

ELIZABETH BREKHUS
elizabethb@brekhus.com
www.brekhus.com

Brekhus
Law
Partners

ATTORNEYS AT LAW

October 22, 2024

1000 DRAKES LANDING ROAD
GREENBRAE, CA 94904-3027
FACSIMILE: (415) 461-7356
(415) 461-1001

Sent via Email and USPS

Garrett Toy
General Manager
Tamalpais Community Services District
305 Bell Lane
Mill Valley, CA 94941
gtov@tamcsd.org

Board Director Steffen Bartschat and
Members of the TCSD Board of Directors
sbartschat@tamcsd.org; jbrown@tamcsd.org
mgm.tcsd@gmail.com;
stevenmlevine@comcast.net;
jjacobs@tamcsd.org

Dear Mr. Toy, Director Bartschat and Members of the TCSD Board of Directors,

We represent Michael Gervais, the owner of 303 Bell Lane. Please direct all communication to this office.

The Tamalpais Community Services District's current operations fail to comply with its use permits for its property and its ongoing and continuous actions amount to a private and public nuisance. Despite multiple notices of violations, the TCSD has failed to remedy its non-permitted activities or abate its ongoing nuisance conduct.

My client makes the following demands in order to settle this dispute between TCSD and Gervais relating to the nuisance noise and unpermitted uses of the TCSD property at 305 Bell Lane:

- Change the starting time for trucks and other noise generating activities incident to the collection of trash from 5 am to 7 am;
- Cease conducting trash compacting on site at 305 Bell Lane;
- Eliminate access to the debris bins by the general public from the property, including recycling debris bins, and cease holding special debris and/or hazardous waste collection days at 305 Bell Lane;
- Eliminate pedestrian use of the property along the drainage and flood way easement by placement of physical obstacles – including appropriate landscaping – and signage alerting pedestrians not to use the drainage and flood easement along the north side of the property (adjoining 303 Bell) as a pedestrian walkway; and
- Cease outdoor amplified music at events at the Tam Valley Community Center.

Noise Nuisance

The garbage trucks starting at 305 Bell Lane at 5am is a nuisance to the surrounding neighborhood and particularly to 303 Bell Lane. As confirmed by the TCSD's own consultant, the TCSD's garbage trucks generate noise in excess of the benchmarks provided by the Marin

County General Plan. Each weekday morning, starting at 5 am, the TCSD's garbage trucks generate excessive noise on site at 305 Bell Lane before beginning their routes. Given that the TCSD has historically started its garbage truck operations later in the morning, it is evident that the TCSD is capable of operating within the County's benchmarks for allowable noise, yet it currently refuses to do so.

Moreover, despite the use permit for 305 Bell Lane (UP1089) only providing for a shop area, parking garages, and a meeting hall and tot yard, the TCSD has been improperly crushing garbage in its trucks throughout the day at 305 Bell Lane. The noise associated with this garbage processing activity also exceeds the permissible noise levels. The TCSD has never received a use permit for this activity. In a 2014 noise study conducted by Rosen Goldberg Der & Lewit, Inc. for TCSD, both trucks starting and trash crushing were identified as excessively loud, leading to a Settlement Agreement with the owner of 303 Bell Lane in 2017 wherein TCSD paid the owner of 303 Bell Lane over \$100,000 and promised not to conduct transfer operations on site. Despite this promise, TCSD is still compacting trash, one of the activities inherent to the banned transfer operations, therefore violating the Settlement Agreement.

Illegal Uses outside Use Permit

TCSD has been improperly using 305 Bell Lane for debris and recyclable material disposal. As you know, the TCSD previously applied for – and the County has twice denied – a use permit to allow debris and recyclable material disposal at 305 Bell Lane. Yet, the TCSD currently maintains multiple debris bins at 305 Bell Lane for recyclable material disposal and the TCSD hosts regular community events that it refers to as “Debris and Shred Day” and “Household Hazardous Waste Collection” at 305 Bell Lane. As the TCSD's own consultant, Scott Hochstrasser, confirmed when evaluating whether the TCSD's conduct was covered by its use permits, these activities require a use permit. Yet, the TCSD has never obtained one. When the TCSD previously attempted to obtain one, the County decision cited an Environmental Impact Report, which identified the “unavoidable adverse impacts” of the proposed use. The County decision found that: “Substantial noise would be created by the project and such noise would exceed the ambient noise levels that residents in the neighborhood have a right to expect.” Indeed, the TCSD's current unpermitted debris and recyclable material disposal activities confirms the County's findings given the excessive noise associated with emptying debris bins and crushing garbage at 305 Bell Lane. As the County decision concluded, issuing a use permit would be “detrimental to the health, safety, comfort, convenience and welfare of persons residing and working in the neighborhood.”

In addition, the TCSD regularly hosts community events, such as Creekside Fridays and Oktoberfest, in the Tam Valley Community Center parking lot with live amplified music outdoors in violation of the use permit for 203 Marin Avenue. The TCSD's music events typically last for several hours and the amplified music reverberates throughout the neighborhood. The use permit for 203 Marin Avenue explicitly states that “[a]mplified music shall be restricted to the interior of the community center. Outdoor use and broadcast of amplified music is prohibited” and that “live or recorded music is prohibited outside the community center building.” It is evident that the TCSD's outdoor events with amplified music does not comply with the use permit for 203 Marin Avenue or with the Countywide Plan benchmarks for allowable noise in a residential area.

Noisy and Hazardous Pedestrian Easement

Finally, the TCSD has facilitated an additional noise nuisance by the improper use of the flood control and drainage easement that is situated between 305 Bell Lane and 303 Bell Lane. The TCSD has improperly converted this flood control and drainage easement into a non-ADA compliant pedestrian easement. The TCSD permitting the general public to traverse the flood and drainage control easement creates both noise and privacy concerns for my client.

Moreover, in order to facilitate access, the TCSD improperly removed landscaping that is required by its building permit. When the TCSD renovated its building to add more square footage, its permit was approved with conditions, including required landscaping on the entrance to the flood control and drainage easement that blocked public access. As stated in its findings: "Landscaping has been proposed and will be required as a condition of approval to provide visual screening of the existing structure and the addition from adjacent properties"; "The required landscaping and use of earthtone colors will effectively negate any potentially adverse impacts to neighbors"; "Landscaping on the front, north side, and rear of the addition shall be required as a condition of approval to effectively screen the office/meeting structure from view" and "The project will not prevent the development, use or enjoyment of other properties in the vicinity with respect to light, views, vistas, and privacy because the office/meeting space structure will be setback adequate distances from property lines and will be adequately screened with vegetation." Unfortunately, the TCSD has removed the required landscaping, meaning that its building – which is bright yellow—is not visually screened whatsoever.

Litigation Hold

Litigation is imminent regarding the TCSD's failure to comply with use permits and for creating an ongoing and continuing noise nuisance. With this communication, you are on notice of the TCSD's obligation to preserve documents related to claims against it involving the operation of its solid-waste services and for its improper land use activities. Consequently, the TCSD must ensure that it and its board members, managers, principals, agents, subcontractors, and any agents or employees are preserving and retaining all emails, text messages (including messages sent over messaging platforms such as WhatsApp), social media messages (including NextDoor and Meta), audiovisual recordings, voicemails, drafts, notes, notepads, communications, documents, webpages, word-processing files, receipts, invoices, calendars, bank records, spreadsheets, data and electronically stored information of any kind that relate in any way to these matters. There is no time limitation to this preservation obligation.

You must take steps to preserve materials including, but not limited to, the following categories of documents:

- All documents and communications related to formal or informal noise complaints related to the TCSD's operations at 305 Bell Lane, events hosted at 203 Marin Avenue, or its solid-waste services;
- All documents and communications, including board and subcommittee agendas, board and subcommittee materials, related to the hours of operation of TCSD's solid-waste services;

- All documents and communications related to contracting solid-waste services to a third party;
- All documents and communications related to noise studies of the TCSD's solid-waste services, including the study performed by Rosen, Goldbert, Der & Lewitz, Inc.;
- All documents and communications related to the TCSD's permits involving 305 Bell Lane or 203 Marin Avenue, including the report by Scott Hochstrasser of International Planning Associates;
- All documents and communications related to the TCSD's debris bins for recyclable materials located outside of the gate at 305 Bell Lane;
- All documents and communications related to the TCSD's use of outdoor amplified sound for its events hosted at the Tamalpais Valley Community Center located at 203 Marin Avenue including, for example, Creekside Fridays and Oktoberfest;
- All communications related to the public use of the drainage and flood control easement situated between 303 Bell Lane and 305 Bell Lane as a pedestrian walkway, including any communications related to facilitating public access.

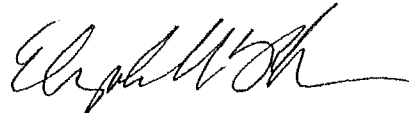
Please note that the above list is not exhaustive.

The laws and rules prohibiting the destruction of evidence apply to electronically stored information in the same manner that they apply to other evidence. Due to its format, electronic information is easily deleted, modified, or corrupted. Accordingly, you must take every reasonable step to preserve this information until this matter is resolved. This may include, but would not be limited to, an obligation to discontinue all data destruction and backup recycling policies and procedures on any and all devices within your possession, custody, or control. Your obligation to preserve documents applies both to you individually and to any entities or individuals that you control.

Time to Respond

My client has tried for months to resolve the noise and unpermitted use issues at 305 Bell Lane, without TCSD ever seriously considering moderating its activities to address neighbors' complaints. If TCSD wishes to amicably resolve this matter without resorting to litigation, please contact me regarding abatement of the nuisance and illegal uses within two weeks of the board meeting following the receipt of this letter.

Very truly yours,



Elizabeth Brekhus



TAMALPAIS COMMUNITY SERVICES DISTRICT

305 Bell Lane, Mill Valley, CA 94941 ♦ 415.388.6393 ♦ Fax: 415.388.4168

info@tamcsd.org ♦ www.tamcsd.org

MEMO TO FILE

DATE: September 6, 2024

FROM: Garrett Toy, General Manager

RE: Threat of Litigation

On Thursday, September 5th at approximately 3:30pm Michael Gervais came into the office (305 Bell Lane). Mr. Gervais lives next door at 303 Bell Lane and has recently moved back into the house. He previously was renting the house out. I spoke to him regarding the emails he sent me while I was on vacation (8/23, 8/27 and 8/28). During our conversation, he indicated he believed the noise at 5:00am in the morning was a public nuisance and he threatened to sue TCSD on that basis. He also indicated he plans to give us a notification of preservation of records. He stated that TCSD only has approval to park trucks in the yard but not to run a disposal operation. The TCSD Administrative Clerk and Alan Shear, Assistant General Manager, were also in the office and heard our conversation. Mr. Shear can confirm the threat.