

CAUSE NO.: C2011-1647A

THE CITY OF GARDEN RIDGE, TEXAS	§	IN THE DISTRICT COURT
	§	
V.	§	<u>22nd</u> JUDICIAL DISTRICT
	§	
VORDENBAUM, INC., D/B/A BRACKEN RIFLE AND PISTOL RANGE	§	COMAL COUNTY, TEXAS

**PETITION FOR PRE-SUIT INVESTIGATION
PURSUANT TO TEX. R. CIV. P. 202**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the City of Garden Ridge, hereinafter called “Petitioner,” and files this Petition for Pre-Suit Investigation pursuant to Texas Rule of Civil Procedure 202 and in support thereof would show the following:

1. Petitioner is the City of Garden, Texas

City of Garden Ridge
9400 Municipal Parkway
Garden Ridge, Texas 78266

2. Petitioner requests that the Court authorize the inspection of the Bracken Range and Rifle Club (“Bracken Range”) at the address listed below to investigate a potential claim or suit.

Vordenbaum, Inc., d/b/a Bracken Rifle and Pistol Range
19140 Marbach Lane
San Antonio, Texas 78266

Currently represented by
Mr. Gordon O. Stafford, Jr.
SBOT NO. 18995000
O'GORMAN & STAFFORD, L.L.C.
750 Rittiman Road
San Antonio, Texas 78209

3. Thomas H. Wilson and Lynn Wilson, plaintiffs in the pending lawsuit against the Bracken Range, Cause No. C2010-1511D Dist. Ct. Comal County 433rd Jud. Dist., are interested third parties in this Petition.

Thomas H. Wilson and Lynn Wilson
c/o Mr. Jaay D. Neal
SBOT NO. 14836700
LAW OFFICES OF JAAY D. NEAL, P.C.
322 W. Woodlawn Avenue
San Antonio, Texas 78212

4. This Petition is verified and is filed in Comal County where venue of the anticipated suit may lie.

5. The Petitioner requests that the Court set this Petition for hearing and that the notice of hearing and this petition be returned to Petitioner so that it may be served on all parties in accordance with Texas Rule of Civil Procedure 21(a).

6. The Petitioner seeks to investigate a potential claim against Bracken Range.

7. The subject matter of the anticipated litigation involves the following:

a. As early as 2007 and as recently as February 2011, citizens of the residential single-family home subdivision known as Wild Wind within the jurisdictional limits of the City of Garden Ridge, Texas have reported finding bullets in their yards and damage to their homes as a possible result of stray bullets from the Bracken Range, located at 19140 Marbach Lane, San Antonio, Texas.

b. In its investigation of this potential public nuisance, Petitioner has engaged an expert to identify potential safety risks at the Bracken Range and has proposed several improvements that need to be made at the Bracken Range in order to ensure the safety of the residents of Wild Wind. *See Exhibits A and B.* Bracken Range has implemented some, but not all of Petitioner's proposals. Because the safety protocols implemented by

Bracken Range appear less than what Petitioner's expert believes is required to ensure the safety of its citizens, Petitioner requests permission to inspect the range, obtain certain information regarding the safety measures implemented, conduct certain testing, all to ensure that the safety measures in place are sufficient.

8. Petitioner seeks to discover through its investigation, inspection and testing the following:

- a. What are the ballistic capabilities of the constructed baffles?
- b. What is the density of the rubber used to fill the space between the plywood and in the baffles?
- c. What is the amount of rubber used to fill the space between the plywood in the baffles and is it enough to spot pistol rounds?
- d. Are their air voids at the top of the vertically stacked baffles?
- e. What is the thickness of the shredded rubber between the plywood?
- f. Is the wood used in the baffles a treated plywood and what thickness of wood is used?
- g. What is the life span of the wood under current and long term weather conditions?
- h. What are maintenance procedures of the baffles?
- i. What are the regular maintenance and inspection standards implemented in connection with the round containment measures used on the range?
- j. What engineering or architectural drawings were used to construct the baffles? If such were used, the ability to inspect the drawings.
- k. What size are the posts and baffle members?
- l. Are there any bracing or structural supports?

m. Were the posts and baffles designed by an engineer to accommodate wind loads for the area?

9. Additionally, Petitioner seeks to conduct a shooting test at Bracken Range that consists of firing standard FMJ, ball, wad cutters or solid rounds in factory load ammunition at the baffle using 9mm, 40 S&W, 45 ACP and 44 Remington magnum handguns fired from a distance of approximately 1 yard from the baffle at a downward angle?

10. Petitioner asks that the Court order Bracken Range to produce all documents associated with the safety, testing, architectural, and engineering specifications outlined in paragraphs 8(a-m) and 9.

11. Petitioner asks the Court to use its discretion to allow the pre-suit investigation of Bracken Range as described above to determine what claims may exist against Bracken Range for the safety hazard caused by bullets straying from the range into the City of Garden Ridge subdivision Wild Wind. Allowing this pre-suit discovery will avoid the disruption of Petitioner's potentially unnecessary intervention into the pending litigation between the residents of Wild Wind. *See Wilson v. Vordenbaum, Inc., D/B/A Braken Rifle and Pistol Range*, No. C2010-1511D (Dist. Ct. 433rd Jud. Dist.).

12. The Petitioner seeks to have deposed a DESIGNATED CORPORATE REPRESENTATIVE(S) who can provide testimony, access and produce all documents sought on the areas of inquiry outlined in paragraphs 8(a-m), 9, and 10 above.

WHEREFORE, PREMISES CONSIDERED, Petitioner, the City of Garden Ridge, respectfully prays that the Court authorize the investigation of Bracken Range as described above on the matters set forth herein at a time and place designated by the Court and for such other and further relief to which the Petitioner may be entitled at law or in equity.

Signed on this the 21 day of December, 2011.

Respectfully submitted,

DENTON, NAVARRO, ROCHA & BERNAL
A Professional Corporation
2500 W. William Cannon Drive, Suite 609
Austin, Texas 78745
512/279-6431
512/279-6438 (Facsimile)
george.hyde@rampage-aus.com
ryan.henry@rampage-sa.com
erin.higginbotham@rampage-aus.com

By:



GEORGE E. HYDE
State Bar No. 45006157
RYAN S. HENRY
State Bar No. 24007347
ERIN A. HIGGINBOTHAM
State Bar No. 24065418

R:\Garden Ridge, City of v. Bracken Range (44632)\Pleadings\PETITION FOR PRE-SUIT DEPOSITION.docx

VERIFICATION

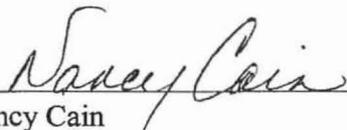
STATE OF TEXAS §

§

COUNTY OF COMAL §

On this 27th day of December, 2011 personally appeared Nancy Cain who, after being by me duly sworn stated the following:

“My name is Nancy Cain. I am over the age of eighteen and am competent to make this affidavit. The matters stated in this Petition for Pre-Suit Investigation pursuant to Texas Rule of Civil Procedure 202 are within my personal knowledge and are true and correct.”

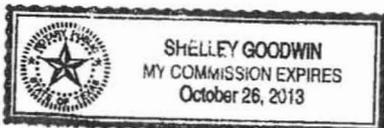


Nancy Cain

Signed and sworn on this the 27th day of December, 2011.



Notary Public
In and for the State of Texas





August 10, 2011

Mr. George Hyde
Denton, Navarro, Rocha & Bernal, P.C.
2517 N. Main Ave.
San Antonio, Texas 78212

Delivered via email
george.hyde@rampage-us.com

**Re: Evaluation of Bracken Range and Rifle Club Firing Ranges
San Antonio, Texas**

Dear Mr. Hyde;

TRS RANGE SERVICES, LLC (TRS) has prepared the following summary of the site evaluation of the Bracken Range and Rifle Club. The site evaluation was conducted on Wednesday July 15, 2011 between 7 AM and 9 AM. The following persons were present during the site evaluation:

- Mr. Kerry O'Neal, **TRS**
- Mr. George Hyde, Denton, Navarro, Rocha and Bernal, P.C.
- Owner, Bracken Range and Rifle Club and legal counsel

The figures and photographs referenced in this summary are included as Attachment 1 to this letter.

SITE INFORMATION

TRS has developed our understanding of site conditions based on information provided by Denton, Navarro, Rocha and Bernal, P.C. that includes information provided in an email, dated July 13, 2011, as well as discussions on site and a visual inspection of down range subdivisions and effected residences.

The emailed file information includes:

- Incident reports of projectiles found at residences downrange of firing positions
- Internal city correspondence regarding the firing range issues and possible solutions
- Presentation on the shooting range and City Council meeting minutes regarding the shooting range
- Copy of the text of S.B. No. 766 – Liability of Sport Gun Club Owners and proposed amendments

TRS prepared the attached site maps using readily available imagery from the Google Earth website (dated July 13, 2011). **TRS** did not receive any maps from the property owner and none were available from the city of Garden Ridge, City of San Antonio or the Comal County planning department. The Bracken Range and Rifle Club is located at 19140 Marbach Lane, San Antonio, Texas, as shown on Figure 1. Surrounding properties include:

Direction	Description/Proximity
North	Agricultural area with scattered residences
South	Agricultural area with scattered residences
West	Agricultural area with scattered residences
East	Quarry adjacent to property; residential area approximately 1260' East/NE of range

TRS RANGE SERVICES, LLC
1117 N. Eagle Road Eagle, Idaho 83616 • 208-938-2891 • 208-938-2892 fax
1739 Maybank Hwy, Ste B Box 326 Charleston, South Carolina 29412 • 843-795-3860 • 843-795-2144 fax
www.trsrangeservices.com

Exhibit A

Attorney/Client Privileged Information

*The closest downrange property is approximately 1,600 feet northeast.

The entire shooting range is approximately 2 acres in size. **TRS** evaluated the following two ranges identified in the current controversy as suspect (as shown on Figure 2):

- CHL Range
- Pistol Range

TRS' site evaluation indicates that the firing range sits on a level site that is approximately 40 vertical feet lower than the surrounding residential developments. The scope of inspection services by **TRS** was limited to the ranges made available at the time of the site visit. **TRS** evaluated the Pistol and CHL ranges because they are positioned such that the residential areas were down range in the direct line of fire (Figure 2). During the site evaluation, **TRS** took photographs of specific conditions that are presented below. Please note that any discussion of elevations and berm heights are relative and represent **TRS'** best estimate since a survey was not conducted and no site-specific elevation data was available.

PISTOL RANGE EVALUATION

Pistol Range Observations:

The Pistol Range is 15 to 25 yards with 36 position firing ranges that includes:

- A wooden covered area with metal roofing at the firing positions. An angled wooden baffle also is present at the firing line, constructed of two layers plywood, $\frac{3}{4}$ " rubber panel, and corrugated metal roofing material. The roof and baffle locations are shown from the interior of the covered area in Photograph 1.
- An earthen berm surrounding the range at approximately 12 feet above ground surface.
- A wooden baffle constructed on top of the earthen berm to approximately 6 to 8 feet (Photograph 2). The wooden baffle consists of a two layers of treated plywood attached to 2 x 4 posts filled with 3½" granular chopped rubber.
- There is evidence of some minor erosion below the wooden baffle wall where additional plywood has been added.

TRS Pistol Range Findings:

- The pistol range has evidence of bullets penetrating the existing firing line canopy baffle at the following locations:
 - Lane 25: 3 bullet holes (Photograph 3)
 - Lane 26: 2 bullet holes (Photograph 4)
 - Lane 29: 3 bullet holes (Photograph 5)
 - Lane 30: 1 bullet hole (Photograph 6)
 - Lane 31: 1 bullet hole (Photograph 7)
 - Lane 33: 3 bullet holes (Photograph 8)
 - Lane 36: 1 bullet hole (Photograph 9)
- The wooden canopy baffle is not designed to adequately stop pistol or rifle calibers (see photographs 10 and 11).
- Erosion at the base of the wooden baffle wall may result in openings and has the potential for bullets to leave the bullet containment area.
- The granular chopped rubber within the baffles is not installed at a thickness sufficient to stop pistol calibers.
- There is potential for bullets to leave the firing range area.

TRS Pistol Range Recommendations:

Bullet containment and secondary baffles should be designed with materials and structures that have the capability to stop pistol rounds from penetration. Materials should be selected based on range use, minimization of ricochet, and consideration of maintenance requirements. Recommended materials include appropriately designed steel (minimum 10 gauge mild steel), with plywood and rubber facing and/or rubber thickness greater than 20 inches. Any designs should take into consideration local soil conditions, wind loads,

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Exhibit A

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and other factors to safely support the baffle structures. Figure 3 is a conceptual drawing showing commonly accepted materials in use at pistol ranges.

CHL RANGE EVALUATION

The CHL Range is a 15 yard firing range used for tactical training.

CHL Range Observations:

- There is a baffle constructed of wood only at the backstop (see photograph 12).

TRS CHL Range Findings:

- The CHL range has evidence of bullets penetrating the plywood wall above the bullet trap at the following locations:
 - Lane 1 (Photograph 13)
 - Lane 7 (Photograph 14)
 - Bullet penetration at the edge of the baffle (Photograph 15)

TRS CHL Range Recommendations:

- The range should be modified and designed based on the use of the range (tactical versus static).
- The range design should include infield baffles at locations to minimize the potential for bullets to leave the range. The baffle designs should consider materials, elevations, and long-term maintenance.
- The range design should evaluate elevations, shooting trajectories, and other conditions to minimize the potential for bullets to leave the range.
- The existing overhead baffle at the firing line should be extended and constructed of materials capable of stopping pistol calibers.
- Baffles should be constructed using materials capable of stopping pistol rounds. **TRS** recommends a steel surface with attached plywood and ballistic rubber panels. **TRS** estimates the cost of materials and installation for these baffles to be approximately \$27 per square foot. The actual square footage would need to be determined during the design layout and engineering. This price does not include engineering and permitting for any structures at the site. Design costs are estimated at \$7,000.00-\$10,000.00.

SUMMARY OF TRS' EVALUATION:

There is clear and obvious evidence of bullets penetrating the existing safety features based on **TRS'** site evaluation. **TRS** recommends that the **Bracken Range and Rifle Club** Pistol and CHL Ranges be closed until properly designed safety structures can be installed.

If you have any additional questions or need further information please contact me at 951-314-3121.

Sincerely,



Kerry O'Neal
TRS RANGE SERVICES, LLC

Attachment 1 – Figures and Photographs



Attachment 1
Figures and Photographs
Bracken Range and Rifle Club Firing Ranges
San Antonio, Texas

TRS RANGE SERVICES, LLC
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Exhibit A



Figure 1 - Range & Surrounding Land uses
Attorney/Client Privileged Information

0 500 1,000 2,000 3,000 4,000 5,000
Feet

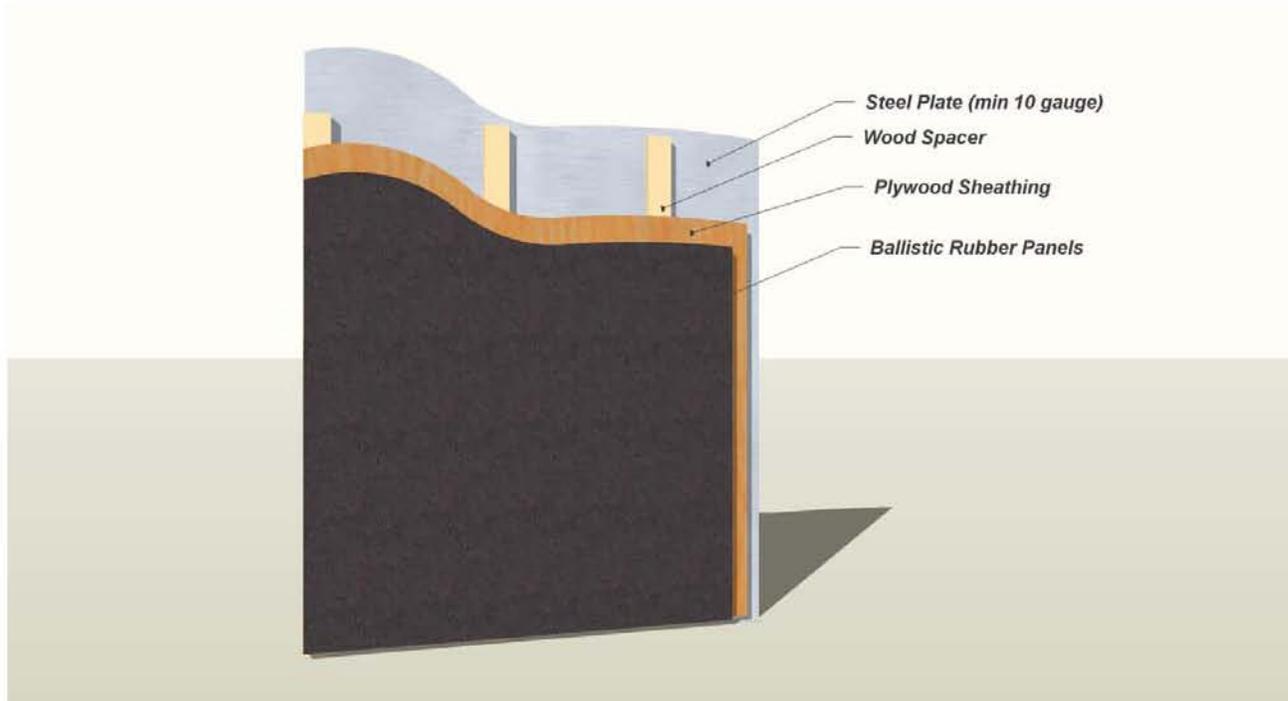


Figure 2 - Range Layout
Attorney/Client Privileged Information

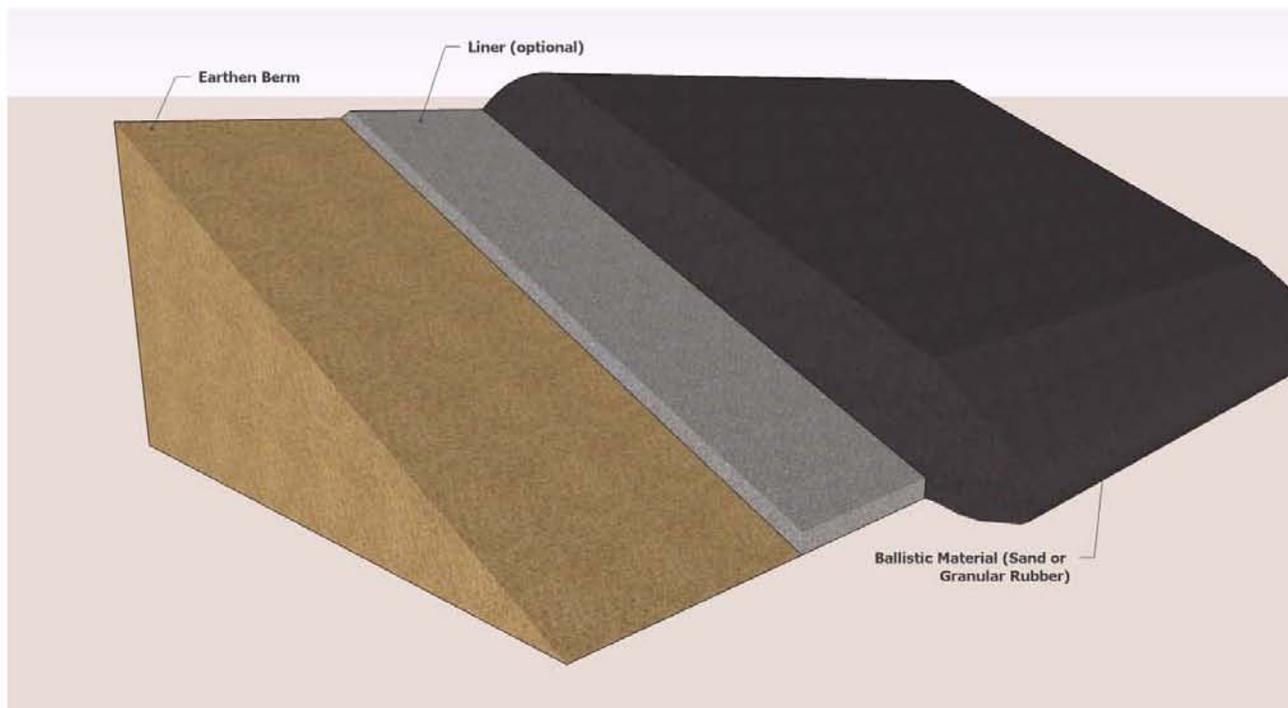
0 50 100 200 300
Feet

Exhibit A

Figure 3. Conceptual drawings of commonly accepted materials for use at pistol ranges. Note that graphics are not for use in construction. TRS can provide engineered drawings upon request.

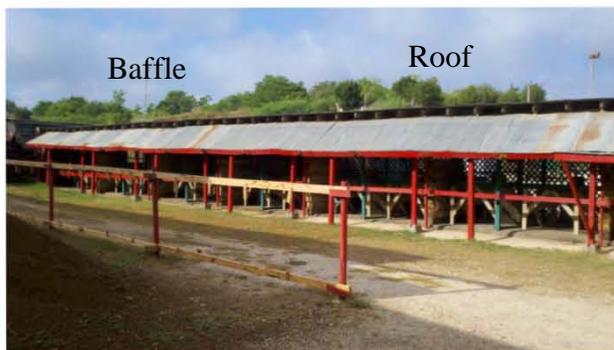


Typical baffle materials and construction



Typical bullet trap materials and construction.

Photograph 1



Photograph 2



Pistol range backstop and wall

Photograph 3



Bullet Holes at shooting position 25

Photograph 4



Bullet holes at shooting position 26

Photograph 5



Bullet holes at shooting position 29

Photograph 6



Bullet holes at shooting position 30

Photograph 7



Bullet holes at shooting position 31

Photograph 8



Bullet holes at shooting position 33

Photograph 9



Bullet holes at shooting position 36

Photograph 10



Bullet holes through canopy at pistol range

Photograph 11



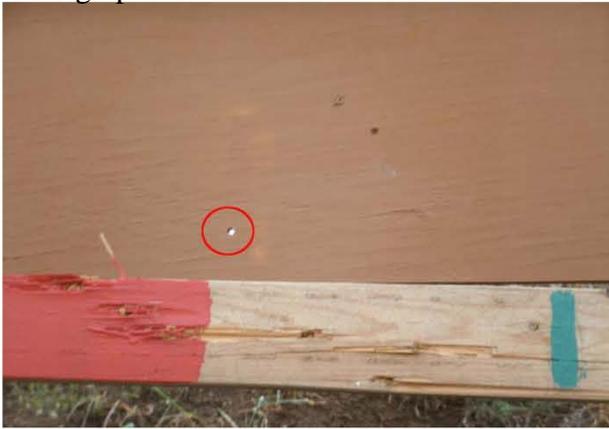
Bullet holes through canopy at pistol range

Photograph 12



Backstop at CHL

Photograph 13



Bullet holes through backstop at CHL

Photograph 14



Bullet holes through backstop at CHL

Photograph 15



Bullet holes through backstop at CHL



November 30, 2011

Partner/Shareholder
Denton, Navarro, Rocha & Bernal
A Professional Corporation
2500 W. William Cannon, Suite 609
Austin, Texas 78745

Delivered via email: george.hyde@rampage-aus.com

Re: Review of Range Improvements
Bracken Range, Texas

Dear: George Hyde:

TRS Range Services (TRS) has reviewed the video of the Bracken Range site improvements. From the video, it appears that layered baffles have been installed across the ranges for the purposes of round containment. TRS has some concerns regarding the baffle construction listed below.

Materials used in building the baffles

1. The baffles appeared to be constructed of 2 layers of $\frac{3}{4}$ " plywood filled with shredded rubber. There is a question as to the density of the rubber used to fill the space between the plywood and whether or not there is enough rubber to stop pistol rounds. A common problem with stacking rubber vertically is that the rubber condenses in the bottom leaving air voids at the top of the baffle. The result is partial containment within the bottom portion of the baffle only. Additional questions regarding construction materials used in the baffles include:
 - What is the thickness of the shredded rubber between the plywood?
 - Is the wood used in the baffles a treated plywood and what thickness of wood was used?
 - What is the life span of the wood under current and long term weather conditions?
 - What are maintenance procedures of the baffles?

Engineering and construction practices

2. The video is not clear as the sizing of the post and the post and baffle members may be undersized. There also does not appear to be bracing or structural supports.

Questions concerning engineering

- Were the posts and baffles designed by an engineer to accommodate wind loads for the area? TRS would be able to provide better evaluation if engineering or architectural drawings of the baffles were provided for review.

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Exhibit B

It is TRS' opinion that a simple shooting test be conducted to prove the ballistic capabilities of the constructed baffles. The test would consist of firing standard FMJ, ball, wad cutters or solid rounds in factory load ammunition at the baffle using 9mm, 40 S&W, 45 ACP and 44 Remington magnum handguns. Handguns would be fired from a distance of approximately 1 yard from the baffle. This test would occur from a ladder, or other heightened platform, to insure a downward angle of fire so as to keep rounds within the range should baffle penetration occur (see attached drawing sheet 1 for an illustration). At this close range it will be easy to identify an exit hole on the back side of the baffle indicating penetration. TRS believes that this is the best possible testing solution to determine if these baffles are adequate for ballistic containment at the range.

TRS also recommends that the club incorporate regular maintenance and inspections of the baffle system to continually evaluate the integrity of the system.

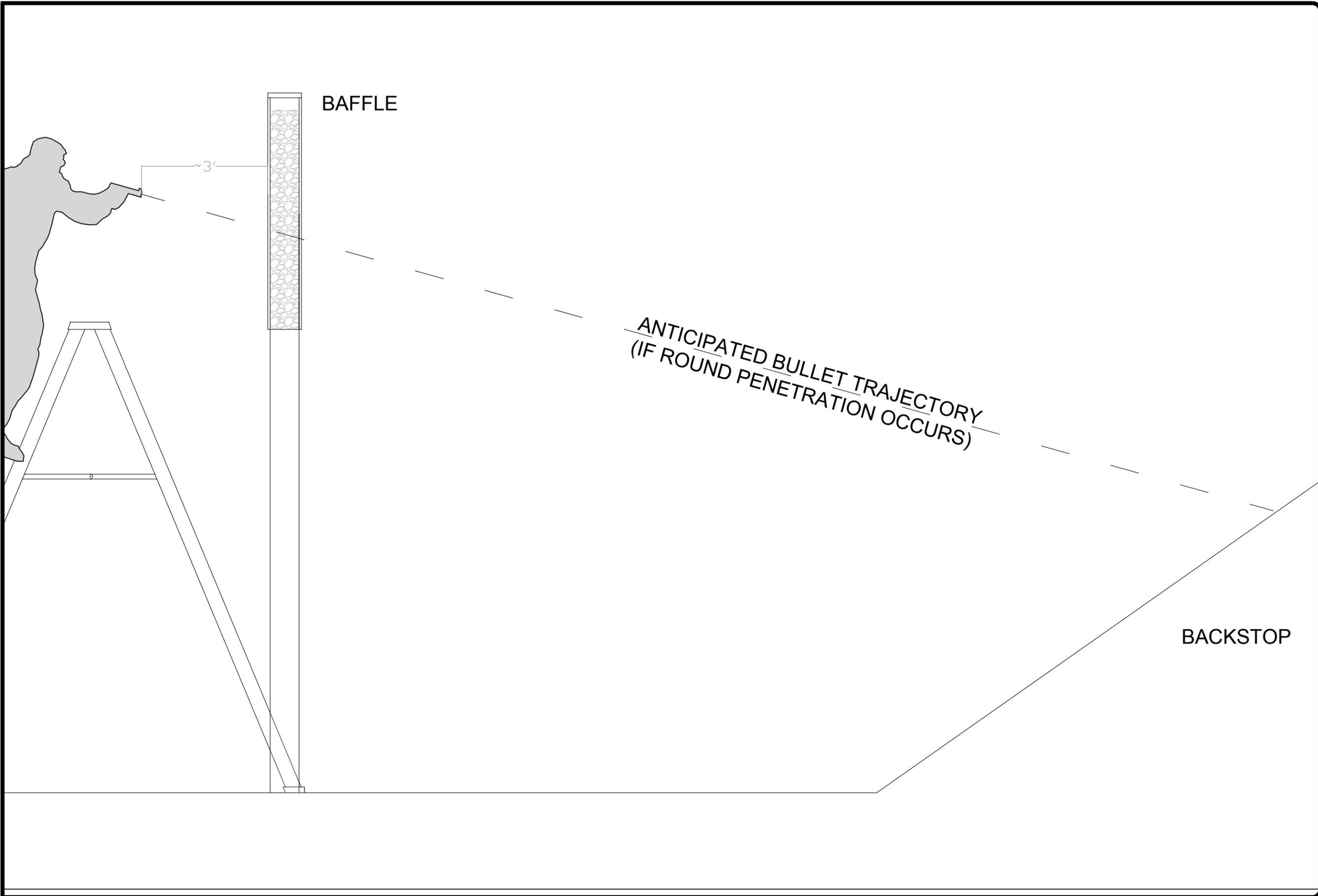
If you have any questions, please contact me at 951-314-3121.

Best Regards,



Kerry O'Neal
TRS RANGE SERVICES

ATTACHMENTS: DRAWING SHEET 1 – BAFFLE TEST DIAGRAM



TRs Range Services
 Certified 8(a) Small Business
 SMALL ARMS RANGES • DESIGN • CONSTRUCTION • SPECIALTY SERVICES

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Baffle Test Diagram

REVISIONS	

PROJECT: _____
 DATE: **11-2011**
 SCALE: _____
 DRAWN BY: _____

SHEET NUMBER
1

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