need for statewide uniformity or any concern about extraterritorial impact. Uniformity in itself is no virtue, Denver v. State, at 769, and uniformity in this area seems to have diminished value due to the wide diversity of localities included in Colorado. As plaintiffs stated in their opening brief: "Simply put, a bullet fired in Denver—whether maliciously by a criminal or negligently by a law-abiding citizen—is more likely to hit something or somebody than a bullet fired in rural Colorado."

Unlike the legislation for concealed carry, Senate Bill 25 fails to set forth a comprehensive regulatory scheme that serves as uniform authority for open carry of firearms. Also, unlike transportation of concealed weapons in automobiles, it should be relatively simple for a gun owner to recall that he or she may not carry a sidearm openly in downtown Denver as is possible in rural Colorado. History is also on the side of the local ordinance. Since 1973, Denver has regulated the open carrying of firearms in public. The State has been silent on the topic until Senate Bill 25. The Colorado Constitution, while protecting the right to bear arms, does not specifically commit regulation of open carrying of firearms to either state or local government. Finally, there is no apparent need for governmental cooperation to facilitate laws in this area. City of Northglenn, 62 P.3d at 156. Based on the totality of the circumstances, I conclude that the State's interest in allowing the general open carry of firearms is insubstantial and is far outweighed by Denver's local interest in regulating firearms more strictly in an urbanized area. Where the State's interest is insubstantial, a matter may be deemed one of exclusively local concern for purposes of home rule analysis. City and County of Denver v. State, 788 P.2d at 771.

I reach this conclusion despite the strong declarations of statewide interest in regulating firearms provided in Senate Bill 25. See C.R.S. 29-11.7-101 (2003). While such declarations should be afforded deference in recognition of the legislature's authority to declare public policy, they are not binding. Without more, declarations of the General Assembly do not clearly establish the significance of the State's interest in regulating open carry of firearms. Relying on the declarations alone to demonstrate the statewide interest would render the home rule amendment meaningless. The home rule amendment makes home rule municipalities superior to the General Assembly with respect to local matters. For this constitutional scheme to have any vitality, the General Assembly must do more than simply declare an interest in a regulatory matter. It must also demonstrate its interest through actual legislation related to that subject matter. Otherwise, home rule control of what has traditionally been a local matter could be usurped by the General Assembly without any showing that its interests are sufficiently significant to move the issue from one of local concern to one of mixed or statewide concern. That is, the State would merely have to declare an interest in a subject matter without actually legislating within that area of interest to render local control powerless. Such a result would nullify the purpose and intent of the home rule amendment.



For the reasons stated above, I find the State has failed to demonstrate a significant interest in requiring every city and town to allow open carry of firearms. Thus, I conclude that the City has proved, beyond a reasonable doubt, that C.R.S. §29-11.7-103, insofar as the state relies on it to preempt the ordinances at issue here, is an unconstitutional infringement on the home rule powers of the City and County of Denver as guaranteed by Article XX, § 6 of the Colorado Constitution

### ASSAULT WEAPONS/SATURDAY NIGHT SPECIALS

Denver ordinances make it unlawful to possess or sell certain types of weapons. DRMC §38-130 outlaws “assault weapons” as defined in the ordinance. Specifically, subsection (e) of the ordinance states: “It shall be unlawful to carry, store, keep, manufacture, sell or otherwise possess within the City and County of Denver a weapon or weapons defined herein as assault weapons. . . .” There are exceptions for governmental agencies and movie props, and the ordinance provides an affirmative defense for nonresidents transporting an assault weapon through the city or by persons who have a permit for the assault weapon pursuant to the ordinance.

Subsection (c) of DRMC §38-122 makes it unlawful for dealers to “sell, rent, exchange or deliver any handgun . . . knowing or having reasonable cause to believe that the basic structural components . . .” of the handgun make it what is known as a “Saturday night special.”

The only state law restriction on possessing or selling certain types of firearms prohibits the sale or possession of machine guns, short shotguns and short rifles. See C.R.S. §§ 18-12-101, 102 (2003). However, C.R.S. §29-11.7-103, quoted above, purports to prohibit local ordinances which prohibit the sale, purchase or possession of a firearm allowable under state or federal law.

The City argues that regulation of assault weapons and Saturday night specials is a purely local issue based on the unique characteristics of Denver described above. Further, the City’s ordinance banning assault weapons has been in effect since 1989, while the sale of Saturday night specials has been banned since 1975. The State has never chosen to legislate in this area. The State responds that this area, like all gun control, is an area of mixed state and local concern and that the state statute preempting conflicting City ordinances predominates.

I hold for the City on this issue. Subsection (a) of the assault weapons ordinance states the City Council’s findings as to why assault weapons pose a threat to the health, safety and security of the citizens of Denver and that the increasing use of assault weapons for criminal activities has resulted in a record number of related homicides and injuries to both citizens and law enforcement officers. Like open carry, there is little need for statewide uniformity given the unique characteristics of Denver, and the impact of the ordinances on people living outside of Denver is minimal. The exceptions under the assault weapons ban allow the legitimate transportation of weapons by nonresidents through Denver, and the ban on Saturday night specials only applies to sales by dealers within the City and County of Denver. My evaluation of the totality of the circumstances is that Denver’s interest in limiting the impact of assault

weapons and Saturday night specials in Denver far outweighs the State's insubstantial interest in uniformity of gun control laws, especially since the State has never chosen to legislate in this arena before.

For the reasons stated above, I find the State has failed to demonstrate a significant interest in requiring every city and town to allow assault weapons and Saturday night specials. Thus, I conclude that the City has proved, beyond a reasonable doubt, that C.R.S. §29-11.7-103, insofar as the state relies on it to preempt the ordinances at issue here, is an unconstitutional infringement on the home rule powers of the City and County of Denver as guaranteed by Article XX, § 6 of the Colorado Constitution

### JUVENILES/SAFE STORAGE

Both state and local law restrict making any firearm available to a minor. DRMC §38-124 makes it unlawful for any person to sell, loan or furnish a firearm to a minor. There are no exceptions.

DRMC §38-131(b) reads:

It shall be unlawful for any person to store, control or possess any firearm within or upon any premises of which that person has an ownership interest, custody or control, in such a manner that that person knows, or should know, that a minor is likely to be in possession of the firearm and in the event that the minor does, in fact, obtain possession of the firearm.

Subsection (c) of the safe storage ordinance contains exceptions for when the firearm is kept in a locked container or equipped with a trigger guard not available to the minor or when the minor obtains the firearm in a lawful act of self defense or defense of the minor's home and property.

State law similarly outlaws providing firearms to minors but permits minors to possess weapons for safety classes, hunting, target practice and similar purposes. C.R.S. §18-12-108.5 (2003).

The City argues that its regulation of possession of firearms by minors is not equivalent to the prohibition proscribed by C.R.S. §29-11.7-103. As I did above, I reject this statutory construction argument. The City also argues that restricting possession of firearms by juveniles is a local issue. The State argues that this is a mixed issue on which the state statute must predominate.

Based on the totality of the factors to be considered, I conclude that possession of firearms by juveniles is a mixed issue of state and local concern. I am unpersuaded that Denver has such unique characteristics in this area that its local interests predominate and make the state interest insubstantial. Because DRMC §38-124 lacks any exceptions, it does prohibit activities which would be permitted under state law and is therefore preempted.



However, with regard to the safe storage ordinance, §38-131, I see no conflict with state law. State law is silent on the question of safe storage, and this ordinance does not prohibit the sale, purchase or possession of any firearm as described in C.R.S. §29-11.7-103. Therefore, the safe storage ordinance is not preempted.

### FIREARMS IN CITY PARKS

Since 1996 it has been unlawful for any person to possess any firearm within any Denver park, parkway, mountain park or other recreational facility. DRMC §39-9(a). State law is silent on possession of firearms in parks. The State argues that this ordinance is preempted by C.R.S. §29-11.7-103. Further, the State argues that if the City wishes to prohibit open carrying of firearms in city parks, the City may post notices at the entrances to such parks under C.R.S. §29-11.7-104.

The City argues that regulating the possession of weapons in city parks is a purely local issue and that it is unreasonable and impractical to require the City to post every entrance to its vast network of parks and parkways. Further, the ordinances apply to both concealed carry and open carry, while posting would prohibit only open carry.

The State does not object to the portion of the ordinance which prohibits the display, flourish or discharge of firearms in city parks, presumably because these restrictions are roughly consistent with state law. See C.R.S. §18-12-106(1)(a) and (b) (2003).

On this issue, the City's argument is supported by state law. C.R.S. §31-25-201 (2003) grants the City authority to establish, maintain and acquire lands for parkways, parks or recreational purposes. More specifically, in C.R.S. §31-25-216 (2003), a city and county is granted full police power and jurisdiction over extraterritorial parklands, of which Denver has a substantial collection. The State has not sought to regulate the City's policing of its own parks until the enactment of Senate Bill 25. Denver's park system is unique to it, especially with regard to its extensive system of mountain parks and parkways. Any need for uniformity is vastly outweighed by Denver's judgment that its citizens are safer without guns in the parks. There is no extraterritorial impact to this ordinance. Commuter routes typically do not traverse parklands, and it is not an unreasonable burden for visitors to Denver to inform themselves as to restrictions on guns in parks. The State has not shown any substantial interest in requiring a municipality to open its parks to all guns; as described above, the bare interest in uniformity is unconvincing. Therefore, based on the totality of the circumstances, I conclude that the issue of open carry of firearms in parks is one of exclusive local concern. To the extent that C.R.S. §29-11.7-103 purports to preempt the Denver ordinance as it prohibits open carry in parks, I find beyond a reasonable doubt that it is unconstitutional.

However, the City's local concern for policing its own parks collides with the statewide statutory scheme governing carrying concealed handguns with a permit. The City has admitted that concealed carry is an area of mixed state and local concern. As stated above, the State's creation of uniform regulations on concealed carry predominates. Since the ordinance

prohibiting all firearms in parks conflicts with the state statutes on concealed carry, the ordinance is preempted by state law only as to concealed handguns carried with a permit.

### CONCLUSION, DECLARATION AND INJUNCTION

Based on the foregoing conclusions of law, I hereby order as follows:

1. DRMC §§38-117(a), 38-117(f) and 38-118, insofar as these ordinances regulate the carrying of firearms in automobiles without a permit, are preempted by C.R.S. §§18-12-204(2)(a), 18-12-214(1)(a) and 18-12-105.6 (2003) to the extent their language is more restrictive than state law as described above. These ordinances remain valid and enforceable in all other respects.
2. DRMC §§38-117(b) and 38-118, insofar as these ordinances regulate the open carrying of firearms, remain valid and enforceable by the City and are not preempted by C.R.S. §29-11.7-103 (2003).
3. DRMC §38-130, concerning assault weapons, remains valid and enforceable by the City and is not preempted by C.R.S. §29-11.7-103 (2003).
4. DRMC § 38-122(b) and (c), prohibiting the sale of Saturday night specials, remains valid and enforceable by the City, and is not preempted by C.R.S. §29-11.7-103 (2003).
5. DRMC § 38-124, insofar as this ordinance prohibits the furnishing of firearms to minors without exceptions, is preempted by C.R.S. §18-12-108.5 (2003).
6. DRMC §38-131, concerning the safe storage of firearms, remains valid and enforceable by the City and is not preempted by C.R.S. §18-12-108.5 or §29-11.7-103.
7. DRMC §39-9 prohibiting firearms in parks:
  - A. Remains valid and enforceable by the City in regard to all firearms other than concealed handguns carried with a permit, and is not preempted by C.R.S. §29-11.7-103 (2003);
  - B. Is preempted in regard to concealed handguns carried with a permit by C.R.S. §§18-12-204(2)(a), 18-12-214(1)(a) and 18-12-105.6 (2003).
8. Since the State has conceded the continuing validity and enforceability of the following City ordinances and regulations, these ordinances remain valid and enforceable and are not preempted by C.R.S. §29-11.7.103 (2003) or other state statutes:

- A. DRMC §14-92, concerning firearms in vehicles, presumption of possession;
  - B. DRMC §38-117(c), concerning the display and flourishing of firearms;
  - C. DRMC §38-121, concerning the firing and discharge of weapons;
  - D. DRMC §38-123, concerning identification and records of weapons sales;
  - E. DRMC §38-124, insofar as this ordinance prohibits the furnishing of firearms to intoxicated persons and others;
  - F. DRMC §42-137, concerning the carrying of firearms by licensed security guards;
  - G. DRMC §59-80(6)(c)(1), concerning the sale of firearms by licensed dealers in residential zone districts;
  - H. Career Service Authority Rules 15-110(A) and 16-50(A)(6), concerning the unauthorized carrying of firearms by City employees; and
  - I. Manager of Aviation Rules 20.09 and 20.10, prohibiting firearms in restricted areas of the airport.
9. The State is and shall be permanently enjoined from enforcing against the City the preemptive language of the statutes adopted or amended by SB 03-24 and SB 03-25, or from otherwise interfering with Denver's enforcement of the City ordinances and regulations set forth above in paragraphs 2, 3, 4, 6, 7A and 8A through 8I on the basis of these statutes.
10. Any and all claims related to DRMC §38-125 shall be dismissed due to the fact that this ordinance was repealed after the institution of this action by the City.

SO ORDERED.

Dated this 5th day of November, 2004.

BY THE COURT:

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Joseph E. Meyer III  
District Court Judge

cc: David Broadwell, Assistant City Attorney, Attorney for Plaintiffs  
Robert Dodd, Assistant Attorney General, Attorney for Defendants

# PINECLIFF NEIGHBORHOOD: UNITED IN OPPOSITION AGAINST CPC CU 13-00077

16-Jan-2014  
Planning Commission  
Concerned Pinecliff Residents

1

## Agenda

- Introduction
- Plea for Common Sense
- Inadequate Sound Study
- Neighborhood Demographics
- Summary of Presentation

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Exhibit: C  
CPC Meeting: January 16,2014



## Pinecliff Resident's Plea for Common Sense

- Development Notification Problems
  - Two of 617 Pinecliff residents notified
  - No initial notification of PHOA president
  - Neighbors furious about lack of timely notification
- Presentation Group Attributes
  - Over 120 years of Pinecliff residence
  - Not paid professionals
  - Limited resources
- Quotes from Impact of "State-of-the-Art" Gun Clubs in California, Utah, and Ohio



3

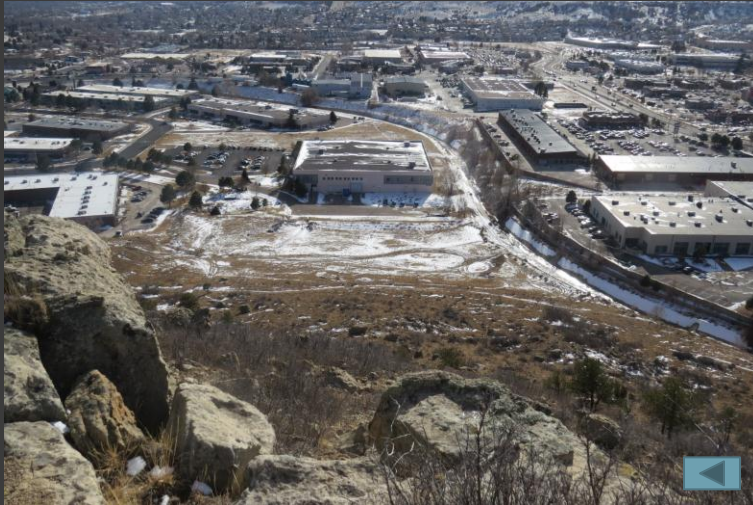
## Pinecliff Resident's Plea for Common Sense (cont.)

- Immeasurable Factors – Noise Levels Not Only Issue
  - Vibrations and percussions
  - "Fourth of July" every day for wildlife and pets
  - Risk of gun-related accidents
  - Decrease in property values
- Conditional Use from City Zoning Code:
  - ... may be allowed after careful consideration of their impact upon the neighborhood ...*
  - ... the value and qualities of the neighborhood surrounding the conditional use are not substantially injured.*



4

## View of Proposed Gun Club



5

## Pinecliff Wildlife in Our Backyard






**Chapter 7.3.504: Hillside Overlay:**  
"To conserve the unique natural features and aesthetic qualities of the hillside areas"  
"The preserve wildlife habitat and wetland areas which provide wildlife migration corridors"



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## Inadequate Sound Study

- Angus Morrison (Ph.D., Aeronautics & Astronautics)
- Wave Engineering (WE) noise study (093013)
  - CadnaA + ISO 9613
- No independent verification and validation of WE software for the use of gunshot noise prediction
  - Essential for software supporting decision-making
- Detailed critique of sound study provided by Dan Oltrogge (BS/MS – Aerospace Engineering) 
- Lack of analysis of all calibers and weapon types
- Uncertainties or error margins not documented in study
  - Not clear what the predicted noise levels represent 
  - Uncertainties from ISO 9613 would translate into violations of COS Noise Ordinance on a regular, if not continuous, basis 

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## Inadequate Sound Study

- Last paragraph of WE Sound Study states:
  - *“Gunshots may be audible because distinct sounds can be discerned by the ear even below ambient sound levels.”*
- Do we have to build Whistling Pines Gun Club West to demonstrate the veracity of the sound study?
  - Noise levels above the COS Noise Statute
  - Gunshots audible to the Pinecliff residents

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## WE Predicted Noise Levels



Figure 4 from WE Sound Study, 30 September 2013



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## ISO 9613 Noise Level Uncertainties

Table 5

Height, $h$ *1	Distance, $d$ *1	
	$0 < d < 100$ m	$100 \text{ m} < d < 1\,000$ m
$0 < h < 5$ m	$\pm 3$ dB	$\pm 3$ dB
$5 \text{ m} < h < 30$ m	$\pm 1$ dB	$\pm 3$ dB

\*1  $h$  is the mean height of the source and receiver.  
 $d$  is the distance between the source and receiver.

NOTE — These estimates have been made from situations where there are no effects due to reflection or attenuation due to screening.

### Quote from Section 9. Accuracy and limitations of the method:

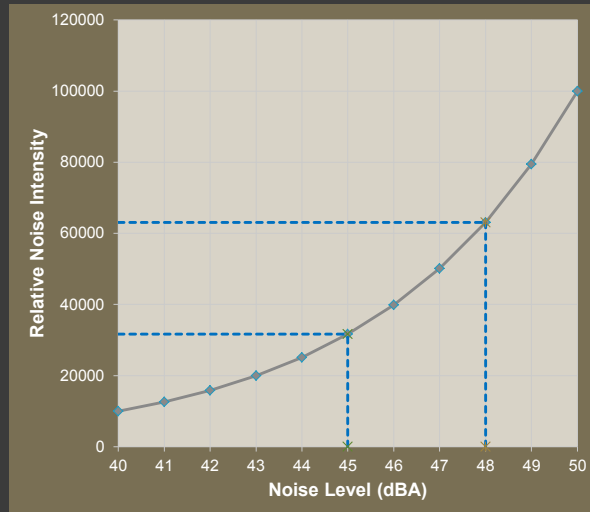
*“The estimates of accuracy in table 5 are for downwind conditions averaged over independent situations (as specified in clause 5). They should not necessarily be expected to agree with the variation in measurements made at a given site on a given day. The latter can be expected to be considerably larger than the values in table 5.”*



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## Intensity Variation with Decibels



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## Pinecliff at a Glance



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## Pinecliff at a Glance



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## Pinecliff at a Glance



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## Pinecliff at a Glance



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## Demographics:

- Neighborhood Watch Program
- Cliff Point Circle East & West
- 17 Homes

Criteria:	Households:	Calculation:	Percentage:
<b>Guns / Rifles</b>	11	11 / 17 homes	<b>65%</b>
<b>Retirees</b>	10	10 / 17	<b>59%</b>
<b>Military Veterans</b>	10	10 / 17	<b>59%</b>
<b>No Central Air Conditioning</b>	9	9 / 17	<b>53%</b>

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## Process Walk Through...

- ◎ 9.7.104: Discharge of Weapon:
  - Illegal within Colorado Springs city limits
  - Need Conditional Use
- ◎ 7.3 .302: Purpose & Specific Requirements of the Industrial Zone Districts:
  - Operations which are quiet
  - Serve mutual interests of adjacent residential areas
- ◎ 7.5.705: Conditions of Approval:
  - Alleviate or mitigate any potentially significant adverse impacts on other property in the neighborhood
- ◎ 7.5.704: Authorization & Findings

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## Criteria for Conditional Use

### A) Surrounding Neighborhood:

- ◎ *“Value & qualities of the neighborhood surrounding the conditional use are not substantially injured.”*
- ◎ Repetitive gun shot noise will diminish quality of life and enjoyment of our property
- ◎ 59% of “worst case” scenario Pinecliff block are retirees

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## Criteria for Conditional Use

### B) Intent of Zoning Code:

- ◉ *“Zoning Code to promote public health, safety and general welfare.”*
- ◉ Prolonged exposure to repetitive noise can cause physical and psychological health issues
- ◉ 59% of “worst case” scenario Pinecliff block are Military Veterans (e.g. Korean and Vietnam wars; other deployments; etc.)
- ◉ 53% of homes do not have central AC

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## Criteria for Conditional Use

### C) Comprehensive Plan:

- ◉ *“Conditional use is consistent with the Comprehensive Plan of the City.”*
- ◉ Per 2020 Comprehensive Plan planned “Employment Center”
- ◉ Dichotomy:
  - Planned & envisioned = no noise
  - Proposed development = **repetitive noise!**

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## Limit for...



- Ten minutes

21

## Limit for...



- Sixteen minutes

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## No Limit for...



- 64 hours per week x 52 weeks
- = 3328 hours of repetitive noise a year!!!

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## Proposed Gun Clubs Comparison:

Gun Club	Square Footage	Address	Right Next to a Residential Neighborhood?
Magnum Shooting Center	30,000 SF	13372 Meadowgrass, Colorado Springs, CO 80921	NO
Majestic Mountain Range	21,420 SF	1170 Kelly Johnson Blvd., Colorado Springs, CO 80920	NO
<b>Whistling Pines Gun Club West</b>	20,719 SF	4750 Peace Palace Pt, Colorado Springs, CO 80907	<b>YES (less than 500 feet)</b>

**Conditional Use Deal Breaker!**

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## Pinecliff at a Glance



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## Summary of Presentation

- A Personal Perspective
- Flaws in the Administrative Process
- Inadequate Sound Study
- Hillside Overlay District
- Neighborhood Demographics
- Ramification of State Law (C.R.S. 25-12-109)
- Conclusion: Find Another Location more Compatible
- Matter of record:
  - 50 opposing emails
  - 3 supporting emails

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## United in Opposition:

- Bruce Hutchinson; Scott Morrison; Patty Carbone; Dick & Pat Bursell; Edgar Coss; Carolyn Cochran; Kim Young; Robert & Catherine Berta; Dan & Marcia Oltrogge; Ellyn & Stan Feldman; Bob & Betty Russell; James Huddleston; Paul & Margaret Steichen; Karl Dohm; Keith Roberts; Barbara Bruckner; Gene & Betty Lou Maton; John & Kelli Long; John Wei; Wulf Schwerdtfeger; Rick Patenaude; Jan & Vera Kolnik; James & Donna Holt; Chris Ito; Clyde Lawson; Ken & Vickie Knipp; Geoff & Lois Chance; Frank Molli; Leonie Cramer; Jean Muller; Bryan Keys; James Preston; Gil Reese; Kathyryn Preston; Linda & Mike Mulready; Karen Bell; Julie Crocfer; David & Lynn Bloomfield; Carl Peterson; Steve Oltrogge; Alaina Oltrogge; Angus & Gail Morrison; Perry Swanson; Paul Hollendorfer; Scott & Jen Russell; Karen Bell; Mike & Lynn Potter; John Lindsey...

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## Critique of WE Sound Study

- Lack of suitable margin of error
- Lack of analysis of all gun types
- Adoption of “averaging technique” by sound engineer
- Lack of analysis of worst-case atmospheric conditions
- Insufficient sampling of previous facilities
- Current facility design versus sound study assumptions
- Lack of analysis of all homes
- Sound study conflict of interest
- 60 dBA noise level limit 25' from facility not considered
- Risk of gun-related incidents near facility



Detailed discussion contained in pages 200-202 of handouts

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## Summary of Group Presentation – 1/16/14

Good afternoon Commissioners,

My name is Patty Carbone, and I have lived in Pinecliff 31 years. I consider myself the historian of the neighborhood. I helped start the Pinecliff Homeowners Association in 1984 to enhance our spirit of community and protect our quality of life. Pinecliff has been active in the political process for the last 30 years, promoting this mission. I am speaking today as a concerned citizen.

We feel that we have tried to take a “common sense” approach to development. In the past, we have only objected to nearby development when we felt that it might infringe on our property rights or devalue our quality of life. Thus, we have been effective in defeating proposals for a helipad on the roof of the Holiday Inn, a cell tower next to the Sunbird Restaurant, and even the construction of a topless car wash on Garden of the Gods Road.

(These were actual proposals that I actively opposed.....!!!)

What you have heard here today are the reasons why we believe that this applicant’s proposal will be detrimental to our neighborhood, and why we think that you should deny this project:

### 1) FLAWED ADMINISTRATIVE PROCESS

- A) Notification of only 2 residents. In Item 4 of today’s agenda, the Majestic proposal, neighbors within 1,000 feet were notified; with this item Pinecliff only had a 500-foot notification (p. 14 of agenda)
- B) Misrepresentation of the Pinecliff Homeowners’ Association position in Erin’s staff report. The PHOA submitted a letter IN OPPOSITION, which was not mentioned in the staff report. (p.98 of agenda)
- C) City Staff told the HOA President and neighbors that, because this is a “quasi-judicial” item we were not allowed to contact public officials –

we could only voice concerns and send emails to the Planner in charge. We just found out that the “quasi-judicial” process applies to public officials, but not private citizens. We could have contacted you; you just couldn’t write back or offer to meet with us one on one.

## 2) INADEQUATE SOUND STUDY

- A) By Erin’s own admission under “noise” in Analysis of Review Criteria, **“The sound of gunfire has the potential to greatly affect quality of life for surrounding property owner and residents”.**
- B) **No independent verification and validation of Wave Engineering software was provided for the use of gunshot noise prediction**
- C) **Uncertainties or error margins were not documented in noise study**
- D) **Despite the claim of Wave Engineering that they had tested the loudest weapons that would be used at the range, they failed in test the 50-caliber weapons that will be allowed**
- E) **The sound study is just a prediction**
- F) **At the end of the first Sound Study, the Sound Engineer admitted that the sounds, even though below City Code decibel limit, “may be heard by the human ear”. This means, even at the 45 decibel level allowed by the Colorado Springs Noise Ordinance at the edge of the property, the residents above will have to retreat to the interior of their homes and close the doors and windows. Is this fair? Perhaps the COS Noise Ordinance should be revisited and consider adding repetitive gunfire to the list of barking dogs and noisy alarms to establish a reasonable time for repetitive noise before allowing a sport shooting range near an existing residential neighborhood.**
- G) **We have asked repeatedly for the qualifications of the Sound Engineer hired by the applicant. Residents would like to be assured that he is “unimpeachable”. At the December 3<sup>rd</sup> neighborhood meeting I requested a list of the names and locations of gun clubs he had studied in the past. Mr. Kwoikoski claimed to have worked on 6 or 7 ranges**



previously, and said that he would provide us with more information, but we are still waiting to receive that information.(p.115,Q # 1)

2) HILLSIDE OVERLAY:

Because of the Hillside Overlay designation, the wildlife corridors should have been studied. Pinecliff is bordered on the north by the 560-acre Ute Valley regional park, and because of the nearby Douglas Creek we have many wildlife corridors in our neighborhood that may potentially be affected. Having been exposed as prey to gunfire in the past would certainly change the patterns of any animal.

3) NEIGHBORHOOD DEMOGRAPHICS:

Of the 17 homeowners most affected on Cliff Point Circle East, 65% of those own guns. This is not a gun issue.

4) Colorado Revised Statutes Title 25, Article 12, Item 109 ramifications  
According to the "Sixty-first General Assembly Bill Summary", this statute "Prohibits local governments and persons from enforcing laws, ordinances, rules, or orders against a qualifying sport shooting range or its owner or operators on the basis of noise emanating from the range if the noise level measured along the property line of the range does not exceed a specified decibel level."

If you approve this request for Conditional Use today citizens of Pinecliff may be disenfranchised because of an obscure State Law and have no recourse in the future to file a noise complaint once a "sport shooting range" is approved. Even though many residents of Pinecliff are gun owners, we do not feel that this is a gun issue. This is a COMPATIBILITY issue. **We urge you to deny this proposal and ask the applicant to find a location that is NOT adjacent to an existing neighborhood that would be more appropriate.**

Thank you.....



CPC CU 1300077-Quasi-Judicial

Whistling Pines West – 4750 Peace Palace Point

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## Conformance with Conditional Use Criteria of the Zoning Code Section 7.5.704

A Conditional Use must be in conformance  
with the three following criteria as listed in  
Section 7.5.704 of the Zoning Code.

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- 1) *The values and qualities of the surrounding neighborhood must not be substantially injured;  
and*
- 2) *The conditional use must be consistent with the intent and purpose of the zoning ordinance to promote the health, safety and general welfare;*
- 3) *The conditional use must be in keeping with the Comprehensive Plan of the City.*

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## Items deserving a close look

- 1) What weapons were used for testing purposes?
- 2) Comments at December 3, 2013, meeting bearing on likelihood of foreseeable noise problems?
- 3) Legal Quagmire

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# Anticipated Weapons Not Tested For Sound Levels

Verbatim Excerpts from December 3d meeting:

Q. What's the biggest gun you can shoot? (at the proposed range)?

*R. Holmes. **50 BMG (.50 Caliber Browning Machine Gun)***

Q. Were **.50 Caliber (rounds)** considered (in the sound study)?

*J. Kwoikoski. I considered .50 caliber. **.50 Caliber is the only weapon that I was not able to find sound data for.** So I had to then ... make my own judgment. It's going to be louder than the loudest rifle I had if it is ...and apply a factor there. **I do not have specific data for that weapon.***

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# Large Caliber Machine Gun Use, Yet Not Part of Sound Study?

Q. Let me ask you a quick question. We're not shooting machine guns here. Just the cartridge that you could shoot in a machine gun ... probably shot in a bolt action semi-automatic rifle. Is that correct?

*R. Holmes. **No. Some of our members do have machine guns, very few of them do. They're not illegal if they're licensed and they may come down once every 6 months. They don't shoot a whole lot cuz it's real expensive.***

6

# .50 Caliber Browning Machine Gun (50 BMG)



7

# .50 BMG Cartridge comparison More Powder—More Noise!



From left: .50 Cal , 300 Win Mag, .308 Winchester, 7.62x39mm, 5.56x45mm NATO, .22LR

8



FLAWED SOFTWARE DATABASE FOR “PREDICTED  
SOUND LEVELS”

- (Page 92) 1st Sound Report
  - “For our predictions, we used a database of over 100 handguns and rifles and selected the loudest weapons likely to be used in the range.”

9

FLAWED SOFTWARE DATABASE FOR “PREDICTED  
SOUND LEVELS”

- What are the “loudest weapons likely to be used” in the range”?
- Answer (page 247): Just two rifles and 4 pistols. Three of the pistols were the same size (9mm).

10

First “sound study” references only two rifle calibers.



From left: .50 Cal , 300 Win Mag, .308 Winchester, 7.62×39mm, 5.56×45mm NATO, .22LR

11

### FLAWED DATABASE FOR “PREDICTED SOUND LEVELS”

- Specifically (page 247):
  - Two “virtually identical” rifles and 4 pistols.
  - Three pistols (same caliber, 9mm).
  - One pistol, .357 Magnum
- This is a comprehensive database?

12

# “Loudest” handguns? Really?



Side-by-side comparison of many common pistol rounds. L-R: (1) 3 in 12 ga magnum shotgun shell (for comparison), (2) size "AA" battery (for comparison), (3) .454 Casull, (4) .45 Winchester Magnum, (5) .44 Remington Magnum, (6) .357 Magnum, (7) .38 Special, (8) .45 ACP, (9) .38 Super, (10) 9 mm Luger, (11) .32 ACP, (12) .22 LR

13

# Were any of these tested?

## Whispering Pines Gun Club.



Unlike every other gun shop in the Colorado Springs area, the club lets you try guns before you buy them. Choose from over 90 rental guns: .22 long rifle **all the way up through the .460 and .500 Smith & Wesson's and Guncrafter .50 G.I.** Members can rent any three guns for \$10 or all guns for \$15 per session (Some guns are for sale only). The club may not make money renting guns, but members appreciate the extra level of assurance. If you've ever bought a gun that looked right and felt right in the shop, but turned out to be a disappointment once you'd bought it and driven to a range, you know what we're talking about

14

## How about these handguns?

- Guncrafter .50 G.I.?
- Smith & Wesson .460?
- Smith & Wesson .500?



15

## How about these two popular handguns?

- .454 Casull
- .44 Mag  
(Dirty Harry)



16



# How about these?

**Would You Like to Own a Machine Gun, Short Barrel Rifle or Silencer?**

Posted on January 2, 2012 by rhimes

Like 1 Tweet 2 Share 2

- Machine Guns
- Short Barreled Rifles/Shotguns
- Silencers

These "Class 3" items are strictly regulated by the National Firearms Act (NFA) – but that doesn't mean you can't own one!

On February 2nd we will hold our first **Purchasing a Class 3** course. It will be taught by a Colorado Springs attorney, well versed in firearms law. We will cover:

- Who cannot own a Class 3?

17

## What was used in first sound study?

**Per Jeff Kwolkoski, only 2 Rifles and 4 Pistols (page 247)**

**Per Carl Peterson: Continues concern with testing of what can be anticipated: 300 Winchester Mag, 375 H&H, 416 Rigby, 460 Weatherby, and 50 BMG.**

**Explains: "More Powder, More Bang Principle"**

18

## What does this statement mean?

December 23, 2013 at 12:31 PM email from Jeremy Hammers to Jeff Kwolkowski (sound expert):

“If your (sic) going to eliminate the 50 cal. That would help our case so let me know.”

19

## What weapons used in 2d study?

- Report from Jeff Kwolkoski (Dec. 27, 2013)
- Was difficult for him to measure.
- Lacks scientific completeness, *specific* weapons, measurements, and distances
- Completely Nonreponsive to Carl Peterson’s questions

20

# Vague comments from the 2d study (emphasis added)

- (Page 239-241) At the existing Whistling Pines East facility, a variety of (**unnamed, number or caliber**) handguns were fired during my observations, and
- 
- a .300 Winchester Magnum rifle with a muzzle brake was fired. At the Trigger Time facility, a **variety (no brand, number or caliber size)** of handguns and rifles were fired during my observations
- 
- It was **not possible** to measure gunshots 500' from each property due to the ambient noise in the area.
- 
- In order to **estimate** the noise level at 500', I measured **gunshot noise levels relatively close to the Whistling Pines Gun Club East** and then calculated the noise level at 500' based on the attenuation expected due to the additional distance.
- 
- I used the noise level measured closer to **estimate the noise level at 500' to be 61 dBA**.

21

# Where can a .50 BMG and others be sound tested?

The screenshot shows a web browser window displaying a website for 'Dragonmans | Paintball | Bike Park | Shooting Range'. The main content is a 'SHOOTING RANGE' advertisement with the following details:

- #1 RANGE 25'-50' FOR SHOTGUNS & PISTOLS
- #2 RANGE UP TO 100 YARDS
- #3 RANGE UP TO 220 YARDS FOR LONG RANGE RIFLES

Below the ranges is an image of a rifle with the text 'CLICK FOR FULL DETAILS HERE'. At the bottom, there is a section for 'Dragonmans Colorado Springs' with a paragraph of text: 'In the late 1960's, Mel Bernstein built a Harley Davidson Dragon Bike, that literally resembled a dragon, and blew actual fire out of the mouth! When riding his bike around Long Island, New York, where he grew up, people would shout, "there goes the dragonman!" Over forty years later the name still lives on!'

22

## Applicant's Admissions of expected sound problems

From December 3, 2013, Public Meeting  
Jeff Kwolkoski, Wave Engineering

**“Right. I can't tell you - - you'll never hear a gun shot or something from the range.** Because if it's let's say 50 db and ... just as a rule of thumb the ear can pick out things that are up to maybe 10 db below that so say 40 db. You could, if there was something 45 db ... and maybe it was ambient or may it wasn't ... anything particularly loud going on ... **you could, certainly could hear. I can't say you will never hear.”**

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## Applicant's Admissions of expected sound problems

R. Holmes. *How often do you go out on your back deck?*

*I mean, you're not gonna hear it inside your house.  
You're not gonna hear anything inside your house.*

G. Morrison: Well out on my deck ... We're out on our deck all the time.

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## C.R.S. 25-12-109 Legal Quagmire

- **Digest of Bills - 1998**
- **H.B. 98-1170 Shooting ranges - restrictions on legal actions - assumption of risk.** Prohibits local governments from commencing a civil action or seeking a criminal penalty against a qualifying sport shooting range or its owners or operators on the basis of **noise** emanating from the range unless a written complaint is filed by a resident of the jurisdiction in which the range is located. Requires that such complainant have established residence within the jurisdiction before January 1, 1985, for the complaint to be acted upon.
- Prohibits **a person** from bringing a lawsuit against a qualifying sport shooting range located in the vicinity of the person's property on the **grounds of the noise levels** emanating from the range if:
  - The range was established before the person acquired the property;
  - The range complies with all laws, ordinances, rules, and orders regulating noise that applied to the range and its operation at the time of its construction or initial operation;
  - No law, ordinance, rule, or order regulating noise applied to the qualifying range at the time of its construction or initial operation.
- **APPROVED** by Governor April 13, 1998  
**EFFECTIVE** April 13, 1998

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## Legal Quagmire

- C.R.S. 25-12-109 (Range Protection Law)
- Which “Noise Law” Prevails, State or Local Govt.? Colorado Springs Home Rule v. Pre-emption by State?
- Recourse Protection for families?
- Unconstitutional Potential “Taking” of rights & property (reverse condemnation)?

26

# Legal Quagmire

- Will this FAQ on the Colo. Springs Planning Dept. website be amended?
- Q: Who can I complain to about excessive noise?
- A: Contact the Colorado Springs Police Department at 444-7000 for information and assistance.

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- 1) *The values and qualities of the surrounding neighborhood must not be substantially injured;  
and*
- 2) *The conditional use must be consistent with the intent and purpose of the zoning ordinance to promote the health, safety and general welfare;*
- 3) *The conditional use must be in keeping with the Comprehensive Plan of the City.*

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Mr. Jeremy Hammers  
September 30, 2013  
Page 6

For our predictions, we used a database of over 100 handguns and rifles and selected the loudest weapons likely to be used in the range. The shooting noise of the weapons was measured according to Nordtest Method NT ACOU 099.

### Shooting Noise

The predicted impulsive shooting noise levels are shown at selected receptor on Figure 2. The receptor locations are shown by target symbols (☉).



Figure 2: Predicted noise levels from gunshots

The four locations ranging from 38 to 42 dBA are at the edge of the bluff, in clear line-of-sight of the gun club. This is near the residential property lines, but south of the homes themselves. The upper floors of several of these homes are visible from at or near the future gun club site.

The one location shown with the 36 dBA noise level is approximately 50' back from the bluff near the homes themselves. The noise level continues to drop as you move further away from the bluff.



## McCauley, Erin

---

**From:** Peterson, Carl [USA] <peterson\_carl@bah.com>  
**Sent:** Tuesday, December 31, 2013 12:26 PM  
**To:** McCauley, Erin  
**Cc:** Jeremy Hammers (jjhammers@hammersconstruction.com)  
**Subject:** RE: [External] FW: Whistling Pines Gun Club Noise Study Questions

Erin,

Terrific, thank you. Please include my comments in the Planning Commission package. I'm looking forward to seeing the second noise study. We just need to make sure that the gun/cartridge combinations that will be used on the rifle and pistol ranges were used in the studies and that the gun club will meet the noise standards. I didn't see the 50 BMG or the 460 Weatherby used in the first study, nor were some large caliber handgun cartridges used. Only smaller cartridges were used. I appreciate everyone's cooperation and help on this.

Sincerely,

Carl

Carl Peterson

---

**From:** McCauley, Erin [mailto:EMcCauley@springsgov.com]  
**Sent:** Tuesday, December 31, 2013 11:19 AM  
**To:** Peterson, Carl [USA]  
**Cc:** Jeremy Hammers (jjhammers@hammersconstruction.com)  
**Subject:** RE: [External] FW: Whistling Pines Gun Club Noise Study Questions

Hi Carl,

Thanks for the comments. I've read through them and I've forwarded them onto Jeremy Hammers at Hammers Construction.

Bottom line, though, is that based on the study (and another study, which I'll forward to you and other neighbors), Hammers and the owner of Whistling Pines are confident that the noise attenuation features will get them their 45 db(A) measurement they've committed to. I've made that measurement a condition of approval and a condition of issuing the Certificate of Occupancy, which means that if they can't demonstrate the noise doesn't exceed the 45db(A) limit, they can't open.

Does that satisfy your lingering concerns about the noise?

Also, would you like me to include your comments in the Planning Commission package or does the condition above satisfy them?

Thanks!!

**Erin McCauley AICP LEED AP BD+C**

Planner II  
Land Use Review Division  
Planning & Development Team  
30 S. Nevada Avenue, Suite 105  
Colorado Springs, CO 80903  
(719) 385-5369 - phone





Please consider the environment before printing this email.

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**From:** Peterson, Carl [USA] [[mailto:peterston\\_carl@bah.com](mailto:peterston_carl@bah.com)]  
**Sent:** Monday, December 30, 2013 2:25 PM  
**To:** McCauley, Erin  
**Subject:** RE: [External] FW: Whistling Pines Gun Club Noise Study Questions

Erin,

Thank you. The e-mail trail below answers my questions. The noise study is invalid, as follows:

1. Per Jeff Kwolkoski's remarks below, the noise study did not model some bigger calibers that can be used on the rifle range, such as the 300 Win Mag, 375 H&H, 416 Rigby, 460 Weatherby, and 50 BMG. The biggest cartridge that Jeff mentioned below is the 308/7.62. Those two cartridges are virtually identical (the 308 caliber is the civilian version of the military 7.62 mm). A typical 308/7.62 will have 45 to 50 grains of powder in it. Whereas a 300 Win Mag can have 70 grains of powder, a 375 H&H can come close to 80 grains, the 416 Rigby in the 90 to 100 grain range, and as I mentioned previously, the 460 Weatherby can have 124 grains and the 50 BMG can have up to 238 grains. More powder, more noise.
2. Jeff Kwolkoski also wrote below: "We use a database of sound data for over 100 combinations of weapons and ammunition. However, there are many weapons and cartridges for which good sound data is not available. It is true that the sound level of each weapon and cartridge will vary somewhat. We cannot model every weapon and cartridge that will be used in the ranges, but we believe that the sound levels of these weapons are representative of the vast majority of weapons that will be fired on the ranges." In other words, there are plenty of bigger cartridges that can be allowed on the both the rifle and the pistol range that are not modelled.
3. The 44 Magnum was not used in modelling on the pistol range. A typical full power 44 Magnum load can have 22 or 23 grains of powder in it. The 9mm rounds modelled won't have more than 8 or 9 grains, and I don't think a 357 Magnum (which Jeff says was modelled) will have more than 15 grains of powder. There are Smith & Wesson revolvers available in the 45 and 50 caliber range that can hold over 30 grains of powder. More powder, more noise.
4. Down below in the e-mail, Jeremy Hammers writes the following: "If your going to eliminate the 50 cal. That would help our case so let me know." That comment tells me that the WPGC folks have some concerns themselves about the adequacy of the noise insulation.
5. I'm not sure what Jeff means by stating that "Muzzle breaks were not specifically studied. Muzzle breaks redirect a portion of the sound to the side. They can significantly increase the sound level at the shooter's ear but they do not significantly increase the overall sound energy produced by the gun." We need to know what a not significant increase in overall sound energy is. Is that one dB, five or ten, or more?

I am not against this gun club. I am concerned about having adequate noise insulation. Perhaps a better study needs to be performed that will accurately capture the noise generated by the firearms and cartridges to be permitted so that the range can be adequately insulated against noise. Having a gun club so quiet that no one knows it is there is the best advertisement WPGC could have. Again, I'm sure that the gun club wants to be a good neighbor.

Going down the e-mail trail it looks like Jeremy Hammers had his 300 Win Mag out with the muzzle brake on it doing some sound testing. Maybe the WPGC folks could get the boys with the 460 Weatherbys, the 50 BMGs, the 460 and 500 S&W revolvers and get some good data on those particular firearms and model the actual guns that will be used on both

the rifle and the pistol range. We might have some more accurate data that way. Just a thought. I don't know if that is viable or not. I'm not sure what the solutions are, nor do I know what data or information the Planning Commission would find acceptable.

One last question. What were the results of the testing with Jeremy's 300 Win Mag with the muzzle brake? Did that meet the Planning Commissions standards?

Sincerely,

Carl

Carl Peterson

---

**From:** McCauley, Erin [<mailto:EMcCauley@springsgov.com>]  
**Sent:** Monday, December 30, 2013 12:30 PM  
**To:** Peterson, Carl [USA]  
**Subject:** [External] FW: Whistling Pines Gun Club Noise Study Questions

Hi Carl,

I just got the following response from Jeremy Hammers and his sound Engineer. Let me know if this answers your questions.

Thanks,

**Erin McCauley AICP LEED AP BD+C**

Planner II  
Land Use Review Division  
Planning & Development Team  
30 S. Nevada Avenue, Suite 105  
Colorado Springs, CO 80903  
(719) 385-5369 - phone  
(719) 385-5167 - fax  
[emccauley@springsgov.com](mailto:emccauley@springsgov.com)



*Please consider the environment before printing this email.*

---

**From:** Jeremy Hammers [<mailto:jjhammers@hammersconstruction.com>]  
**Sent:** Monday, December 30, 2013 12:28 PM  
**To:** McCauley, Erin  
**Subject:** FW: Whistling Pines Gun Club Noise Study Questions

See below...

**Jeremy Hammers**  
**Senior Project Manager**  
**Hammers Construction, Inc.**  
1411 Woolsey Heights  
Colorado Springs, Co. 80915  
direct: 719-955-4614  
office: 719-570-1599



cell: 719-499-4133  
fax: 719-570-7008  
North Dakota 701-842-6999  
[jjhammers@hammersconstruction.com](mailto:jjhammers@hammersconstruction.com)  
[www.hammersconstruction.com](http://www.hammersconstruction.com)

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From: Jeff Kwolkoski [<mailto:ikwolkoski@waveengineering.co>]  
Sent: Friday, December 27, 2013 9:20 AM  
To: Jeremy Hammers  
Subject: Re: Whistling Pines Gun Club Noise Study Questions

Jeremy,

I have attempted to address the issues raised by Mr. Petersen. Let me know if you have any comments.

*What were the calibers and cartridges modeled in the study?*

We use a database of sound data for over 100 combinations of weapons and ammunition. However, there are many weapons and cartridges for which good sound data is not available. It is true that the sound level of each weapon and cartridge will vary somewhat. We cannot model every weapon and cartridge that will be used in the ranges, but we believe that the sound levels of these weapons are representative of the vast majority of weapons that will be fired on the ranges.

The representative weapons are:

- Rifle M/87 308 cal (.308 Winchester Match 12.3gr)
- Rifle M/75 G3 (7.62mm x 51mm Sharp APE)
- Beretta 9mm M92F Compact (Norma 9mm Luger safety)
- Smith & Wesson .357 magnum (cal.357 Magnum 10.2 gr soft point flat nose)
- SigSauer 228 Police 9mm (Action 3, 9mm x 19 Sintox)
- Glock 17/9mm (9mm sharp M/41)

Please note that most of these weapon and ammunition designations are European and "gr" means grams, not grains.

As I mentioned before, we do not have sound data for a .50 caliber rifle and Mr. Holmes indicated that he is willing to have the higher caliber weapons measured if necessary.

*Were the effects of muzzle brakes also included in the study?*

Muzzle breaks were not specifically studied. Muzzle breaks redirect a portion of the sound to the side. They can significantly increase the sound level at the shooter's ear but they do not significantly increase the overall sound energy produced by the gun. As I discussed in the public meeting, the direction of the sound inside the range is not an issue since sound will reflect and reverberate inside the range before it gets to the roof, which is our main concern. In other words, the sound transmitting through the roof will be the same no matter which way the gun is pointed inside the range, and whether or not a muzzle brake is used.

I hope this addresses Mr. Peterson's concerns. Please let me know if you need anything else.

Regards,

Jeff Kwolkoski, P.E., INCE Bd. Cert.  
President



P.O. Box 1153, Littleton, CO 80160  
720-446-WAVE (9283)  
[www.WaveEngineering.co](http://www.WaveEngineering.co)

On Mon, Dec 23, 2013 at 12:31 PM, Jeremy Hammers <[jjhammers@hammersconstruction.com](mailto:jjhammers@hammersconstruction.com)> wrote:  
See below. Some thinking for over the Holiday. Our sound tests sound sufficiently help this out.

I have a muzzle break on my 300 Win Mag that I was shooting during our latest sound testing.

If your going to eliminate the 50 cal. That would help our case so let me know.

By the way is everything ok in the 25 yard range?

Sent from my iPhone

Begin forwarded message:

**From:** "McCauley, Erin" <[EMcCauley@springsgov.com](mailto:EMcCauley@springsgov.com)>  
**Date:** December 23, 2013 at 11:52:29 AM MST  
**To:** "Jeremy Hammers ([jjhammers@hammersconstruction.com](mailto:jjhammers@hammersconstruction.com))"  
<[jjhammers@hammersconstruction.com](mailto:jjhammers@hammersconstruction.com)>, "Steve Hammers  
([SHammers@hammersconstruction.com](mailto:SHammers@hammersconstruction.com))" <[SHammers@hammersconstruction.com](mailto:SHammers@hammersconstruction.com)>  
**Subject:** FW: Whistling Pines Gun Club Noise Study Questions

Hi Jeremy & Steve,

I was printing out all of the comments and came across this one that I should have forwarded earlier – do you have answers to these questions or could you get them? I remember your noise consultant mentioning the calibers, but I didn't write them down...

**Erin McCauley AICP LEED AP BD+C**

Planner II

Land Use Review Division

Planning & Development Team



30 S. Nevada Avenue, Suite 105

Colorado Springs, CO 80903

(719) 385-5369 - phone

(719) 385-5167 - fax

emccauley@springsgov.com

*Please consider the environment before printing this email.*

---

**From:** Peterson, Carl [USA] [[mailto:peterson\\_carl@bah.com](mailto:peterson_carl@bah.com)]  
**Sent:** Thursday, December 12, 2013 7:24 PM  
**To:** McCauley, Erin  
**Subject:** Whistling Pines Gun Club Noise Study Questions

Erin,

I have some concerns about the validity of the noise study that was accomplished to support the building of the Whistling Pines Gun Club. We need to know the following in order to determine if the study is accurate:

1. What were the calibers and cartridges modelled in the study?
2. Were the effects of muzzle brakes also included in the study?

Gunpowder burned relates to noise produced. More gunpowder burned, more noise. Regarding rifle rounds, a typical .30-06 will have a little under 60 grains of gunpowder in it, whereas a .460 Weatherby Magnum can have up to 124 grains of powder in it. A 50 caliber Browning machine gun (BMG) round can have up to 238 grains.

Finally, big guns generate a lot of energy at both ends. In order to ameliorate the effects of recoil, many big guns will have a muzzle brake at the muzzle that deflects gas from the gunpowder to the side, with the result that felt recoil is reduced. Another effect of a muzzle brake is increased muzzle blast, hence noise. Does the noise study include the effects of muzzle brakes in the calculations? We need to know what kind of cartridges were used in the noise



study calculations and whether or not muzzle brakes were employed. See the attachment for a picture of a .50 caliber muzzle brake.

The best advertisement for the Whispering Pines Gun Club would be that no one knows that it is there because it is so quiet. I'm sure that the gun club wants to be a good neighbor. We want them to be a good neighbor as well. But we need accurate data to answer these questions.

Sincerely,

Carl

Carl H. Peterson

## Verbatim excerpts from December 3, 2013 meeting.

Q=Question from audience

H=Response from Bob Holmes, owner WPGC

K=Jeff Kwolkoski, Wave Engineering

### Meter location File #1:

51:00 Q. In your report you say gunshots may be audible because distinct sounds can be discerned by the ear even below the ambient sound levels ... and because of the nature of the impulsive repetitive sound, that sound could be audible for those properties before the street? Even at below the 45 db level ... because of the nature of the sound?

K. Right. **I can't tell you – you'll never hear a gunshot or something from the range.** Because if it's let's say 50 db and ... just as a rule of thumb the ear can pick out things that are up to maybe 10 db below that so say 40 db. You could, if there was something 45 db ... and maybe it was ambient or maybe it wasn't ... anything particularly loud going on ... **you could, certainly could hear. I can't say you'll will never hear.**

1:03:54 K. And those are the two things that are going to determine **whether you hear something or not is how loud is the gunshot but also how loud is the ambient sound?** So if it's quieter, it's easier to hear things ...but as we get away from the edge of the hill any noise from the range is reduced more.

1:05:59 Q. Have you looked at data from other similar facilities that use this type of abatement psychology and do you have any data that says/suggests you'll base the numbers that you predict?

K. **I haven't looked at data with this type of roof materials specifically.** I've used this type of material on a variety of projects. I'm familiar with what it does. **We don't do gun ranges.** We do all kinds of schools and commercial buildings and many different types of buildings. I don't have data specifically for shooting ranges of this material. .

41:41: Q. What's the biggest gun you can shoot? (at the proposed range)?

H. **50 BMG (.50 Caliber Browning Machine Gun).**

1:16:00 Q. Were .50 Caliber (rounds) considered (in the sound study)?

1:16:04 K. I considered .50 caliber. **.50 Caliber is the only weapon that I was not able to find sound data for.** So I had to then ... make my own judgment. It's going to be louder than the loudest rifle I had if it is ...and apply a factor there. **I do not have specific data for that weapon.**

Meter location File #2:

6:31: Q. Let me ask you a quick question. We're not shooting machine guns here. Just the cartridge that you could shoot in a machine gun ... probably shot in a bolt action semi-automatic rifle. Is that correct?

**H. No. Some of our members do have machine guns, very few of them do. They're not illegal if they're licensed and they may come down once every 6 months. They don't shoot a whole lot cuz it's real expensive.**

28:08: Q. What concerns me is your own sound engineer said we could even hear the shots below the 45 db. Since the ear can discern certain sounds we might be able to hear it at 40 db or below. And., I'm concerned about hearing that repetitive impulsive noise in my yard or in my home. Because, to me that would be the equivalent of Chinese water torture.

H. Well, how loud do you think that is going to be?

Q. Even if that's right ... ping, ping, ping would be unacceptable.

H. It's below the ambient noise ... so.

K. Even if it's above the ambient noise it's gonna be pretty faint.

Q. Pretty faint but you still may hear it.

Q. I just had ear surgery and I showed my ear surgeon the Wave study and he said, "At night when the ambient noise goes down, he said, with your level of hearing," which is above average, he said, "you will definitely hear it." And that obviously concerns me.

K. What I found was that at night and for purposes of the gun club, from as late as 8 o'clock, the ambient noise really doesn't go down because of where the noise is coming from. It doesn't go down like it would next to a highway where the traffic drops right down.

**H. How often do you go out on your back deck? I mean, you're not gonna hear it inside your house. You're not gonna hear anything inside your house.**

Q. Well out on our deck ... . We're out on our deck all the time.





January 15, 2014

Colorado Springs City Planning Commission  
Mr. Edward Gonzalez  
30 South Nevada Avenue, MC 155  
Colorado Springs, CO 80903

*copy*

**RE: Objection to Whistling Pines Gun Club's Conditional Use Application**

Dear Chairman Gonzalez:

The Conditional Use Application of Whistling Pines Gun Club West, LLC (hereafter, the "Gun Club") may not be approved by the Planning Commission, as this Application and the subject property, among other reasons, does not comply with the Hillside Area Overlay Zone ordinance (hereafter, the "Hillside Ordinance"). (**Exhibit 1**).

Further, the subject property as it exists today, is in gross Noncompliance With Approved Grading under Hillside Ordinance 7.3.504.I.1-3, which requires that: "*Any violation shall be enforced in accord with Part 15 of the Subdivision Code; the City Engineer may cause corrective procedures to be taken at the full expense of the property owner; and The Manager [Planning Director] is authorized to pursue enforcement actions.*" Enforcement of this Ordinance is mandatory, not precatory.

Consequently, the Planning Commission is without authority to approve this Application. The only action the Commission can take is to formally deny this Application and remand it back to the Planning and Development Department with instructions to commence an enforcement action under the applicable ordinances, given the imminent and existing damage that has occurred as a result of noncompliance.

The Hillside Ordinance, #83-229, was adopted by the City Council on September 13, 1983. The purpose of the ordinance was to preserve the "*unique characteristics and natural heritage of the City.*" The objective is "*to conserve the unique natural features and aesthetic qualities of the hillside areas.*" (Hillside Ordinance 7.3.504.A.2.-3.) The properties that we are talking about this morning are the quintessential example of this important **purpose** and **objective** being totally violated.

Hillside Ordinance 7.3.504.B.2, Approvals Required, states in relevant part:

*"No such land shall be subdivided, graded or otherwise disturbed for development, subdivision, or any other purpose unless such construction, subdivision, disturbance, or development is undertaken in accord with the requirements set forth in this section and this Code."*

The files and records of the City Engineer and the City Utility Department demonstrate that very substantial illegal grading and ecological disturbance of wildlife habitat and hillside vegetation have occurred on the subject property and heretofore unbeknown on an adjoining property, all without an approved Grading Plan or approval of the adjoining property owner. The unlawful excavation of approximately 15,000 cubic yards of dirt and rock has destroyed the natural features and aesthetic qualities of this previously beautiful hillside area, and has caused serious soil erosion, drainage problems, and water quality degradation. (See **Exhibit 2**).

Hillside Ordinance 7.3.504.B.3.a requires that if a property owner wishes to be exempt from the “*Hillside Area Overlay it will be necessary to **rezone** the property.*” The Gun Club’s Conditional Use Application violates the Hillside Ordinance in every one of its nine (9) requirements (Sections A through I), and the property owner has made no rezoning request for exemption therefrom. Therefore their application is nonconforming and incomplete and may not be approved.

Hillside Ordinance 7.3.504.C requires that the applicant submit a Land Suitability Analysis. This analysis must, among many other things, “assess the impact of proposed development both on and off the site.” The Gun Club has not submitted such analysis and its Application is in violation of the Hillside Ordinance by not having done so.

Hillside Ordinance 7.3.504.D references the requirement for a Hillside Development Package, and should be required of Applicant, as their proposed development is so drastically different from any previously proposed, and/or now expired, development plan. This 4-page Ordinance contains 59 paragraphs of requirements that have been ignored. The Gun Club has not submitted a Hillside Development Package.

Hillside Ordinance 7.3.504.E Wildfire Mitigation contains 14 paragraphs of very important requirements, including among other things, the requirement for disclosure statements on the Hillside Site Plan/Lot Grading Plans. In view of the Waldo Canyon and Black Forest fires, these wildfire mitigation omissions are inexcusable. The Gun Club Conditional Use Application should be denied on this basis alone.

Hillside Ordinance 7.3.504.I Illegal Land Disturbances, Grading and Vegetation Removal provides:

*“1. Compliance Required: all grading and vegetation removal, erosion and stormwater quality control, restoration and maintenance within the hillside area overlay **shall** be accomplished in accord with the City approved grading, erosion and stormwater quality control and reclamation plans and/or hillside site plan/lot grading plan and the provisions of this section.*”



2. Noncompliance With Approved Grading, Erosion And Stormwater Quality Control, And Reclamation Plans: Any overlot, street, drainage, utility grading or other land disturbance performed which is not in compliance with the approved hillside grading, erosion and stormwater quality control, and reclamation plans and the provisions of this section **shall** be deemed to be a violation of part 15 of the Subdivision Code of this chapter. Any violation shall be enforced in accord with the procedures set forth in part 15 of the Subdivision Code of this chapter. If the City Engineer determines that there is either imminent or existing erosion damage, drainage damage, dust pollution of other hazardous conditions for which immediate action is necessary, the City Engineer may cause corrective procedures to be undertaken at the full expense of the property owner and may take other enforcement actions deemed necessary as outlined in section 7.7.1509 of this chapter.

3. Noncompliance With Approved Hillside Site Plan/Lot Grading Plan: No grading or removal of vegetation shall occur on properties subject to the hillside overlay zone other than that authorized on the City approved hillside site plan/lot grading plan. Any grading or vegetation removal occurring on an individual lot or tract which does not comply with the City approved hillside site plan shall be deemed to be a violation of this Code. The Manager is authorized to pursue enforcement actions including, but not limited to, the issuance of a notice and order for illegal grading or vegetation removed in violation of the approved hillside site plan/lot grading plan.”

Ms. Lydia Maring, PE, of City Engineering, has provided us with a copy of the Concept Plan for Garden Of The Gods Business Park, Filing # 10, which document is stamped “**APPROVED, Development Services Division, Dec 22, 1994, by Development Services Manager.**” This document shows the topography of the subject property in 1-foot intervals as it existed on “September 26, 1994”, before the unauthorized grading occurred. (See **Exhibit 3**).

The Colorado Springs Utilities Department provided us with the topographic map, illustrating in 2-foot intervals the topography of the subject property after the unauthorized grading. (See **Exhibit 4**). In comparing these two maps, it is easy to see

that the northern one-fourth (¼) of the Gun Club property and the southern half (½) of the GeoTech property were excavated by up to 12 feet deep, and the southern half of the Gun Club property was raised about 5 feet. The cuts and fills seem to balance perfectly.

The result of this unauthorized grading was to create 35% to 47% slopes on two sides of the GeoTech property, and (not unremarkably) a flat level building site of about 2% grade or less on the Gun Club property. The effect on the GeoTech property produced slopes too steep to support vegetation, causing serious erosion and drainage problems and resulting ecological damage. It also made access to the GeoTech property up a 47% slope impossible. Additionally, this unauthorized excavating has left a horrible scar on the hillside landscape just below one of this City's distinguishing natural features: the Pope's Bluff cliff and rock outcropping. (See **Exhibits 2 and 5**). The Hillside Ordinance was designed to prevent this very damaging geologic and ecological disturbance. It has failed for now, but that can be remedied in part by this Commission's denial of this Conditional Use Application.

These facts that have just recently come to light are not intended to fault the Planning Department in any way, as there is a great deal of history behind this property that the Planning Department did not have access to. In fact, Planner Erin McCauley has done a very commendable and professional job in processing this Application, in keeping the neighbors informed, and in representing the City and its citizens' interest, while at the same time encouraging growth and development. Way to go, Erin!

GeoTech did not previously inform the Planning Department of this property history and these circumstances, as we only recently completed our investigation and came into possession of these facts and were then able to arrive at these conclusions. Additionally, we were trying to work out a remediation plan with the Gun Club that would not require the City to get involved. That failed due to the intransigence of Mr. Holmes. For four (4) months, after having filed his Conditional Use Application, on August 5, 2013, he refused to meet with us or to return our calls, despite the fact that our property directly adjoins the Gun Club property on 3 sides: north, east and west. He finally, albeit reluctantly, agreed to meet with us on December 5, 2013. We discussed various options and came to some preliminary understandings, agreeing to talk again in 1 week. But again, Mr. Holmes and his contractors refused to return our calls. Additionally, my letter of December 24, 2013, to Mr. Holmes' legal counsel remains unresponded to. We have exhausted all efforts to remediate this unfortunate situation; it is now up to the City to enforce its ordinances and to accomplish the much needed remediation.

Planning and development cannot begin until after this property has been fully restored to its original and lawful condition. Only then can the development process go forward. To do otherwise rewards unlawful disrespect of our ordinances and promotes environmental damage to our fragile hillsides.



The Development Plan is the document that establishes the project design parameters. In the Hillside Area Overlay Zone, the hillside development criteria, as set forth in the ordinance, must be incorporated into the Development Plan. The Gun Club has failed to do this and its Application must be denied.

The Gun Club proposes, with their latest December 5, 2013 “Preliminary Grading Plan” (a would-be Development Plan) (see **Exhibit 6**), to cut into the hillside again, this time to excavate over 11,000 cubic yards of dirt and rock to be hauled off the site and disposed of. That is over 1,000 tandem-axle truckloads of dirt and rock. This radical plan will create even more 35% slopes and more scars in the Hillside Area Overlay. When does the rape of this hillside property end?

There is no “Development Plan” *per se*. The Gun Club submitted a Site Plan and a Preliminary Grading Plan. We are all left with the task of combining those two in our mind in order to begin to understand what the development plan might be, and what the property owner might be up to.

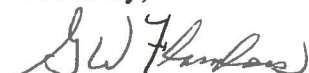
Further, the Gun Club’s Preliminary Grading Plan now demonstrates that the building site is being excavated so deeply into the hillside that the building and its parking lot, at an elevation 6,328 feet, will be 10 feet below the hundred-year flood plain of 6,338 feet. This just invites disaster. Additionally, this grading within the floodplain is a violation of the Colorado Floodplain Damage Prevention Ordinance, (Title 29, Article 20, of the Colorado Revised Statutes) and such violation must not be sanctioned by this Commission’s approval of their Application and Preliminary Grading Plan.

The proposed steep and deep-cut grading in the floodplain occurs just feet away from the major Douglas Creek, deep-profile, drainage structure. An engineering question remains as to what degree the integrity of this important drainage structure will be compromised by the proposed steep and deep-cut grading next to this structure. Will the hydrostatic pressure on the side of the channel during flood stage blow out the side-wall and flood both the Gun Club building and the entire Garden of the Gods Business Park?

It is clear that this building does not fit the site, so they are modifying the property in a radical and intolerable manner to fit the building. This is backwards. Buildings must be designed in the Hillside Area Overlay Zone to fit the earth.

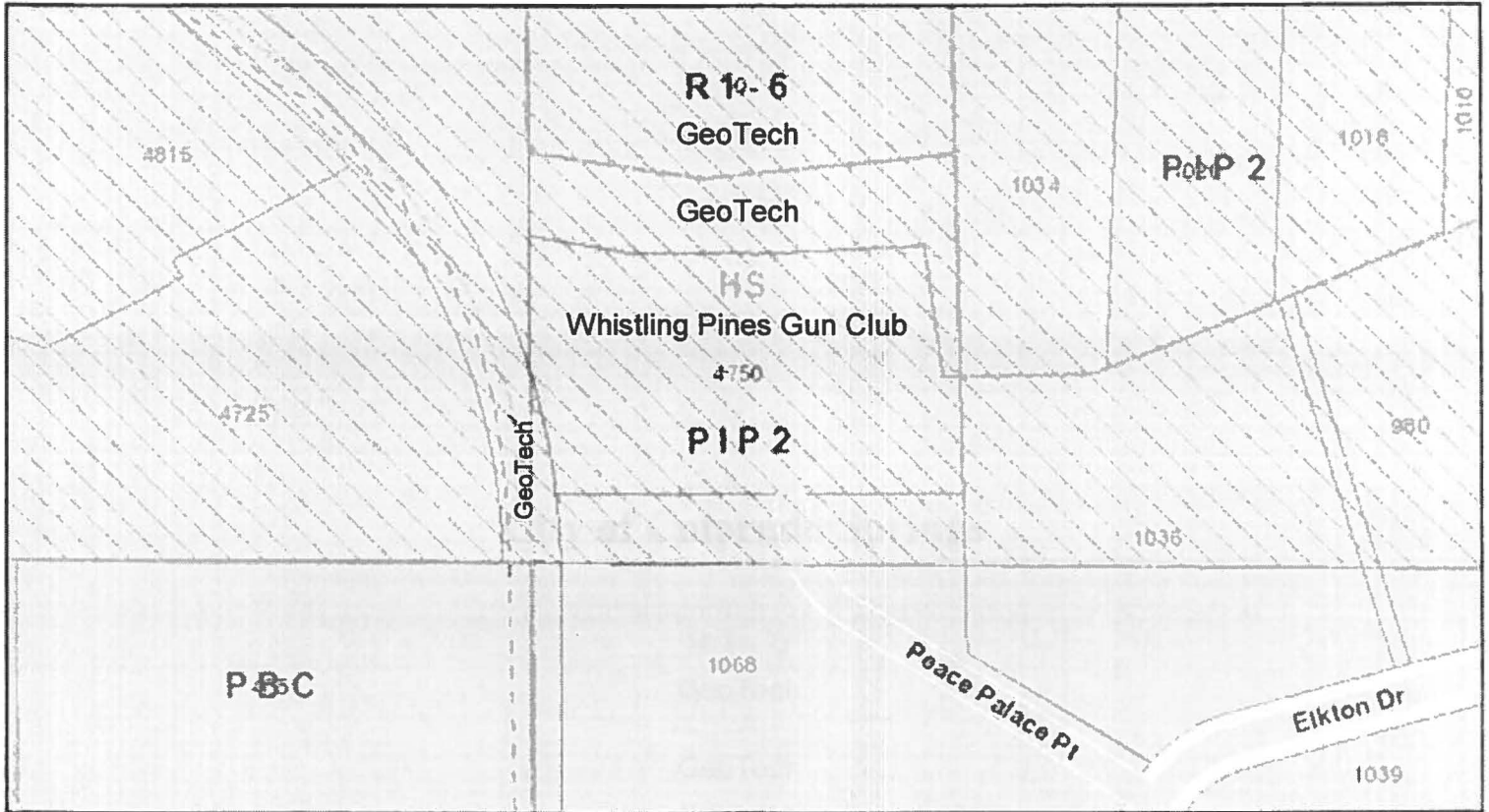
This Application and its proposed development are ill conceived, and are as wrong as two left shoes. We join with our 60 residential and commercial neighbors in requesting that the Application be denied.

Sincerely,



G. W. Flanders, President

# City of Colorado Springs



<b>TSN</b>	7324307013	<b>Mail Zip</b>	80915
<b>Parcel Address</b>	4750 PEACE PALACE PT	<b>Zoning Code</b>	PIP2 HS CU UV
<b>Owner Name</b>	WHISTLING PINES GUN CLUB WEST LLC	<b>Area (SQ FT)</b>	2.50
<b>Mailing Address</b>	1412 WOOSLEY HTS	<b>RBD Permits</b>	Permits
<b>Mail City</b>	COLORADO SPRINGS	<b>Tax Information</b>	Property Details
<b>Mail State</b>	CO	<b>LUR History</b>	View History

## EXHIBIT 1

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**Map Scale**  
1 inch = 217 feet

12/11/2013

**Item: 6**  
**Exhibit: F**  
**CPC Meeting: January 16, 2014**



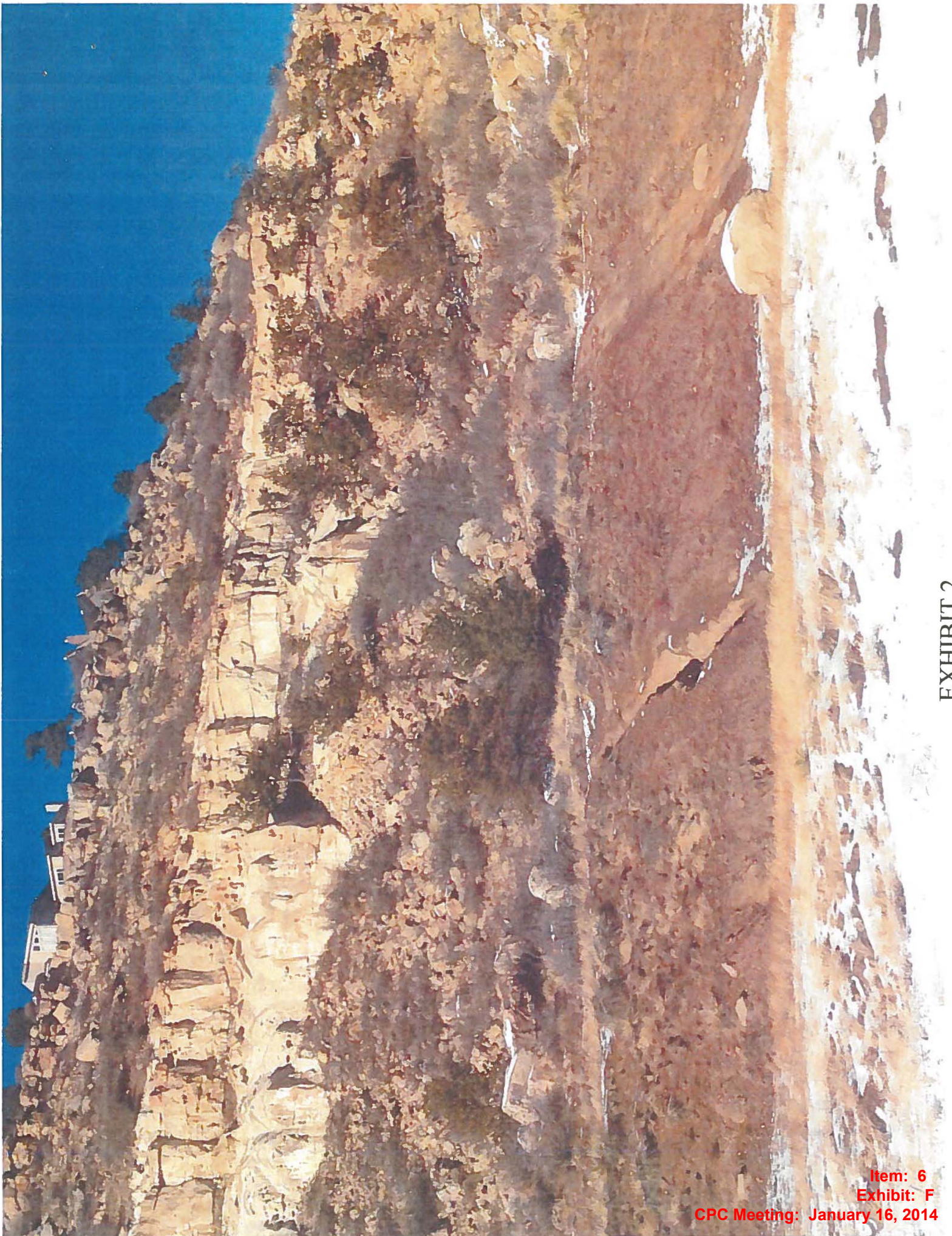


EXHIBIT 2

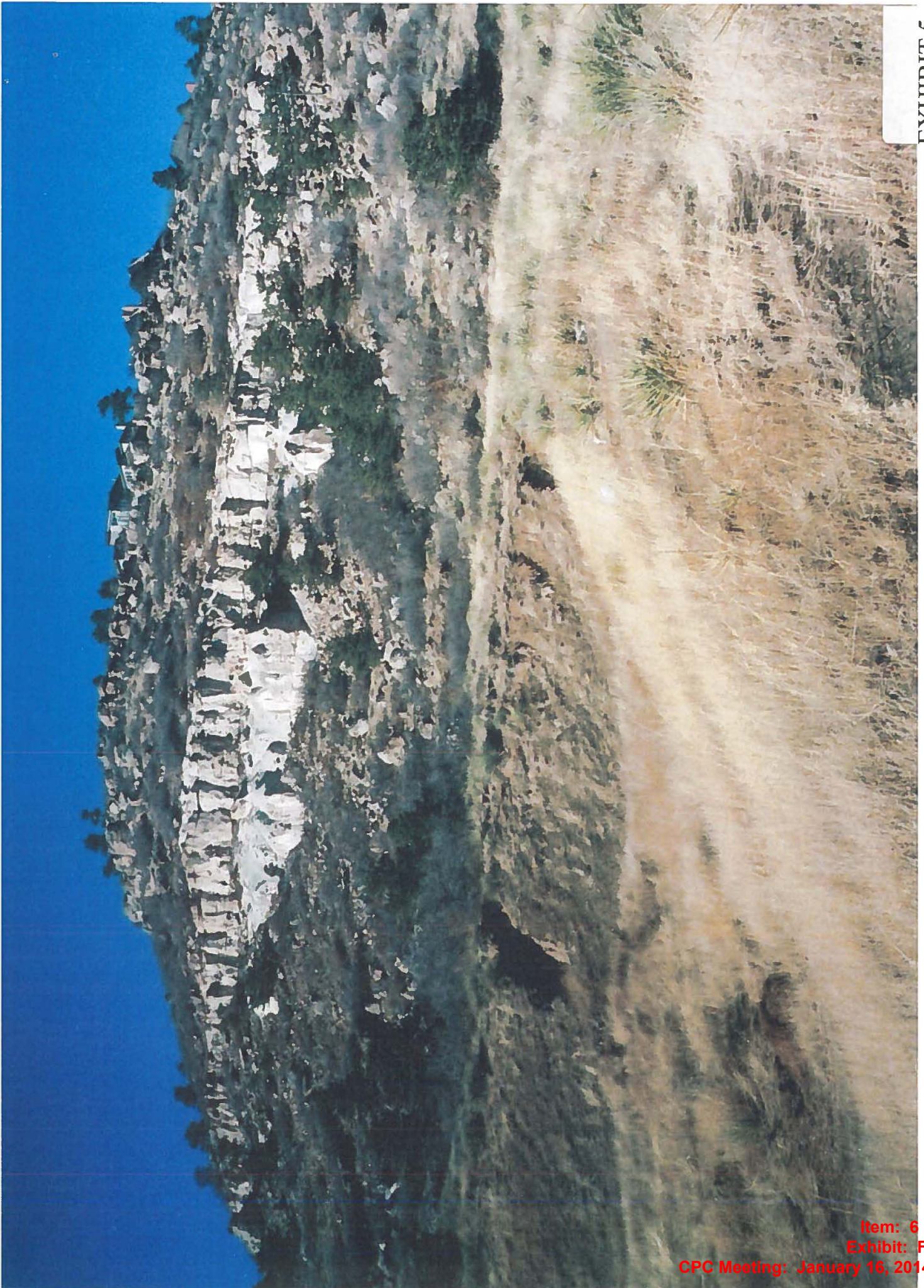
Item: 6  
Exhibit: F  
CPC Meeting: January 16, 2014







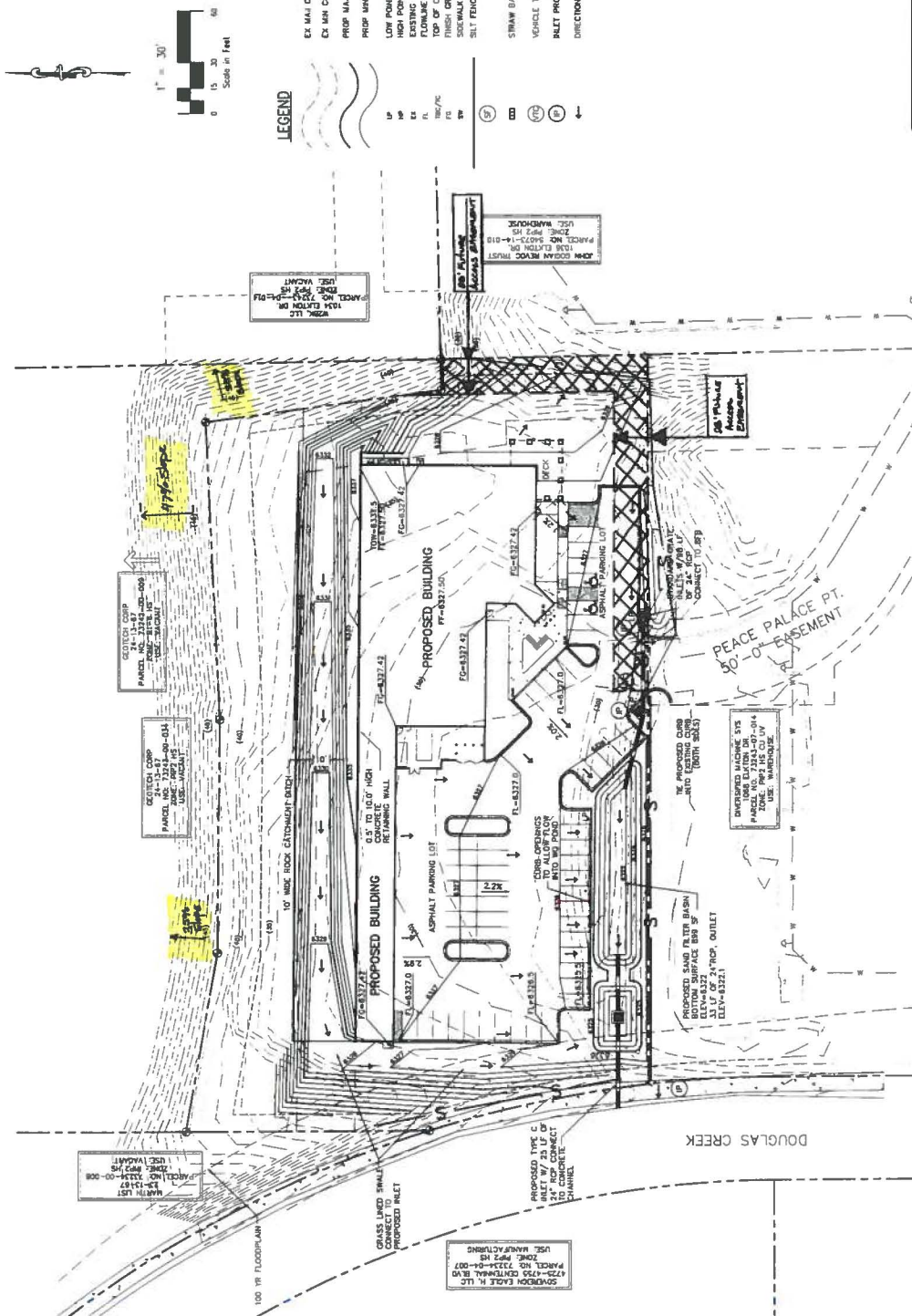






# LOT 1, GARDEN OF THE GODS BUSINESS PARK, FILING NO. 12 - WHISTLING PINES GUN CLUB

PRELIMINARY GRADING PLAN  
NOVEMBER 2013



- LEGEND**
- EX MAJ CONT
  - EX MIN CONT
  - PROP MAJ CONT
  - PROP MIN CONT
  - LOW POINT
  - HIGH POINT
  - EXISTING
  - FLOODING
  - FINISH GRADE
  - SOILWALK
  - SILT FENCE
  - STRAW BALES
  - VEHICLE TRACKING CONTROL
  - SALE PROTECTION
  - DIRECTION OF FLOW

**STANDARD GRADING, EROSION AND STORED WATER QUALITY CONTROL PLAN NOTES**

1. ALL EROSION CONTROL MEASURES SHALL BE DESIGNED TO PREVENT EROSION OF THE SOIL SURFACE AND TO MAINTAIN THE STABILITY OF THE SOIL SURFACE. EROSION CONTROL MEASURES SHALL BE DESIGNED TO PREVENT EROSION OF THE SOIL SURFACE AND TO MAINTAIN THE STABILITY OF THE SOIL SURFACE.
2. ALL EROSION CONTROL MEASURES SHALL BE DESIGNED TO PREVENT EROSION OF THE SOIL SURFACE AND TO MAINTAIN THE STABILITY OF THE SOIL SURFACE.
3. THE INSTALLATION OF THE FIRST LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
4. THE INSTALLATION OF THE SECOND LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
5. THE INSTALLATION OF THE THIRD LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
6. THE INSTALLATION OF THE FOURTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
7. THE INSTALLATION OF THE FIFTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
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9. THE INSTALLATION OF THE SEVENTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
10. THE INSTALLATION OF THE EIGHTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
11. THE INSTALLATION OF THE NINTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
12. THE INSTALLATION OF THE TENTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
13. THE INSTALLATION OF THE ELEVENTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
14. THE INSTALLATION OF THE TWELFTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
15. THE INSTALLATION OF THE THIRTEENTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
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21. THE INSTALLATION OF THE NINETEENTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
22. THE INSTALLATION OF THE TWENTIETH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
23. THE INSTALLATION OF THE TWENTY-FIRST LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
24. THE INSTALLATION OF THE TWENTY-SECOND LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
25. THE INSTALLATION OF THE TWENTY-THIRD LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
26. THE INSTALLATION OF THE TWENTY-FOURTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
27. THE INSTALLATION OF THE TWENTY-FIFTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
28. THE INSTALLATION OF THE TWENTY-SIXTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
29. THE INSTALLATION OF THE TWENTY-SEVENTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
30. THE INSTALLATION OF THE TWENTY-EIGHTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
31. THE INSTALLATION OF THE TWENTY-NINTH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.
32. THE INSTALLATION OF THE THIRTIETH LEVEL OF EROSION CONTROL MEASURES SHALL BE COMPLETED WITHIN 14 DAYS OF THE START OF CONSTRUCTION.

**PRELIMINARY GRADING PLAN**

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 SCALE: DATE: 12/05/2013  
 DRAWN BY: WMS  
 CHECKED BY: WMS  
 SHEET 3 OF 8  
 GRD



CPC CU 13-00077

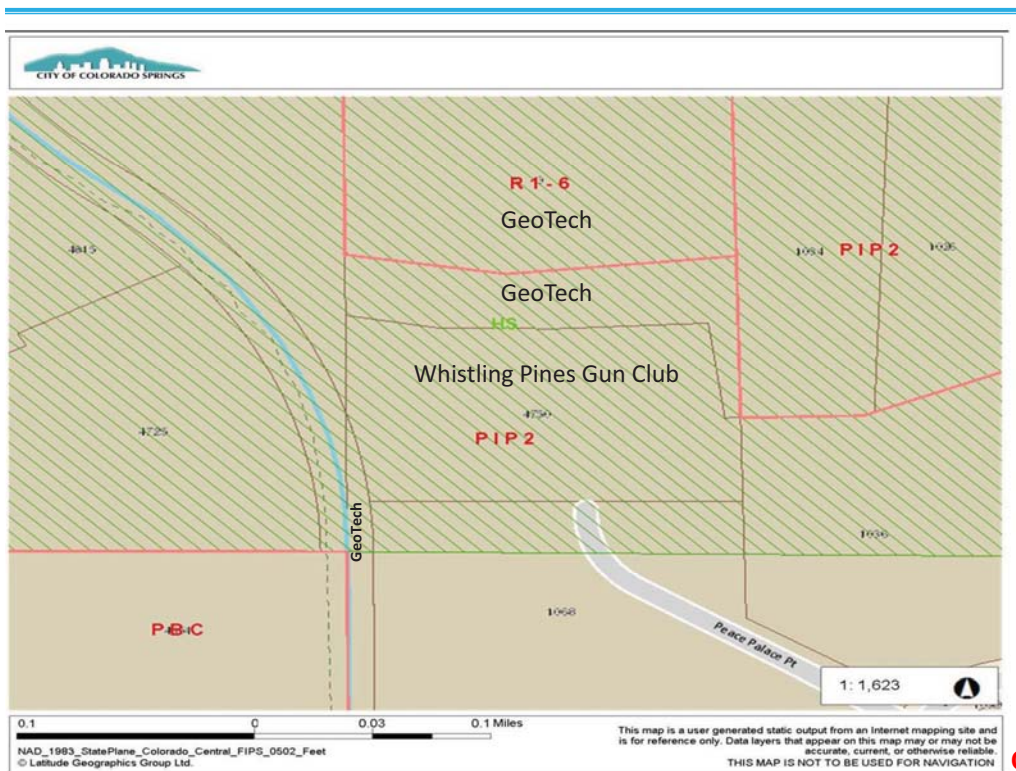
LOT 1, GARDEN OF THE GODS BUSINESS PARK,  
FILING NO. 12 - WHISTLING PINES GUN CLUB

EXHIBIT 6

# GEOTECH CORPORATION's

## Opposition to Whistling Pines Gun Club's Conditional Use Application

January 15, 2014



Item: 6  
Exhibit: F  
CPC Meeting: January 16, 2014





EXHIBIT 5









EXHIBIT 5