

COURT OF APPEALS NO. 70553-9-I

IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

RACE TRACK, LLC, a Washington limited liability company; PACIFIC
GRAND PRIX, LLC, a Washington limited liability company; and
PACIFIC RIM PROFORMANCE, INC., d/b/a PROFORMANCE
RACING SCHOOL, a Washington corporation,

Appellants,

v.

KING COUNTY, a political subdivision of Washington State,

Respondent.

KING COUNTY'S RESPONSE
TO APPELLANTS' OPENING BRIEF

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ORIGINAL

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I. INTRODUCTION

The King County hearing examiner (the Examiner) heard nine days of detailed testimony from thirty (30) witnesses, and considered more than 100 exhibits. In a detailed and considered Report and Decision^{1 2} the Examiner upheld Department of Development and Environmental Services³ (DDES) Notice and Order E1000334,⁴ and concluded that appellants Race Track, LLC, Pacific Grand Prix, LLC, and Pacific Rim ProFormance, Inc., (collectively Appellants, individually Race Track, PGP, and ProFormance) violated the Conditional Use Permit⁵ (CUP) that governs activities at the automobile racing facility popularly known as Pacific Raceways. The Snohomish County Superior Court affirmed the Examiner's decision, amending the Examiner's decision on one issue

¹ The Examiner's March 21, 2012 Report and Decision, AR: SC02532-02550, is attached as Appendix A.

² Documents attached as appendices will be referenced in this brief by appendix designation and Superior Court designation, e.g., App. A, SC02532. Documents that are not attached will be referenced initially by title and throughout by Superior Court designation and clerk's pages where applicable, e.g., September 28, 2011 Sparling Noise Study, AR: SC00312. References to Verbatim Transcripts of Proceedings shall be referenced by clerk's page number, and where necessary for clarity witness name e.g., Huling, CP 979:12-13.

³ Now known as the Department of Permitting and Environmental Review (DPER), prior to 1993 known as Building and Land Development (BALD).

⁴ The January 21, 2011 Notice and Order, AR: SC00401-403, is attached as Appendix B.

⁵ Conditional Use Permit #71-0-81-0, AR: SC00050 at 00074. The CUP is attached as Appendix C.

only, and exercised its original jurisdiction to reject Appellants' equitable estoppel arguments.⁶

This Court should affirm the Examiner and the superior court and award King County reasonable attorney fees. CUP conditions require Pacific Raceways to be closed and quiet on Mondays and Tuesdays, and one weekend day of each summer month ("CUP quiet days").⁷ The CUP also requires regulatory review before new track uses may be added.⁸

Extensive evidence established that Racetrack's lessees, including and particularly ProFormance, engaged in extremely loud activities on CUP quiet days that impacted neighbors for miles around. And, as the superior court noted, the record "clearly demonstrated" that PGP's owner engaged in "willful misconduct"⁹ in the kart track permit process, providing a sound basis for King County's decision to enforce CUP conditions that prohibit use of the kart track by vehicles other than karts. This Court should hold that substantial evidence supported the Examiner's decision, and that Appellants cannot invoke equity to bar enforcement of clear CUP conditions, especially where the noise violations severely impact the local citizens that the CUP was intended to protect.

⁶ The May 30, 2013 Opinion in Snohomish County case number 12-2-04325-4, CP 26-43 is attached as Appendix D.

⁷ Pacific Raceways' regular operations are exempt from noise regulations.

⁸ App. C, AR: SC00065, AR: SC00068, AR: SC00070.

⁹ App. D at 9:15-20.

II. FACT STATEMENT

CUP #A-71-0-81 allows automobile racing at Pacific Raceways (formerly known as Seattle International Raceways (SIR)) within reasonable limits.¹⁰ The CUP imposes quiet day restrictions, including Condition 1(a), requiring the track to be closed and quiet on Mondays and Tuesdays, and: Condition 1(b) requiring Pacific Raceways to be closed on one weekend day per month from May through September.¹¹ Condition 1(a) allows limited uses of the track, including “police and emergency vehicle testing and training, or other non-race related testing functions that are quiet, non-impacting.”¹² CUP Rules and Procedures, ¶15 (1)-(4), require that all uses and their locations conform to those mapped by SIR on a required plot plan.¹³ CUP Conditions 15, 16 and 17 specify that changes to CUP conditions or track uses require a CUP amendment.¹⁴

In 2011, after receiving hundreds of complaints about illegal new uses at the newly constructed kart track and noise on CUP quiet days, DDES issued a Notice and Order¹⁵ which the Examiner upheld.¹⁶ The

¹⁰ App. C.

¹¹ App. C, AR: SC00068.

¹² Id.

¹³ App. C, AR: SC00065, see also AR: SC00240.

¹⁴ App. C, AR: SC00070-71.

¹⁵ App. B.

¹⁶ App. A.

Snohomish County Superior Court upheld the Examiner's decision.¹⁷ This Court should likewise uphold King County's Notice and Order, affirm the Superior Court's rulings, and award King County reasonable attorney fees under RCW 4.84.370.

A. The Conditional Use Permit

CUP A-71-0 was issued to SIR in 1972.¹⁸ The current CUP, A-71-0-81, was issued to SIR in 1984 following extensive litigation between the county, track neighbors and SIR.¹⁹ Jim Rockstad was the lessor.²⁰ Fiorito family members owned the real property.²¹

The plot plan and CUP quiet days requirements were incorporated into the CUP pursuant to litigation-related negotiations between SIR management and track neighbors.²² A Fiorito family representative attended the negotiations.²³ During the 1984 litigation process, the hearing official, Irving Berteig reasoned, "The County has not enacted regulations to control noise levels at the track, but has limited the operating hours as necessary to make the track more compatible with the surrounding uses. Compatibility is the basic and ongoing criteria for the

¹⁷ The Superior Court disagreed only with the Examiner's analysis that school uses are not allowed on CUP quiet days, but concurred with the Examiner's ultimate conclusion that ProFormance violated the CUP. See CP 43:7-16.

¹⁸ App. A, AR: SC02534 Findings ¶ 4.

¹⁹ App. A, AR: SC02534-35 Findings ¶ 4-10.

²⁰ Deposition of Jason Fiorito, AR: SC02238:19-SC02239:4.

²¹ AR: SC02150-51, AR: SC02238, CP 340:12 - 23.

²² App. A, AR: SC02535-37 Findings ¶ 10, 12, 13, 18, CP 1713:8-1717:11.

²³ CP 1723:5-15.

granting and continuing exercise of a conditional use permit.”²⁴

In response to a 1991 inquiry from County staff, Bertieg explained the history and intent of the quiet day requirements as follows:

The intent was to provide one day each month on a Saturday or Sunday when the community would be **free from impact by SIR**. That would mean **no scheduled events and especially no noise that would impact the neighborhood. If sound from SIR would add to ambient levels, it would be impacting** and therefore not permitted.²⁵

Over the years King County officials have consistently stated that track activities on CUP quiet days track activities had to be quiet, could not create noise over ambient levels,²⁶ add to ambient noise levels,²⁷ or create impacts outside the track.²⁸

B. 1989 CUP interpretation

In 1989 SIR operator Jim Rockstad wrote King County CUP coordinator Gordon Thomson to ask if a driver’s training school was allowed on weekend quiet days. The 1989 correspondence reflects DDES’s consistent position that activities on quiet days had to be quiet and non-impacting. Rockstad inquired:

²⁴ App. A, AR: SC02534 Findings ¶ 5, quoting April 27, 1983 Decision of Zoning and Subdivision Examiner, Finding No. 19.

²⁵ AR: SC00086-87 (emphasis added.)

²⁶ The October 12, 1989 letter to Jim Rockstad from Gordon Thomson, AR: SC00084-85, is attached as Appendix H.

²⁷ February 19, 1992 memo to Jerry Marbett from Irving Bertieg, AR: SC00090, February 19, 1992 letter from Greg Borba to Jim Rockstad, AR: SC00091-92.

²⁸ February 19, 1992 memo to Jerry Marbett from Irving Bertieg, AR: SC00090, February 19, 1992 letter from Greg Borba to Jim Rockstad, AR: SC00091-92.

1. Can a filming take place at SIR with no public address system, no spectators, cars with mufflers and approximate [sic] 30 people?
2. Can a classroom school take place with 20 students and video-taping vehicles with mufflers in cornering situations?
3. Does "Quiet Day" mean non spectator, non-impacting (muffled vehicles) no noise above ambient and no traffic problems?²⁹

Thomson responded:

1. Yes, filming may take place at SIR with no public address system, no spectators, cars with mufflers, and a limit of approximately 30 people.
2. Yes, a driver's training school for approximately 20 students using muffled cars may take place.....
3. Yes, quiet day mean[s] non-spectator, non-impacting (muffled vehicles), no noise above ambient, and no traffic impacts.³⁰

C. The Facility

The 320 acre Pacific Raceways site is just south of Highway 18, and east of the city of Auburn.³¹ The zoning is rural, with an industrial overlay for the sole purpose of operating the racetrack. The area surrounding the facility is also zoned rural, and is primarily residential in

²⁹ The September 29, 1989 letter to Gordon Thompson from Jim Rockstad, AR: SC00082 is attached as Appendix G.

³⁰ App. H, AR: SC00084.

³¹ Track vicinity aerial showing surrounding tax lots with markups, AR: SC02417, attached as Appendix E and Track vicinity aerial with topography, AR: SC02303, attached as Appendix F.

nature.³² Soos Creek, known for its salmon,³³ runs along the southern property line.³⁴

The racing facilities shown on the plot plan include a long, thin, 2.25 mile-long, “road course,” containing a variety of elevations and curves,³⁵ an existing drag strip running inside the confines of the road course,³⁶ and a motocross area. New additions include the recently constructed kart track, and an ongoing excavation project, where a relocated drag strip is anticipated.³⁷

D. Pacific Rim ProFormance dba Proformance Racing School.

ProFormance runs a variety of programs on the road course, including sport lapping, thrill rides in a taxi, and a competition school, all generally held on Mondays and Tuesdays.³⁸ Speeds reach 110 miles per hour.³⁹

ProFormance opened at SIR in 1994 and 1995.⁴⁰ Owner Don Kitch, Jr., was aware of the CUP conditions on Mondays and Tuesdays,

³² CP 865:17-22.

³³ Gaither, CP 1606:21-1607:3, Boehm, CP 1257:11-12, CP 1259:18-20.

³⁴ See Appendix E and Appendix F, AR: SC02417 and AR: SC02303.

³⁵ App. E, AR: SC02417, Deposition of Don Kitch Jr., CP 528:14-529:23.

³⁶ App. E and F, AR: SC02417 and AR: SC02303.

³⁷ App. E and F, AR: SC02417 and AR: SC02303.

³⁸ CP 446:9-447:10, CP 453:11-455:13, CP 468:1-17, CP 475:18-25, Track layout with markups, AR: SC00488.

³⁹ CP 527:12-25.

⁴⁰ Kitch, AR: SC01710:7-11.

and discussed them with Jim Rockstad.⁴¹ Rockstad provided Kitch with the letter from Gordon Thomson.⁴² Kitch did not consider any other documents or talk to anyone at King County before starting his business.⁴³

Kitch often attended CUP-required meetings with track neighbors.⁴⁴ Frequently “no one was there.”⁴⁵ Kitch never heard noise complaints.⁴⁶ He did recall that in 2010 the annual meeting was attended by 75 to 100 people.⁴⁷

E. Track Management Changes

In 2002, after significant litigation, the Fiorito family⁴⁸ took the track back from Jim Rockstad and changed its name to Pacific Raceways.⁴⁹ Jason Fiorito (Fiorito) became President of Pacific Raceways, Inc.⁵⁰ Before starting at Pacific Raceways, Fiorito managed a sand and gravel pit for Fiorito Brothers, Inc.⁵¹

Fiorito never spoke to Jim Rockstad about allowed activities on Mondays and Tuesdays.⁵² With the exception of the CUP, Fiorito

⁴¹ Kitch, AR: SC01734:5-11.

⁴² CP 416: 1-8.

⁴³ Kitch AR: SC01717: 7-SC01721:22.

⁴⁴ CP 503:23-504:5.

⁴⁵ CP 504:9, CP 507:7.

⁴⁶ CP 506:15, CP 522:1-9, CP 524:1-3.

⁴⁷ Kitch, CP 507:19.

⁴⁸ The Fiorito Brothers' primary business was historically highway construction. CP 340, 35:12-15.

⁴⁹ CP 342:12-15, CP 353:22-354:11.

⁵⁰ CP 339:15-17, CP 861:16.

⁵¹ Fiorito, AR: SC02149: 9-10.

⁵² Fiorito, AR: SC02238:19-2239:18.

reviewed no County documents discussing CUP quiet days until 2010.

He “never saw ambient noise until pretty recently.”⁵³

Fiorito testified that he spoke to County CUP coordinator Matt Caskey just once about allowed uses on Mondays and Tuesdays, and performed no follow up investigation. Fiorito testified that Caskey told him that “street legal, muffled vehicles, had always been allowed.”⁵⁴

Caskey, in contrast, testified that when he was CUP coordinator quiet day activities had to be quiet and nonimpacting, but that upon Fiorito’s urging he began characterizing allowed uses as including “muffled, street-legal vehicles” in the mid 2000s.⁵⁵

Fiorito also testified that he asked Don Kitch about the meaning of the CUP conditions and that “Don told me historically that meant him.”⁵⁶

Kitch testified that he never had a conversation with Fiorito about what the CUP conditions meant, and that Fiorito never asked him about it.⁵⁷

F. Pacific Grand Prix, LLC

In 2003 Racetrack lawyers wrote King County about building a new kart track.⁵⁸ A December 29, 2003 letter explained that “[t]he go kart

⁵³ CP 387:22-388:10, CP 873:4-25, CP 1812:23-24.

⁵⁴ CP 349:17-20.

⁵⁵ Deposition of Matthew Caskey, AR: SC00928:21-929:11, AR: SC00929:12, AR: SC00944:16-17, AR: SC00971:16-972:12, AR: SC00129-130.

⁵⁶ CP 348:14-16.

⁵⁷ CP 509:23-510:6.

⁵⁸ December 29, 2003 letter from Don Marcy to (former Director) Stephanie Warden, SC00097-00099 at Exhibit 2.

track needs to be moved in order for it to be used by shift karts because the frequency of the use will increase and create conflicts with the usage of the road course.”⁵⁹ The letter stated that the intent of the project was to “move the go cart track for use by shift karts.”⁶⁰ Based on statements that Racetrack intended only to relocate an existing go cart use, DDES only required a grading permit and associated State Environmental Policy Act (SEPA) review for the kart track project rather than a CUP amendment.⁶¹

PGP’s consultants handled the permit process.⁶² A SEPA checklist was submitted on June 10, 2005. Paul Zalud, PGP’s President, admitted that he reviewed the SEPA environmental checklist and supporting noise study before submitting them to DDES.⁶³ The SEPA checklist described noise impacts as follows: “the noise created by the karts during racing, practice, and track operations. This noise will occur on an intermittent but permanent basis as they are allowed under the existing CUP.”⁶⁴ It did not reference uses or noise impacts other than karts.⁶⁵

Additional documents PGP and Racetrack submitted to DDES describing the new track’s intended use included:

⁵⁹ *Id.*

⁶⁰ *Id.* at page 1, ¶ 1, 3, and at page 2, ¶ 2.

⁶¹ See Mitigated Determination of Non Significance, AR: SC00135-41, Clearing and Grading Permit, AR: SC00142-52.

⁶² CP 768:10-771:9.

⁶³ CP 821:1-824:6.

⁶⁴ Exhibit 7 to Deposition of Paul Zalud, AR: SC02064-2082 at page 9.

⁶⁵ CP 824:16-25, CP 826:21-827:22.

- 3/17/04 Land Use Pre-application Meeting Request Form: “Pacific Grand Prix LLC will lease land from Pacific Raceways and operate a cart racing facility.”⁶⁶
- 1/21/05 letter from Racetrack attorney Don Marcy, “shift kart use.”⁶⁷
- 6/18/05 Track Operations Summary: “existing kart events,” “kart rental activity,” “kart owners are allowed to rent the road race track,” “intent of the applicant is to bring karting events back to Pacific Raceways,” “the vendors will sell kart equipment,” “kart racing events will not coincide with major racing events,” “drive a performance kart.”⁶⁸
- 9/12/05 revised Track Operations Summary: “existing kart events,” “kart rental activity,” “kart owners are allowed to rent the road race track,” “intent of the applicant is to bring karting events back to Pacific Raceways,” “the vendors will sell kart equipment,” “kart racing events will not coincide with major racing events,” “drive a performance kart.”⁶⁹
- 9/14/05 Revised Noise Evaluation re “Noise Generated by Karts.”⁷⁰

DDES’ 2005 SEPA Mitigated Determination of Nonsignificance

(MDNS) required kart track operations to comply with CUP A-71-0-81 and prohibited use of karts with two-stroke engines.⁷¹ It was incorporated into the Grading Permit authorizing kart track construction.⁷² The kart

⁶⁶ AR: SC00451-456.

⁶⁷ AR: SC00119-00121.

⁶⁸ AR: SC00123-00125.

⁶⁹ AR: SC00131-00134.

⁷⁰ AR: SC00451-00456.

⁷¹ AR: SC00140, SC00149.

⁷² AR: SC00135-152.

track opened for business in June of 2009.⁷³ Zalud admitted that he never discussed non-kart uses with DDES staff during track construction.⁷⁴

G. The Notice and Order

After the 2009 and 2010 annual neighborhood meetings DDES received waves of noise complaints from track neighbors.⁷⁵ On January 21, 2011, after receiving hundreds of complaints, DDES issued a Notice and Order.⁷⁶ It alleged that uses on required quiet days were “. . . . race-related, not quiet, and not ‘non-impacting’ in violation of the plain language of CUP conditions 1A and B.” The Notice and Order also alleged that use of the kart track by unapproved vehicles violated condition 15.⁷⁷ Racetrack, ProFormance, and PGP jointly appealed.

H. The Evidence

Track neighbors living all around Pacific Raceways⁷⁸ testified at the appeal hearing about kart track and CUP quiet day noise impacts.^{79 80} Track neighbors consistently described “blatantly loud,”⁸¹ “distracting,”⁸²

⁷³ CP 794:15-16.

⁷⁴ CP 792:18-25.

⁷⁵ CP 1491:18-23, CP 1651:3-5, CP 1664:3-1666:1, CP 1667:12-1668:23, CP 1669:19-1670:4, Deposition of Randy Sandin, AR: SC01232.

⁷⁶ App. B, AR: SC01454:19-55:7.

⁷⁷ Appellant PGP conceded the quiet days violation, and Appellant Race Track conceded a third violation alleging operating past required closing times.

⁷⁸ App. D, AR: SC02417.

⁷⁹ Williams, CP 1062:16-24.

⁸⁰ Larry Worden, CP 1000:5-1001:2, Huling, CP 1093:2-10943:2, Boehm, CP 1291:2-6, Guddat, CP 1311:4-24.

⁸¹ Williams, CP 1058:3-10.

⁸² Williams, CP 1044:1-9.

and “intrusive”⁸³ track noise on CUP quiet days and from non-approved kart track uses. The neighbors testified that the noise “goes on and on,”⁸⁴ is “incessant,”⁸⁵ “constant,”⁸⁶ “continuous,”⁸⁷ goes “around and around” and sounds like it is “circling the house for hours.”⁸⁸ The neighbors described the noise as “high-pitched,”⁸⁹ like a “bumble bee,”⁹⁰ “hornets,”⁹¹ or a “giant bee hive.”⁹² Neighbors heard “engine revving,”⁹³ “backfiring,”⁹⁴ “shifting and downshifting,”⁹⁵ and “accelerating.”⁹⁶ Drifter cars on the kart track in particular generate obnoxious squealing tire noise.⁹⁷

The majority of those who testified described track noise on CUP quiet days as interfering with their ability to hold normal conversations,⁹⁸

⁸³ Williams, CP 1044:1-9, 1105:10-16, Huling, CP 1088:5-9, Guddat, CP 1314:6.

⁸⁴ Huling, CP 1092:24.

⁸⁵ Williams, CP 1044:1-9.

⁸⁶ Boehm, CP 1268:5-1269:3, CP 1271:2-8.

⁸⁷ Guddat, CP 1312:5-10.

⁸⁸ Williams, CP 1044:1-9.

⁸⁹ Huling, CP 1106:1-3, Gaither, CP 1629:24-25, CP 1632:2-4, CP 1642:22-1644:6, Guddat, CP 1312:16-21.

⁹⁰ Williams, CP 1044:1-9.

⁹¹ Boehm, CP 1281:16, 1290:6-7.

⁹² Wells, CP 1536:11-12.

⁹³ Gaither, CP 1630:1-2.

⁹⁴ Clark, CP 1560:10, Gaither, CP 1628:18-1629:12.

⁹⁵ Williams, CP 1044:1-9.

⁹⁶ Williams, CP 1050:2-12, Huling, CP 1092:13-1093:11, Gaither, CP 1612:25-1613:1.

⁹⁷ Neumann, CP 964:5-8, Huling, CP 1106:8-12, Felton, CP 1687:1-12.

⁹⁸ Larry Worden, CP 1036:7-24, Huling, CP 1096:1-11, Boehm, CP 1271:11-16, CP 1277:13-23, CP 1279:3-1280:12, Guddat, CP 131159:4-24, Wells, CP 1534:11-1535:5, Clark, CP 1562:18-1563:16, Gaither, CP 1618:6-8, Felton, CP 1694:1-3, Linda Worden,

both inside and outside of their homes,⁹⁹ even after installing double windows.¹⁰⁰ Many described less tangible impacts, such as the inability to hear children playing,¹⁰¹ or birds singing and Soos Creek,¹⁰² or having to turn up their televisions.¹⁰³ Neighbors testified that more noise reaches their homes now than in the past,¹⁰⁴ due to removal of sound barriers by extensive on-site foresting and gravel mining.¹⁰⁵

Fiorito admitted that track operations have never generated a profit,¹⁰⁶ but mining activities have produced about \$4.5 million in revenue.¹⁰⁷ Absent track construction projects no mining could occur, however, because mining is prohibited in the rural zone.¹⁰⁸

Track neighbors testified to a total of 32 separate days during which they verified that the track was operating in violation of the CUP

CP 1729:18-1730:5, CP 1730:11-1731:5, CP 1731:13-17, CP 1733:10-16, Tetlow, CP 1520:24-1521:2.

⁹⁹ Huling, CP 1090:16-1091:25, Gaither, CP 1605:13-22, Felton, CP 1693:24-25, Boehm, CP 1276:8.

¹⁰⁰ Huling, CP 1089:16-1091:7, Clark, CP 1565:24-1566:1.

¹⁰¹ Wells, CP 1537:17-24.

¹⁰² Huling, CP 1088:12-13, Boehm, CP 1261:1-17, CP 1268:1-3, CP 1280:15-22, Felton, CP 1682:6-9, CP 1693:19-22, Linda Worden, CP 1744:13-18.

¹⁰³ Boehm, CP 1276:10-1277:12, Huling, CP 1096:16-22, Gaither, CP 1616:14-25.

¹⁰⁴ Guddat, CP 1318:10-15.

¹⁰⁵ Larry Worden, CP 1012:1-1016:2, Boehm, CP 1261:3-20, CP 1273:23-1274:6, Wells, CP 1532:11-1533:13, Linda Worden, CP 1706:1-1708:5, CP 1732:13-1733:2, and see Steffel, CP 565:6-14, Jurdy, CP 1397:4-6, CP 1398:10-12, Fiorito, CP 1823:8-1825:6, AR: SC02434.

¹⁰⁶ CP 863:10-21.

¹⁰⁷ CP 864:23-865:4.

¹⁰⁸ CP 863:22-864:13, App. D, AR: SC02417.

quiet days conditions.¹⁰⁹ Appellants' published schedules,¹¹⁰ the Porsche Club on-line schedule,¹¹¹ on-line photographs taken for Proformance,¹¹² the Race Track and ProFormance 2011 Track Use Agreement,¹¹³ and Don Kitch's testimony¹¹⁴ corroborated the source of the noise.¹¹⁵

I. North of Highway 18

Linda and Larry Worden live exactly a mile away from Pacific Raceways, on the north side of Highway 18, next to witness Jeff Guddat.¹¹⁶ Mrs. Worden heard "unbelievable noise coming from Pacific Raceway" in 2010,¹¹⁷ so she went over to see what it was and saw "that it was coming from the kart track."¹¹⁸ Thereafter she frequently went to the track to watch grading activity and to educate herself about the new noise.¹¹⁹ She never reported a violation "without me going over to personally look to see what was making the noise. . ."^{120 121}

¹⁰⁹ See Appendix J for a list of violation dates and track activities.

¹¹⁰ AR: SC00374-96, AR: SC02437-43.

¹¹¹ AR: SC02399-400.

¹¹² AR: SC02421-27.

¹¹³ AR: SC02286-2291.

¹¹⁴ CP 426:14-17, CP 446:12-447:11.

¹¹⁵ In the interests of brevity some individual neighbors' testimony is not discussed here.

¹¹⁶ CP 988:24, CP 991:25-992:9, CP 1705:15, CP 1719:18, CP 1729:11-12, CP 1739:16-22.

¹¹⁷ CP 1724:18-20.

¹¹⁸ CP 1724:23-24.

¹¹⁹ CP 1725:14-16.

¹²⁰ CP 1728:3-10.

¹²¹ Worden retained records of 51 days that she heard activities at Pacific Raceways and visually confirmed the source of the noise. She testified to twenty of them.

Mrs. Worden learned that the kart track was running 2-stroke karts and big motorcycles called Supermoto which sound like big motorcycles “coming through your house.”^{122 123} She also saw drifter cars using the kart track.

She testified: “the drifters are probably, they’re horrible. They also come right through the house. From one end of the house to the other.”¹²⁴ Drifter cars “go out on a kart track, which has very tight corner[s] . . . to see how fast you can slide around each corner. So it’s a lot of, it’s a lot of high engine noise, loud engine noise, plus the tire noise, plus all the squealing tires, and going around the corners.” If a Supermoto or a drifter car event is going on the kart track Mrs. Worden could not have a conversation on her patio and would not choose to be outside.¹²⁵

During a Monday or Tuesday lapping event on the road course she would have to “speak a little louder,” on her back patio.¹²⁶ Inside, the road course noise is audible as much as 50 percent of the time on Mondays and Tuesdays.¹²⁷ When the Porsche Club used the road course on

CP 1749:25-1750:13.

¹²² CP 1726:11-1727:1, CP 1728:17-22.

¹²³ CP 1727:21-22.

¹²⁴ CP 1726:11-1727:1, CP 1728:17-22.

¹²⁵ CP 1729:24-1730:5, AR: SC02431.

¹²⁶ CP 1730:11-1731:5, AR: SC02431, AR: SC02432.

¹²⁷ CP 1721:1-24.

September 3, 2011, a weekend quiet day, it was loud on the property “[a]nywhere. In the house. Outside. Anywhere.”¹²⁸ Mrs. Worden testified that “[w]e had grandchildren and whatever that weekend. And yes, it made a huge difference. In volume of the speech.”¹²⁹

Mr. Larry Worden also described track noise received at the Worden home and noted that track noise is louder than Highway 18.¹³⁰ He testified that the reason it is so loud now “is they took all the trees down. They took the hill down that was there to buffer the sound. So, now the sound goes right through our place.”¹³¹ Mr. Worden testified that a large number of trees were removed from the site, and that previously there was “a 50-foot high hill right here...that blocked the sound” from the track.¹³²

J. South side/Auburn Black Diamond Road

Neighbors living off of Auburn-Black Diamond Road, south of Pacific Raceways,¹³³ described road course noise on CUP quiet days.

1. Jean Williams and Peter Tetlow

Ms. Williams and Mr. Tetlow¹³⁴ live at 14426 SE Auburn-Black Diamond Road.¹³⁵ They are long-time business partners.¹³⁶

¹²⁸ CP 1743:11.

¹²⁹ CP 1743:21-22.

¹³⁰ CP 998:18-25.

¹³¹ CP 1007:4-20.

¹³² CP 1012:13-1015:9.

¹³³ App. E, AR: SC02417.

¹³⁴ Now deceased.

¹³⁵ CP 1514:1-8, CP 1041:6-17, AR: SC002417.

¹³⁶ CP 1046:22-1047:6.

Ms. Williams' office faces east.¹³⁷ She testified:

I hear it on Mondays and Tuesdays when I'm working in my office. My office [h]as a sunroom on the outside between the office sunroom and then the yard and the deck. And it's very intrusive because it is incessant. It's frequent. It goes around and around. And you can hear them shifting and you can hear them down-shifting. Winding out. So, I quite often will turn on a fan or some, just something that mutes it a little bit. Otherwise, it's just like a bumble bee that follows you at a picnic. It's distracting to my research. It's just intrusive.¹³⁸

She hears cars accelerating, decelerating, down shifting, and occasionally backfiring.¹³⁹ Regarding the impact of the noise she testified:

I knew when it was distracting. I knew that it, when it was bothering my concentration. So, yeah. You know. It was impacting my life. To hear the words non-impacting to me, is just fundamentally wrong.¹⁴⁰

Mr. Tetlow's office is on the south side of the house, the opposite side from Ms. Williams'.¹⁴¹ He testified:

We're in between that and the race track. And what happens is it not only fills up the valley with sound, but it reverberates off of the hill. And I get it in stereo from the south side. So, it's a very loud situation where I can't conduct business there as easily as I could in a quieter environment.¹⁴²

¹³⁷ CP 1044:13-17.

¹³⁸ CP 1044:1-9.

¹³⁹ CP 1050:2-12.

¹⁴⁰ CP 1051:14-17.

¹⁴¹ CP 1517:3-8.

¹⁴² CP 1520:3-7.

2. Sandra Gaither

Issues regarding Pacific Raceways are life-long and emotional for Mrs. Gaither.¹⁴³ She would like to see the track removed.¹⁴⁴ She grew up on property her parents, the Lundbergs,¹⁴⁵ bought in 1948.¹⁴⁶ They built their house by hand with fir and cedar from the property.¹⁴⁷ It was a gathering place for friends and family until the track opened in 1960.¹⁴⁸ Mrs. Lundberg lived there until she died in 2011.

The property shares a boundary line with Pacific Raceways.¹⁴⁹ The road course is 300-400 hundred feet from the house.¹⁵⁰ The closest stretch is curvy with an incline.¹⁵¹ Mrs. Gaither visited almost every Monday and Tuesday in recent years.¹⁵² She testified:

Well, generally, for us, we are so straight exposed with that window between the hillsides, it comes up quite quickly at first. And usually, you know, it's the buzz and then it gets louder, and louder and louder. I'm not quite sure where they start with the school. But it certainly gains momentum, and speed and noise as it comes. I think it's turn 7....So, I'm hearing it all the way. But it's getting loud as we're coming into 4,5,(a) and (b), and then somewhere in here is where the, this, the incline begins....Right around corner 6....And then that's when they're gonna be

¹⁴³ CP 1599:4-12.

¹⁴⁴ CP 1599:8-12.

¹⁴⁵ CP 1599:2, CP 1600:21, AR: SC02412-SC02416, AR: SC02301.

¹⁴⁶ CP 1602:17-19.

¹⁴⁷ CP 1603:6-10, CP 1606:21-22.

¹⁴⁸ CP 1603:16-20.

¹⁴⁹ CP 1600:7-8, AR: SC002305-2306.

¹⁵⁰ CP 1601:6-1602:6.

¹⁵¹ CP 1628:4-19.

¹⁵² CP 1608:24-25, CP 1610:4-8.

changing speed, changing gears. That's quite often when we hear the backfires.¹⁵³

Track noise disturbs Mrs. Gaither “[i]f it’s impacting me, if it’s enough to interrupt, to take my attention away from what I’m doing, or from what I’m saying or hearing. If that impact is great enough that I cannot carry on what I was doing in my normal setting, then, yeah.”¹⁵⁴

3. Tracie Felton

Ms. Felton made a variety of complaints to King County about track noise starting in 2010. She occasionally verified the source by visiting the track, but mostly looked online.¹⁵⁵ Ms. Felton heard Monday and Tuesday noise most in the afternoons.¹⁵⁶

4. Leah Boehm

Ms. Boehm lived with the track for years, but became more aware of it in 2010.¹⁵⁷ She described increasing track noise over the years.¹⁵⁸ On Mondays and Tuesdays she would start hearing track noise around 9:00 or 9:30, and the noise “kicked in heavy around 11:30 or so.”¹⁵⁹ Ms. Boehm correlated what she was hearing with particular track activities by looking at the Pacific Raceways website.¹⁶⁰ She testified that “as soon as

¹⁵³ CP 1611:11-17, CP 1612:1-9.

¹⁵⁴ CP 1638:13-23.

¹⁵⁵ CP 1687:9-25.

¹⁵⁶ CP 1693:5-18.

¹⁵⁷ CP 1267:1-8.

¹⁵⁸ CP 1258:4-20.

¹⁵⁹ CP 1286:5-10.

¹⁶⁰ CP 1291:7-19.

they'd start their 11:30 lapping, 11:30 a.m. I heard loud race cars going, and going, and going, and going. So, yeah, I would say, you know, there was a direct correlation.”¹⁶¹

5. John Clark

Mr. Clark is a retired shop teacher. He did automotive work in the summers.¹⁶² He has lived next to Pacific Raceways for 26 years.¹⁶³ His house is about 30 feet below the road course.¹⁶⁴ He testified that weekend quiet days used to be posted but that “I don’t, they don’t post them anymore, I don’t know when they are.”¹⁶⁵ He stated “We used to try to schedule out barbeques and stuff. But we don’t bother anymore.”¹⁶⁶

K. Heather Highlands Neighbors

The Heather Highlands neighborhood is approximately a mile and a half east of Pacific Raceways, on the valley wall.¹⁶⁷

1. Don Huling

Mr. Huling is sensitive to noise. Before retiring he modified jet airplane flaps to meet noise requirements.¹⁶⁸ He testified that there is no

¹⁶¹ CP 1292:11-15.

¹⁶² CP 1546:12-1548:19.

¹⁶³ CP 1551:3.

¹⁶⁴ CP 1552:13-16, CP 1553:13-16.

¹⁶⁵ CP 1566:2-12, CP 1572:11-12.

¹⁶⁶ CP 1566:2-12, CP 1572:11-12.

¹⁶⁷ CP 971:5-6, Huling, CP 1084:20-1085:9, CP 1090:7-15, see also App. E, AR: SC02417.

¹⁶⁸ CP 1086:15-22, CP 1087:2-11.

place in his 2,700 square foot house where he cannot hear track noise on Mondays and Tuesdays:¹⁶⁹

If it's going around the big track, you can hear them go around and there's a pick up in noise as they're accelerating and decelerating when it's not so loud. As they come down the curve through the S-turns, why then you can hear them pretty good then. Even though their exhausts are pointing away from us. And they make the big round house turn at the east end. And you can hear them accelerating all through [there] and then up the straight-of-way. So you get a pattern. I don't know, it probably is a minute and a half, two minutes long, from making a full circuit. And you get this noise pattern that just goes on and on. So you know, you know where it's coming from.¹⁷⁰

With regard to the daily schedule, he testified “[t]ypically, you wouldn't hear much going on, oh about 11:00 or so. And then there seemed to be a lunch break period. And then they, in the afternoons, why it would go from onesie-twosie are [sic] half a dozen or so. So it got louder in the afternoons.”¹⁷¹ Mr. Huling hears individual motors, and can tell about how many cars are on the track.¹⁷² When there are a lot of cars it is a lot louder.¹⁷³

Mr. Huling also described noise from the kart track. He observed that “the tonal quality was different than race cars on the main race track, [sic] The higher pitched, [sic] which would be smaller engines like go-

¹⁶⁹ CP 1091:8-25.

¹⁷⁰ CP 1092:13-1093:1.

¹⁷¹ CP 1094:11-14.

¹⁷² CP 1095:23-25.

¹⁷³ CP 1095:15-19.

karts or motorcycles. And the pattern of noise was different because of the, there's no long straight-of-ways on that track. So you'd hear lots of ups and downs, ups and downs when they were running."¹⁷⁴ Mr. Huling verified what he was hearing through the ProFormance website.¹⁷⁵

2. Nick Wells

The Wells' house is about a tenth of a mile farther from Pacific Raceways than the Hulings'.¹⁷⁶ Mr. Wells has been home during the day since 2005. In 2009, when his wife started working from home on Mondays and Tuesdays¹⁷⁷ he noticed that "[u]sually in the middle of the afternoon from 1:00 or 2:00 on, it sounded as though road racing were going."¹⁷⁸ He and his wife liked to sit outside to eat their lunch, but "if we delayed too long we learned that we couldn't sit on the deck and have lunch because the noise was too much. . . . [Y]ou could have a conversation for short periods of time. But then the noise level would increase and it just, it got to where it was easier to be inside than it was to be outside."¹⁷⁹ The noise pattern continued for most of the afternoon.¹⁸⁰

¹⁷⁴ CP 1104:21-25.

¹⁷⁵ CP 1093:21-23.

¹⁷⁶ CP 1530:11-16.

¹⁷⁷ CP 1533:23-25.

¹⁷⁸ CP 1534:13-24.

¹⁷⁹ CP 1535:2-5.

¹⁸⁰ CP 1535:7-1536:15.

3. Diana Robertson

Mrs. Robertson has lived in Heather Highlands since 2004.¹⁸¹ She used to hang out at Pacific Raceways and has been to the track hundreds of times.¹⁸² ¹⁸³ Mrs. Robertson can every once in a while hear the sound of cars, but it has never been an issue.¹⁸⁴

L. Northside Neighbors

The Appellants presented testimony from neighbors who live to the north of Pacific Raceways.

1. Pamela Neumann

Mrs. Neumann enjoys the sound of the track, and supports the industry.¹⁸⁵ She explained why the noise is less on the north side than what the south side neighbors hear:

It's more of, the sound is more there. We don't get an echo I think, as the people on the south end get it, go through the canyon. When I went to that meeting at Lakeview there was, I think was Wednesday night, and there was grudge races going on. And it seemed that the echo through the canyon was a lot worse in sound than what I heard from when I left home.¹⁸⁶

Mrs. Neumann testified "I think the only thing that irritates me about the track is when they have, it's, I think it's called drifting. And it's

¹⁸¹ CP 974:19-21.

¹⁸² CP 976:5-10.

¹⁸³ CP 976:11-18.

¹⁸⁴ CP 984:25-985:3.

¹⁸⁵ CP 959:8-18.

¹⁸⁶ CP 961:13-24.

the constant squealing of tires. I don't know how they do it. But that's the only sound from the race track that bothers me."¹⁸⁷

2. Jennifer and Kelly Nowland

Mrs. Nowland was literally born in the car as her parents were passing Pacific Raceways on their way to the hospital.¹⁸⁸ She and her family would go to the track when she was a child.¹⁸⁹ Mr. Nowland has formed car clubs, and has rented the track.¹⁹⁰ They hear noise from the track, but it's background noise, they don't pay attention to it.¹⁹¹

M. The Noise Studies

The parties admitted noise studies into evidence. The studies measured track noise on CUP quiet days, in different locations, different times of the year, and during different events. Overall, the studies showed increased ambient noise levels in a variety of locations,¹⁹² many sound events 10 decibels and more over the ambient level,¹⁹³ and impacts caused by tonal quality.¹⁹⁴

¹⁸⁷ CP 964:5-9.

¹⁸⁸ CP 916:17-21.

¹⁸⁹ CP 916:25-917:7.

¹⁹⁰ CP 947:22-949:16.

¹⁹¹ CP 921:14-16, CP 938:23-939:13.

¹⁹² March 29, 2011, JR Engineering Report, AR: SC00292-00309, AR: SC00310-00311, April 7, 2011, JR Engineering Report, AR: SC00312-00340, September 28, 2011, Sparling Report, AR: SC00341-00350.

¹⁹³ AR: SC02405-02407, AR: SC02409-2411, CP 1402:18-1404:8.

¹⁹⁴ October 22, 2010 Sparling Noise study, AR: SC00241-91.

Basil Jurdy, the County's expert, described track noise measured on September 3, 2011, a weekend quiet day:

The measurements that we took, and the measurements that were taken by Mr. Steffel, show peaks of events, or peak of noise levels that represented, that presented a car event going by. When we look at the spacing between these peaks the average time is 1.5 to two minutes. The length of the race track is about 2 and, 2.25 miles. This tells us that the speed of the, the car speed on the race track is about 70 to 90 miles per hour. These are race cars. And they sound completely different than vehicular traffic on streets. Nearby Black Diamond Road has regular cars that are moving at 35 to 40 miles per hour. Occasionally there's somebody breaking the speed limit but it's not regularly every two minutes or minute and a half.¹⁹⁵

N. The Examiner's Conclusions

With regard to CUP quiet days the Examiner concluded:

The training done by ProFormance Racing School has not been "quiet" and "non-impacting" as those words are commonly understood. The noise heard at nearby residential properties has been *substantial*, and the residents on some of those properties have been impacted.¹⁹⁶

With regard to the kart track the Examiner found:

Based upon the documents presented to King County by the [Appellants] preceding and throughout the application process, King County intended, and the applicants either understood or should have understood, that the description of uses as "shift kart events, driver training, and track rental," limited all uses on the track to karts.¹⁹⁷

¹⁹⁵ CP 1391:17-1392:2.

¹⁹⁶ CP 115:20-21.

¹⁹⁷ App. A, CP 112:7-9, AR: SC02540, .

O. The Superior Court Opinion

The superior court affirmed the Hearing Examiner's Decision, amending only one line, and exercised its original jurisdiction to deny Appellants equitable claims.¹⁹⁸

III. ISSUES PRESENTED

- A. Was the Examiner's decision supported by substantial evidence?**
- B. Is CUP Condition 1(a), which states that the track must be closed on Mondays and Tuesdays except for "emergency vehicle testing and training, or other non-race related testing functions that are quiet and non-impacting" clear?**
- C. Do equitable doctrines preclude enforcement of CUP conditions where Appellants' activities cause severe noise impacts to area residents?**
 - 1. Under RCW 7.48.160 may laches or estoppel bar enforcement of CUP conditions?**
 - 2. Is permit interpretation a question of law to which equitable estoppel does not apply?**
 - 3. Should this Court conclude that no Appellant proved the elements of equitable estoppel?**
 - i. Were ProFormance's exceptionally loud, race-related activities reasonably based on any statement by King County?**
 - ii. Did Race Track prove reliance on any statement by the county were its President did not consider the documentary record until 2010 and his testimony regarding conversations with others is disputed?**
 - iii. Did PGP establish reasonable reliance on any statement by King County where its operator**

¹⁹⁸ App. D, CP 43:7-16, and see *James v. County of Kitsap*, 154 Wn.2d 574, 115 P.3d 286 (2005) re superior court exercise of original jurisdiction in LUPA appeals.

never spoke with DDES staff about his intended use of the kart track?

4. Does laches bar King County's timely enforcement of CUP conditions where the violations at issue substantially impact Appellants' neighbors?

D. Should King County be awarded reasonable attorney fees under RCW 4.84.370?

IV. ARGUMENT

Appellants bear the burden to prove error under RCW 36.70C.130. Here, the Examiner and the superior court correctly held that Appellants violated CUP conditions by generating extreme noise on quiet days and by running cars and motorcycles on the kart track. Because the County acted consistently and diligently equity does not bar enforcement. This appeal should be denied.

A. Extensive evidence proved that Appellants generated excessive noise on CUP quiet days.

Substantial evidence is evidence that would persuade a fair-minded person of the truth of the statement asserted.¹⁹⁹ On review the court considers all evidence and reasonable inferences in the light most favorable to the party who prevailed before the highest fact-finding authority.²⁰⁰ Because this Court accepts the fact finder's views regarding

¹⁹⁹ Cingular Wireless, LLC v. Thurston County, 131 Wn.App. 756, 768, 129 P.3d 300 (2006) (quoting Freeburg v. City of Seattle, 71 Wn.App. 367, 371-72, 859 P.2d 610 (1993)).

²⁰⁰ Cingular Wireless, LLC, 131 Wn.App. at 768.

the credibility of witnesses and the weight given to competing inferences,²⁰¹ Appellants' arguments that track neighbors' testimony was biased or otherwise not credible must be rejected.

In this case the Court must consider all the evidence in the light most favorable to King County, as the prevailing party before the Hearing Examiner. Eleven neighbors living a mile or more away from Pacific Raceways testified that they could not hold normal conversations at their homes on CUP quiet days because the track noise was so loud. As previously described herein, track neighbors described distinct noise patterns generated by track activities, and corroborated their observations by either going to the track or looking at on-line event schedules. The record contains specific evidence of loud track activity on at least thirty violation dates.²⁰²

Notice and Order E1000334 alleged that Racetrack and ProFormance were violating CUP conditions by

Use of the primary Race Track for race-related functions on required quiet days in violation of permit conditions 1A and B, including but not limited to operation of ProFormance Racing School and use of the track by private vehicles for "lapping." DDES alleges that Race Track LLC knowingly permits uses on required quiet days which are race-related, are not quiet, and are not non-impacting in

²⁰¹ Freeburg, 71 Wn.App. at 371-72.

²⁰² App. J.

violation of the plain language of the Conditional Use Permit A-71-0-81, 1984 Rules and Procedures.²⁰³

The Examiner concluded that “. . . the training done by ProFormance Racing School has not been “quiet” and “nonimpacting” as those words are commonly understood. The noise heard at nearby residences has been substantial, and the residents on some of those properties have been impacted.”²⁰⁴ The record reflects that the noise is so loud that it can be heard inside the Worden house, a mile north of the track, up to 50% of the time on Mondays and Tuesdays,^{205 206} often interfering with the families’ ability to communicate. On September 3, 2011, a weekend quiet day, track noise was loud on the Worden property “[a]nywhere. In the house. Outside. Anywhere.”²⁰⁷ Inside the Worden house one would “talk a little louder,” and “outside, outside makes a difference than how you, as to the volume of your voice than inside.”²⁰⁸

John Clark, a south side neighbor, testified that he does not bother scheduling barbeques and family events on weekend quiet days anymore because when they did it was not quiet.²⁰⁹ Pete Tetlow testified that if cars

²⁰³ App. B, AR: SC00402.

²⁰⁴ App. A, AR: SC 02542.

²⁰⁵ CP 1719:18-19, CP 1719:15-1720:24.

²⁰⁶ ProFormance is the most common track user on Mondays and Tuesdays.

²⁰⁷ CP 1743:11.

²⁰⁸ CP 1743:12-19.

²⁰⁹ CP 1566:2-12, CP 1572:11-12.

were running on the track on Mondays and Tuesdays it interfered with his ability to conduct business from his home office.²¹⁰

Heather Highlands neighbors testified that on Mondays and Tuesdays track noise is heard throughout their homes, even with noise reducing windows.²¹¹ Residents cannot hold normal conversations in their gardens.²¹² As one resident testified “You could have a conversation for short periods of time. But then the noise would increase and it just, it got to where it was easier to be inside than outside.”²¹³

The Sparling noise study, submitted by DDES, supported neighbors’ descriptions of the noise they heard. The study showed

. . . a dramatic depiction of the noise differential at one nearby residence on Monday, August 15, 2011, between times when noise events were and were not observed emanating from Pacific Raceways. Although the noise level averages, identified as 30 minute Leq, are moved by only 2.9dBA (from 50.5 dBA to 53.4 dBA), the number and amplitude of peak noise events during the raceway activity are changed dramatically, with numerous events during raceways activity that are 10 dBA and more in excess of the 30 minutes Leq without raceways activity.²¹⁴

²¹⁰ CP 1520:3-7.

²¹¹ CP 1089:16-1092:9.

²¹² Huling, CP 1096:7-14, Wells, CP 1534:15-24.

²¹³ CP 1535:2-5.

²¹⁴ App. A at Findings, ¶21, AR: SC02538, and see September 28, 2011 Sparling Noise Study, AR: SC00312-40.

The Sparling report showed that the noise emitted on September 3, 2011, a quiet day when the Porsche club was on the track, was even louder than the August 15, 2011 date.²¹⁵

When the evidence and inferences are considered in the light most favorable to the County it is abundantly clear that track activities on Mondays, Tuesdays, and weekend quiet days have not been quiet and had significant impacts on neighboring residents.

Appellants' argument that track neighbors were unable to testify to specific violations is simply incorrect. In addition to unmistakable track noise patterns overall, the record reflects at least 30 dates in which illegal track activity was confirmed as the source of a noise complaint.²¹⁶ Track noise on CUP quiet days affects speech intelligibility throughout homes more than a mile away from the track.

Appellants' substantial evidence argument borders on frivolity. Considering the record in the whole in the light most favorable to DDES Appellants cannot show error under RCW 36.70C.130(1).

B. Condition 1(a) provides fair notice that loud activities are not allowed on CUP quiet days.

²¹⁵ AR: SC00319 at figure 8.

²¹⁶ App. J.

CUP condition 1(a) is not vague.²¹⁷ It is clear as applied to Appellants here. The track is to be closed on CUP quiet days.²¹⁸ The only exception is for “emergency vehicle testing and training and other non-race related testing functions that are *quiet and non-impacting*.”²¹⁹ The superior court and the Examiner agreed that “Proformance Racing School has not been quiet and non-impacting, as required by the CUP.”²²⁰ This Court should hold that the phrase “quiet and non-impacting” is not subject to varying interpretations.

A land use ordinance that provides fair warning and allows a person of common intelligence to understand the law’s meaning does not violate a party’s constitutional rights.²²¹ Courts do not require unreasonable standards of specificity and judge ordinances as applied.²²² Ordinances are presumed constitutional, and the challenger must prove the ordinance is unconstitutional beyond a reasonable doubt.

Appellants provide no authority to support the application of vagueness doctrine to negotiated operational permit conditions. Instead, permit conditions must 1) not offend the zoning code, 2) not require illegal

²¹⁷ CP 234-237.

²¹⁸ App. C, AR: SC00050-74 at SC00068.

²¹⁹ Id. at AR: SC00068(emphasis added).

²²⁰ App. D at 10:17-18. The superior court disagreed with the Examiner’s conclusion that schools were not allowed, finding that a quiet, non-race related, driver’s training school for new, inexperienced or elderly drivers with reasonable speed limits would be permitted by condition 1(a).

²²¹ Young v. Pierce County, 120 Wn.App. 175, 182, 84 P.3d 927 (2004).

²²² Id. at 182.

conduct, 3) be in the public interest, 4) be reasonably calculated to achieve a legitimate zoning objective and 5) not be unnecessarily burdensome.²²³

Burien Bark Supply v. King County,²²⁴ a zoning case, does not support Appellants' claims.²²⁵ Burien Bark purchased a commercial site after county officials confirmed that their intended bark sorting use was permitted there. Per code, manufacturing and processing were permitted in the general commercial zone "in limited degree"²²⁶

Burien Bark used its property to sort and bag and sell beauty bark.²²⁷ In 1980 and 1981, county inspectors responded to dust and noise complaints from neighbors, but found no zoning violation.²²⁸ In 1983, following additional complaints, the county notified Burien Bark that its entire operation violated area zoning. On appeal the Supreme Court concluded that "manufacturing and processing in limited degree" was unconstitutionally vague.²²⁹

The Supreme Court reasoned

The code does not explain how a procedure is to be deemed "limited." We cannot tell, for example, whether one should consider the number of steps in the process; the percentage of business time devoted to the process; the extent to which

²²³ Woodinville Water Dist. v. King County, 105 Wn.App. 897, 906, 21 P.3d 309, 313 (2001), (citing Gerla v. City of Tacoma, 12 Wn.App. 883, 533 P.2d 416 (1975)).

²²⁴ 106 Wn.2d 868, 725 P.2d 994 (1986).

²²⁵ CP 232.

²²⁶ Id. at 869, citing former KCC 21.30.010 (emphasis added).

²²⁷ Id. at 869.

²²⁸ Id. at 869-70.

²²⁹ Id. at 870.

the process is necessary for the overall business; or the physical size of the process. The code unconstitutionally leaves to the discretion of county officials the substance of determining what activities are prohibited.²³⁰

Here, in contrast, the word “quiet” is in common usage and is commonly understood.

The ordinary meaning of “quiet” is, “still, calm, motionless...not noisy, hushed....” or “making no noise; silent...free of noise; hushed.”²³¹ As applied to Appellants, “quiet and non-impacting” provides fair warning that loud racing schools and track lapping by sport racing enthusiasts, which interfere with conversations in homes and gardens for miles around, violate the condition.

CUP condition 1(a) gives fair warning that the extreme noise generated by Appellants’ activities is not allowed. Error under RCW 36.70C.130(1)(f) must be proved beyond a reasonable doubt. Appellants cannot meet that burden. The Examiner’s decision should be affirmed.

C. Equitable doctrines do not apply to questions of law or diligent exercise of CUP enforcement functions.

This Court should hold that laches and equitable estoppel do not bar DDES’ exercise of its essential governmental function. The Court should find that DDES was diligent and that none of the Appellants’ noisy

²³⁰ *Id.*

²³¹ App. A, Findings ¶ 11(internal citations omitted); AR: SC02535.

CUP violations were based on statements by county staff. The Court should also conclude that estoppel does not apply to the interpretation of CUP conditions, because CUP interpretation is a question of law. Finally, the Court should hold that the equities weigh strongly against Race Track, whose ownership apparently desires to eat its cake and have it too.

Having generated \$4.5 million in revenue by removing gravel and timber noise barriers to the detriment of its neighbors and tenants, Race Track now adds insult to injury by claiming that the neighbors are unduly sensitive and biased and that the county effort to enforce their rights under the CUP was “nonsensical.”

Estoppel will not be applied where its application would interfere with the discharge of governmental duties.²³² Because the county acted in its governmental capacity “the evidence must present **unmistakable justification** for imposition of the doctrine.”²³³ Appellants cannot meet their burden.

In Mercer Island vs. Steinman, the Court refused to apply equitable estoppel to Mercer Island’s enforcement of its single-family zoning code.²³⁴ Steinman applied for a building permit for the construction of an addition for use as a “game room,” “hobby area” and “photo dark room.”

²³² City of Mercer Island v. Steinmann, 9 Wn.App. at 481-82, 513 P.2d 80.

²³³ City of Mercer Island v. Steinmann, 9 Wn.App. 479, 482, 513 P.2d 80 (1973)(emphasis added).

²³⁴ See id.

Instead, Steinmann's remodel contained three apartments, two of which he rented out.²³⁵ County official had inspected while the apartments were under construction.

In rejecting Steinmann's estoppel argument the Court reasoned, "a municipality is not precluded from enforcing zoning regulations if its officers have issued building permits allowing construction contrary to such regulations, have given general approval to violations of the regulations, or have remained inactive in the face of such violations."²³⁶ The Court concluded that "[t]he public has an interest in zoning that cannot thus be set at naught. The plaintiff landowner is presumed to have known of the invalidity of the exception and to have acted at his peril."²³⁷

The Supreme Court recently came to a similar conclusion in Lauer v. Pierce County. The Lauer's neighbors, the Garrisons, built a single family residence within a stream buffer.²³⁸ The Garrisons, who failed to identify the stream in their permit application, argued that they had vested rights and that they relied on a Pierce County inspector's approval of the house's footing location.²³⁹

²³⁵ Id. at 481.

²³⁶ Id. (citations omitted, emphasis added.)

²³⁷ City of Mercer Island v. Steinmann 9 Wash.App. at 483, citing V. F. Zahodiakin Eng'r Corp. v. Zoning Bd. of Adjustment of City of Summit, 86 A.2d at 132 (emphasis added).

²³⁸ Lauer v. Pierce County, 173 Wn.2d 242, 267 P.3d 988.

²³⁹ Id. at 250.

The Court noted that it was not clear what county statement the Garrisons were relying on, and that “the alleged statement made by the County is not even included in the record.”²⁴⁰ The Court reasoned that “where the representations allegedly relied upon are matters of law, rather than fact, equitable estoppel will not be applied.”²⁴¹ Because “whether rights pursuant to a land use application vest is a question of law” the Court concluded that equitable estoppel did not apply.

Silverstreak, Inc. v. Department of Labor and Industries cited by Appellants’ is unlike this case.²⁴² Silverstreak does not involve permit enforcement or impacts on citizens. Silverstreak involved wage regulations protecting workers on the SeaTac third runway project.²⁴³ The Silverstreak court noted that “[p]recluding the Department from applying its new policy position...does not impair any legitimate department functions.”²⁴⁴ Here, in contrast, neighbors for miles are impacted by Appellants’ CUP violations. Thus, Silverstreak does not apply.

The facts in this case are like the facts in Steinmann and Lauer. Like a permit vesting determination, interpretation of CUP conditions is a question of law to which equitable estoppel does not apply. Also like the situation in Steinmann and Lauer, PGP operator Zalud failed to provide

²⁴⁰ Id. at 257.

²⁴¹ Id. citing Dep’t of Ecology v. Theodoratus, 135 Wash.2d 582, 599, 957 P.2d 1241 (1998).

²⁴² Appellants’ Opening Brief at 25, citing 159 Wn.2d 868, 154 P.3d 891 (2007).

²⁴³ Id.

²⁴⁴ Id. at 891.

full and accurate information in his permit application. The Court should conclude that the public right to the protections of the CUP conditions prevail, and that Appellants violated the plain language of those conditions at their own risk.

1. Laches and estoppel do not apply to governmental zoning decisions or to public nuisances pursuant to RCW 7.48.190.

Policy concerns precluding waiver of public rights are codified at RCW 7.48.190. That statute states that “[n]o lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.” The county is authorized by statute to adopt ordinances declaring what shall be deemed a nuisance.²⁴⁵ KCC 23.02.030(A)²⁴⁶ provides that “[a]ll civil code violations are hereby determined to be detrimental to the public health, safety and environment and are hereby declared public nuisances.” Violation of a conditional use permit is a civil code violation.²⁴⁷ Violations of a zoning permit are equivalent to violations of the zoning regulation itself.²⁴⁸ Thus, in addition to the common law analysis described in Steinmann, RCW 7.48.190 also precludes application of laches and estoppel.

²⁴⁵ RCW 36.32.120(10).

²⁴⁶ Attached as Appendix I.

²⁴⁷ KCC 21A.02.040(A), 21A.08.020(A), Attached as Appendix I.

²⁴⁸ In re Minor Subdivision Plot Approval #88-340 For Stanley Robinson, 156 Vt. 199, 202, 591 A.2d 61, 62 (1991) (citing Kulak v. Zoning Hearings Bd. of Bristol Township, 128 Pa.Comm. 457, 461-462, 563 A.2d 978, 980 (1989), and In re Meeker, 156 Vt. 182, 588 A.2d 1362, 1367 (1991)).

2. None of the Appellants have established the elements of equitable estoppel.

The doctrine of equitable estoppel applies when there exists 1) an act or admission by a party inconsistent with a later asserted claim; (2) an action by the relying party on the faith of such statement of act; and (3) injury to the relying party would result if the party making the representation were permitted to contract or repudiate the statement or act.²⁴⁹ In addition to the above elements, a party asserting equitable estoppel against the government must also prove that (1) estoppel is necessary to prevent a manifest injustice; and (2) that applying estoppel will not impair governmental functions.²⁵⁰

Regarding CUP quiet day violations, the Court should hold that DDES staff consistently represented that activities on CUP quiet days were to be quiet and non-impacting, that Appellants did not prove any statement to the contrary, or any detrimental reliance thereon, and in light of the clear, negotiated limitations in CUP condition 1(a), that action based on any statement ostensibly allowing loud activities on CUP quiet days would not have been reasonable.

Regarding unpermitted kart track uses, the Court should hold that PGP owner, Paul Zalud, cannot establish any element of equitable

²⁴⁹ Steinmann, 9 Wn.App. at 481 (internal citations omitted).

²⁵⁰ Litz v. Pierce County, 44 Wn.App. 674, 683, 723 P.2d 475 (1986) (citing Shafer v. State, 83 Wn.2d 618, 623, 521 P.2d 736 (1974)).

estoppel. The Court should also hold that Zalud is not entitled to equitable relief because he engaged in willful misconduct in the permit process.²⁵¹

i. ProFormance cannot meet the elements of equitable estoppel.

The DDES Notice and Order alleged

Use of the primary Race Track for race-related functions on required quiet days in violation of permit conditions 1A and B, including but not limited to operation of ProFormance Racing School and use of the track by private vehicles for “lapping.” DDES alleges that Race Track LLC knowingly permits uses on required quiet days which are race-related, are not quiet and are not “non-impacting” in violation of the plain language of Conditional Use Permit A-71-0-81, 1984 Rules and Procedures.²⁵²

ProFormance owner Don Kitch, Jr. was aware of the CUP’s limitations on track uses Mondays and Tuesdays.²⁵³ When deciding whether to operate at SIR Kitch reviewed the 1989 letter to Rockstad from CUP coordinator Gordon Thomson.²⁵⁴

Rockstad’s letter inquired “[c]an a classroom school take place with 20 students and video-taping vehicles with mufflers in cornering situations,” and does “Quiet Day” mean non spectator, nonimpacting (muffled vehicles) no noise above ambient and no traffic problems?²⁵⁵

²⁵¹ App.. D at p. 9:17-18.

²⁵² App. B. AR: SC00402.

²⁵³ CP 415:12-25.

²⁵⁴ CP 416:1-17, 498:25-499:18, September 29, 1989 Letter from Rockstad to Thomson. AR: SC00082-83, App. G, and October 12, 1989 letter from Thomson to Rockstad, AR: SC00084-85, App. H.

²⁵⁵ App. G.

Thomson responded “[y]es, a driver’s training school for approximately 20 students using muffled cars may take place,” and “[y]es, quiet day mean[s] non-spectator, non-impacting (muffled vehicles), no noise above ambient, and no traffic impacts.”²⁵⁶ Kitch testified that he did not consider any other documents or talk to anyone at King County.²⁵⁷

ProFormance runs a variety of programs on Mondays and Tuesdays, including recreational sport lapping, thrill rides in a taxi, and a competition racing school.²⁵⁸ Goal speeds reach 110 miles per hour.²⁵⁹ Multiple track neighbors described extreme noise from his program.²⁶⁰ The Sparling Noise Study illustrated the noise produced by ProFormance on August 15, 2011.²⁶¹

Because the evidence clearly illustrates that ProFormance is not operating a classroom school, that its activities are almost universally race-related, and that ProFormance’s operations generate noise well above ambient, Kitch’s operations cannot have been developed in reasonable reliance on the Thomson letter. King County’s Notice and Order is consistent with that 1989 correspondence. ProFormance cannot meet its

²⁵⁶ App. H.

²⁵⁷ Kitch, AR: SC01717-1723.

²⁵⁸ CP 446:9-447:10, CP 453:11-455:13, CP 468:1-17, CP 475:18-25.

²⁵⁹ CP 527:12-25.

²⁶⁰ Neighbors testifying specifically about activities correlated with ProFormance include, *inter alia*, Jean Williams, CP 1050:2-12, Don Huling, CP 1092:13-1093:1 Nick Wells, CP 1535:7-1536:15, Sandy Gaither, CP 1611:11-17, 1612:1-9.

²⁶¹ AR: SC00318, Figures 6 and 7, Felton CP 1688:1-3, 15-18, CP 1699:1-6.

burden to show an inconsistent statement or action on the faith of such statement. The Examiner's decision was not legally erroneous as to Appellant ProFormance.

ii. Appellant Race Track cannot meet the elements of equitable estoppel.

The Fiorito family²⁶² took Pacific Raceways back from Jim Rockstad in 2002.²⁶³ Incoming President Jason Fiorito²⁶⁴ did not speak to Rockstad about the CUP,²⁶⁵ or investigate the meaning of CUP quiet days until 2010.²⁶⁶ CUP coordinator Matt Caskey repudiated Fiorito's claims about his statements, as did Don Kitch.

Fiorito testified that CUP coordinator Caskey told him in 2001 that "street legal, muffled vehicles, had always been allowed."²⁶⁷ Caskey maintained that CUP quiet days had to be quiet and nonimpacting, testifying that he characterized allowed uses on those days as "muffled, street-legal vehicles" starting in the mid 2000s, upon Fiorito's urging.²⁶⁸ Fiorito also testified that he asked ProFormance owner Don Kitch about the meaning of the CUP terms "non-race related testing functions that are

²⁶² The Fiorito Brothers' primary business was historically highway construction. CP 340:14-15.

²⁶³ CP 414:20-416:15, Fiorito, AR: SC02218:1-3, AR: SC02239:12-18, AR: SC02239.

²⁶⁴ CP 413:16, CP 861:16.

²⁶⁵ Fiorito, AR: SC02221-2228.

²⁶⁶ CP 387:22-388:10, CP 873:4-25, CP 1812:23-24.

²⁶⁷ CP 423:17-20.

²⁶⁸ Caskey, AR: SC00971:21-972:12, AR: SC01000:16, AR: SC00971-2.

quiet and non-impacting” and that “Don told me historically that meant him.”²⁶⁹ Kitch testified that the conversation never happened.²⁷⁰

The superior court found that when Appellants inquired regarding permitted activities on CUP quiet days “King County’s responses consistently reflect the language of the CUP – that any activities had to abide by the ‘quiet, non-impacting’” requirements of the CUP.²⁷¹ This Court should conclude the limited evidence regarding any statements made to Fiorito is a far cry from the clear and convincing evidence required to establish estoppel against the government. Certainly Racetrack cannot prove reasonable reliance on any amorphous statement in the face of the plain language of the CUP and the consistent requirement that quiet day activities had to be just that.

iii. Kart track operator Paul Zalud did not rely on any statement by DDES staff.

The superior court, exercising its original jurisdiction, found that Paul Zalud, operator of PGP, failed to provide information to the County essential to its ability to effectively evaluate the track’s proposed uses, and that his “willful misconduct” is clearly shown by the record.²⁷² The Examiner found “based upon the documents presented to King County by

²⁶⁹ CP 422:14-16.

²⁷⁰ CP 509:23-510:6.

²⁷¹ App. D at 16:3-5.

²⁷² App. D at 9:16-17

the [Appellants] preceding and throughout the application process, King County intended, and the applicants either understood or should have understood, that the description of uses as “shift kart events, driver training, and track rental,” limited all uses on the track to karts.²⁷³

Zalud neither consulted the CUP²⁷⁴ nor spoke to DDES personnel about allowed uses of the kart track.²⁷⁵ Because Zalud cannot establish that he relied on any statement by DDES he cannot meet his burden to prove any element of equitable estoppel. Furthermore, courts do not apply equitable doctrines to those who lack clean hands.²⁷⁶ The superior court’s decision should be upheld as to Appellant PGP.

3. Laches does not apply because DDES acted diligently and because Appellants’ CUP violations impact track neighbors that the CUP was intended to protect.

This Court should conclude that laches does not apply because DDES acted diligently and because Appellants’ CUP violations impact members of the public. Wierck v. District of Columbia Bd. of Zoning Adjustment²⁷⁷ and Hancock v. Hueter²⁷⁸ do not support application of laches against DDES in this case.²⁷⁹

²⁷³ App. A, Findings at ¶¶ 25-27, AR: SC02539-40.

²⁷⁴ Zalud, AR: SC01925:10-15.

²⁷⁵ CP 775:18-25.

²⁷⁶ Lauer v. Pierce County, 173 Wash.2d 242, 267 P.3d 988 (2011).

²⁷⁷ 383 P.2d 7 (1978).

²⁷⁸ 118 Mich.App. 811 (1982).

²⁷⁹ CP 232-233.

Wierck involved an agency that issued a permit for construction of a shed, and then erroneously allowed a residential structure to be built instead.²⁸⁰ In the six-year period between the agency's error and its later order that the structure be demolished, a new owner purchased the property. The new owner relied on rental income from the structure.²⁸¹ Importantly, there was no discussion of impacts beyond the single lot and structure. The Court concluded that the equities strongly favored the homeowner and applied laches to protect the landowner.²⁸²

The Hancock facts are even less similar to this case than the Wierck facts. Hueter owned a three-unit, multi-family structure. The enforcing agency argued that area zoning allowed only two units. The court found that Hueter's three units were a protected legal nonconforming use and that no public nuisance was involved.²⁸³ The Court concluded that laches applied because the enforcing agency had not been diligent and because the zoning map did not clearly establish a violation.²⁸⁴

Here, in contrast, the evidence established that DDES was diligent. The 2011 Notice and Order was issued within two years after neighbors

²⁸⁰ 383 A.2d at 8-9.

²⁸¹ Id. at 10.

²⁸² Id. at 12.

²⁸³ Id. at 592.

²⁸⁴ Id. at 593-94.

began inundating DDES with waves of noise complaints.²⁸⁵ As the superior court concluded: “the factual record established before the Hearing Examiner defeats Petitioners’ argument that there was an undue delay between the County’s knowledge of CUP violations and the issuance of the Notice and Order.”²⁸⁶ Furthermore, the evidence showed that appellant Race Track mined and logged the site, generating at least \$4.5 million in revenue, while exacerbating noise impacts on the neighborhood. Thus, the cited cases do not support the application of laches here.

This Court should hold that laches does not apply. DDES diligently responded to a multitude of complaints made by the very citizens that the CUP conditions were drafted to protect. The superior court’s Opinion was correct on the law and the equities.

D. The County should be awarded its reasonable attorneys fees under RCW 4.84.370 because it prevailed before the Examiner and the Superior Court.

Under RCW 4.84.370 reasonable attorney fees and costs shall be awarded to a substantially prevailing party on appeal if that party also prevailed before both an administrative body and the superior court below. The fee provision applies where the appeal involved a decision to issue,

²⁸⁵ Sandin, AR: SC01232-34.

²⁸⁶ App. D at 17:15-17, CP 24.

condition, or deny a conditional use permit. Because King County prevailed in all prior judicial appeals this Court should award reasonable fees.²⁸⁷

V. CONCLUSION

Extensive evidence established that Appellants' exceptionally loud activities impacted home owners on all sides of Pacific Raceways and directly violated the plain language of CUP A-71-0-81. This Court should uphold the Examiner's well-supported Report and Decision and the superior court's well-reasoned Opinion. Having accepted the benefits of the CUP the law and the equities require Appellants to accept its burdens. Their appeal should be denied.

DATED this 12th day of December, 2013.

DANIEL T. SATTERBERG
King County Prosecuting Attorney

Respectfully submitted,



CRISTY CRAIG, WSBA #27451
Senior Deputy Prosecuting Attorney
King County Prosecuting Attorney Office

²⁸⁷ RCW 4.84.370(b).

APPENDIX A

March 21, 2012

OFFICE OF THE HEARING EXAMINER
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King County Courthouse, Room 1200
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REPORT AND DECISION

SUBJECT: Development and Environmental Services File No. **E1000334**

PROFORMANCE RACING SCHOOL, ET AL
PACIFIC GRAND PRIX LLC and
RACE TRACK LLC
Code Enforcement Appeals

Location: 31001 44th Avenue SE

Appellants: Race Track LLC, Performance Racing School and
Pacific Grand Prix LLC
represented by Steven VanDerhoef and Charles E. Newton
524 Second Avenue Suite 500
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516 Third Avenue W400
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny the appeals
Department's Final Recommendation:	Deny the appeals
Examiner's Decision:	Deny the appeals, with modification to Notice and Order of King County Code Violation

EXAMINER PROCEEDINGS

Hearing Opened:	January 9, 2012
Hearing Closed:	February 8, 2012

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

ISSUES AND TOPICS ADDRESSED: Conditional Use Permit interpretation, uses authorized and permit conditions

SUMMARY: Appellants' appeals of Notice of King County Code Violations are denied, subject to modification of Notice of King County Code Violation. Claims of equitable estoppel are not acted upon by hearing examiner.

FINDINGS, CONCLUSIONS AND DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On January 21, 2011, the Department of Development and Environmental Services (DDES) issued a notice of King County code violation, civil penalty order, abatement order, notice of lien, duty to notify ("Notice and Order") to Race Track LLC (Race Track), Pacific Grand Prix LLC (Pacific) and ProFormance Racing School (Proformance). The property subject to the Notice and Order is located at 31001 44th Avenue SE in unincorporated King County. Race Track is the owner of the subject property. Pacific and ProFormance are lessees, tenants and/or operate businesses on the property subject to agreements with Race Track.
2. The Notice and Order alleged:
 - a. Failure to comply with the conditions of King County Conditional Use (CUP) Permit A-71-0-81, April 30, 1984 Rules and Procedures, and violation of Sections 21A.02.040(A), 21A.08.100, and 21A.42.190(A), of King County Code (K.C.C.). Specifically:
 - (1) Use of primary Race Track for race-related functions on required quiet days in violation of permit conditions 1A and B, including but not limited to operation of Proformance Racing School and use of the track by private vehicles for "lapping". DDES alleges that Race Track LLC knowingly permits uses on required quiet days which are race-related, are not quiet, and are not "non-impacting" in violation of the plain language of Conditional Use Permit A-71-0-81, 1984 Rules and Procedures.
 - (2) Use of shift kart track by vehicles other than shift karts, including but not limited to motorcycles and street legal automobiles in violation of permit condition 15 requiring all improvements and uses to be conducted in accordance with the pre-March 31, 1984 plot plan.
 - (3) Exceeding permitted limits regarding hours of operation by periodically operating past required closing times.
3. Timely appeals of the Notice and Order were filed by Race Track, Pacific and ProFormance.

Race Track asserts that King County is changing its interpretation of what activities are allowed on the "quiet days" at the race track, that the alleged violations are vague and ambiguous, and that Race Track has not violated the conditions of the conditional use permit under which Race Track operates. Race Track also asserts that the doctrine of equitable estoppel requires that King County not be allowed to change its interpretation of allowed activities on "quiet days".

Pacific asserts that the conditional use permit does not say anything about what vehicles may operate on the kart track, that approvals granted for construction of the kart track do not preclude

its use by motorcycles and street-legal automobiles, that the appellant has not violated any condition attached to the construction of the kart track and that the pre-March 31, 1984 plot plan is not relevant to the kart track.

ProFormance asserts that King County is changing its interpretation of what activities are allowed on quiet days, that the alleged violations are vague and ambiguous, and that the appellant has not violated the conditions of the conditional use permit. ProFormance also asserts that the doctrine of equitable estoppel requires that King County not be allowed to change its interpretation of allowed activities on quiet days.

4. Conditional Use Permit No. A-71-0 was initially issued June 27, 1972. That CUP was modified by the Zoning Adjustor in 1981. On appeal by Seattle International Raceway (SIR) to the King County Zoning and Subdivision Examiner ("Examiner"), as Case No. A-71-0-81, the Adjustor's decision to approve the permit was affirmed on February 26, 1982. The Examiner's decision to approve, subject to modified conditions, contained the entire set of conditions.¹
5. CUP A-71-0-81 was revoked by the King County Zoning Adjustor on January 25, 1983, pursuant to KCC 21.66.020. The Zoning Adjustor's action was taken under the county's authority to attach and enforce conditions to a conditional use permit, to make the use more compatible with the surrounding uses. The Zoning and Subdivision Examiner found on appeal, "The County has not enacted regulations to control noise levels at the track, but has limited the operating hours as necessary to make the track more compatible with the surrounding uses. Compatibility is the basic and ongoing criteria for the granting and continuing exercise of a conditional use permit." April 27, 1983 Decision of Zoning and Subdivision Examiner, Finding No. 19. The Zoning Adjustor's decision of revocation established conditions under which the permit could be reinstated. The Adjustor's January 25, 1983 decision was modified and affirmed by the Zoning and Subdivision Examiner on April 27, 1983. The Examiner's decision affirmed the Adjustor's decision that revoked the CUP, "with the modifications cited in Conclusion 10". To the extent relevant to the instant appeals, Conclusion 10 stated:
 - "10. Some clarification of the conditions for reinstatement is needed:
 - a. All references to conditions made in the conditions for reinstatement refer to the conditions of approval as stated in the February 26, 1982 Examiner's report.
 - b. Condition 10b should read, "Any reinstated permit shall include the conditions of the February 26, 1982 permit, with the exception of Conditions 4d and e, which are modified by the reinstatement conditions cited above."
6. On April 30, 1984, the Zoning Adjustor issued a report and decision that reinstated the CUP. (Exh. no. 2) That report and decision was accompanied by Rules and Procedures. (Exh. nos. 3 and 6) On February 7, 1986, some changes were made to the Rules and Procedures. (Exh. no. 7) King County and the Appellants have considered the Zoning and Subdivision Examiner's February 26, 1982 "Decision on an Appeal of the Zoning Adjustor's Approval of a Conditional Use Permit" as the CUP applicable in this proceeding. Finding No. 8, *infra*, describes the relevant ancillary documents.
7. The February 26, 1982 decision by the Zoning and Subdivision Examiner ("the CUP"), in its "subject" heading, refers to the permit as being, "for use of the site as a motor vehicle race track".

¹ The Zoning Adjustor's Decision that was the subject of the 1982 appeal to the Examiner was not entered into the hearing record. The Hearing Examiner has taken official notice of the February 26, 1982 and April 27, 1983 decisions of the Zoning and Subdivision Examiner.

Conclusion No. 2 of the same decision refers to, "The adjustor's decision to approve the continued use of the site for racing activities. . ."²

8. The Zoning Adjustor's reinstatement order issued April 30, 1984 refers to conditional use permit no. A-71-0-81, and states, "This conditional use permit is subject to the Examiner's February 26, 1982 decision, the reinstatement conditions set forth in the Zoning Adjustors January 25, 1983 decision, and the accompanying Rules and Procedures". (Exh. no. 2, p. 7)
9. In an introductory statement preceding the Reinstatement Order, the Adjustor refers to the public benefit provided by SIR, including "a direct benefit to public agencies by providing a driving training course" (exh. no. 2, page 2), and "a wide range of racing, recreational interests, and a significant economic base for many businesses which either depend on or are stimulated by the existence of SIR". (Ibid, p. 2) The Reinstatement Order does not itself contain any discussion of the uses permitted by the CUP. (Ibid, pp. 3-7)
10. The February 26, 1982 Examiner decision (the CUP) includes under the heading "Operating Conditions", Condition Number 1, which states:
 - "1. "The hours of track operation shall be limited to 9:00 a.m. to 5:30 p.m. for both testing³ and racing with the following exceptions:
 - a. SIR will be closed to all race testing and racing on Monday and Tuesday year round provided that these days may be used for racing when a rained out event could not be scheduled for the following weekend, or when a holiday which has a major event associated within it falls on a Monday or Tuesday. Race testing is not meant to exclude police and emergency vehicle testing and training, or other non-race related testing functions that are quiet, non-impacting.
 - b. SIR shall provide a minimum of one quiet weekend day (Saturday or Sunday) per month during the May through September racing season. SIR shall notify Building and Land Development in writing of the five designated quiet days prior to May 1st each year. SIR should notify interested community representatives in the interest of community relations.
 - c. . . ."
 - "2. (Omitted)
 - "3. This permit and the conditions imposed herein authorize this use on this property and shall be binding on any future owners or operators. . ." CUP, p. 10.
11. The ordinary meaning of "quiet" is, "still; calm; motionless. . .not noisy; hushed. . ." Webster's New World Dictionary, 2nd Concise Edition 1975, p. 612; or "making no noise; silent. . .free of noise; hushed. . ." American Heritage Dictionary, 2nd College Edition 1985, p. 1016.
12. Page 1 of the April 30, 1984 Rules and Procedures (Exh. no. 3) contains an unnumbered section, "HOURS OF OPERATION", which states that on Monday and Tuesday the track is to be "closed". Immediately following, in Section 1 of the Rules and Procedures, it is stated:

² The first county approval of the site for racing was in 1959, when a King County Use and Occupancy Permit was issued to Pacific Motor Raceways (J.D. Fiorito) to establish a "general public automotive testing and time trial course and road race circuit." (See Exh. no. 33)

³ It is possible that "testing" relates back to the 1959 permit (see Footnote 2). The record, insofar as the examiner ascertained, does not indicate what permitted activities were contemplated as within the meaning of testing.

- “1. Testing and Racing Operation.
- “a. “Closed Mondays and Tuesdays
- “b. “Quiet weekend days
- (1) (1984 quiet weekend days are listed)...
- (2) “SIR shall notify BALD prior to May 1st each year for the next season quiet weekend days. Each year’s schedule shall be posted on the entrance sign so both neighbors and track users can be aware of the scheduled quiet weekend days.”
13. The CUP includes condition no. 17, which provides:
- “No auxiliary use of the race track or facilities beyond motoring, bicycle racing, training and motor-related events shall be allowed. No rock concerts or other non-racing entertainment shall be allowed prior to or after the times of the actual racing events. There shall be no expansion of events without a proper public hearing by the Building and Land Development Division of King County. SIR shall present to Building and Land Development for approval a list of auxiliary uses and events (e.g. rock concerts and swap meets) and demonstrate such events are to ‘fill in’ time between races and are not in fact the primary event”. CUP, p. 14
14. The subject property is currently zoned RA-5 (Residential Rural Area) and I-P (Industrial). A motor race track is not permitted in the RA-5 zone; it is permitted in the I zone, subject to approval of a Special Use Permit. KCC 21A.08.100. Accessory uses, including driving school, motocross and skid pad, are allowed if approved as part of the special use permit. KCC 21A.08.100(24).
15. The CUP also includes condition no. 18, requiring an annual meeting with representatives of SIR, the community, and other agencies, “. . . to review compliance with this permit and any problems of operation. Such a meeting will determine whether the conditions are met and, if they are not being met, will establish procedures to bring about compliance.” CUP, p. 14
16. On October 8, 1985, King County Zoning Adjustor Irving Berteig conducted a public hearing to consider rule changes to address issues raised during the immediately past race season, and to simultaneously satisfy the requirement for the annual meeting to be held between SIR and the community to evaluate the past racing season and effectiveness of the CUP conditions. This public hearing was followed by the Zoning Adjustor’s order dated February 7, 1986 (exh. no. 7). Among the items addressed by that order was a request by SIR to permit some flexibility concerning changing of the quiet weekend days subsequent to those dates being posted for the season. The Zoning Adjustor’s action was to make it clear that no late changes are permitted, stating “Quiet weekend days shall not be changed after May 1st” (exh. no. 7, page 2).
17. On April 17, 1986 Zoning Adjustor Berteig addressed a memorandum to the community, advising that the King County Building and Land Development Division had designated Gordon Thomson as the conditional use permit administrator for SIR (exh. no. 8). On September 29, 1989, SIR wrote a letter to Mr. Thomson, in which Jim Rockstad asked seven questions (exh. no. 9). The questions were preceded by Mr. Rockstad’s general statement,
- “As each year rolls by and Seattle International Raceway moves toward additional road racing events and performance driving schools, it gets harder and harder to both fulfill the needs of the clubs and organizations and meet *the five quiet days as required for weekends* in May through September. (Italics added)

"I need clarification on the 'quiet day' issue of the SIR conditional use permit:"

Among the specific questions asked were:

"Can a classroom school take place with 20 students and videotaping vehicles with mufflers in cornering situations?"

"Does 'quiet day' mean non-spectator, non-impacting (muffled vehicles) no noise above ambient and no traffic problems?"

The answers provided by Mr. Thomson to Mr. Rockstad, contained in a letter dated October 12, 1989 (Exh. no. 10), stated:

"2. Yes, a driver's training school for approximately 20 students using muffled cars may take place.

"6. Yes, quiet day means non-spectator, non-impacting (muffled vehicles), no noise above ambient, and no traffic impacts."

"The permit also allows certain activities (e.g. emergency vehicle testing and training) to occur on Mondays and Tuesdays when the track is closed. . . ." Exh. no. 10.

18. In 1991, Greg Borba had succeeded Gordon Thomson as the SIR conditional use permit administrator. Mr. Borba requested clarification from the Zoning Adjustor of the condition regarding quiet days (operating Condition 1.b), and Mr. Berteig responded on February 19, 1992 (Exh. no. 13). Mr. Berteig stated:

"...The quiet day requirement was originally one of the negotiated compromises that came out of the mediation activities during the late '70s. The intent was to provide one day each month on a Saturday or Sunday when the community would be free from impact by SIR. That would mean no scheduled events and especially no noise that would impact the neighborhood. If sound from SIR would add to the ambient sound level, it would be impacting and therefore not permitted. Note that this is more restrictive than condition 1.a. which limits activity on *Monday and Tuesdays when certain testing and police emergency training is allowed so long as it is quiet and non-impacting.*" (Exh. no. 13, italics added)

19. On February 28, 1992, Mr. Borba wrote to SIR (Jim Rockstad), enclosing Mr. Berteig's February 19, 1992 memorandum on the "quiet day" issue (Exh. no. 13). Mr. Borba stated,

"Although a driving school may have been in session on the scheduled quiet days, there were several sources who stated that it was not quiet at the track, specifically on August 18, 1991 (a Sunday). Part of the problem of enforcing the 'quiet day' condition is that there is no expressly stated definition of 'quiet day' in SIR's conditional use permit. As I expressed in the Newsletter, we do not need to re-invent the wheel with respect to quiet day activities. "The type of activities which have been previously approved by Irv Berteig and/or Gordon Thomson (see Finding No. 17, above). . .are all acceptable 'quiet day' activities provided they are non-spectator events, use non-impacting (muffled) vehicles, create no noise above ambient levels, and create no traffic impacts outside the track. The purpose of my site visits will be to observe and listen to the noise levels created by these activities to assure compliance." (Exh. no. 14)

20. The King County Noise Control Ordinance, ordinance 3139, is codified in Chapters 12.86 through 12.100 of the King County Code. Section 12.94.020 provides that the following sounds are exempt from the Noise Ordinance between 7:00 a.m. and 10:00 p.m. on weekdays, and between 9:00 a.m. and 10:00 p.m. on weekends, unless other hours are specified:

“F. Sounds created by motor vehicle racing events at existing authorized facilities between 9:00 a.m. and (sic), provided that such sounds shall be exempt until 11:00 p.m. on Fridays and Saturdays.” KCC 12.94.020.F.

The same ordinance defines “motor vehicle racing event” as “any competition between motor vehicles and/or off-highway vehicles under the auspices of a sanctioning body recognized by the administrator in accordance with the administrative code.” KCC 12.87.150.

21. The preponderance of evidence at the hearing established that noise from vehicles operating at Pacific Raceways could be heard at nearby residential properties on Mondays and Tuesdays and on designated weekend quiet days. The audibility of this off-site noise was testified to by the expert witnesses called by both King County and the appellants. The experts called by King County and the appellants measured noise levels using different standards, and offered different interpretations of “ambient noise levels”. They also differed in their assessments of the degree of “impact” on persons hearing the noise. However, there was no substantial disagreement that the noise could be heard by surrounding residents.

Exhibit 61, p. 7, Figures 6 and 7, provides a dramatic depiction of the noise differential at one nearby residence on Monday, August 15, 2011, between times when noise events were and were not observed emanating from Pacific Raceways. Although the noise level averages, identified as 30 minutes Leq, are moved by only 2.9 dBA (from 50.5 dBA to 53.4 dBA), the number and amplitude of peak noise events during the raceway activity are changed dramatically, with numerous events during raceway activity that are 10 dBA and more in excess of the 30 minute Leq without raceway activity.

In addition, there was substantial testimony offered by King County that the noise heard on Mondays, Tuesdays and weekend quiet days was disturbing to some community residents. The testimony by other community residents, that they did not hear or were not bothered by noise from the race track, is credible, but does not detract from the fact that other residents did hear the noise and were bothered by it, and that the impact on some was substantial.

22. Condition no. 14 of the current CUP required that the applicant submit a detailed plot plan to indicate the location and purpose of all roadways and tracks on the subject property. A plot plan submitted to King County on December 10, 1974, for permit A-71-0 (Exh. no. 106), showed a “go kart track” at the east end of the subject property. That plot plan was approved by Ed Sand, the Department Director, as an “as-built plan”. The SIR plot plan submitted to King County BALD, as revised September 6, 1984 (Exh. no. 57), showed the same area as a “drag strip pit area”. In 1997-98, go karts at SIR used the main road race course. In 2004, according to appellant Pacific (Exh. no. 113), an existing cart track was located near the eastern boundary of the property, and doubled as parking for larger events. The existing cart track surface was in need of replacement. Race Track and Pacific then proposed to re-locate a cart racing facility to the western portion of the property where a new kart track would replace the existing surface.
23. In 2003, Race Track, together with Pacific, had begun discussions with DDES concerning the process that would be applicable, “to move the go kart track from the east end of the road course track to. . .near its western end.” (Exh. no. 17) Race Track and Pacific stated, “That the go kart track needs to be moved in order for it to be used by shift karts because the frequency of use will increase and create conflicts with usage of the road course”.

24. Race Track and Pacific, through their attorneys, asserted that the request to move the go kart track was not a change in use or modification of the CUP conditions, that would trigger the need for an amended conditional use permit, but was a relocation of a use from one part of the property to another part of the property. Although the appellants' attorney's letter contained the statement, "The use, which is motor vehicle racing, will remain the same," a reading of the entire letter (Exh. no. 17) would lead a reasonable person to understand that the specific type of motor vehicle racing that was under consideration was kart racing. DDES subsequently agreed that the request to relocate the go kart track would be reviewed and acted upon as a grading permit application.
25. As part of the grading permit application review, King County requested and received from Pacific a revised Track Operations Summary ("Summary") dated June 9, 2005. (Exh. no. 21) The introduction to the Summary stated that Pacific proposed to relocate the existing kart track from the east end of the drag strip to a 20 acre site approximately 1,300 feet west. The introduction further stated, "The information presented in this Operations Summary document is preliminary in nature. Actual kart track use and operation will be adjusted to suit actual demand and be in conformance with operations allowed under the existing King County Conditional Use Permit #A-71-0-81." The Summary further stated, ". . . There are currently no formal daily 'arrive and drive' or kart rental activities although kart owners are allowed to rent the road race track and do so irregularly by making reservations. The existing kart track surface is also used as a pit area and parking lot which has over the years damaged the track surface. The damaged track surface has caused fewer event sponsors to utilize the Pacific Raceways facility for karting events. It is the intent of the applicant to bring karting events back to Pacific Raceways by relocating and reconstructing a top notch kart track." (Exh. no. 21, pg. 2). The summary also states, "in addition to daily track rental, a weekday 'Arrive and Drive' program will allow the opportunity for up to 20 people to be trained, provided all required equipment and then drive a performance kart. . .". Ibid pg. 3.
26. A revision, dated September 12, 2005, to the track Operations Summary was filed with DDES on September 14, 2005. In the revision, it was repeated that the track (Pacific Raceways) is closed Monday and Tuesday year around, and it was added that "there are also certain weekends during which there is no motorized vehicle racing allowed. These weekends are determined on a yearly basis." (Exh. no. 24, pg. 2) The revised document then adds:
- "No motorized activities whatsoever shall be allowed on the shift kart track on Monday and Tuesday year around and on Pacific Raceways certain quiet weekend days from May 1 through September 30." (Exh. no. 24, pg. 3)
- The section of the document describing "Daily Track Operations" was also modified, to change "Track rental may occur 7 days per week. . ." to "Track rental will occur mostly during the allowable operating weekdays. . ."
- The same section, in the second paragraph, was modified to change, "The arrive and drive program is proposed to operate on average five days per week. . ." to, "The arrive and drive program is proposed to operate Wednesday, Thursday, Friday. . ."
- The final change was an addition made to the third paragraph of the same section, "In general proposed operations will adhere to the existing Conditional Use Permit until such time as those conditions change." (Exhs. 21 and 24) In all other material respects, the September 12, 2005 Revision retained the language of the June 9, 2005 Track Operations Summary.
27. Other significant documents submitted to King County in 2005 in support of the re-location of the Kart Track stated or implied that use of the relocated track would be exclusively by go karts or shift karts. They were the Environmental Checklist, which stated, "Exhaust and emissions from karts will continue to occur as a result of kart track operations", and "Long term effects will be

the noise created by the karts during racing, practice and track operations. . . “(Exh. no 79, deposition of Paul Zalud, exh. no. 7, pp. 5 and 9) The noise study requested by King County and submitted by the applicants analyzed only use of the new track by karts.

28. When DDES issued its MDNS and Clearing and Grading Permit for relocation of the kart track, it reasonably understood from the application documents and other communications received from the applicants (Race Track and Pacific), and from the applicants’ engineers, that the use proposed for the re-located track would be for go karts, shift karts or performance karts. If the applicants had a different understanding, based upon industry usage of terms or the applicants’ intentions, they failed to communicate that to King County. Consequently, use of the relocated Kart Track by other types of vehicles was not considered by King County when reviewing the proposal that resulted in the approval of Clearing and Grading Permit No. L05CG064.
29. A state environmental policy act (SEPA) mitigated determination of non-significance (MDNS) was issued for Pacific Grand Prix Kart Track on December 14, 2005. (Exh. no. 25) The MDNS was based upon review of site plans, environmental checklist revision dated 6/10/05, track operations summary revised 9/12/05, noise evaluation report, second revision dated September 2005 and other documents. The proposal was described in the MDNS as follows,

“The proposal is to relocate an existing race track, known as a ‘kart’ track.

“Three types of uses are proposed for the relocated track: shift kart race events, driver training and track rental. . . .Driver training consists of an ‘arrive and drive’ program for up to 20 participants and is proposed for operation on Wednesday through Friday. . . Track rental is available to members of the general public who supply their own vehicles, drivers and equipment.” Ibid pg. 2.

“The noise study further indicates that noise impacts to surrounding residential areas will be reduced when the louder two-stroke cycle engine karts are phased out by the end of 2008.” Ibid pg. 3.

Mitigation of the proposal was described in the MDNS as follows:

“1. . .

- a. Mondays and Tuesdays are quiet days. The track shall be closed and no activities are permitted.”
- b. “All shift kart track activities shall be closed on quiet weekend days designated by Pacific Raceways or their successor in interest.”

“2. Use of karts with two-stroke cycle engines on the kart track facility shall be prohibited after January 1, 2009.” Ibid pg. 6.

Based upon the documents presented to King County by the applicants preceding and throughout the application process, King County intended, and the applicants either understood or should have understood, that the description of uses as “shift kart race events, driver training and track rental,” limited all uses on the track to karts.

30. The conditions of the MDNS were carried forward into the grading/clearing permit issued for the kart track relocation on January 11, 2006. (Exh. no. 25, pg. 6) The presence on the site of King County grading inspectors, whose attention was focused on the physical site development, is not substantial evidence that King County knew and understood that non-kart activities had been proposed and approved through the grading permit. To the extent it carries any weight, it is

substantially outweighed by the written information provided to King County by the applicants preceding and during the application review process.

31. Pacific Raceway's officials and King County DDES employees, including management, have agreed over the years that the use of the track on Mondays and Tuesdays for emergency vehicle testing and training, driver training, car clubs, and similar events that operate street legal (licensed) vehicles in a non-racing venue, have generally met CUP requirements for those events on Mondays and Tuesdays and on quiet weekend days to be 'quiet and non-impacting'.
32. With respect to noise control methods, the rules and procedures (exh. no. 3) states that these rules will be supplemented in the future. No supplement to the rules and procedures concerning noise control methods were submitted, reviewed or adopted.
33. Section 17 of the Rules and Procedures states that as of 1984, no auxiliary uses had been requested. An unauthorized use on one of the parking areas for a BMX track was required to be discontinued. Bicycle racing was stated to be allowed, but must be contained within a designated track area. (Exh. no. 3, pg. 8)

CONCLUSIONS:

1. The Hearing Examiner does not have jurisdiction to consider the issue of equitable estoppel.
2. The February 26, 1982 decision by the Zoning and Subdivision Examiner constitutes the CUP currently in effect for the subject property, subject to the modifications subsequently made by the decisions, rules and procedures described in Finding No. 8, above.
3. The 1984 reinstatement of the CUP allows use of the site as a motor vehicle race track, and permits continued use of the site for racing activities.
4. The meaning of Condition No. 17 of the CUP (see Finding No. 13) is not clear. That condition states that, "Motoring, bicycle racing, training and motor related events" are allowed as auxiliary uses. The remaining provisions of Condition No. 17 are limitations upon auxiliary uses. However, the examples of auxiliary uses contained in the limiting provisions are "rock concerts", "non-racing entertainment" and "swap meets". The limitations placed on this second type of auxiliary use (see second and final sentences of Finding No. 13), appear inapplicable to the allowed auxiliary uses of "motoring, bicycle racing, training and motor related events". The most reasonable interpretation of Condition No. 17 of the CUP is that the specifically stated auxiliary uses that are not proscribed were intended to be allowed by the CUP, subject to any other applicable conditions. This is consistent with the interpretation that King County has made of the CUP.
5. All uses permitted by the Conditional Use Permit are subject to the conditions set forth in the Examiner's February 26, 1982 decision, the Zoning Adjustors January 25, 1983 decision (as modified by the April 27, 1983 Zoning Examiner Decision), the Rules and Procedures that accompanied the April 30, 1984 reinstatement decision and the modifications to the Rules and Procedures made on February 7, 1986.
6. Beginning in 1989, King County's interpretation of CUP A-71-0-81 evolved. Activities permitted at Pacific Raceways on Mondays and Tuesdays and weekend quiet days expanded.
7. A zoning permit should be interpreted according to the same rules as are applicable to a statute or ordinance. Although an ordinance that limits the right to use ones property should be interpreted strictly, that rule does not imply that a broad interpretation should be applied to a permit that authorizes a property use. The first rule of interpretation is to ascertain the purpose and intent of

the permit, by giving to its words their plain and ordinary meaning. Interpretations by the Zoning Adjustor and conditional use permit administrators designated by DDES are entitled to some deference, but that deference is limited by the ordinary meaning of the words used in the permit and its conditions.

8. Condition 1.a of this conditional use permit provides that the track will be closed to all race testing and racing on Monday and Tuesday, with limited exceptions. The one exception relevant to the instant case is, "Race testing is not meant to exclude police and emergency vehicle testing and training, or other non-race related testing functions that are quiet, non-impacting." Use of the race track for police and emergency vehicle testing and training is not alleged by King County as a violation of the CUP, nor is use of the track for other non-race related *testing* functions that are quiet and non-impacting.
9. When a conditional use permit is obtained, the permittee may make those uses of the property authorized by the zoning ordinance in the absence of a permit, and in addition those uses authorized by the permit. The conditions of the permit limit the authority to use the property pursuant to the use permit. If the permittee exercises its authority to use the property in accordance with the permit, it must accept the burdens with the benefits of the permit.
10. The provision of Operating Condition No. 1 of the CUP is structured to control the hours of track operation. The general statement of hours was from 9:00 a.m. to 5:30 p.m., "for both testing and racing, with the following exceptions. . ." The first exception is that the track "will be closed to all race testing and racing on Monday and Tuesday year-round. . .", but that, "Race testing is not meant to exclude police and emergency vehicle testing and training, or other non-race related testing functions that are quiet, non-impacting." There is no reasonable way that the foregoing language can be read as authorizing driver training for persons who are not police or emergency vehicle drivers on Mondays and Tuesdays at Pacific Raceways (SIR). If the language of the CUP is ambiguous in other respects, it does not create or harbor any ambiguity on the question in issue. It does not authorize the operation of a driving school on Monday or Tuesday, or on weekend quiet days.

Even if one could interpret the CUP as authorizing a driving school on Mondays and Tuesdays, as King County did for a lengthy period of time, the training done by ProFormance Racing School has not been "quiet" and "non-impacting", as those words are commonly understood. The noise heard at nearby residential properties has been substantial, and the residents on some of those properties have been impacted.

11. A driving school is permitted on the subject property as an auxiliary (accessory) use by Condition No. 17 of the CUP, only on days other than Monday, Tuesday or weekend quiet days.
12. It was inconsistent with the terms of the conditional use permit to advise Seattle International Raceway in 1989 that a driver's training school using muffled cars could take place on weekend quiet days or on Mondays and Tuesdays. It was unclear and misleading to state that a quiet day meant non-spectator, non-impacting (muffled vehicles), no noise above ambient, and no traffic impacts. Only activity authorized by the conditional use permit or by the zoning code were then permissible. Those *authorized* activities were limited by the provisions that the track would be closed to all race testing and racing on Monday and Tuesday, with the exceptions previously noted in condition 1A, and that the track would provide one quiet weekend day per month during the May through September racing season.
13. Similarly, Operating Condition No. 1 of the CUP does not authorize Monday, Tuesday or weekend quiet day use of the track by car clubs or for similar functions, other than "non-race related testing functions." Use of the track by car clubs or others is allowed only on days other than Monday, Tuesday or weekend quiet days.

14. King County's approval of Clearing and Grading Permit No. L05CB064 was understood and intended by King County to authorize relocation of a kart track for uses by karts, and not for other motor vehicles. That understanding and intent was reasonable in light of the information presented to King County by the applicants. No other motor vehicles than karts should be permitted to utilize the relocated kart track.

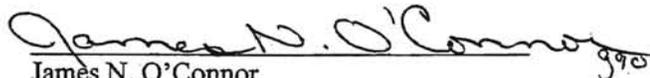
DECISION:

The appeals by Race Track LLC, Pacific Grand Prix LLC, Don Kitch and ProFormance Racing School, of the Notice and Order dated January 21, 2011 are denied, subject to the following modification to the second section 1.B of the Notice and Order, to provide as follows:

"TO BRING THIS PROPERTY INTO COMPLIANCE:

- "1. Comply with all conditions of Permit A-71-9-81 including:
- A. Cease all racing and performance driving school operations and any other race-related functions, including any and all racing, lapping, or similar uses of private vehicles on required quiet days by February 21, 2011. Required quiet days are Mondays, Tuesdays and designated week-end quiet days.
 - B. Cease all non-kart use of the kart track by February 21, 2011.
 - C. Cease all operations outside permitted hours of operation by February 21, 2011.

ORDERED March 21, 2012.


James N. O'Connor
King County Hearing Examiner pro tem

NOTICE OF APPEAL

Pursuant to King County Code Chapter 20.24, the King County Council has directed that the Examiner make the final decision on behalf of the county regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in King County Superior Court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JANUARY 9, 10, 11, 12, 18, 24, 27, 30, 2012 AND FEBRUARY 1, 8, 2012,
PUBLIC HEARING ON DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO.
E1000334.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Cristy Craig, Randy Sandin, Jo Barto for the Department of Development and Environmental Services, Charles E. Newton and Stephen VanDerhoef for the appellants, Jason Fiorito, Don Kitch, Richard Steffel, Paul Zalud, Sgt. Brian Williams, Deputy Amber Kennedy, Leah Boehm, Don Huling, Jean Williams, Peter Tetlow, Nick Wells, Don Clark, Jeffrey Guddat, John Starbard, Basel H. Jurdy, Holly Sawin, Traci Felton, Linda Worden.

The following Exhibits were offered and entered into the record on January 9, 2012:

- Exhibit no. 1 Revocation of CUP (Berteig Depo. Exh. 3)
- Exhibit no. 2 Reinstatement Report and Decision dated April 30, 1984 (Berteig Deposition Exh. 3)
- Exhibit no. 3 Rules and Procedures – CUP A-71-0-81 dated April 30, 1984 (Berteig Deposition Exh. 4)
- Exhibit no. 4 Modified Conditions – Conditional Use Permit (Berteig Deposition Exh. 2)
- Exhibit no. 5 Letter to parties of record from Irving Berteig re: Reinstatement Report and Decision dated May 1, 1984 (Kitch Deposition Exh. 3)
- Exhibit no. 6 “Final Word” compilation of CUP documents dated May 4, 1984 (Berteig Deposition Exh. 5)
- Exhibit no. 7 Zoning Adjustor Report and Decision (Berteig Deposition Exh. 12)
- Exhibit no. 8 Letter to Party of Record from Irving Berteig dated April 17, 1986 (Berteig Deposition Exh. 6)
- Exhibit no. 9 Letter to Gordon Thompson from Jim Rockstad dated September 29, 1989 (Kitch Deposition Exh. 1; Warden Deposition Exh. 7)
- Exhibit no. 10 Letter to Jim Rockstad from Gordon Thomson dated October 12, 1989 (Berteig Deposition Exh. 6)
- Exhibit no. 11 Letter to Greg Borba from Irving Berteig dated October 10, 1991 (Berteig Deposition Exh. 13)
- Exhibit no. 12 Letter to John Clark from Irving Berteig dated February 19, 1992 (Berteig Deposition Exh. 9)
- Exhibit no. 13 Memo to Jerry Marbett from Irving Berteig dated February 19, 1992 (Berteig Deposition Exh. 8)
- Exhibit no. 14 Letter to Jim Rockstad from Greg Borba dated February 28, 1992 (Berteig Deposition Exh. 10)
- Exhibit no. 15 Building and Land Development Division Newsletter Seattle International Raceway Updated dated September 1992 (Berteig Deposition Exh. 11)
- Exhibit no. 16.1 1994 Road Course Schedule (Zalud Deposition Exh. 3)
- Exhibit no. 16.2 1996 Pacific Raceways Schedule (from County’s Public Disclosure Request Response)
- Exhibit no. 17 Letter to Stephanie Warden from Don Marcy (from County’s Public Disclosure Request Response)
- Exhibit no. 18 Lease/Concessions Agreement (Kitch Deposition Exh. 4)
- Exhibit no. 19 Letter to Ramon Locsin from Don Marcy (Fiorito Deposition Exh. 6; Zalud Deposition Exh. 12) dated January 21, 2005
- Exhibit no. 20 Email to Lamar Reed from Matthew Caskey dated April 26, 2005 (Caskey Deposition Exh. 1)
- Exhibit no. 21 Track Operations Summary (Zalud Deposition Exh. 6)
- Exhibit no. 22 Email to Craig Duckering from Matthew Caskey dated June 21, 2005 (Caskey Deposition Exh. 2)
- Exhibit no. 23 Letter to Linda Litwak from Matthew Caskey dated July 27, 2005 (Caskey Deposition Exh. 3; Warden Deposition Exh. 6)
- Exhibit no. 24 Revised Track Operations Summary dated September 12, 2005 (Zalud Deposition Exh. 9)
- Exhibit no. 25 State Environmental Policy Act Mitigated Determination of Nonsignificance dated December 14, 2005 (Zalud Deposition Exh. 11; Warden Deposition Exh. 3)
- Exhibit no. 26 Grading/Clearing Permit dated January 11, 2006 (Warden Deposition Exh. 4)
- Exhibit no. 27 Ground Lease between Race Track LLC as Landlord and Pacific Grand Prix, LLC as Tenant dated February 28, 2006 (Fiorito Deposition Exh. 1)
- Exhibit no. 28 Email to Cathy Ortiz-Olguin from Matthew Caskey dated April 4, 2006 (Caskey Deposition Exh. 4)
- Exhibit no. 29 CUP Compliance Comments by Matt Caskey, PPM II (Warden Deposition Exh. 5)
- Exhibit no. 30 2009, 2010 and 2011 yearly planners (Fiorito Deposition Exh. 4)

- Exhibit no. 31 Draft letter to Jason Fiorito from Randy Sandin dated January 27, 2010 (Sandin Deposition Exh. 3)
- Exhibit no. 32 Letter to Jason Fiorito from Randy Sandin dated February 22, 2010 (Fiorito Deposition Exh. 3; Sandin Deposition Exh. 4)
- Exhibit no. 33 Pacific Raceways Briefing Summary (Sandin Deposition Exh. 7)
- Exhibit no. 34 Pacific Raceways timeline dated June 2010 (Sandin Deposition Exh. 6)
- Exhibit no. 35 Draft Violation Letter to Jason Fiorito from Holly Sawin dated June 30, 2010 (Sandin Deposition Exh. 9)
- Exhibit no. 36 Email to Jim Chan from John Starbard dated July 1, 2010 (Starbard Deposition Exh. 3)
- Exhibit no. 37 Email to Ramon Locsin, Bernard Moore and Kimberly Claussen from Randy Sandin dated July 4, 2010 (Sandin Deposition Exh. 10)
- Exhibit no. 38 Violation letter to Jason Fiorito from Holly Sawin dated July 13, 2010 (Sandin Deposition Exh. 11)
- Exhibit no. 39 Email to John Starbard from Randy Sandin dated July 22, 2010 (Sandin Deposition Exh. 12) "See especially paragraph 4 (Borba's February 28, 1992 letter)"
- Exhibit no. 40 Email to Jim Chan and Sheryl Lux from Holly Sawin dated August 2, 2010 (Starbard Deposition Exh. 4)
- Exhibit no. 41 Email to Lisa Dinsmore from Kimberly Claussen dated August 11, 2010 (Starbard Deposition Exh. 5)
- Exhibit no. 42 Email to Linda Worden from John Starbard dated August 16, 2010 (Starbard Deposition Exh. 6)
- Exhibit no. 43 Email to Jim Chan from Randy Sandin dated September 2, 2010 (Sandin Deposition Exh. 13)
- Exhibit no. 44 Email string between Sheryl Lux and John Starbard dated December 14, 2010 (Starbard Deposition Exh. 8)
- Exhibit no. 45 Email to John Starbard from Sheryl Lux dated December 14, 2010 (Starbard Deposition Exh. 9)
- Exhibit no. 46 Email to Holly Sawin from Sheryl Lux dated December 15, 2010 (Starbard Deposition Exh. 10)
- Exhibit no. 47 2011 Yearly Planner (Zalud Deposition Exh. 15)
- Exhibit no. 48 Email from John Starbard to Linda Worden, King County Council and DDES Staff (Locsin Deposition Exh. 11)
- Exhibit no. 49 Email to John Starbard, Harry Reinert and Ramon Locsin from Randy Sandin dated January 5, 2011 (Sandin Deposition Exh. 14)
- Exhibit no. 50 Email to John Starbard from Randy Sandin dated January 6, 2011 (Sandin Deposition Exh. 15)
- Exhibit no. 51 Email to Randy Sandin from Cristy Craig dated January 10, 2011 (Sandin Deposition Exh. 16)
- Exhibit no. 52 Email to Randy Sandin from Randy Sandin dated January 11, 2011 (Sandin Deposition Exh. 17)
- Exhibit no. 53 2011 Track Use Agreement (Kitch Deposition Exh. 5; Fiorito Deposition Exh. 2)
- Exhibit no. 54 Notice of King County Code Violation: Civil Penalty Order: Abatement Order; Duty to Notify dated January 21, 2011 (Sandin Deposition Exh. 19)
- Exhibit no. 55 Timeline of Key Events – Kart Track Uses
- Exhibit no. 56 Timeline of Key Events – Monday and Tuesday Uses
- Exhibit no. 57 Plot Plan prepared by Meriwether Leachman Associates, Inc. (HE011201)
- Exhibit no. 58 Sparling Noise Study dated October 22, 2010
- Exhibit no. 59 JR Engineering Report dated March 29, 2011
- Exhibit no. 60 JR Engineering report dated April 7, 2011
- Exhibit no. 61 Sparling Noise Study dated September 28, 2011
- Exhibit no. 62 Environ Expert Report Regarding Profornance School Noise on Mondays and Tuesdays dated December 16, 2011

Exhibit no. 63	Environ Rebuttal Report Regarding Proformance School Noise on Mondays and Tuesdays dated January 4, 2012
Exhibit no. 64	Aerial Photo of Gaither property from Google Earth
Exhibit no. 65	Aerial Photo of Felton property from Google Earth
Exhibit no. 66	Aerial Photo of Gaither property and Track from Google Earth
Exhibit no. 67	Sealed
Exhibit no. 68	Email to Jason Fiorito from John Starbard dated October 28, 2011
Exhibit no. 69	Email to Jason Fiorito from John Starbard dated November 4, 2011
Exhibit no. 100	Sparling Rebuttal Report of Environ Memo dated January 6, 2012
Exhibit no. 101	Proformance Internet Documents printed January 4, 2011
Exhibit no. 102	Lundberg photograph taken Spring 2007
Exhibit no. 103	King County DDES Staff Report
103A	Notice and Order issued on January 21, 2011
103B	Notice and Statement of Appeal of ProFormance Racing School received on February 9, 2011
Exhibit no. 103C	Notice and Statement of Appeal of Race Track LLC received February 9, 2011
103D	Notice and Statement of Appeal of Pacific Grand Prix LLC received February 9, 2011
103E	King County Codes cited in Notice and Order
103F	King County Conditional Use Permit (CUP) A-71-0-81 dated April 30, 1984
103G	Pacific Raceways Vicinity: 2010 aerial photograph, King County Geographical Information System (GHIS)
Exhibit no. 110	Memo to Greg Borba from Matt Caskey dated January 9, 2004
Exhibit no. 111	Email to Ramon Locsin from Tim Hatley dated December 15, 2004
Exhibit no. 112	Letter of transmittal to DDES re: Pre-App meeting request dated March 15, 2004
Exhibit no. 113	Pre-app Meeting Request form w/attachments
Exhibit no. 114	Email to Matthew Caskey from Greg Borba dated March 29, 2004
Exhibit no. 115	Don March fax cover sheet
Exhibit no. 116	Notice of Application
Exhibit no. 117	Clearing and Grading Permit Application Worksheet
Exhibit no. 118	Letter to Ramon Locsin from Optimum Environmental dated September 7, 2005 and attached revision (Zalud 8)
Exhibit no. 119	King County Journal Article dated December 26, 2005
Exhibit no. 120	Clearing and Grading Permit with conditions dated January 11, 2006
Exhibit no. 121	Kart track as built

The following Exhibits were offered and entered into the record on January 10, 2012:

Exhibit no. 57A	Exhibit no. 57 enlarged
57B	Exhibit no. 57 enlarged with markups in blue by Don Kitch; markups in brown by Sgt. Williams; markups in green by Deputy Kennedy
Exhibit no. 70A	Excerpt Deposition of Irving Berteig
70B	Original Deposition of Irving Berteig
Exhibit no. 71A	Excerpt Deposition of Greg Borba
71B	Original Deposition of Greg Borba
Exhibit no. 72A	Excerpt Deposition of Stephanie Warden
Exhibit no. 72B	Original Deposition of Stephanie Warden
Exhibit no. 73A	Excerpt Deposition of Gregory Kipp
73B	Original Deposition of Gregory Kipp
Exhibit no. 74A	Excerpt Deposition of Matthew Caskey
74B	Original Deposition of Matthew Caskey
Exhibit no. 75A	Excerpt Deposition of Randy Sandin
75B	Original Deposition of Randy Sandin
Exhibit no. 76A	Excerpt Deposition of John Starbard

76B	Original Deposition of John Starbard
Exhibit no. 77	Original Deposition of Ramon Locsin
Exhibit no. 78	Deposition of Don Kitch, Jr.
Exhibit no. 79	Deposition of Paul Zalud
Exhibit no. 80	Deposition of Jason Fiorito
Exhibit no. 122	Track vicinity aerial showing surrounding tax lots
122B	Smaller version of exh. 122
Exhibit no. 123	Track vicinity aerial with topography
123B	Smaller version of exh. 123

The following Exhibits were offered and entered into the record on January 11, 2012:

Exhibit no. 104	iMap
Exhibit no. 105	2009 aerial photograph

The following Exhibits were offered and entered into the record on January 24, 2012:

Exhibit no. 70C	County excerpts of Deposition of Irving Berteig
Exhibit no. 71C	County excerpts of Deposition of Greg Borba
Exhibit no. 72C	County excerpts of Deposition Stephanie Warden
Exhibit no. 74C	County excerpts of Deposition of Matthew Caskey
Exhibit no. 75C	County excerpts of Deposition of Randy Sandin
Exhibit no. 76C	County excerpts of Deposition of John Starbard
Exhibit no. 86	Email from Leah Boehm to Councilmembers, etc. dated January 21, 2011
Exhibit no. 106	Reduced site plan approved in 1975
Exhibit no. 106A	Actual size site plan
Exhibit no. 107	Decision of Appeal on Conditional Use Permit Application dated August 23, 1985
Exhibit no. 108	Roadracing schools schedule for 1992
Exhibit no. 109	Pacific Raceways facilities guide
Exhibit no. 124	Competition school schedule

The following Exhibits were offered and entered into the record on January 27, 2012:

Exhibit no. 81	Graph of sound level measurement by Environ from northern location on October 24, 2011, 12:15 to 1:15 p.m., zero B/G during events
Exhibit no. 82	Graph of sound level measurement by Environ from northern location on October 24, 2011, 12:15 to 1:15 p.m., average B/G during events
Exhibit no. 83	Graph of Sparling noise studies hourly Leqs and Ldns at Lundberg location #3
Exhibit no. 84	Graph of Sparling noise studies hourly Leqs and Ldns at Gaither SLM location
Exhibit no. 125	Graph of Environ sound level measurements from northern location on October 24, 2011 12:00 p.m. to 1:15 p.m.
Exhibit no. 126	Graph of Environ sound level measurements from northern location on October 24, 2011 12:00 p.m. to 1:15 p.m.: events that exceeded the assumed 50.3 dBA ambient level in the absence of the Pacific Raceways car events
Exhibit no. 127	Graph of Environ sound level measurements from northern location on October 24, 2011 12:00 p.m. to 1:15 p.m.: events that exceeded the assumed 45 dBA ambient level in the absence of the Pacific Raceways car events
Exhibit no. 128	Photocopies of paintings
Exhibit no. 129	Graph of sound level measurements from Gaither residence on August 15, 2011
Exhibit no. 130	Graph of sound level measurements from Gaither residence on August 15, 2011
Exhibit no. 131	Graph of audibility of events relative to ambient

The following Exhibit was offered and entered into the record on January 30, 2012:

Exhibit no. 85 Letter from Sandy Gaither to Cristy Craig dated December 12, 2011

The following Exhibits were offered and entered into the record on February 1, 2012:

Exhibit no. 122A Track vicinity aerial showing surrounding tax lots with markups
Exhibit no. 132 Email to Kimberly Claussen from Holly Sawin dated June 8, 2010
Exhibit no. 133 Performance Racing Schedule
Exhibit no. 134 Listing of track days from Porsche Club of America's web site
Exhibit no. 135 Photographs of various dates/cars as listed on Red Mist Photography for
 Performance Racing School in 2010
Exhibit no. 136 Photograph of the front of Worden home
Exhibit no. 137 Photograph of the Worden back deck
Exhibit no. 138 Photograph of the west side of the Worden home
Exhibit no. 139 Photograph of further west of the Worden home
Exhibit no. 140 Photograph of SE 304th St. from Hwy 118 looking on to Pacific Raceways
 property reflecting grading activities, cart track & creek
Exhibit no. 141 Set of photographs of the Worden property
Exhibit no. 142 Photograph of track
Exhibit no. 143 2010 combined schedule for track
Exhibit no. 144 Email to John Starbard from Linda Worden dated August 2, 2010
Exhibit no. 145 Email to Randy Sandin from Linda Worden dated May 23, 2010
Exhibit no. 146 Email to John Starbard from Linda Worden dated July 20, 2010
Exhibit no. 147 Email to John Starbard from Linda Worden dated September 7, 2010
Exhibit no. 148 Email to John Starbard from Linda Worden dated September 21, 2010

JNOC/gao

March 21, 2012

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
King County Courthouse, Room 1200
516 Third Avenue
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-0198
Email hearingexaminer@kingcounty.gov

CERTIFICATE OF SERVICE

SUBJECT: Development and Environmental Services File No. **E1000334**

**PROFORMANCE RACING SCHOOL, ET AL
PACIFIC GRAND PRIX LLC and
RACE TRACK LLC
Code Enforcement Appeals**

I, Ginger Ohrmundt, certify under penalty of perjury under the laws of the State of Washington that on March 21, 2012, I transmitted the **REPORT AND DECISION** to the following parties of record and interested persons:

Jody Armstrong
33211 134th Avenue SE
Auburn, WA 98092

Joe Berg
15016 SE 306th Street
Kent, WA 98042

Leah Boehn
14414 SE 318th Street
Auburn, WA 98092

Darren Carnell
King County Courthouse Rm W400
516 Third Avenue
Seattle, WA 98104

John Clark
15118 SE Auburn-Blk Diamond Rd.
Auburn, WA 98092

Kimberly Claussen
900 Oakesdale Avenue SW
Renton, WA 98057

John & Marjorie Cooper
17121 SE 331st Street
Auburn, WA 98092

Cristy Craig
Prosecuting Attorney's Office
516 Third Avenue W400
Seattle, WA 98104

Elizabeth Deraitus
900 Oakesdale Avenue SW
Renton, WA 98057

Traci Felton
14526 SE 318th Street
Auburn, WA 98092

Jason Fiorito
31001 144th Avenue SE
Kent, WA 98042

Kathryn Fraser
16925 SE 325th Place
Auburn, WA 98092

Sandra Gaither
18835 SE 214th
Renton, WA 98058

Ann Gilpin
18318 SE 346th Street
Auburn, WA 98092

Billy Heger
15016 SE 306th Street
Kent, WA 98042

Don Huling
17117 SE 329th Street
Auburn, WA 98092

Basel Jurdy
720 Olive Way Suite 1400
Seattle, WA 92101-1853

Don Kitch
PO Box 791
Bellevue, WA 98009

SC 02549

Jarrold Lewis
900 Oakesdale Avenue SW
Renton, WA 98057

Ramon Locsin
900 Oakesdale Avenue SW
Renton, WA 98058

Sheryl Lux
900 Oakesdale Avenue SW
Renton, WA 98057

Donald E. Marcy
524 Second Avenue Suite 500
Seattle, WA 98104

Karen Meador
32404 169th Avenue SE
Auburn, WA 98092

John Mitchell
17031 SE 323rd Place
Auburn, WA 98092

Charles Newton
520 Second Avenue, Suite 500
Seattle, WA 98104

Lorraine Nixon
20606 SE 192nd Street
Renton, WA 98058

Diana Norcross
17213 SE 331st Street
Auburn, WA 98092

Pacific Grand Prix LLC
P.O. Box 409
Mountlake Terrace, WA 98043

Performance Racing School
P.O. Box 791
Bellevue, WA 98009

Race Track LLC
2505 N. Northlake Way
Seattle, WA 98103

Chris Ricketts
900 Oakesdale Avenue SW
Renton, WA 98057

Holly Sawin
900 Oakesdale Avenue SW
Renton, WA 98057

Mary Shawyer
18210 SE 326th Street
Auburn, WA 98092

Jennifer Stacy
Prosecuting Attorney's Office
516 Third Avenue W400
Seattle, WA 98104

John Starbard
900 Oakesdale Avenue SW
Renton, WA 98057

Stephen VanDerhoef
524 Second Avenue Suite 500
Seattle, WA 98104

Nicholas Wells
17404 SE 331st Ct.
Auburn, WA 98092

Toya Williams
900 Oakesdale Avenue SW
Renton, WA 98057

Jean Williams
14426 SE Auburn-Black Diamond
Auburn, WA 98092

Linda & Larry Worden
13445 SE 288th Street
Auburn, WA 98092

Paul Zarus
3612 216th Dr. SW
Brier, WA 98042

- EMAILED to all County staff listed as parties of record/interested persons and primary parties with e-mail addresses on record.
- caused to be placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties of record/interested persons at the addresses indicated on the list attached to the original Certificate of Service.
- caused to be placed with the United States Postal Service, with sufficient postage, as CERTIFIED MAIL with a return receipt requested in an envelope addressed to the primary parties.
- caused to be placed via County INTEROFFICE MAIL to County staff on the list attached to the original Certificate of Service.

DATED March 21, 2012.


Ginger Ohrmundt
Legislative Secretary

APPENDIX B

Code Enforcement Section
900 Oakesdale Avenue Southwest
Renton, WA 98057-5212



20110204001517

DDES
PAGE-001 OF 003
02/04/2011 15:04
KING COUNTY, WA

0.00

V.

Race Track LLC
P.O.Box 31529
Seattle WA 98103

Race Track LLC
c/o Mr. J. Dan Fiorito, Jr.
2505 N. Northlake Way
Seattle WA 98103

Pacific Grand Prix LLC
c/o Mr. Paul Zalud
3612 216th Dr. SW
Brier, WA 98036

Mr. Don Kitch
ProFormance Racing School
6841 Lake Washington Blvd
Newcastle WA 98056-1012

**NOTICE OF KING COUNTY CODE
VIOLATION: CIVIL PENALTY
ORDER: ABATEMENT ORDER: DUTY
TO NOTIFY**

CASE NUMBER: E1000334

ZONING: I-P, RA-5

ADDRESS: 31001 144th AVE SE

ACCOUNT: 1021059002, 1021059003, 1021059008, 1021059019, 1021059029, 1121059035

LEGAL DESCRIPTION:

Parcel: 1021059002

QSTR NE 10-21-05

NW 1/4 OF NE 1/4 LESS POR SOLD N P RY CO 11-22-18

AND

Parcel: 1021059003

QSTR NE 10-21-05

UND 1/2 INT IN FOLG S 1/2 OF NE 1/4 & N 1/2 OF N 1/2 OF NE 1/4 OF SE 1/4

AND

Parcel: 1021059008

QSTR NW 10-21-05

UND 1/2 INT IN FOLG POR OF SE 1/4 OF NW 1/4 LY SELY OF ST HWY POR OF E 1/2 OF SW 1/4 LY NLY OF NP R/W & POR OF W 1/2 OF SW 1/4 LY NLY OF NP R/W & ELY OF LN BEG AT PT ON NLY LN OF R/W WCH IS 932.39 FT N & 1400.31 FT W OF S 1/4 COR OF SEC TH N 36-21-40 W 393.89 FT TH N 28-23-10 W 157.52 FT TH N 32-49-10 E 146.04 FT TH N 01-34-40 E 22.90 FT TH N 00-58-00 E 276 FT TH N 21-48-20 E 127.88 FT TH N 17-49-30 E 142.02 FT TH N 42-38-00 E 215.45 FT TH N 13-36-30 E TO E LN SD SUBD - LESS POR FOR RD/ STORMWATER TREATMENT AREA

AND

Parcel: 1021059019

QSTR SE 10-21-05

NW 1/4 OF SE 1/4 LESS R R R/W LESS POR LY SLY OF R R R/W

AND

Parcel: 1021059029

QSTR SE 10-21-05

S 3/4 OF NE 1/4 OF SE 1/4 LESS N P R/W

Parcel: 1121059035

QSTR SW 11-21-05

POR OF N 1/2 OF SW 1/4 LY NLY OF N P R/W & WLY OF LN BEG ON NLY LN OF SD R/W 50 FT NLY ,MEAS AT R/A, FR PT ON C/L OF MAIN TRACK 2072.5 FT ,MEAS ALG SD C/L, FR W LN OF SEC TH NELY TO NE COR SD SUBD

YOU HAVE BEEN FOUND TO HAVE COMMITTED A CIVIL CODE VIOLATION AND TO BE A PERSON RESPONSIBLE FOR CODE COMPLIANCE, AND YOU ARE HEREBY NOTIFIED AND ORDERED PURSUANT TO KING COUNTY ORDINANCE 14309, AS AMENDED, OF THE FOLLOWING:

SC 00401

CIVIL CODE VIOLATIONS (Including KCC Section 23.02.010B):

The King County Department of Development and Environmental Services has found the above-described location is maintained or used in violation of the King County Code (KCC).

THEREFORE, YOU ARE ORDERED TO CORRECT VIOLATIONS LISTED BELOW IN ACCORDANCE WITH LISTED CODE PROVISIONS AND CODES ADOPTED UNDER THE AUTHORITY OF TITLE 16 OF THE KING COUNTY CODE AS AMENDED BY ORDINANCE 15802 AND INCLUDING BUT NOT LIMITED TO CHAPTER 21A.50 AND TITLE 23 OF THE KING COUNTY CODE; REVISED CODE OF WASHINGTON (RCW) 19.27.020, 19.27.031, 19.27.040, 19.27.074, AND THE WASHINGTON ADMINISTRATIVE CODE (WAC) 51-40-003:

1. Failure to comply with the conditions of King County Conditional Use (CUP) Permit A-71-0-81, April 30, 1984 Rules and Procedures, and violation of Sections 21A.02.040(A), 21A.08.100, and 21A.42.190(A), of King County Code (K.C.C.). Specifically:
 - A. Use of primary Race Track for race-related functions on required quiet days in violation of permit conditions 1A and B, including but not limited to operation of ProFormance Racing School and use of the track by private vehicles for "lapping". DDES alleges that Race Track LLC knowingly permits uses on required quiet days which are race-related, are not quiet, and are not "non-impacting" in violation of the plain language of Conditional Use Permit A-71-0-81, 1984 Rules and Procedures.
 - B. Use of shift kart track by vehicles other than shift karts, including but not limited to motorcycles and street legal automobiles in violation of permit condition 15 requiring all improvements and uses to be conducted in accordance with the pre-March 31, 1984 plot plan.
 - C. Exceeding permitted limits regarding hours of operation by periodically operating past required closing times.

TO BRING THIS PROPERTY INTO COMPLIANCE

1. Comply with all conditions of Permit A-71-0-81 including:
 - A. Cease all racing and performance driving school operations and any other race-related functions, including any and all racing, lapping, or similar uses of private vehicles on required quiet days by **February 21, 2011**.
 - B. Cease all non-shift kart use of the shift kart track by **February 21, 2011**.
 - C. Cease all operation outside permitted hours of operation by **February 21, 2011**.

**** ANY PERMITS REQUIRED TO PERFORM THE CORRECTIVE ACTION MUST BE OBTAINED FROM THE PROPER ISSUING AGENCY. Some permit applications require appointments, which may be several weeks out.**

FAILURE TO COMPLY WITH THIS NOTICE AND ORDER MAY SUBJECT YOU TO ADDITIONAL CIVIL PENALTIES, ABATEMENT AND/OR MISDEMEANOR ACTIONS, AND COULD LEAD TO THE DENIAL OF SUBSEQUENT KING COUNTY PERMIT APPLICATIONS ON THE SUBJECT PROPERTY.

CIVIL PENALTY/NOTICE OF LIEN (Including KCC Section 23.24.070):

You shall correct each violation by the above dates or you will incur daily civil penalties against you according to the following schedule:

Violation 1: \$80.00 per day for the first 30 days, then \$160.00 per day for each day thereafter.

This Department shall periodically bill you for the amount incurred up to and through the date of billing. PERIODIC BILLS ARE DUE AND PAYABLE 30 DAYS FROM RECEIPT. If any assessed penalty, fee or cost is not paid on or before the due date, King County may charge the unpaid amount as a LIEN against the real property of all persons responsible for code compliance and as a JOINT AND SEVERAL PERSONAL OBLIGATION of all persons responsible for code compliance.

CRIMINAL MISDEMEANOR/NON-COMPLIANCE WITH FINAL ORDER (KCC Section 23.02.030):

Any person who willfully or knowingly causes, aids or abets a civil code violation by any act of commission or omission is guilty of a misdemeanor. Upon conviction, the person shall be punished by a fine of not to exceed one thousand dollars and/or imprisonment in the County jail for a term not to exceed 90 days. Each week (7 days) such violation continues shall be considered a separate misdemeanor offense. **Failure to corrected cited violations may lead to denial of subsequent King County permit applications on the subject property.**

NOTIFICATION OF RECORDING (KCC Section 23.24.040):

A copy of this Notice and Order shall be recorded against the property in the King County Office of Records and Elections. King County shall file a Certificate of Compliance when the property is brought into compliance.

ABATEMENT WORK/NOTICE OF LIEN (Including KCC Section 23.40.030 and RCW 35.80.030.1H):

King County may proceed to abate the violation(s) and cause the work to be done, and charge the costs thereof as a lien against the real property of all persons responsible for code compliance and as a joint and several personal obligation of all persons responsible for code compliance.

APPEAL (Including KCC Chapter 23.36):

Any person named in the Notice and Order or having any record or equitable title in the property against which the Notice and Order is recorded may appeal the order to the Hearing Examiner of King County. A notice of appeal must be received in writing by DDES within fourteen (14) days **by February 9, 2011** and a statement of appeal must be received in writing by DDES within twenty-one (21) days **by February 16, 2011** of the date of service of the Notice and Order. A form which includes a combined notice of appeal and a statement of appeal is included in this packet. You are not required to use the enclosed form. If you use the enclosed form, the entire completed form must be received by DDES within fourteen days **February 9, 2011**. The DATE OF SERVICE is three business days after the Notice and Order is mailed. **FAILURE TO APPEAL WITH THE SPECIFIC REASONS WHY THE NOTICE AND ORDER SHOULD BE REVERSED OR MODIFIED MAY RESULT IN A MOTION TO HAVE THE APPEAL DISMISSED BY THE HEARING EXAMINER. FAILURE TO FILE A TIMELY NOTICE AND STATEMENT OF APPEAL WITHIN THE DEADLINES SET FORTH ABOVE RENDERS THE NOTICE AND ORDER A FINAL DETERMINATION THAT THE CONDITIONS DESCRIBED IN THE NOTICE AND ORDER EXISTED AND CONSTITUTED A CIVIL CODE VIOLATION, AND THAT THE NAMED PARTY IS LIABLE AS A PERSON RESPONSIBLE FOR CODE COMPLIANCE.**

DUTY TO NOTIFY (KCC Section 23.24.030N):

The person(s) responsible for code compliance has the DUTY TO NOTIFY the Department of Development and Environmental Services-Land Use Services Division of ANY ACTIONS TAKEN TO ACHIEVE COMPLIANCE WITH THE NOTICE AND ORDER.

DATED THIS JANUARY 21, 2011.



Sheryl Lux
Interim Code Enforcement Supervisor

SL:HS: hs

APPENDIX C

SIR

Handwritten marks and signature: Nancy



King County Executive
Randy Revelle

Department of Planning and Community Development
Holly Miller, Director

MAY 4, 1984

Z O N I N G A D J U S T O R

NOTICE

TO: PARTIES OF RECORD

RE: PUBLIC HEARING - OCTOBER 9, 1984 - SIR A-71-0-84
9:00 a.m., or as soon thereafter as possible,
Suite 402, Council Chambers, King County Courthouse

In accordance with the Reinstatement Order and Rules and Procedures for the Seattle International Raceways (SIR) Revoked Conditional Use Permit, a public hearing will be held on October 9, 1984, at 9:00 a.m., or as soon after as possible, in Council Chambers, in the King County Courthouse, Seattle, Washington. (See Page 6, under 10. Rules and Procedure. (3)), as ordered by the Zoning Adjustor on April 30, 1984.

**FINDS, ZONING ADJUSTORS
FINDINGS AND DECISION
THE FINAL WORD USE TO ASSESS
WHETHER SIR IS COMPLYING WITH
CONDITIONS TO OPERATE/CUP**

*as of April 30 1985
per Inv B.*

EXHIBIT
5
Bertus
10-5-84

SC 00050

Exhibit No. 4
Item No. E1000337
Received 1-9-12
King County Hearing Examiner

HE001422

Appellant's Exhibit 6

SIR Reinstatement, 71-0-81, April 30, 1984

DIVISION OF BUILDING AND LAND DEVELOPMENT
Department of Planning & Community Development
450 King County Administration Building
Seattle, Washington 98104

ZONING ADJUSTOR

April 30, 1984

SUBJECT: Reinstatement Report and Decision
Seattle International Raceways (SIR)
Conditional Use Permit A-71-0-81

Seattle International Raceways (SIR) has requested reinstatement of its revoked conditional use permit, and has submitted the documents and \$100,000 bond required by the Reinstatement Conditions established by the Zoning Adjustor's January 25, 1983 decision (upheld by the Zoning & Subdivision Examiner and Superior Court on appeal). The proposal has been reviewed and detailed findings and conclusions are included in the accompanying Reinstatement Order. In addition, Rules and Procedures required by one of the February 26, 1982 Permit Conditions are attached. Drafts dated March 30, 1984 of both the Reinstatement Order and the Rules and Procedures were reviewed at a public meeting held April 9, 1984. A vertical bar in the left margin identifies text that has been modified since the March 30, 1984 drafts.

In examining the reinstatement request, it is appropriate to review some of the underlying principles:

1. The action resulting from the 1981 public hearing initiated by the Zoning Adjustor under the provisions of Chapter 21.66 KCC is a set of Permit Conditions as modified by the Zoning & Subdivision Examiner on appeal dated February 26, 1982.

2. SIR openly violated those Permit Conditions, and a second public hearing was initiated by the Zoning Adjustor. The Adjustor's January 25, 1983 decision was to revoke the conditional use permit. That decision was upheld by the Zoning & Subdivision Examiner on April 27, 1983, and also upheld by Superior Court. The January 25, 1983 Adjustor decision also provided a means for SIR to request reinstatement, and the action set forth Reinstatement Conditions, modified in part by the Examiner.

3. The local community throughout both public hearings testified that their objective was SIR compliance with the permit conditions - not SIR closure.

4. The Zoning Adjustor is guided by criteria adopted by ordinance, the basic intent of which is to set conditions that will assure compatibility of uses.

5. SIR continues to provide a broad public benefit. It has a direct benefit to public agencies by providing a driving training course. SIR provides a wide range of racing, recreational interests, and a significant economic base for many businesses which either depend on or are stimulated by the existence of SIR.

These many organizations and businesses are relying on SIR to meet its obligations necessary to keep the track operating. SIR has an obligation to its many supporters, organizations, and businesses to manage its affairs responsibly and not continue to jeopardize their interests.

6. The public benefits provided by SIR do not absolve SIR of responsibilities to be a good neighbor in the community and to meet the terms of its Conditional Use Permit.

Clearly, the issues are complex and controversial. The following actions are taken under the premise that SIR's permit has been revoked and will not be permanently reinstated unless and until SIR attains complete compliance with all applicable conditions. ✓ Because some of the conditions imposed on SIR allow SIR a period of time to complete physical improvements, any reinstatement at this time must be provisional until SIR is able to meet the improvement conditions. ✓ If SIR earns permanent reinstatement, it must continue to meet the Permit Conditions as clarified by the Rules and Regulations, and be subject to the normal Zoning Code enforcement provisions.

REINSTATEMENT ORDER
Seattle International Raceways (SIR)
Conditional Use Permit A-71-0-81

SIR has applied for reinstatement under the provisions of the Zoning Adjustor's January 25, 1983 decision. That Adjustor decision which revoked the SIR conditional use permit also provided a set of 'reinstatement conditions' allowing SIR an opportunity to redeem its revoked permit. On January 26, 1984 — SIR submitted the required set of plan documents and the \$100,000 bond, thus meeting the reinstatement application requirements. Accordingly, the Building and Land Development Division has reviewed the submitted documents, and comments have been solicited from other County departments, the Washington State Department of Transportation (WSDOT) and the Washington State Patrol (WSP). Community representatives and other interested parties were notified and comments invited.

— A 'temporary reinstatement' was granted on February 1, 1984 to allow time for detailed review (Exhibit 14). Community representatives and appropriate agencies were given copies of the Plot Plan to review. On February 22, 1984 a notice was sent to

all parties of record advising them of the request, describing where to view the Plot Plan and file, and invited comments by mid-March. A second letter was sent March 13, 1984 to persons responding, acknowledging receipt of their comments, and describing the current status.

— A meeting was conducted on March 26, 1984, with representatives from WSDOT, State Patrol, and King County Departments of Health, Public Works, and Public Safety. The formulation of rules and procedures in accordance with the conditional use permit requirement was the objective and result of the meeting.

FINDINGS AND CONCLUSIONS:

The SIR reinstatement request has been evaluated and is discussed below following the outline of the 11 Reinstatement Conditions set down in the Adjustor's January 25th decision (see Attachment B):

1. Plot Plan.

✓ (1) SIR submitted a Plot Plan (dated Jan 25, 1984) as required by formal request dated January 26, 1984 (Exhibit 8). An early review revealed problems with parking areas beyond the alcohol turnstile control facilities. SIR subsequently revised the Plot Plan (dated Feb 10, 1984), and additionally modified the plot plan to eliminate parking areas "D", "E", and "F" (letter dated March 7, 1984). SIR also notified BALD (letter dated Feb 17, 1984) that fence repairs have been made to areas identified in a recent BALD field inspection.

✓ (2) The plot plan contains some errors as identified by staff and community representatives. The errors dealt with the location or description of uses and features such as fencing.

✓ (3) The plot plan is deficient in fencing, particularly in securing the Motocross track area from the remainder of the racetrack. Both the mapping errors and the deficient fencing are dealt with in the Rules and Procedures.

✓ (4) SIR has proposed an enhanced Motocross track improvement program. Its design appears to embody the principles of spectator control, safe viewing, and improved sanitary facilities. At the same time SIR has characterized the facility as introducing new racing forms and additional audiences. Community representatives have challenged this proposal as being outside the scope of the existing permit.

The parking area improvements, alcohol turnstile fencing, and sanitary facilities for the revised Motocross area are not outside the scope of the existing permit — in fact, they are required.

✓
OK
File
New
WP

For mtg w/ Jim Rocstad Feb 4

The revised track and grandstand facilities are significant changes and are not authorized. A conditional use permit amendment which would be subject to public hearing and review as provided by Permit Condition 16 (see Attachment A) is necessary.

2. Parking/Exiting Plan.

(1) The parking/exiting plan as revised is acceptable, and is approved with some additional fencing and other changes as set forth in the rules and procedures.

3. Emergency Lane Improvement Plan.

(1) The original emergency lane condition called for a "high concrete curb, post and cable, or fence" with the final design subject to approval by BALD. There can be no reduction in the purpose of the emergency lane. It is necessary for life safety reasons. Additionally, it has been revealed that one resident's sole means of access legally shares a portion of the SIR access road. Therefore, the integrity of the emergency lane must be assured.

(2) The method used to preserve the emergency lane is a technical matter. Three methods were suggested in Permit Condition 4 a with final design approval by BALD. The approved design is described in detail in the Rules and Procedure.

4. Interim Alcohol Turnstile Control Alternative and Plan.

(1) The Department of Public Safety has approved the current plan with minor modifications as detailed in the Rules and Procedures.

5. Intersection Improvement Plan and Lighting Improvement Plan.

(1) SIR submitted the plans substantially as required by the Adjustor's condition. Upon WSDOT and State Patrol review, however, major design conflicts were identified.

(2) King County policy precludes the use of 144th Ave SE and other local streets as a means of access; whereas current (adopted in 1957) WSDOT plans for SR 18 would funnel SIR traffic directly onto those streets. Such a conflict is too fundamental to allow to pass. The conflict must be resolved in favor of County policy, or SIR must not be allowed to continue operation.

(3) WSDOT recognizes the vintage of its plan and, in fact, has a feasibility study programmed to start this year. The 1984-85 feasibility study will examine land uses, traffic impacts and demands, and facility needs, as well as implementation issues. Actual funding and implementation is not known, although major project design alone is both expensive and time consuming.

conflict

(4) In the interim WSDOT and the State Patrol recommend local improvements and certain procedural changes in handling SIR traffic. In view of interchange improvements at Kent-Kangely and SR 18, and after testing their ideas at the end of the 1983 racing season, the agencies recommend moving all exiting traffic for major events onto SR 18 as northbound-only. In this manner they estimate exiting times can be reduced dramatically, and above all safety of the motoring public enhanced.

(5) Design and contracting requirements for the intersection are addressed in the Rules and Procedures.

(6) The entrance road lighting plan is satisfactory.

6. Racing Season Schedule.

(1) Notice to Public Safety and State Patrol have been accomplished.

(2) Quiet Weekend Days have been identified. Posting must occur prior to May 1 in accordance with Condition 1.b.

(3) Additional Quiet Weekend Days have not been identified in exchange for extra racing hours.

*also for
motocross*

7. Litter Patrol Number.

(1) SIR has identified their litter patrol phone number as 631-1550.

8. Loudspeaker Control Plan.

(1) SIR has submitted a loudspeaker control plan and Health Department approval has been given. The Rules and Procedures describe the monitoring system.

motocross

9. Bond.

(1) SIR submitted a bond in the amount of \$100,000. The bond has an expiration date, and it must be renewed in a timely manner. SIR will not be allowed to operate without a valid bond.

10. Rules and Procedure.

(1) Rules and procedures have been prepared and follow in this document.

(2) The rules and procedures assure compliance with the February 26, 1982 Permit Conditions; a timetable for completion of improvements is included.

(3) A public hearing will be scheduled for October.

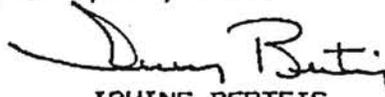
SIR Reinstatement, 71-0-81, April 30, 1984

11. SIR has not requested camping by other than race participants. Camping by other than racing participants is not allowed.

REINSTATEMENT ORDER:

The Seattle International Raceways (SIR) Conditional Use Permit A-71-0-81 is provisionally reinstated for the 1984 racing season. Reinstatement shall be fully granted automatically by completion of the required improvements in accordance with the calendar of deadlines set out in the Rules and Procedures. This Conditional Use Permit shall be revoked if SIR fails to meet the improvement schedule. This Conditional Use Permit is subject to the Permit Conditions as set forth in the Zoning & Subdivision Examiner's February 26, 1982 decision, the Reinstatement Conditions set forth in the Zoning Adjustor's January 25, 1983 decision, and the accompanying Rules and Procedures.

Ordered this 30th day of April, 1984.



IRVING BERTEIG
Zoning Adjustor

(Conditions of reinstatement always to be met per 3rd preamble in 1st part of report)

**RULES AND PROCEDURES
Seattle International Raceways (SIR)
Conditional Use Permit A-71-0-81**

April 30, 1984

The following rules and procedures are organized to follow the list of Permit Conditions resulting from the Zoning & Subdivision Examiner's February 26, 1982 decision. The first numbers and letters of the following paragraphs correspond to the Examiner's numbered Permit Conditions, and the short titles represent the Condition topic. The Examiner's 1982 decision and the Zoning Adjustor's subsequent January 25, 1983 decision listing Reinstatement Conditions are attached as Attachments A and B, respectively.

HOURS OF OPERATION:

The daily schedule is summarized below, subject to the Rules and Procedures:

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
September 1 through April 30: 9am-5:30pm	Closed	Closed	9am-5:30pm	9am-5:30pm	9am-5:30pm	9am-5:30pm
May 1 through August 31: 9am-5:30pm	Closed	Closed	9am- ^{10:00} 9pm	9am-5:30pm	9am- ^{D.O.O} 9pm	9am- ^{10:06} 9pm

(See Attachment A, Item No. 1 a b and c, and Item No 6)

1. Testing and Racing Operation.

- a. Closed Mondays and Tuesdays.
- b. Quiet Weekend Days.

OK 1985

(1) The 1984 Quiet Weekend Days have been listed as:

May:	Sunday	May 13, 1984
June:	Sunday	June 17, 1984
July:	Sunday	July 1, 1984
August:	Saturday	August 25, 1984
September:	Saturday	September 29, 1984

(2) SIR shall notify BALD prior to May 1st each year for the next season quiet weekend days. Each year's schedule shall be posted on the entrance sign so both neighbors and track users can be aware of the scheduled quiet weekend days.

GENERAL PROVISION:

2/ The land within the boundaries of the Conditional Use Permit are not to be sold without BALD approval.

3. The Conditional Use Permit is binding on current and future owners or operators.

TRAFFIC RELATED CONDITIONS:

4. Ingress/egress improvements needed:

a. Emergency Lane.

✓ (1) The emergency lane improvements proposed by SIR are acceptable on a trial basis. The emergency lane shall be striped and traffic cones used to protect its availability during both entering and exiting periods. In addition, SIR parking attendants shall assure compliance.

✓ (2) If the King County Police find that the integrity of the emergency lane is not maintained, they may require the cones be replaced by pipe and cable.

✓ (3) The emergency lane shall be kept clear at all times to allow access to the Savela property for the extent of the Savela easement (see Exhibit 58, A 71-0-84) which appears to be in common with the SIR access road for a distance of about 650 feet.

✓ (4) SIR shall provide suitable written authorization to King County Police to enforce violations on the private road.

Entrance
b. Parking/Exiting Plan.

7
1 ✓ (1) Spectator parking shall not be allowed in parking areas "D", "E", and "F" (see SIR letter eliminating those areas for parking).

✓ (2) The parking lot exiting program is approved. After the close of an evening event SIR parking attendants shall clear and secure each parking lot.

✓ (3) The emergency lane shall not be used in exiting.

exit ✓ (4) All exiting traffic for major events shall be directed north on SR 18. No traffic shall be allowed to turn left (southbound) or cross to 144th Ave SE.

entrance ✓ (5) SIR shall advertise that the preferred entrance will be from the south (northbound traffic) on SR 18. Use of 144th Ave SE will be prohibited, and left turns from SR 18 (southbound traffic) may be prohibited for major events. The State Patrol will enforce this traffic flow on SR 18.

✓ c. King County Police and State Patrol Notification. ✓

(1) Proper notification has been given for 1984.

✓ (2) SIR shall contract with WSDOT for State Patrol traffic control assistance for major events during each season until final SR 18 improvements are completed. The criteria established by KCC 6.08.090 for contracts with King County Police shall be met.

✓ (3) Evidence of such completed contract shall be submitted to BALD prior to May 15, 1984.

~~_____~~ d. Intersection Improvements. *under review by DOT now 1/20/85*

(1) The intersection design proposed by SIR to meet the Zoning Adjustor's condition is not acceptable to WSDOT and the State Patrol.

The agencies prefer an intersection design which will provide two northbound lanes extended directly across SE 296th onto SR 18. All exiting will be northbound-only for with the following advantages:

- (a) Traffic safety for both SIR patrons and SR 18 drivers will be enhanced;
- (b) Dispersal time can be reduced substantially;
- (c) All traffic will enter directly onto the freeway and major arterial system, rather than residential streets.

Additional studies are needed before WSDOT will approve the use of left turn lanes on SR 18. While left turn lanes may be helpful to handling certain lesser events at SIR, they may add hazards to other high-volume events. In any event such channelization could be developed only with extensive lighting improvements; the cost itself warrants more study. In the interim the WSP can provide special traffic patrol assistance to assist in exiting the larger events. ✓

(2) Manual executable warning signs are needed on SR 18 north and south of the intersection because of impaired sight distances in both directions. The signs can have battery powered lights initially. The signs will be activated as needed by the State Patrol to caution motorists travelling SR 18 of upcoming congestion. ✓

(3) SIR shall contract with WSDOT for the installation of the warning lights, some local intersection improvements, and contract for WSP traffic patrol assistance.

(4) The existing shoulder improvements are not structurally sufficient to serve an extended period. Shoulder development should be at a standard comparable to regular through-lane construction. The northbound shoulder should extend. ✓

to tie into the existing "slow lane" in order to provide enough acceleration lane distance to accommodate moderate to heavy SIR exiting volumes.

(5) SIR shall prepare revised intersection plans to WSDOT specifications to accomplish the northbound lane improvements. The plans shall be submitted to the Building and Land Development division by June 15, 1984 for coordination with WSDOT.

(6) Reinstatement Condition 5 called for intersection improvements during the first racing season. Since the WSDOT wants to defer construction until 1985, those interim measures such as signing and contracted State Patrol traffic assistance must be accomplished early in the current season. *ok*

e. Entrance Road Lighting.

(1) The lighting plan proposed by SIR is approved.

(2) Lighting installation shall be accomplished by midseason; that is, no later than July 1, 1984.

*1 pde left to be installed
aluminum poles*

of intersection

f. Shoulder Widening.

(1) WSDOT has made some shoulder improvements, but not to a structural standard sufficient to carry extended, concentrated volumes. The use of northbound-only exiting and preferred northbound entrancing will concentrate use of shoulders to the east side of SR 18 only. While additional shoulder development on the west side as recommended by SIR's Mitchell/Nelson report may not be necessary, a higher level of improvement to the east side will be required.

(2) The contracting requirements are discussed in 4 d.

5. Ordinance 5415.

(1) The intent of Ordinance 5415 and existing conditional use permit conditions is to preclude the use of 144th Ave SE for SIR traffic.

(2) SIR shall contract with King County Police for traffic control services, including the blocking of 144th Ave SE for major events.

(3) SIR shall review its advertising and discontinue any travel directions which encourage the use of 144th Ave SE.

6. Extended Hours.

(1) The Reinstatement Conditions modify the Permit Conditions by requiring the intersection and lighting improvements, rather than leaving them optional. The Reinstatement Conditions limited the extended hours to Friday and

Saturday nights, rather than Wednesday, Friday and Saturday. After review of the record, including both the Adjustor's and Prosecutor's work files and recollection, it must be concluded that Wednesday was left out by oversight or typographical error. In fairness to SIR, when the intersection and lighting improvements are met, the extended hours should apply to Wednesday as well as Friday and Saturday nights.

(2) Permit Condition 4 d shall be considered met in 1984 by completion of a contract with WSDOT for signing, interim intersection improvements, and State Patrol traffic control assistance. Since the warning signs are in place and the interim intersection improvements are not critical to the efficient movement of traffic with State Patrol assistance, the entering and maintenance of the contract is the determining action. The result in 1984 for the duration of the 1984 racing season will be one additional hour of operation (9:00pm closing extended to 10:00pm) on Wednesday, Friday and Saturday nights.

NOTE: The draft Rules and Procedures included a provision allowing use of a contract and bond to meet a condition otherwise requiring completion of improvements. While such a technique is routinely used for similar conditions in new developments in order to mitigate future impacts, it is not suitable in this case where impacts exist. The primary objective is to mitigate the impacts, and the following condition is modified accordingly.

(3) Permit Condition 4 d shall be considered met in 1985 on an interim basis when certified by WSDOT that there has been sufficient maintenance to shoulders and the intersection to allow continuation of traffic assistance as required in 1984 (as in item (2) above), and that a design and time table for 1985 construction has been completed. This condition requires that traffic impacts continue to be mitigated in a manner allowing orderly completion of physical improvements.

Permit Condition 4 d shall be considered met in 1985 and after by the satisfactory completion of northbound lane improvements. The result in 1985 will be a continuation of the one additional hour (9:00pm closing extended to 10:00pm) on Wednesday, Friday and Saturday nights.

(4) Permit Condition 4 f shall be considered met when certified by WSDOT that suitable shoulder development has been accomplished. The result will be a further extension by one additional hour of operation (10:00pm closing extended to 11:00pm) on Friday and Saturday nights.

7. Access Review Public Hearing.

(1) BALD shall set a public hearing in October 1984.

ALCOHOL CONTROL:

B. Washington State Liquor Control Board License Required.

a. Turnstile System.

(1) The turnstile system is approved as described by King County Police (see Exhibit 107, A-71-0-84).

(2) The purpose of the turnstile system is to assist in the compliance with WSLCB licensing requirements, and cannot be merely a gate allowing free movement to and from the spectator's vehicle. This condition must be read in conjunction with Permit Condition 8 b.

(3) Permit Condition 8 a. requires that all events use the turnstile system. Temporary fencing or alternative parking areas shall be necessary for the Motocross area.

b. SIR shall maintain a roving alcohol check crew to patrol parking lots during major events to assure compliance with the terms of their permit and the Washington State Liquor Control Board license.

c. SIR shall maintain signing along the access road to alert patrons to the alcohol checks and to encourage them to drive responsibly.

(1) Signing shall be accomplished by May 15, 1984.

d. SIR shall review its advertising to assure that it is clear that alcohol cannot be brought in by spectators.

(1) It is incumbent upon SIR to maintain control of this provision in any sub-letting of its facilities to special groups.

(2) Evidence of advertising such as that used for the 1982 Fox Hunt event (see Exhibit 34 of A-71-0-82) shall be considered a violation of the terms of the permit and cause for enforcement action under this Rule.

e. SIR shall comply with the rules of the WSLCB.

NUISANCE REDUCTION:

9. Fencing.

(1) The purpose of the fencing condition is two-fold. It is to prevent trespass by those seeking unauthorized entrance to SIR, and it is to assure the success of the turnstile system. The fencing program proposed by SIR and shown on the Revised Plot Plan is approved, subject to the following changes:

(a) The fencing along the south side of the road connecting to the Motocross track (along the earth berm) is insufficient and shall be replaced with 6' cyclone fencing. This provision can be deferred if pedestrian access to the connecting

Motocross

road is prevented by adequate fencing of Lot A and a locked gate during track events.

(b) Additional fence control shall be added to secure the south-west end of the track and Motocross track by June 1, 1984. Detailed location shall be as approved by BALD.

(c) Fencing around the perimeter of SIR property at the west end is non-existent. Detailed fencing plan shall be submitted to BALD by June 1, 1984 and installed by July 1, 1984.

(d) No later than May 1, 1985, fencing along the northeast shall be replaced with six foot cyclone fencing.

(2) BALD shall conduct field inspections of the fencing prior to May 1 and July 1 of each year. SIR shall repair deficiencies in a timely manner. NOTE: 1984 inspections shall be prior to June 1 and July 1.

(3) Complaints of trespass shall be reviewed. Continued problems may be cause for BALD to required modified fence locations or standards.

10. Litter Patrol.

(1) SIR has submitted 631-1550 as the litter patrol phone number for 1984.

(2) The litter patrol phone number will remain in effect unless changed by SIR after a 30 day notice.

NOISE:

11. Jet cars shall not operate after 5:30pm.

(1) SIR has stated that they will comply.

12. Loudspeaker Control Plan.

(1) The King County Health Department has approved the loudspeaker control plan submitted by SIR.

(2) The loudspeaker system shall be maintained to assure that race sounds are not further amplified and that sound is directed to spectators and prevented from disturbance to outside SIR boundaries. Complaints shall be investigated and system modifications made as necessary.

13. Noise Control Methods.

SIR has submitted a proposal for future implementation. That proposal has not been reviewed as of the date of the writing of these rules, nor have rules and procedures been prepared for their consideration. These rules will be supplemented in the future.

PLOT PLAN:

15. Plot Plan.

(1) A plot plan was submitted by SIR prior to March 31, 1984. Parties of record were notified and written comments received and reviewed. Specific corrections have been required and are delineated in the rules for Permit Conditions above.

(2) SIR shall prepare a revised plot plan embodying the changes required by the reinstatement action and these rules in order that a clean, corrected Plot Plan be available to administer this permit. The revised Plot Plan shall be submitted by SIR for approval by the Zoning Adjustor.

(3) The plot plan will be used to administer the permit. All improvements and uses shall remain in compliance with the approved plot plan.

(4) The plot plan shall indicate the location, extent and type of activities authorized by this permit and all activities, development and racing shall be conducted in accordance with that plot plan.

(5) The plot plan shall designate camping areas and camping shall be limited to said areas; camping shall only be allowed to race participants.

16. Future Modifications.

(1) An application for an amendment to this conditional use permit is the proper means to consider modifications to either permit conditions or changes in use.

(2) Any public hearing shall be advertised by BALD to clearly define the scope of the consideration.

17. Auxiliary Use.

(1) No auxiliary uses have been requested.

(2) Unauthorized uses such as an existing BMX track in one of the parking areas shall be discontinued. Bicycle racing is allowed, but must be contained within designated track areas.

18. Annual Meeting.

(1) BALD shall schedule the required meeting with notice given to appropriate parties at least 15 days prior to the meeting.

(2) The annual meeting may be combined with a public hearing on SIR if scheduled during October and if provision is

made one the hearing agenda to consider the issues required in this condition.

19. Rules and Procedures.

(1) County, State and community review of SIR's reinstatement request has been completed resulting in the above rules and procedures. The following agencies have participated:

(a) KC Police have approved the alcohol control turnstile system and SIR has made the changes the Police required. SIR has a current contract for traffic patrol assistance.

(b) KC Health has approved SIR's loudspeaker system. KC Health reports that SIR's sanitary facilities are adequate.

(c) Washington State Patrol (WSP) wants to use exclusive northbound exiting from SIR onto SR 18, believing they can clear the traffic in much shorter periods than in the past.

(d) Washington State Department of Transportation (WSDOT) rejected the intersection plan proposed by SIR, but agrees with WSP on exiting and would support the construction of northbound exiting lanes within the SR 18 right-of-way.

(e) KC Public Works traffic engineer concurs with WSDOT and WSP recommendations.

(f) KC Business license officials will coordinate the business license with the issuance of the conditional use permit.

(g) The Washington State Liquor Control Board (WSLCB) will pull SIR's liquor license if the conditional use permit is revoked, according to KC Police.

~~(2) Future amendments to the Rules and Procedures can be considered after notice to the above agencies, SIR, and community representatives, with a minimum of 15 day comment period.~~

Notice

(3) King County shall establish a complaint system with a phone number distributed to the community residents. The phone shall be manned during all major races. The complaint system shall provide for dispatching of King County Police, King County inspectors or other appropriate personnel to respond to the complaint.

TIME TABLE FOR IMPROVEMENTS:

The SIR Conditional Use Permit shall remain in a "provisional reinstatement" status until the improvements required during the 1984 racing season are completed. Failure by SIR to meet the following schedule shall be cause to remove the provisional reinstatement which is to return the conditional use permit to the revoked status.

Deadline	Action
May 15, 1984	Complete contract with WSDOT for State Patrol traffic assistance ::Rule 4 c (3)
May 15, 1984	Install alcohol check signs and quiet day notices along entrance road ::Rule 1 b and Rule 8 c (1)
May 15, 1984	Complete contract with WSDOT for warning signs and their installation, and some local intersection improvements. ::Rule 4 d (6)
May 15, 1984	Stripe emergency lane and use traffic cones. ::Rule 4 a (1)
June 15, 1984	Submit revised intersection plans to BALD for coordination with WSDOT ::Rule 4 d (7)
June 15, 1984	Submit revised Plot Plan to BALD — ::Rule 15 (2)
July 1, 1984	Install entrance road lighting ::Rule 4 e (2)
September 30, 1984	Complete contract with WSDOT for northbound lane development, intersection improvements, and east shoulder upgrades and extension ::Rule 4 d (3) (6) (7) & f (1) (2)

Upon completion of the above items within the stated deadlines, the SIR Conditional Use Permit shall be considered as permanently reinstated.

Approved this 30th day of April, 1984


IRVING BERTEIG
Zoning Adjustor

Attachments

MODIFIED CONDITIONS
SEATTLE INTERNATIONAL RACEWAYS (SIR)
CONDITIONAL USE PERMIT A-71-0-81

February 26, 1982 appeal decision of the King County Deputy Zoning and Subdivision Examiner:

The decision of the Zoning Adjustor to approve subject to conditions is affirmed with modified conditions.

OPERATING CONDITONS:

1. The hours of tract operation shall be limited to 9:00 a.m. to 5:30 p.m., for both testing and racing with the following exceptions:

a. SIR will be closed to all race testing and racing on Monday and Tuesday year-round, provided that these days may be used for racing when a rained out event could not be scheduled for the following weekend, or when a holiday which has a major event associated within it falls on a Monday or Tuesday. Race testing is not meant to exclude police and emergency vehicle testing and training, or other non-race related testing functions that are quiet, non-impacting.

b. SIR shall provide a minimum of one quiet weekend day (Saturday or Sunday) per month during the May through September racing season. SIR shall notify Building and Land Development in writing of the five designated quiet days prior to May 1st each year. SIR should notify interested community representatives in the interest of community relations.

c. From May 1st to August 31st the tract operating hours may be extended until 9:00 p.m., on Wednesday, Friday and Saturday; provided that the track operating hours may be further extended upon completion of the traffic improvements specified in Condition 4, and noise remedy specified in Condition 12. The intent of these conditions is to better interrelate the SIR impacts, the size of SIR audiences, the timing of the completion of any evening event, and the carrying capacity of the street system.

2. All properties subject to this permit owned by SIR shall not be sold in part without approval of the Building and Land Development Division.
3. This permit and the conditions imposed herein authorize this use on this property and shall be binding on any future owners or operators of this facility, as well as the current parties.

TRAFFIC RELATED CONDITIONS:

4. A number of street improvements are necessary to increase the carrying capacity of the street system in order to bring the time required for ingress and egress to reasonable durations. SIR shall take the actions and make the improvements as follows prior to the 1982 racing season:

a. SIR shall establish and maintain the east driving lane of the entrance road from Southeast 296th to the main gate as an emergency lane, open and free of parked cars. A high concrete curb, post and cable, or fence shall be installed for the length of the entrance road in order to preserve the emergency road. Final design shall be subject to the approval of the Building and Land Development Division.

b. SIR shall establish and submit to Building and Land Development for approval procedures to empty parking lots as rapidly as possible after major events.

c. SIR shall notify King County Department of Public Safety and the Washington State Patrol at least 30 days prior to major events, or in the case of rescheduled events, at the earliest feasible times. The purpose is to coordinate police manpower for traffic control, including, but not limited to, control at the intersection of SR 18 and Southeast 296th Street. SIR shall comply with KCC 6.08.042. SIR shall provide assistance in traffic control to the extent feasible when requested to do so by King County Department of Public Safety.

The following improvements are necessary to increase the safety and traffic capacity near the SIR entrance.

d. Make intersection improvements to SR 18 and Southeast 296th Street, which will make use of the widened shoulders for bypass and turning lanes as recommended by the MITCHELL and NELSON report, except that direct access between 144th Ave. S.E. and S.E. 296th shall not be allowed.

Intersection improvement plans shall be submitted to the King County Department of Public Works for approval and coordination with the Washington State Department of Transportation.

e. Upgrade lighting along the entrance road in accordance with the MITCHELL and NELSON report.

The following improvements are necessary to increase the traffic capacity of SR 18:

f. Widen the shoulders of SR 18 north and south of the intersection with Southeast 296th, as recommended by the MITCHELL and NELSON report.

5. The provisions of Ordinance No. 5415 shall be applied for events as needed to preclude using those local residential streets for SIR traffic.
6. The hours of operation under Condition 1 shall be extended by one hour on Wednesday, Friday and Saturday nights upon certification by Building and Land Development Division of completion of the road and intersection improvements specified in Conditions No. 4, d and e. The hours of operation shall be further extended by one hour on Friday and Saturday nights upon certification by Building and Land Development Division of completion of the SR 18 improvements specified in Condition No. 4f.
7. After the completion of one full racing season with all of the improvements required by Condition No. 4 in place, the Zoning adjustor shall hold a public hearing to determine whether these improvements have been adequate to handle large events. If the improvements have been proven inadequate, the Zoning Adjustor shall require SIR or its successors to develop a second access.

ALCOHOL CONTROL CONDITIONS:

8. Alcoholic beverages shall not be allowed at SIR other than as approved by the Washington State Liquor Control Board.
 - a. SIR shall conduct an inspection to detect and confiscate alcoholic beverages using a turnstile system. Parking areas shall be separate from the rest of the race site activities, such that no drive-in parking will occur inside the race track and such that race patrons will be separated from their vehicles.

b. SIR shall maintain a roving alcohol check crew to patrol parking lots during major events to assure compliance with the terms of their permit and the Washington State Liquor Control Board license.

c. SIR shall maintain signing along the access road to alert patrons to the alcohol checks and to encourage them to drive responsibly.

d. SIR shall review its advertising to assure that it is clear that alcohol cannot be brought in by spectators.

e. SIR shall comply with the rules of the Washington State Liquor Control Board.

NUISANCE REDUCTION:

9. The SIR property shall be fenced and patrolled in such a way as to prevent trespassing or entrance to SIR from other than designated entrances. Fencing shall be a six foot high, chain-link fence with barbed wire, or its equivalent in effectiveness, subject to approval of Building and Land Development Division. Complaints of trespass shall be investigated and any needed corrective actions to fencing made in a timely manner.
10. SIR shall maintain a litter patrol to operate during the day after major events, and provide Building and Land Development with a designated SIR telephone number for residents to use for on-call litter pick up. In the interest of community relations, SIR should also notify community leaders of the designated SIR telephone number.

The litter patrol shall operate on all surrounding streets off the site which are used for access to the site.

NOISE:

11. Jet cars shall not be allowed after 5:30 p.m. unless they meet the noise standards established in Condition No. 13. Any modification of this condition may be considered through an application for an amended conditional use permit.
12. SIR shall prepare and submit to the King County Health Department and BALD for approval procedures to maintain controlled use of the loud speaker system and continue to improve its design so that race sounds are not further amplified and that sound is directed to spectators and prevented from disturbance from outside SIR boundaries.
13. SIR is encouraged to initiate noise control methods, including earth berms, sound barrier walls, or other physical measures as well as mufflers on vehicles. Upon successful implementation of a program that will meet the environmental sound level criteria of the noise ordinance (Chapter 12.88 KCC) without the exemptions for race tracks (KCC 12.94.105), the days and hours of operation may be extended to 9:00 a.m. to 10:00 p.m. on Tuesdays and an additional hour Wednesday through Saturday. Successful implementation shall be as determined by the Health Department Administrator for noise controls. The administrator may require SIR to provide empirical noise studies by a qualified professional engineer.

PLOT PLAN:

15. A detailed plot plan at a scale of not less than one inch equals one hundred feet shall be submitted to Building and Land Development Division by March 31, 1982 for approval of the Zoning Adjustor. More detailed drawings of specific improvements may be requested by the Adjustor as he deems necessary. Upon receipt, Building and Land Development shall

notify parties of record and allow 15 days for public review and written comment. The plot plan shall indicate the location and purpose of all roadways and tracks, buildings, parking areas, camping areas, alcohol concession areas, sanitary facilities, emergency roads, fencing, and other uses. No racing shall take place after May 1, 1982, unless the plot plan has been approved by the Zoning Adjustor.

16. Modification of the above conditions or changes in the uses authorized by this conditional use permit shall be accomplished through an application for an amended conditional use permit. Any consideration of an amended conditional use permit shall be limited to the subject of such application and shall not be cause to reconsider other permit issues.
17. No auxiliary use of the race track or facilities beyond motorcycling, bicycle racing, training and motor related events shall be allowed. No rock concerts or other nonracing entertainment shall be allowed prior to or after the times of the actual racing events. There shall be no expansion of events without a proper public hearing by the Building and Land Development Division of King County. SIR shall present to Building and Land Development for approval a list of auxiliary uses and events (e.g. rock concerts and swap meets) and demonstrate such events are to "fill in" time between races and are not in fact the primary events.
18. King County shall meet annually, by October 15 of each year, with representatives of SIR, the community, the health department, the police and other appropriate parties to review compliance with this permit and any problems of operation. Such a meeting will determine whether the conditions are met and, if they are not being met, will establish procedures to bring about compliance.
19. The King County Division of Building and Land Development, the King County Department of Health and the County Department of Public Safety shall prepare rules, regulations and operating procedures as necessary to implement the conditions and intent of this conditional use permit. Such rules, regulations and procedures shall be submitted to BALD prior to the 1982 racing season.

ACTION: The Conditional Use Permit issued to Seattle International Raceways (SIR) A-71-0 dated June 27, 1972, and as modified by Final Action of the Zoning and Subdivision Examiner as A-71-0-81, dated February 26, 1982, is hereby revoked:

Provided, that SIR may request reinstatement through the satisfactory filing of the following:

1. Plot Plan described in Condition 15.
2. Parking Exiting Plan described in Condition 4. b.
3. Emergency Lane Improvement Plan described in Condition 4.a.
4. Interim Alcohol Turnstile Control Alternative and Plan to meet Condition 8.a., subject to the review and approval of the Department of Public Safety.

NOTE: SIR may elect as an alternative to installing a turnstile system as described in Condition 8.a. to discontinue all beer concessions, maintain present alcohol screening programs, and prohibit alcohol consumption completely.

5. Intersection Improvement Plan described in Condition 4.d., and Lighting Improvement Plan described in Condition 4.e. The intersection and lighting improvements are no longer

ATTACHMENT B

HE001444

SC 00072

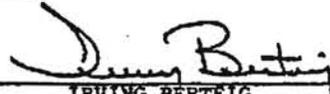
options, and shall be accomplished during the 1983 Racing Season. Once accomplished, SIR may extend its hours of operation to 10:00 p.m., on Friday and Saturday nights.

6. Racing Season Schedule - including:
 - a. Notice to Public Safety described in Condition 4.c.
 - b. Identification of Quiet Weekend Days described in Condition 1. b. In addition, SIR shall post the annual schedule of Quiet Weekend Days in a conspicuous location on the Entrance Sign.
 - c. SIR may designate an additional "Quiet Weekend Day" for each racing event scheduled to 11:00 p.m.
7. Litter Patrol Number described in Condition 10.
8. Loudspeaker Control Plan described in Condition 12.
9. Submit a bond in the amount of \$100,000 to defray expenses incurred by King County as the result of the operation of SIR, or to restore any public property damaged as the result of the operation of SIR. Failure to comply with the operating conditions may result in bond forfeiture, and will result in revocation of this Conditional Use Permit.
10. The above plans shall be reviewed by the Division of Building and Land Development, Department of Health, Department of Public Safety, and Department of Public Works. Their approval shall be in the form of rules, regulations and operating conditions described in Condition 19. The current permit is revoked until reinstatement is approved.
 - a. Final Approval shall be by Action of the Zoning Adjustor.
 - b. Any reinstated permit shall include the conditions of the February 26, 1982 Permit.

FILE NO. A-71-0-82
DECEMBER 18, 1982 - PUBLIC HEARING
Final Report and Decision, Page 19
REVOCATION OR MODIFICATION

- c. A public hearing shall be held October 11, 1983, to review the 1983 Racing Season, and the effectiveness of the operating conditions.

ORDERED this 25th day of January, 1983.



IRVING BERTSIG
ZONING ADJUSTOR

TRANSMITTED this 26th day of January, 1983, to the attached List of Parties of Record.

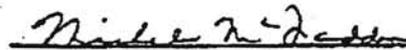
10. Some clarification of the conditions for reinstatement is needed:

- a) All references to conditions made in the conditions for reinstatement refer to the conditions of approval as stated in the February 26, 1982 Examiner's report.
- b) Condition 10b should read, "Any reinstated permit shall include the conditions of the February 26, 1982 permit, with the exception of Conditions 4d and e, which are modified by the reinstatement conditions cited above."
- c) An additional condition should be added to read:
- "SIR shall submit a proposal to the Building and Land Development Division indicating the location and types of camping it wishes to permit on the site, including who should be allowed to camp. This proposal shall be considered by the Zoning Adjustor at the October 11, 1983 hearing on this conditional use permit. Until a decision is rendered by the Zoning Adjustor in this regard, camping shall be limited to actual participants in the races, and spectators shall not be allowed to camp overnight."

DECISION:

Deny the appeal and sustain the decision of the Zoning Adjustor, with the modifications cited in Conclusion 10 above.

ORDERED this 27th day of April, 1983.



Michele McFadden
DEPUTY ZONING AND SUBDIVISION
EXAMINER

HE001446

SC 00074

APPENDIX D

FILED

2013 MAY 30 PM 2:47

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



CL16044402

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

RACE TRACK, LLC, a Washington limited liability company; PACIFIC GRAND PRIX, LLC, a Washington limited liability company; and PACIFIC RIM PROFORMANCE, INC. d/b/a/ PROFORMANCE RACING SCHOOL, a Washington corporation,

Petitioners/Plaintiffs,

v.

KING COUNTY, a political subdivision of Washington State,

Respondent/Defendant.

No. 12-2-04325-4

OPINION

Petitioners seek reversal of the King County Hearing Examiner's Report and Decision dated March 21, 2012. For the reasons set forth below, the Court affirms the decision of the Hearing Examiner in part and reverses it in part.

I. FACTUAL & PROCEDURAL HISTORY

Petitioners are owners and operators of business enterprises engaged in vehicle-related sports and recreation activities at Pacific Raceways, King County, Washington.¹ Race Track

¹ 1/9/12 VI, at 35. The Court has used the following conventions to refer to the record on appeal: (1) The Verbatim Transcript of Proceedings is referenced by the hearing date, followed by VI (for "Verbatim Transcript"), followed by the volume number (for OPINION Page 1.

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owns the property and leases the road course, drag strip, and kart track for vehicle use.² It does business as Pacific Raceways.³ Pacific Grand Prix is one of the lessees and is primarily engaged in shift kart racing.⁴ ProFormance Racing School is another lessee and provides high performance driving instruction to its clientele.⁵

The race track is located on 320 acres in Kent, Washington.⁶ The underlying zoning for the area is RA 5.⁷ The race track has an industrial overlay zoning which, if the race track ceased to exist, would revert to five-acre residential zoning.⁸ Accordingly, the race track may only operate under a Conditional Use Permit (hereinafter "CUP"). The current permit was negotiated and authorized in 1984.⁹ The permit details parking, traffic, nuisance, season schedule, noise, and other operational specifics. The language at issue in this appeal is set forth in the 4/30/84 Rules and Procedures, under Hours of Operation, where Mondays and Tuesdays are designated as "closed" and where "Attachment A, Item No 1 a b and c, and Item No 6" are incorporated by

the referenced hearing date (if there is more than one volume), followed by the page number(s); (2) Hearing Exhibits are referenced as "HE Exh.," followed by the applicable exhibit number and any specific "HE" designated Bates number that may be helpful to locating the document or page reference; (3) where there is no Exhibit number or HE Bates number, the Court has referenced an "SC" Bates number that appears on many documents; (4) the Hearing Examiner's 3/21/12 Decision is referenced as HE Decision, followed by the page number.

² 1/9/12 VT, at 48.

³ *Id.* at 34.

⁴ HE Exh. 27, at SC 00153 and SC00176; see HE Exh. 113, at HE000149.

⁵ HE Exh. 18, at SC 00100 and SC00116; HE Exh. 101, at HE015722.

⁶ 1/12/12 VT, at 103.

⁷ *Id.*

⁸ *Id.*

⁹ The property has been used for racing since approximately 1960. 1/9/12 VT, at 35. The Fiorito family was involved with the track at that time. *Id.* An original conditional use permit ("CUP") was issued on 6/27/72 and modified on 2/26/82. The modified conditions set forth the closed days and quiet, non-impacting conditions that are at issue in these proceedings. HE Decision, at 4; HE Exh. 6; (HE001440). That CUP was revoked on 1/25/83, and the revocation was affirmed on appeal by the Deputy Zoning and Subdivision Manager on 4/27/83. As part of the negotiations that led to the reinstatement of the CUP, King County and the race track adopted Rules and Procedures regarding the operation of the track on 4/30/84. The Rules and Procedures authorized the reinstatement of the CUP once the raceway had addressed items specifically enumerated by the County. They include, in relevant part, Hours of Operation for the track. HE Exh. 6, (HE001430). After a period of non-involvement, the Fiorito family reengaged in day to day track operations in 2002. 1/9/12 VT, at 35. At that time, the property was significantly degraded. Jason Fiorito testified before the Hearing Examiner that "when we took over[,] the entire property was condemned. There wasn't a grandstand that had an occupancy permit. There wasn't a building that had an occupancy permit. There wasn't a racing surface that was certified by an [sic] sanctioning body." 1/19/12 VT, at 37.

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1 reference.¹⁰ Attachment A, titled "Modified Conditions, Seattle International Raceways (SIR)
2 Conditional Use Permit A-71-0-81," contains the following Operating Conditions as No. 1 a, b,
3 and c:

- 4 1. The hours of tract [sic] operation shall be limited to 9:00 a.m. to 5:30 p.m., for
5 both testing and racing with the following exceptions:
- 6 a. SIR will be closed to all race testing and racing on Monday and Tuesday,
7 year-round, provided that these days may be used for racing when a rained
8 out event could not be scheduled for the following weekend, or when a
9 holiday which has a major event associated within it falls on a Monday or
10 a Tuesday. Race testing is not meant to exclude police and emergency
11 vehicle testing and training, or other non-race related testing functions that
12 are quiet, non-impacting.¹¹
- 13 b. SIR shall provide a minimum of one quiet weekend day (Saturday or
14 Sunday) per month during the May through September racing season. SIR
15 shall notify Building and Land Development in writing of the five
16 designated quiet days prior to May 1st each year. SIR should notify
17 interested community representatives in the interest of community
18 relations.
- 19 c. From May 1st to August 31st the tract [sic] operating hours may be
20 extended until 9:00 p.m., on Wednesday, Friday and Saturday; provided
21 that the track operating hours may be further extended upon completion of
22 the traffic improvements specified in Condition 4, and noise remedy
23 specified in Condition 12. The intent of these conditions is to better
24 interrelate the SIR impacts, the size of SIR audiences, the timing of the
25 completion of any evening event, and the carrying capacity of the street
system.¹²

18 Mr. Fiorito, Race Track's owner, summarized his understanding of this portion of the CUP as
19 follows:

20 ¹⁰ HE Exh. 6, at HE 001430 and HE 001440.

21 ¹¹ The term "race testing" is not defined within the CUP, and there is no significant guidance within the record. The Hearing
22 Examiner noted that the term "testing" may refer back to the 1959 permit, which allowed Mr. J. D. Fiorito to establish a "general
23 public automotive testing and time trial course and road race circuit." HE Decision, at 4, nn.2-3.

24 ¹² Condition 12 directs SIR to "continue to improve its design so that race sounds are not further amplified and that sound is
25 directed to spectators and prevented from disturbance from outside SIR boundaries." Although inartfully composed, the last
clause appears to require SIR to improve its design so people beyond the property line are not aware of track activities. This is
consistent with the language that is at issue in this case, language that requires the race track to be "quiet and non-impacting."
Condition 13 provides SIR with an incentive to control the noise that emanates from its business operations. It encourages SIR to
implement noise control methods that will bring the enterprise into compliance with King County's noise ordinance, KCC
12.94.105.

1 Quiet days, as I understand the language of all the letters and the Conditional
2 Use Permit, refer to weekend quiet days. The one weekend day per month,
3 May through September, that has to be given up by SIR, or Pacific
4 Raceways, is the quiet day. And then separate and distinct from the quiet day
5 are Mondays and Tuesdays which are closed to racing and race testing. And
6 although at the end of that paragraph it references that those activities have to
7 be quiet and non-impacting, they're never referred to as far as I can tell in
8 any of the documents as being quiet days. So, in my nomenclature, and I
9 believe the nomenclature of all of the documents, quiet days refers to
10 weekend quiet days. And Mondays and Tuesdays can be called for, I think
11 are expressly called, closed to racing and race testing.¹³

12 Linda Worthen, a track neighbor who was involved in the litigation that led to the 1984 CUP
13 amendment, recalled that "[q]uiet days applied to all of it. Quiet . . . at that time applied to quiet
14 weekend days and Mondays and Tuesdays. Quiet was quiet. And the only . . . exception to that
15 was police or emergency vehicle training."¹⁴

16 Vehicles operate on several surfaces at the race track: a racing oval, a drag strip, and the
17 kart track. Since 2002, when the Fiorito family became re-involved with the day to day
18 operations of the track, the racing oval has remained in the same location, but the drag strip and
19 the kart track have moved. Other physical changes have occurred at the race track, including
20 timber and gravel removal, and removal of an earthen berm. Additionally, the evidence presented
21 to the Hearing Examiner established that uses have changed at the track, due at least in part to
22 changing interests and changed motor vehicle equipment. The physical changes to the property,
23 coupled with use and equipment changes, support the conclusion that track-operation-related
24 noise impacts on the surrounding community have increased in recent years. These noise
25 impacts form the factual basis for the violation order that King County issued on January 21,
2011. It alleged:

¹³ 1/12/12 VT, at 112.

¹⁴ 2/1/12 VT, at 68.

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- 1 A. Use of primary Race Track for race-related functions on required quiet days in
2 violation of permit conditions 1A and B, including but not limited to operation
3 of ProFormance Racing School and use of the track by private vehicles for
4 "lapping". [sic] DDES alleges that Race Track LLC knowingly permits uses
5 on required quiet days which are race-related, are not quiet, and are not "non-
6 impacting" in violation of the plain language of Conditional Use Permit A-71-
7 0-81, 1984 Rules and Procedures.
- 8 B. Use of shift kart track by vehicles other than shift karts, including but not
9 limited to motorcycles and street legal automobiles in violation of permit
10 condition 15 requiring all improvements and uses to be conducted in
11 accordance with the pre-March 31, 1984 plot plan.
- 12 C. Exceeding permitted limits regarding hours of operation by periodically
13 operating past required closing times.¹⁵

14 To cure the violations, the Notice of King County Code Violation (hereinafter "Notice &
15 Order") directed Petitioners to:

- 16 A. Cease all racing and performance driving school operations and any other
17 race-related functions, including any and all racing, lapping, or similar uses of
18 private vehicles on required quiet days by **February 21, 2011**.
- 19 B. Cease all non-shift kart use of the shift kart track by **February 21, 2011**.
- 20 C. Cease all operations outside permitted hours of operation by **February 21,**
21 **2011**.¹⁶

22 Petitioners appealed the Notice and Order issued by King County. The appeal was heard
23 by the Hearing Examiner, Mr. James O'Connor. In those proceedings, the Hearing Examiner
24 received evidence from 24 witnesses over 9 days, and docketed 12 pages of records.¹⁷ The
25 Hearing Examiner issued a 16-page decision in which he upheld DDES's Order and specified

¹⁵ SC00402. NB: Petitioners separately addressed Violation C, exceeding the hours of operation. It is not at issue in this appeal.

¹⁶ *Id.*

¹⁷ Index and certification of the Record of DDES; Docket No. 35.

1 under paragraph A that “[r]equired quiet days are Mondays, Tuesdays and designated week-end
2 quiet days.”¹⁸ Petitioners have appealed the Hearing Examiner’s Decision to this Court.

3 II. REQUESTED RELIEF

4 Petitioners filed a LUPA Petition seeking (1) an order reversing the Hearing Examiner’s
5 Decision under the standards set forth at RCW 36.70C.130(1)(b), (c), (d), and (l); (2) an order
6 reversing the Hearing Examiner’s Decision under principles of equitable estoppel and laches;
7 and (3) such other relief as the Court deems just and equitable.¹⁹

8 III. STANDARD OF REVIEW

9
10 LUPA provides the exclusive means for judicial review of a land use decision.²⁰ The
11 Hearing Examiner’s conclusions under RCW 36.70C.130(1)(b), (c), (d), and (l) all present
12 questions of law that the Court reviews *de novo*.²¹ Because the Hearing Examiner did not have
13 jurisdiction to consider Petitioners’ equitable estoppel and laches arguments, this Court exercises
14 original jurisdiction over those issues.²²

15
16 In assessing the sufficiency of the evidence under RCW 36.70C, this Court views the
17 facts and the inferences to be drawn from them in a light most favorable to the party that
18 prevailed before the Hearing Examiner.²³ Factual findings are reviewed under the substantial
19 evidence standard.²⁴ “Substantial evidence” means that there must be a sufficient quantum of
20 evidence in the record to persuade a reasonable person that the declared premise is true.²⁵ A

21
22 ¹⁸ HE Decision, at 12.

¹⁹ Complaint, at 18; Petitioner’s Opening Brief, at 22.

²⁰ *Phoenix Dev., Inc. v. City of Woodinville*, 171 Wn.2d 820, 828, 256 P.3d 1150 (2011).

²¹ *Id.*

²² HE Decision, at 10.

²³ *Phoenix Dev.*, 171 Wn.2d at 828.

²⁴ *Id.* at 829.

²⁵ *Id.*; *Isla Verde Int’l Holdings, Inc. v. City of Canas*, 146 Wn.2d 740, 751–52, 49 P.3d 867 (2002); *Wenatchee Sportsmen Ass’n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000).

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1 finding is “clearly erroneous” where the reviewing court is left with the definite and firm
2 conviction that a mistake has been committed based upon the record below.²⁶

3 IV. LEGAL ANALYSIS

4 A. There is No Basis to Conclude that the Hearing Examiner’s Decision is an
5 Erroneous Interpretation of the Law under RCW 36.70C.130(1)(b).

6 Petitioners challenge the Hearing Examiner’s Decision as an erroneous interpretation of
7 the law under RCW 36.70C.130(1)(b), yet their opening brief fails to analyze this theory. King
8 County recast Petitioner’s equitable estoppel and laches arguments under RCW
9 36.70C.130(1)(b) in its response, but, because the Hearing Examiner was not authorized to
10 consider those legal arguments, they are ones properly evaluated under prong (d) of the statute.
11 Accordingly, this Court analyzes Petitioners equitable estoppel and laches arguments within
12 Section IV. E. below. Because Petitioners did not support their claim of error under prong (b)
13 with any citation to authority, this Court will not address it.²⁷

14 B. The Hearing Examiner’s Decision is Supported by Substantial Evidence when
15 Viewed in Light of the Whole Record before the Court.

16 Petitioners assert that the Hearing Examiner’s Decision is not supported by substantial
17 evidence as required by RCW 36.70C.130(1)(c). They argue that the evidence presented at the
18 hearing should be discounted or found not persuasive for a variety of reasons.²⁸ However, as
19 discussed above, this Court views the facts and inferences drawn from them in a light most
20 favorable to King County, the party that prevailed before the Hearing Examiner. Because those
21

22
23
24 ²⁶ *Phoenix Dev., supra* note 20, at 829; *Norway Hill Pres. and Prot. Ass’n v. King County Council*, 87 Wn.2d 267, 274, 552 P.2d
674 (1976); *Friends of Cedar Park Neighborhood v. City of Seattle*, 156 Wn. App. 633, 647, 234 P.3d 214 (2010).

²⁷ *Drazt v. Naccorato*, 146 Wn. App. 536, 541, 192 P.3d 921 (2008).

²⁸ See Petitioners’ Opening Brief, at 38–50.

1 facts are supported by substantial evidence, and because this Court neither has a definite nor firm
2 conviction that a mistake has been made, they have not been disturbed on appeal.

3 King County offered testimony from a number of current or former neighbors of the
4 track. Each differentiated, to the best of their ability, between the noise generated on permitted
5 days²⁹ from Mondays, Tuesdays, and the required quiet weekend days. Many neighborhood
6 witnesses described the negative impacts caused by noise from the track.³⁰ They distinguished
7 noise perceived from Highway 18 and the track,³¹ as well as noise perceived from the train track
8 and the race track.³² Some also acknowledged that shift kart noises have become less impactful
9 over time.³³

10
11 Taken as a whole, the testimony established by substantial evidence that noise impacts
12 from Pacific Raceway have been increasing in recent years. The evidence supports a conclusion
13 that a combination of factors caused this increase: usage patterns, equipment changes, and
14 changes caused by the logging and earth removal projects that have occurred as part of the
15 Fiorito family's renovation of the track.

20 ²⁹ "Permitted days" refers to every Wednesday through Sunday, with the exception of the five quiet weekend days required by
the CUP.

21 ³⁰ See, e.g., Larry Worden, 1/17/12 VT I, at 81-82, 86, 89-104, and VT II, at 8, 15; Jenn Williams, 1/17/12 VT II, at 29-31, 43, 59;
Don Huling, 1/17/12 VT II, at 66-67, 71, 83, 85-86; Jeffrey Guddat, 1/24/12 VT II, at 59, 61, 63, 66; Pete Tetlow, 1/30/12 VT, at
22 31-33; Nicholas Wells, 1/30/12 VT, at 44-50; John Clark, 1/30/12 VT, at 70-75; Tracie Felton, 2/1/12 VT, at 31-33, 41-45;
Linda Worden, 2/1/12 VT, at 70-73, 75-85, 93-94, 100-105, 107, 117-119.

23 ³¹ See, e.g., Larry Worden, 1/17/12 VT I, at 80, 86, and VT II, at 2; Leah Boehm, 1/24/12 VT, at 8; and Jeffrey Guddat, 1/24/12
VT II, at 60.

24 ³² See, e.g., Jenn Williams, 1/17/12 VT II, at 42-43; and Leah Boehm, 1/24/12 VT II, at 8.

25 ³³ See, e.g., Larry Worden, 1/17/12 VT, at 95; Linda Worden, 2/1/12 VT, at 72. The testimony that four stroke shift karts are now
used and are much quieter than the formerly used two stroke karts is an example of how noise impacts from the track can
improve and, in some instances, have improved.

1 C. The Hearing Examiner's Application of the Law to the Facts.

2 The "clearly erroneous" standard articulated in RCW 36.70C.130(d) authorizes the court
3 to reverse a land use decision when "the court is left with a definite and firm conviction that the
4 examiner's decision is incorrect, even though there is evidence to support the decision."³⁴ As
5 discussed above, there is substantial evidence to support the factual determinations made by the
6 Hearing Examiner. Thus, the remaining question is whether the Court has a "definite and firm
7 conviction that the examiner's decision is incorrect."³⁵

8 The Hearing Examiner's Decision carefully reviews the history of the conditional use
9 permit, management of the permit by DDES, and the law. For example, the Hearing Examiner
10 identified and resolved ambiguities and questions where he found them, such as the meaning of
11 Condition 17 and Operating Condition No. 1 in the CUP.³⁶ He also entered findings and
12 conclusions that pertain to the kart track that are amply supported by the record.
13

14 Regarding the kart track claim, Petitioners' argument that the County improperly directed
15 them to cease all non-shift kart use of the shift kart track by 2/21/11 is meritless. Mr. Zalud,
16 Pacific Grand Prix's owner, failed to provide information to the County essential to its ability to
17 effectively evaluate the track's proposed uses.³⁷ The operator's willful misconduct is clearly
18 demonstrated by the record and provided a sound basis for both King County's action and the
19 Hearing Examiner's affirmation of the Notice and Order of violation pertaining to the kart track.
20 The Hearing Examiner's Decision regarding the kart track is affirmed.
21

22
23
24 ³⁴ *Phoenix Dev.*, *supra* at 829.

³⁵ *Id.*

³⁶ *Id.* Decision, at 10-11 (Conclusions No. 4 and 10).

³⁷ 1/12/12 VT, at 41-86.

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1 At Conclusion 10, however, the Hearing Examiner concluded that the "non-race related
2 testing" language in CUP Condition No. 1 could not be read to authorize driving training for
3 persons who are not police or emergency vehicle drivers on Mondays and Tuesdays.³⁸ After
4 carefully reviewing the record before the Hearing Examiner, this Court has the definite and firm
5 conviction the Hearing Examiner has erred on this point.

6 ProFormance Racing maintains that its schools and clinics do not race or race test on
7 Mondays, Tuesdays, or the required quiet summer weekend days. If they are correct, nothing in
8 the CUP prohibits non-racing and non-race testing activities that are quiet and non-impacting.
9 Under the plain language of the CUP, it is not the existence of a driver education school that
10 violates the CUP; it is only a use that is not quiet and that is impacting that contravenes the
11 permit. If, for example, ProFormance Racing held clinics for new, inexperienced, or elderly
12 drivers to improve their driving skills on arterial roadways that have maximum speed limits of 35
13 miles per hour, it is unlikely such clinics would be perceived as racing, race-testing, or causing
14 impacting noise. Indeed, Mr. Kitch, the owner of ProPerformance Racing, offers some of those
15 skills in his teen street survival skills course (although at higher speeds).³⁹

17 However, this Court agrees with the Hearing Examiner's ultimate Conclusion, that
18 ProFormance Racing School has not been quiet and non-impacting, as required by the CUP.⁴⁰
19 Accordingly, this Court strikes paragraph A of page 16 of the Hearing Examiner's Decision, and
20 replaces it with the following language:

21
22 A. Cease all racing and performance driving functions that teach, promote,
23 encourage, facilitate, emulate or permit race testing activities or behaviors and
all other race related functions and behaviors, including any and all racing,

24 ³⁸ H.E. Decision, at 11 (Conclusion 10).

³⁹ 1/10/12 VT, at 60.

25 ⁴⁰ H.E. Decision, at 11 (Conclusion 10).

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lapping, or similar uses of vehicles on Mondays, Tuesdays, and the five required summer quiet days by 2/21/11. All track related operations that take place on Mondays, Tuesdays, and the five summer weekend quiet days must be quiet and non-impacting beyond Race Track's property line. Police and emergency vehicle testing and training is exempt from this Order.

D. The Hearing Examiner's Decision Does Not Violate Petitioners' Constitutional Rights.

Petitioners also seek relief on constitutional grounds, arguing under RCW 36.70C.130(f) that the Conditional Use Permit is unconstitutionally vague and that the Notice and Order, therefore, violates their substantive due process rights.

1. The CUP is Not Unconstitutionally Vague. Petitioners challenge the constitutionality of the CUP in this case on vagueness grounds. The CUP sets forth the terms and conditions governing the track's operations. The court evaluates this permit claim in the same manner as if the challenge was to a local land use ordinance.

A land use ordinance that provides fair warning and allows a person of common intelligence to understand the law's meaning does not violate a party's constitutional rights.⁴¹ Courts do not require an unreasonable standard of specificity and we judge the ordinance as applied, not for facial vagueness.⁴² A duly enacted ordinance is presumed constitutional, and the party challenging it must demonstrate that the ordinance is unconstitutional beyond a reasonable doubt.⁴³

Here, the challenged language is not so vague that it cannot be understood by an ordinary person. The CUP establishes operating conditions for the track.⁴⁴ It sets the track's hours of

⁴¹ *Young v. Pierce County*, 120 Wn. App. 175, 182, 84 P.3d 927 (2004).

⁴² *Young*, 120 Wn. App. at 182.

⁴³ *Kitsap County v. Mattress Outlet*, 153 Wn.2d 506, 509, 104 P.3d 1280(2005); *Griffin v. Thurston County Bd. of Health*, 137 Wn. App. 609, 154 P.3d 296 (2007).

⁴⁴ III: Exh. 6, at III: 001440.

1 operation as 9:00 a.m. to 5:30 p.m., "for both testing and racing."⁴⁵ It also establishes
2 exceptions.⁴⁶ Those exceptions include, in relevant part, that (1) the track shall be closed on
3 Mondays and Tuesdays year-round, and (2) there shall be a minimum of one quiet Saturday or
4 Sunday each month during the May through September racing season.⁴⁷ The first exception,
5 relating to track closures on Mondays and Tuesdays, contains additional language that clearly
6 reflects that the track, in fact, did not need to be closed to all uses on Mondays and Tuesdays. It
7 allows the track to be used when a weekend race has been rained out and when the weekend is a
8 holiday weekend that has a major event associated with it. It also states "[r]ace testing is not
9 meant to exclude police and emergency vehicle testing, or other non-race related testing
10 functions that are quiet, non-impacting."⁴⁸

11 The Hearing Examiner found that:

12 There is no reasonable way that the foregoing language [regarding Operating
13 Condition No. 1] can be read as authorizing driver training for persons who
14 are not police or emergency vehicle drivers on Monday or Tuesday at Pacific
15 Raceways (SIR). If the language of the CUP is ambiguous in other respects, it
16 does not create or harbor any ambiguity on the question in issue. It does not
authorize the operation of a driving school on Monday or Tuesday, or on
weekend quiet days.⁴⁹

17 As noted above, this Court disagrees with that Conclusion. Nevertheless, Petitioners assert that
18 the last exception is unconstitutionally vague, at least as it has been applied by King County to
19 the track.

20 The evidence established that the track sought guidance at various times regarding
21 whether or not certain uses would be acceptable under the non-race related testing functions that
22

23 ⁴⁵ *Id.*

24 ⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ III Decision, at 11 (Conclusion No. 10).

1 are under the "quiet and non-impacting" exception. The most significant interpretation of this
2 language comes from the 1989 exchange between Jim Rockstad, the track's General Manager at
3 that time, and Gordon Thompson, the King County employee who was charged with managing
4 the permit at that time.⁵⁰ Although the exchange plainly relates to the five quiet weekend days
5 required during the racing season, Mr. Thompson agrees that filming and a driver training school
6 may take place at the track.⁵¹ He defines a quiet day as one that is non-spectator, non-impacting,
7 has no noise above ambient levels, and has no traffic impacts.⁵² Additional correspondence,
8 exchanged between 1991 and 2010, reflect DDES's knowledge that the track was being used for
9 non-race related driver training purposes, car clubs, and emergency vehicle testing. The
10 correspondence further reflects DDES's view that these uses were "generally" "quiet and non-
11 impacting."

12 While the phrase "non-race related testing functions" may be subject to varying
13 interpretations, the phrase "quiet and non-impacting" is not. The standard established by the
14 CUP is that the track will be closed on Mondays and Tuesdays and required quiet weekend days.
15 If it is closed, it will be quiet. If it is not closed, then the permitted activity needs to be as quiet
16 as if the track were closed.
17

18 This case is, therefore, unlike *Burien Bark Supply v. King County*, 106 Wn.2d 868, 725
19 P.2d 994 (1986), where code language that defined the type of manufacturing and processing that
20 could occur in a general commercial zone was unconstitutionally vague.⁵³ Unlike that case
21 where Burien Bark was trying to bring its specific business model into compliance with a general
22 zoning statute that allowed "manufacturing and processing in limited degree," Pacific Raceway
23

24 ⁵⁰ IIE Exh. 9; IIE Exh. 10.

25 ⁵¹ IIE Exh. 10.

⁵² *Id.*

⁵³ *Burien Bark*, 106 Wn.2d at 872.

1 has a specific, negotiated permit that contains clear, express language ("quiet") that it and the
2 community both knew it must abide by to be able to conduct business under the permit. As
3 consideration for the track's permission to exceed noise and other land use limitations placed on
4 R-5 and I-P zoned properties 256 days of the year, the permit requires the track to be quiet and
5 non-impacting the other 109 days of the year.⁵⁴

6 Further, there was substantial evidence presented at the hearing that neighbors began
7 noticing increased intrusive noise from the track approximately five to six years before the
8 Notice and Order issued. Those experiences coincide with, and may have been exacerbated by,
9 the logging, gravel mining, berm removal, track relocation, and other development activities that
10 have taken place at the track since Pacific Raceways began renovating the track. Thus, the
11 evidence presented to the Hearing Examiner supports both a finding that the track has not
12 complied with the requirement that it be quiet on quiet days, and that the sound generated on
13 Mondays and Tuesdays was not quiet and was more impactful for the five to six years prior to
14 the issuance of the Notice and Order of Violation than it had been in the more remote past.
15 Thus, contrary to Petitioner's assertion that King County's Notice and Order of Violation holds
16 the track to a different definition of "quiet and non-impacting" than it was subject to for 21 years,
17 substantial evidence established that noise impacts from the track only became significantly
18 impactful in recent years. The fact that Petitioner would interpret the permit conditions
19 differently, or that the County previously interpreted the permit terms differently, or that the
20 Petitioner has invested substantial sums of money in reliance on its erroneous interpretation of
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22
23

24 ⁵⁴ This calculation is intended to illustrate the obligation on Petitioners and is not intended to be a precise calculation. It is based
25 on the premise that there are likely 104 Mondays and Tuesdays each year (52 weeks/year x 2 days/week), plus five additional
summer quiet weekend days.

1 the permit conditions are not grounds to find the CUP is void for vagueness. The CUP is not
2 unconstitutionally vague.

3 E. King County's Action is Not Barred under the Doctrine of Equitable Estoppel or
4 Laches.

5 The King County Hearing Examiner did not have jurisdiction to consider the issue of
6 equitable estoppel or laches.⁵⁵ However, to promote judicial economy and foreshadowing this
7 appeal, the parties presented evidence on this issue during the proceedings before the Hearing
8 Examiner.⁵⁶

9 1. Equitable Estoppel. To establish a prima facie case of equitable estoppel against the
10 government, the moving party must prove the following elements by clear, cogent and
11 convincing evidence⁵⁷: (1) an act or admission by a party that is inconsistent with a later asserted
12 claim; (2) reliance on the faith of the act or admission; (3) injury that would constitute a manifest
13 injustice would result if the party making the representation is permitted to repudiate the act or
14 admission; and (4) applying estoppel would not impair governmental functions.⁵⁸ Application of
15 the doctrine of equitable estoppel to governmental actions is disfavored.⁵⁹

16
17 Petitioners asked DDES in various ways at various times over the years whether certain
18 activities would be allowed on quiet days under the CUP. These requests are well-documented
19 within Petitioners' briefing. Petitioners assert that they detrimentally relied on years of King

20 ⁵⁵ III: Decision, at 10 (Conclusion of Law No. 1); *City of Mercer Island v. Steinmann*, 9 Wn. App. 479, 482, 513 P.2d 80 (1973).
⁵⁶ 1/9/12 VT, at 25-27.

21 ⁵⁷ *Chemical Bank v. Wash. Pub. Power Supply Sys.*, 102 Wn.2d 874, 905, 691 P.2d 524 (1984); *Pioneer Nat'l Title Ins. Co. v.*
Wash., 39 Wn. App. 758, 760-61, 695 P.2d 996 (1985). See also *Pub. Util. Dist. No. 1 of Douglas County v. Cooper*, 69 Wn.2d
22 909, 918, 421 P.2d 1002 (1996).

23 ⁵⁸ *Mercer Island v. Steinmann*, 9 Wn. App. at 481 ("Equitable estoppel may arise where there exists: 1. A statement or act
inconsistent with a later asserted claim; 2. An action by the relying party on the faith of such statement or act; and 3. Injury to the
relying party would result if the party making the representation were permitted to contradict or repudiate the statement or act.");
Litz v. Pierce County, 44 Wn. App. 674, 683, 723 P.2d 475 (1986) (citing *Shafer v. State of Washington*, 83 Wn.2d 618, 623, 521
24 P.2d 736 (1974)).

25 ⁵⁹ *Wash. Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 20, 43 P.3d 4 (2002); *Chemical Bank*, 102 Wn.2d at 905;
Steinmann, 9 Wn. App. at 481 ("The doctrine will be applied temperately against any level of government").

1 County's failure to consistently enforce the terms of the CUP. This argument is flawed in two
2 ways: First a failure to enforce is not an affirmative action, but rather inaction.⁶⁰ Second,
3 substantial evidence in the record reveals that Petitioner's assertion is simply inaccurate. King
4 County's responses consistently reflected the language of the CUP – that any activities had to
5 abide by the "quiet, non-impacting" language in the CUP on Mondays, Tuesdays and the
6 summer weekend quiet days.⁶¹ Petitioners' claim that the Notice and Order of Violation
7 contravenes the past practice and understanding of the parties fails to acknowledge that the Order
8 was issued because Petitioners' quiet days activities were neither quiet nor non-impacting. The
9 record before the Hearing Examiner contains substantial evidence that Petitioners met the
10 continuing legal obligation to be quiet and non-impacting for a period of time, but ceased to be
11 quiet and non-impacting for at least a few years before the Notice and Order was issued.
12

13 The types of activities that violated the quiet and non-impacting language in the CUP
14 varied and included squealing tires, loud revving noises, and loud engine noises. All parties
15 accept and acknowledge that these impacts, when they occur Wednesdays through Fridays and
16 on regular race weekends are all permitted impacts under the CUP. It was the impacts occurring
17 on Mondays and Tuesdays and quiet summer weekend days that were contrary to the CUP and
18 that DDES ordered Petitioners to stop. Substantial evidence established that the complained-of
19 noises lasted for significant periods of time and violated the plain language of the CUP. Because
20 there is substantial evidence that the race track was neither quiet nor non-impacting on the
21 required "quiet days," and because the record supports a conclusion that these impacts have
22
23

24 ⁶⁰ *Federal Way Disposal v. Tacoma*, 11 Wn. App. 894, 897, 527 P.2d 1387 (1974).

1 increased in recent years, the Court finds that Petitioners have failed to establish the first prong
2 of the equitable estoppel test.

3 Similarly, Petitioners fail to establish the third prong of the equitable estoppel test
4 because the raceway property is zoned R-5 and may only operate their business under a CUP.
5 To state the obvious, Petitioners may only use the property as a raceway under certain
6 conditions. If Petitioners do not meet the conditions, the use is not permitted. Here, it would be
7 a manifest injustice to allow Petitioners to continue to operate the raceway on Mondays,
8 Tuesdays and quiet summer weekend days as they have been in recent years because the
9 business model is not consistently quiet and it is impactful. If Petitioners' unpermitted use
10 continues, then the only mitigation provided to the community for coexisting with the raceway
11 will be extinguished, and the community will not be able to rely on having quiet days under the
12 CUP.
13

14 2. Laches. As Petitioners acknowledge, the application of laches against government
15 entities is generally disfavored.⁶² Here, as analyzed above, the factual record established before
16 the Hearing Examiner defeats Petitioners' argument that there was an undue delay between the
17 County's knowledge of CUP violations and the issuance of the Notice and Order.

18 Contrary to Petitioners' position that the County's action contradicts 21 years of
19 consistent interpretation of the CUP, the facts demonstrate that the Notice of Violation was
20 issued because increases in noise impacts became manifest several years before the Notice and
21 Order was issued. Petitioners acknowledge that some of the noise impacts – like complaints
22 attributable to the activities of a Porsche club and complaints attributable to after-hours events at
23

24
25 ⁶² Petitioner's Opening Brief, at 29.

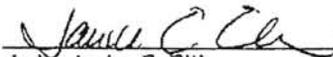
1 the track – were acted on by the track and are no longer at issue. The parties have focused their
2 attention on activities where there is disagreement. Substantial evidence supports the conclusion
3 that Petitioners' noise impacts evolved over time and were caused by a variety of factors. Under
4 the circumstances of this case, it cannot be said as a matter of law that the County took action
5 after an unreasonable delay.⁶³

6 V. CONCLUSION

7 For the foregoing reasons, the Hearing Examiner's decision is affirmed in part and
8 reversed in part. It is reversed exclusively with respect to the Hearing Examiner's conclusion
9 that a driver training school may not operate under the CUP. Consistent with this ruling,
10 Paragraph A of King County's Notice and Order of Violation is amended as follows:
11

12 A. Cease all racing and performance driving functions that teach, promote,
13 encourage, facilitate, emulate or permit race testing activities or behaviors and
14 all other race-related functions and behaviors, including any and all racing,
15 lapping, or similar uses of vehicles on Mondays, Tuesdays, and the five
16 required summer quiet days by 2/21/11. All track related operations that take
17 place on Mondays, Tuesdays, and the five summer weekend quiet days must
18 be quiet and non-impacting beyond Race Track's property line. Police and
19 emergency vehicle testing and training is exempt from this Order.

20 Dated this 30th day of May, 2013.

21 
22 Judge Janice E. Ellis

23
24
25 ⁶³ See, *Citizens for Responsible Grow's v. Kitsap County*, 52 Wn. App. 236, 240, 758 P.2d 1009 (1988).