

BEFORE THE LAND USE HEARINGS OFFICER  
CLACKAMAS COUNTY, OREGON

Regarding an Appeal of a Planning Director  
Decision Denying an Application to Verify and  
Alter a Nonconforming Use.

Case File No: Z0339-23-E APPEAL  
(Pat's Acres Racing Complex)

A. SUMMARY

1. The Hearings Officer received testimony and evidence at the July 18, 2024 public hearing about this application. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform, with the County providing an explanation for virtual participation. At the beginning of the hearing the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the County's staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. The applicant is Chris Egger. The subject property is an approximately 42.87-acre lot zoned Exclusive Farm Use (EFU) located outside of the City of Canby, owned by Mr. Egger, referred to as "Pat's Acres Racing Complex or PARC." The site address is 6255 S. Arndt Rd., Canby, a location within Clackamas County, surrounded by the Pudding River on all four sides, with a paved 22-foot-wide access from S. Arndt Rd. on the south. The subject property is identified as Tax Lots 31E31 01100, 31E31 01200 & 31E31 01290 and is a "lot of record" and considered its own "tract" as defined in ZDO Section 202. The site is within the Aurora-Butteville CPO.
3. This application seeks verification and alteration of an existing nonconforming use ("NCU") involving existing go kart racing and motorcycle racing on the site to also allow "drifting" of full-size automotive vehicles on the subject property. Verification of the NCU (Pat's Acres Racing Complex) was previously approved under County Planning File Nos. PCU-11-67, Z0810-99-E, Z0349-06-E, and Z0474-07-E.
4. On March 1, 2000, the County Hearings Officer partially approved (with conditions) applications Z0810-99-E and Z0811-99-F, for the verification of a nonconforming use (the go-kart racing facility and associated uses) and for an alteration to the use to allow other uses. The decision found the following uses and structures were lawfully established prior to rezoning of the subject property to General Agriculture (GAD) on June 18, 1979: the ½ mile paved go-kart track, pit area, and timing station, the pavilion building used in conjunction with kart racing activities, and overnight camping in in conjunction with kart racing activities. The decision found that kart racing was generally limited to weekend events during daylight hours and on a seasonal, weather-permitting basis. The decision verified that the track was used for members of the Willamette Valley Karting Association, but not the general public, six days per week and not on Mondays. The Hearings Officer approved: expansion of the existing go kart track, installation of bleacher seating, a lean-to storage shed, use of freight vans/trailers for kart repair and sales during race events, use of the site for official race events and PKA members Tuesday through Sunday after 9am during daylight hours, kart racing and rentals to the public on

weekends after 9am and during daylight hours, recreational paintball activities during daylight hours between 9am and 6pm, on-site camping by race participants, and short-term seasonal placement of a recreational vehicle for use as a caretaker/watchman residence. The decision specifically stated that: “No racing events or recreational use of the kart track or subject property by motorcycles, dirt karts, quads, quarter midgets, etc. shall be permitted.” The decision found that the applicant failed to demonstrate that: motorcycle racing was not discontinued for more than 1 year after loss of the track due to flooding in 1979, that lights were used to extend hours of operation, that the track was open to the public, or various public uses were established such as car and motorcycle shows, live music, or similar public events (due to traffic and noise impacts).

5. On August 8, 2006, the County approved (with conditions) an application for alteration of the nonconforming use on the site, file no. Z0349-06-E. Part of this decision included requiring the application to show that, if a nonconforming use is established, it had not been discontinued for a period exceeding twelve (12) consecutive months. This decision approved requests to permit a change to the required karting affiliation, to permit PARC members to use the track Tuesdays through Fridays during daylight hours, to permit use of the existing paved track for motorcycle racing events (in addition to karting events) and permitted use of “a short section of dirt track connected to the paved track for this use.” The decision states:

*“This dirt section is located immediately to the west of the first turn of the existing track and north of the most westerly section of the existing track. In consideration of the location in close proximity to the track area currently in use, the distance to nearby residential uses, the limited area of the proposed track expansion and the fact that approval of this expansion would have no effect on overall track usage, the staff finds that expansion of the track as described, whether dirt or asphalt-surfaced, would not cause additional adverse impacts to surrounding properties and residents.”*

6. The August 8, 2006 decision in file no. Z0349-06-E also approved requests to permit use of an existing structure (the “pavilion building”) to include use as a “pro shop” for the sale, repair, and rental of karts, parts, and accessories, in addition to its approved uses for food service and patron seating, to permit use of a small dirt track north of the kart track for scale remote-controlled car racing, to permit a 100 sf scoring tower 16-20 feet in height, to permit up to 10 shipping containers (subject to obtaining building permits), to permit construction of a 40 ft. by 60 ft. structure for equipment, materials, and rental kart storage (subject to obtaining a building permit, a Flood Hazard Development Permit, and a Principal River Conservation Area Review prior to commencement of construction). With respect to sound pressure level, the decision included the following relevant statement within finding (7)(d) discussing approving weekday use of the track by the general public:

*”In addition, the rental karts generate a lower sound pressure level, 80 dBA, than race karts, 98 dBA due to the difference in engine types and performance of same. The potential decrease in use of the track during the week for racer practice sessions would potentially reduce the sound levels generated by use of the track to some degree”*

7. Among other things, the August 8, 2006 decision in file no. Z0349-06-E included Conditions of Approval with these statements:

*“The kart and motorcycle uses are limited to the existing paved track and an extension of the track at the northwesterly corner of the track area as demarcated upon an aerial photo in the County file.”*

*“No new structures, access roads, track improvements, tree or other significant native vegetation removal or other development shall occur within 100 ft. of the mean high water line of the Pudding River.”*

8. On August 30, 2007, the County partially approved (with conditions) an application for alteration of the nonconforming use on the site, file no. Z0474-07-E. Part of this decision included requiring the application to show that, if a nonconforming use is established, it had not been discontinued for a period exceeding twelve (12) consecutive months. This decision approved requests to permit storage of private kart trailers, to permit gas-powered RC scale racing in addition to electric-powered RC cars, to permit placement of a recreational vehicle for a caretaker/watchman, and to permit placement of temporary tent structures during the racing season.
9. On December 7, 2023, Annabelle Lind, County Planner II, and Lindsey Nesbitt, Planning Manager for Clackamas County, issued a decision denying the application. The decision reviews the prior decisions issued concerning the NCU land use application history and the specific NCUs verified, altered, and/or modified through each application. The decision includes findings concerning the submitted application materials for the current application summarizing the previously permitted NCUs. The decision further reviews whether the application provided sufficient information to determine that these NCUs were continuous, or whether some of these NCUs were discontinued for a period of more than 12 consecutive months. The decision found that the applicant provided sufficient information to determine that the go kart track use verified in Z0810-99-E had not been discontinued for a period of more than 12 consecutive months since the NCU was last verified in 2008. Further, the decision found that use of the track for go kart/racing events for PARC members continued Tuesday – Friday 9am to sunset, and use of the track for go kart racing/events for non-PARC members continued on weekends 9am to sunset. However, the decision found that the applicant did not submit sufficient information to demonstrate that additional uses approved in file nos. Z0810-99-E, Z0349-06-E, and Z0474-07-E continued to exist on the subject property or had been discontinued.
10. The appellant is Tyler Smith, attorney at law, on behalf of his client Mr. Egger. Mr. Smith submitted this appeal on December 19, 2023, citing “Staff misunderstood the request, applied the wrong code, used ex-part materials, ignored prior decisions and used erroneous facts.” The appellant submitted several clock tolling requests rescheduling the hearing in this matter and extending the timeline for a final decision in this matter. On July 10, 2024, Mr. Smith submitted revised application materials prepared for this appeal.
11. On May 2, 2024, the Hearings Officer conducted a public hearing to receive testimony and evidence about the applicant’s proposal. The Hearings Officer made a statement at the beginning of the hearing that he would provide an opportunity for any participant to request that the record remain open to submit additional evidence, arguments, or written testimony at the end of the hearing. Prior to the conclusion of the hearing, the Hearings Officer made a statement consistent with the requirements of ORS 197.797(6) asking if any party or participant requested

an opportunity to have the record remain open to submit additional evidence, arguments or written testimony, providing a brief explanation and ensuring that all participants and parties had an opportunity to make a request. No one requested that the record stay open following the hearing. The appellant indicated that he wished to waive the period for final written argument. The Hearings Officer concluded the hearing and closed the record. The Hearings Officer denied the application in part, and approved the application in part, subject to several conditions.

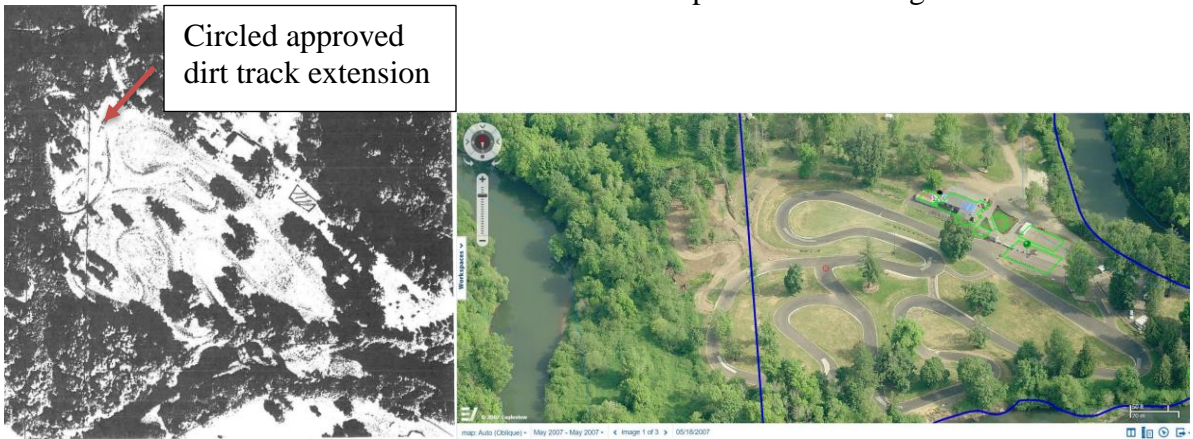
## **B. HEARING AND RECORD HIGHLIGHTS**

1. At the hearing, County Planning Manager Lindsey Nesbitt discussed the staff review of this application. Ms. Nesbitt shared a PowerPoint presentation prepared for this hearing. In her presentation, Ms. Nesbitt provided relevant background information concerning the application, the County's review of the application per the County's Zoning and Development Ordinance (ZDO) and Comprehensive Plan, the reasons for the denial of the application, and the reasons for the appeal. Ms. Nesbitt described the applicant's request as to verify that automobile drifting is an allowed use authorized under prior nonconforming use alterations, or to alter nonconforming use to allow automobile drifting events in place of other prior approved uses.
2. Ms. Nesbitt noted that Pat's Acres Racing Complex was originally developed prior to zoning as a private park with a pavilion and a motorcycle racetrack in 1962, and was used for town meetings, concerts, dances, and other types of local events. Ms. Nesbitt noted that the first zoning for the subject property was applied in 1967 and was General Use Zone. Also in 1967, conditional use permit application PCU-11-67 was approved for the property, authorizing a ½ mile long 20-foot-wide paved go kart track. All karts were required to be run under the supervision of the Willamette Valley Karting Association and equipped with quiet mufflers. The permit also authorized renovation of bathrooms, the dance hall pavilion, and caretaker's house. The property was then rezoned General Agriculture in 1979, and then rezoned Exclusive Farm Use zone in 1993 (officially adopted in 1996).
3. Ms. Nesbitt reported that in 1999, a nonconforming use verification and alteration (County file no. County file Z0810-99) was submitted and this was when the nonconforming use was first verified. The decision approved an expansion of the paved go kart track, installation of bleacher seating and a lean-to storage shed, and approved use of freight vans and tents for seasonal kart repair in conjunction with racing activities. The decision limited use of the site to 6 days per week, Tuesday through Sunday, during daylight hours after 9:00 am, with kart racing and rentals to the public limited to weekends. The decision approved recreational paintball activities, on-site camping by race participants in conjunction with racing events, and use of a recreational vehicle for caretaker/watchman residence on a short-term seasonal basis. The decision required that no racing events or recreational use of the kart track or subject property by motorcycles, dirt karts, quarter midgets, etc. be permitted.
4. Ms. Nesbitt reported that in 2006 a nonconforming use verification and alteration application, County file Z0349-06, was submitted. In this decision, County staff verified that the previous nonconforming uses have continued (or have not been discontinued for more than 12 months). Ms. Nesbitt referenced findings that motorcycle use of the property was not proven to be an existing nonconforming use as it was not continued after a flood, but the decision allowed motorcycle use as an alteration. Specifically, Ms. Nesbitt pointed to the decision as allowing

use of the paved track for occasional motorcycle racing events to occur in place of kart events on weekends only, with no increase in track use approved in association with motorcycle racing events. Conditions of approval limited the kart and motorcycle racing to the existing paved track. The conditions allowed motorcycle racing to also use an unpaved extension of the track shown on the site plan, but restricted the motorcycle racing to weekends only between 9 am and sunset. Use of the track or subject property by dirt bikes, dirt karts, quads, quarter midgets, etc. was not permitted. The decision approved a small remote controlled dirt car racing track with a 100 square foot scoring tower, allowed use of a portion of the pavilion building for kart pro shop uses (sale, repair and rental) during approved facility hours, allowed installation of up to 10 shipping containers for the storage of equipment and materials used on conjunction with the nonconforming use, and approved construction of a 40-foot by 60-foot shop for storage and maintenance of materials and equipment used to maintain the facility.

5. Ms. Nesbitt reported that a 2007 application (County file no. Z0484-07) was the last nonconforming use verification and alteration, explaining that staff are not actually verifying the previously verified nonconforming use through this process, but are verifying that the use remains in compliance with previous approvals and hasn't changed. She reported that this decision permitted parking/storage of private kart trailers in the paved pit area, permitted gas powered RC scale racing in addition to the electric RC cars, permitted placement of one recreational vehicle for caretaker/watchman use with a 180-day limitation, permitted placement of large temporary tents for shelter of racers and other patrons during the racing season, and noted that conditions of approval of County Planning Division files Z0810-99-E and Z0349-06-E remained in effect except as modified in the Z0484-07-E decision.
6. Ms. Nesbitt explained that when an application is submitted for a nonconforming use alteration, staff look at the discontinuation issue and look at the prior approvals to determine what was allowed and the conditions that were imposed, ensuring that the use remains consistent and there hasn't been a discontinuation of the use. Ms. Nesbitt also noted that staff reviewed the application in 2023 when ZDO 1204.06 Discontinuation provided that if a nonconforming use is discontinued for a period of more than 12 consecutive months, the use shall not be resumed unless the resumed use conforms to the requirements of the zoning ordinance and other applicable regulations, and this code was changed in 2024 to a 24 consecutive month period.
7. Ms. Nesbitt pointed out that the appellant, Mr. Smith, submitted additional information (Exhibit 18), also summarizing previously permitted nonconforming uses and structures and providing discussion of evidence submitted regarding discontinuation. Ms. Nesbitt further pointed out that in Exhibit 20 she submitted an updated table of these uses and evidence in Exhibit 18 reflecting the additional information not provided with the application or shown in the table in the staff decision. She noted that staff were able to verify many of the uses, but still have concerns. Ms. Nesbitt stated that with the additional information, staff were able to verify that the go kart track is still being used consistent with prior approvals, the pavilion, bleachers, lean-to storage, and other items that were not originally verified in the staff decision. Ms. Nesbitt also asserts, however, that there appears to be a gap in the motorcycle use of the track, and it appears the approved dirt track has been expanded beyond prior approval without obtaining required land use permits. Ms. Nesbitt contends that prior nonconforming use verifications or alterations did not authorize use of the track for automobiles, and therefore such use would require an approved non-conforming use alteration.

8. Ms. Nesbitt summarized staff review of the evidence submitted concerning motorcycle tracks use, asserting that motorcycle race and practice schedules were not provided for the years 2014 to 2023. She also noted that submitted photographs demonstrate that the paved race track is maintained. However, Ms. Nesbitt asserted that while a submitted written narrative describes the use, staff cannot determine the frequency of the events, how many events of each type are held, or whether motorcycle events are held in lieu of karting events as required, or whether limitations on types of motorcycles are observed. Ms. Nesbitt pointed to limitations in the 2006 alteration allowing use of the paved track for occasional motorcycle race events to occur in place of kart events, and on weekends only, noting again that no increase of track use was approved to accommodate motorcycle racing and pointing to the language of the restrictions.
9. Ms. Nesbitt pointed to the approved extension of the existing paved track as shown on the site plan, noting it is a slight track expansion for motorcycle racing to use the dirt section located immediately to the west of the first turn of the existing track and north of the most westerly section of the existing track. Ms. Nesbitt shared a slide showing the approved site plan, with the circled dirt extension location. Ms. Nesbitt also shared a 2007 aerial photo of the subject property showing the paved track and the area with the approved dirt extension. Ms. Nesbitt points to the vegetation that existed between the track and the river at that time. The site plan with the circled area is shown on the left and the 2007 photo is on the right:



10. The 2007 photograph submitted by the County is consistent with an aerial photo submitted by the appellant dated 8/2/2005 showing the dirt expansion section used for motorcycle racing that was approved in the 2006 decision reproduced below. [See Exhibit 18 at page 5.]



11. Ms. Nesbitt shared a 2012 aerial photo of the property showing the dirt motorcycle extension has been significantly expanded to include essentially the entire area between the asphalt track

and the river, all the way to the riverbanks to the west, and to the north and south. Ms. Nesbitt shared a 2015 aerial photo of the property showing more areas between the asphalt track and river being used for the dirt motorcycle extension, with areas showing significant bare areas with all vegetation removed, including right up to the riverbank. Ms. Nesbitt also shared aerial photos of the property from 2016 and 2018 also showing the entire area between the asphalt track and river used for the dirt motorcycle extension, with the extension now appearing as large or larger than the originally approved asphalt track. These photos also show vegetation removal such that the dirt motorcycle tracks appear wider in many places than the 20-foot-wide asphalt track.



- Ms. Nesbitt then shared a 2023 aerial photograph of the property showing the entire area between the asphalt track and river continues to be used for a dirt motorcycle track as large or larger than the original asphalt track, with vegetation removal such that the dirt motorcycle tracks appear much wider in many places than the 20-foot-wide asphalt track. Ms. Nesbitt compares the 2007 and 2023 photos side-by-side showing the significant expansion of the motorcycle track and the significant vegetation removal. The two photos are reproduced below:



13. Ms. Nesbitt also shared a slide of an aerial photo of the property with an overlay of the applicant’s track submitted with the appellant’s sound study that shows paved asphalt road track and the existing dirt track. [See Exhibit 18 at page 15]



Figure 2. Receiver and noise measurement locations

14. Ms. Nesbitt asserts that the dirt track is now definitely larger than what was approved in 2006. She further notes that the entire site is within the floodway, where development is extremely restricted and requires a floodplain development permit with a “no-rise” certificate. Ms. Nesbitt further points out that the river itself has a 100-foot vegetative buffer area. Ms. Nesbitt noted that the land use permits needed to expand the dirt track beyond the expansion approved through the 2007 nonconforming use alteration approval include an application for Alteration of a Nonconforming Use, a River and Stream Conservation Permit, and a Floodplain Permit with a “no-rise” certificate, none of which were submitted or approved.
15. Ms. Nesbitt discussed that previous nonconforming use verifications and approvals did not include discussion of automobile use, with the use initially limited to go karts and later expanded to include motorcycles. Thus, staff determined that an alteration of a nonconforming use was required to allow drifting of automotive vehicles on the track.
16. Ms. Nesbitt noted that the nonconforming use status of the existing use, structures, and physical improvements is verified pursuant to Subsection 1206.05, but there are questions concerning



compliance with some of the conditions of approval and concerns with expansion of the track. She noted that the alteration or change will not expand the nonconforming use from one lot of record to another. Ms. Nesbitt further discussed how conditions of approval may be imposed on any alteration of a nonconforming structure or other physical improvements, or a change in the use, permitted under ZDO Subsection 1206.07(B), when deemed necessary to ensure the mitigation of any adverse impacts.

17. Ms. Nesbitt then reviewed the requirements for approval of an application for alteration of a nonconforming use, pointing out that the applicant has the burden of proof to meet County ZDO 1206.07(B)(4)'s requirement that the proposed alteration or change, after imposition of conditions, have no greater adverse impact to the neighborhood than the existing structure, other physical improvements, or use. Ms. Nesbitt referenced the staff decision discussing concerns with noise, noting neighbors were complaining about noise associated with the drifting.
18. Ms. Nesbitt pointed to the noise study submitted by the appellant, Mr. Smith, on behalf of the applicant, providing related discussion. Ms. Nesbitt points out that the applicant stated there are generally no more than 8 drift cars on the track at any time, yet the noise study was only conducted for up to 6 cars at one time. Further, Ms. Nesbitt points out that the table in this noise study shows noise measurements from road bikes plus dirt bikes, yet use of road bikes at the same time as dirt bikes was not authorized. In addition, Ms. Nesbitt contends that as the expanded area of the dirt track was not authorized and has not received an NCU alteration approval, noise generated in this area should not be considered as a comparison.
19. Ms. Nesbitt asserts that the appellant's noise study shows that the dirt bikes alone, and the road bikes alone, generate less noise than the drifting cars. Ms. Nesbitt also questions whether the applicant was operating in compliance with the prior conditions of approval, noting that motorcycle use was approved as occasional use with karting as the primary use, and the motorcycles also had conditions to restrict noise. She asserts the noise study does not verify that the motorcycles used for the data were compliant with these conditions of approval. Ms. Nesbitt also points out that the noise study includes no noise data readings for go karts, asserting that the data indicates there will be more drifting and motorcycle use and less karting use. Thus, Ms. Nesbitt contends there is still concern that the noise from drifting events will result in greater adverse impacts. The table showing results from Appellant's noise study is reproduced below. [Exhibit 18, page 16]

Table 4. Measured maximum trackside sound pressure levels

Period	Time	Activity During Period	Maximum Level During Period (dBA)	
			M-Road	M-Dirt
2	9:45 - 9:49	Dirt bikes	-	95.8
7	10:39 - 10:55	Dirt bikes	-	98.9
5	10:21 - 10:32	Road bikes	96.5	-
1	9:27 - 9:45	Road + dirt bikes	97.1	95.8
4	10:14 - 10:21	Road + dirt bikes	96.0	94.5
8	10:55 - 11:15	Road + dirt bikes	98.1	96.9
10	11:34 - 11:55	Road + dirt bikes	95.0	96.5
12	12:14 - 12:40	Road + dirt bikes	<i>no data</i>	98.1
3	9:50 - 10:08	Drifting, 3 cars	99.6	-
6	10:33 - 10:38	Drifting, 4 cars	97.4	-
9	11:18 - 11:31	Drifting, 5 cars	99.4	-
11	11:58 - 12:13	Drifting, 6 cars	99.0	-
<i>Limit</i>			<i>105 dBA</i>	

20. Ms. Nesbitt also points to discussion in the staff decision about traffic impacts, sharing slides containing the information on attendance taken from the application. Ms. Nesbitt contends that

the data shows there is an increased traffic impact resulting from increased attendance associated with the drifting events taking place. She asserts that the applicant has not conducted any traffic impact study to address how traffic impacts from the increased number of attendees at the drifting events would be addressed. Ms. Nesbitt compiled the following table:

Year	Karts/Motorcycles*		Drifting	
	# Events	#Attendees	# Events	# Attendees
1981-1998	11	250-400		
	2	350-600		
1999	14	250-600		
2000*	19	250-600		
	1	1500-1800		
2001*	18	200-600		
	1	1500-1800		
2002*	15	200-450		
	1	2000		
2003*	22	250-600		
	1	1600		
2004*	19	250-600		
	2	1400		
2005*	16	250-600		
2006*	18	250-600		
2007*	16	200-600		
2008*	15	200-600		
2009*	12	250-400	3	100-150
2010	11	250-400	12	100-200
2011	8	250-600	12	200-500
2012	8	200-500	12	400
2013	8	200-500	13	600-800
2014	7	200-500	14	400-600
2015	7	200-600	14	400-1000
2016	7	200-600	14	500-1800
2017	5	200-500	14	500-2000
2018	4	400-600	14	600-2000
2019	4	300-400	14	500-2000
2020	3	400-500	13	400-2500
2021	7	200-500	12	500-2500
2022	8	200-150	1	1200
	1	800		

\*Indicates years Motorcycle races were held in applicant's Exhibit 2. Motorcycle race schedules were provided for 2010, 2011, 2013, 2014. The applicant also provided race schedules for Pat's Acres for years 2015, 2016, 2017, 2018, and 2019. But it was unclear which of the events were motorcycle races.

21. Ms. Nesbitt stated that staff continue to recommend denial of the application consistent with the initial decision. In addition to asserting adverse impacts from noise and traffic, Ms. Nesbitt also pointed out that development in the floodway without a “no-rise” certificate can impact flooding for the neighborhood. Ms. Nesbitt also points to several uses of the site described in the application and identified in the staff decision that have not been authorized, including use of the site for racing/driftng by full-size automobiles, including practice, racing, testing, autocross, and drifting, creation and use of a dirt motorcycle track, hosting of concerts, obstacle course races, movie filming, cycle-cross races, and Warrior Dashes.
22. Appellant Tyler Smith presented discussion, evidence, and advocacy on behalf of his client, Chris Egger, and the application submitted by Mr. Egger, as supplemented by the additional submitted application materials and revised application materials. Mr. Smith presented several portions of Exhibit 18 containing revised application materials that include: the appeal form, a revised narrative, race schedules and photographs, a revised noise study, a copy of the 2024 NCU decision, copies of provisions of the County’s zoning ordinance, and copies of prior land use decisions.
23. Mr. Smith points to the four approval criteria of County ZDO 1206.07(B) Alterations Not Required By Law, asserting that staff erred by applying ZDO 1206.05 as if the applicant was seeking a new NCU verification for every activity taking place on the subject property. Mr. Smith points out that the right to continue a nonconforming use is a right to continue the nature and extent of use that existed at the time the use became nonconforming, citing *Tylka v. Clackamas County*, 28 Or Luba 417 (1994). Mr. Smith asserts that the alteration analysis under ORS 215.130(9) requires a comparison between the proposed alteration and the original

nonconforming use, to which the right to continue is attached, and subsequent lawful alterations, citing, *Underwood v. Clackamas County*, 80 Or LUBA 542 (2019). Mr. Smith then points to the ZDO 1206.04 discontinuation analysis by staff, contending it is irrelevant. Mr. Smith points to statements by Ms. Nesbitt clarifying that this review is not about verifying prior uses, but about clarifying the motorcycle use and the proposal for an alteration of the use to allow “drifting” of full-size automobiles.

24. Mr. Smith contends that the cessation of motorcycle use referenced in connection with the 1996 flood event was for the oval Super Speedway track at the north end of the site, where use ceased between 1996 and 1999 due to the flooding. He asserts that the noisier Super Speedway motorcycle use was discontinued prior to the 2006/07 hearings, but motorcycle use continued on weekends on the existing asphalt track and also on a dirt extension to the west of the asphalt track, just not at the same time as karts or cars. Mr. Smith responded to Ms. Nesbitt’s photos and statements alleging unpermitted Floodway development that has occurred on the subject property, asserting that County zoning requirements for Floodway development were not adopted until 2014, and this is also a prior use not subject to such regulation. Mr. Smith submitted the following photos with site plan notes, pointing out the dirt motorcycle tracks existing in the area between the asphalt race track and the river, and also providing a closer photo of a portion of this area. He asserts that the area grows back with grasses, etc. during the wet season/off-season when the vegetation is much more prevalent.



25. Mr. Smith states that the applicant is seeking affirmation and clarification that motorcycle racing on and off the paved asphalt track was known and approved in 2006 and continues to be an approved use of the site. In addition, Mr. Smith points to the applicant’s request for an alteration to the existing use of the paved track to add “drifting” of full-size automobiles as an approved activity, only on the track, in addition to the current kart and motorcycle uses. Mr. Smith responded to questions concerning whether approval is sought for a maximum of 6 or a maximum of 8 “drifting” vehicles at a time. He explained that the applicant originally sought approval for 8, but two vehicles broke down before the sound measurements resulting in the applicant’s noise study only containing data for up to 6 vehicles. Mr. Smith points to the data as showing no sound measurement difference from the number of vehicles but stated that the application is for up to 6 “drifting” vehicles on the track at a time. He provided copies of the following two photos, the one on the left showing the former Speedway track to the north, and the one on the right an aerial photo from 2006 showing the dirt motorcycle track in the area

west of the asphalt track used for supermoto motorcycle usage that was discussed and approved in County file no. Z0349-06-E:



26. Mr. Smith provided photos of various improvements on the site, such as the pavilion, outside tents, etc., explaining their uses associated with the established kart racing. He also shared a photo of the site from July 2000 showing the dirt motorcycle tracks in the northwest corner of adjacent to the asphalt track, asserting that the grass and brush in the photos are covering existing motorcycle tracks in the areas further north, south, and west of the paved track. Mr. Smith asserts that the actual approved area for the dirt motorcycle track is unclear and the exact location is not known. Mr. Smith questions the accuracy of the circled site plan photo for the approved dirt motorcycle extension, citing a portion of the conditions of approval and asserting that the approved location of the dirt extension is not precisely known. He asserts that the dirt tracks run throughout the treed areas to the north, south, and west of the asphalt track and does not dispute that the tracks run within 100 feet of the river and right along the riverbank at various locations, noting that the exact location changes every year as the property floods and the tracks are reestablished. Mr. Smith also acknowledges there is a condition of approval restricting track improvements from occurring within 100 feet of the river.
27. Mr. Smith states that the “drifting” cars would only be on the asphalt track. By comparison, he points to use of the site by up to 50 motorcycles at a time for the “Supermoto” races, and up to 40 karts on the paved track at a given time for a normal race. Thus, Mr. Smith asserts that the “drifting” cars would involve less activity or less impact than the existing uses. Mr. Smith points to the review criteria requiring that the alteration (after conditions) have no greater adverse impact to the neighborhood than the existing use. Mr. Smith contends that staff used the wrong standard, requiring that the proposed alteration have *less* impact than the current use.
28. Mr. Smith addresses comments regarding traffic impacts associated with the proposed “drifting” activity by asserting that the information submitted by the applicant concerning increasing attendance at these events was only based on estimates, as no headcount “clicker” was used. Mr. Smith points out that none of the prior decisions had a capacity limitation, and the proposal here is for the same unlimited use. Mr. Smith points to his client’s description of 1,800 to 2,000 attendees at some events, asserting that the site has the capacity, and it is not necessary to impose headcount or parking limits. Mr. Smith noted that his client would complete a Traffic Impact Study if required. Mr. Smith also responded to concerns raised about the number of attendees at special events, explaining that 3<sup>rd</sup> parties held various music concerts

and events at the site, with the 3<sup>rd</sup> parties responsible for obtaining permits for their events, but attendance at the race events is typically much less.

29. Mr. Smith next points to *noise* and asserts this is the only factor that really applies, as the applicant expects no change or increase to traffic. Mr. Smith discusses the applicant’s sound measurements conducted by ABD Engineering & Design, Inc., and discusses their expertise and qualifications. He contends that this study submitted by the applicant is substantial evidence supporting the applicant’s assertion that the sound/noise from the “drifting” of full-size automobiles does not create any greater adverse impact than the existing permitted usage. Mr. Smith shared the following Table 3 and Figure 2 showing the locations for the sound measurements, the locations of several residential properties in the general vicinity, and noting properties to the west operating as a sand and gravel mine or quarry:

**Table 3. Description of noise-sensitive receiver locations<sup>1</sup>**

Receiver	Address	Elevation	Description
R1	15055 Armdt Rd	180 ft	Residence, 2500 ft west of facility
R2	15245 Armdt Rd	185 ft	Residence, 1600 ft west of facility
R3	15445 Armdt Rd	95 ft	Residence, 1000 ft west of facility
R4	15505 Armdt Rd	95 ft	Residence, 600 ft south of facility
R5	15602 Armdt Rd	95 ft	Residence, 850 ft south of facility
R6	15582 Armdt Rd	90 ft	Trailer park and residence, 600 ft south of facility
R7	6400 Armdt Rd	90 ft	Residence, 2200 ft southeast of facility
R8	23861 and 23793 Knights Bridge Rd	95 ft	Residences, 2300 ft east of facility
R9	23725 Knights Bridge Rd	95 ft	Residence, 2500 ft northeast of facility

Note 1: See Figure 2 below for receiver locations.



Figure 2. Receiver and noise measurement locations

30. Mr. Smith points to two trackside sound level meters located 50 feet or less from the track, stating this is consistent with the Oregon noise code and compliant with OAR 340-035-0040 standards. Mr. Smith points to Table 4 and explains that the data shows that the maximum noise level measured throughout the entire session did not exceed 99.6 dBA at either meter, less than the OAR limit of 105dBA for racetracks. Mr. Smith explained that the data collection involved running every combination they could think of with motorcycles on the dirt and paved tracks, and drifting cars on the paved track. [With respect to the lack of data for karts, the applicant Mr. Egger explained that there was a kart race at a different location that weekend, so they had no available karts. He also reported that the sound engineers were only available that day.] Mr. Smith pointed to Figure 3 and Table 4 below showing the results of the noise tests at these locations. He also contends that the data shows it doesn’t matter whether the noise reading is taken from activity on the paved track or from the extension track.

**Table 4. Measured maximum trackside sound pressure levels**

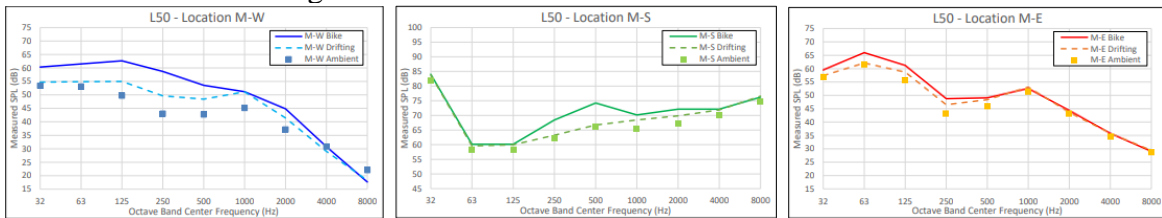
Period	Time	Activity During Period	Maximum Level During Period (dBA)	
			M-Road	M-Dirt
2	9:45 - 9:49	Dirt bikes	-	95.8
7	10:39 - 10:55	Dirt bikes	-	98.9
5	10:21 - 10:32	Road bikes	96.5	-
1	9:27 - 9:45	Road + dirt bikes	97.1	95.8
4	10:14 - 10:21	Road + dirt bikes	96.0	94.5
8	10:55 - 11:15	Road + dirt bikes	98.1	96.9
10	11:34 - 11:55	Road + dirt bikes	95.0	96.5
12	12:14 - 12:40	Road + dirt bikes	no data	98.1
3	9:50 - 10:08	Drifting, 3 cars	99.6	-
6	10:33 - 10:38	Drifting, 4 cars	97.4	-
9	11:18 - 11:31	Drifting, 5 cars	99.4	-
11	11:58 - 12:13	Drifting, 6 cars	99.0	-
<i>Limit</i>			<i>105 dBA</i>	



Figure 3. Trackside measurement locations

31. Mr. Smith points to several observations in the report prepared by ABD Engineering & Design, including that the maximum level measured during any drifting period was within 1.5 dB of the

maximum level measured during any dirt or road bike period, described as a negligible difference. He also points to findings that noise levels for the residence to the south and east of the site do not change to a noticeable degree for bikes or drifting, and for houses to the west the drifting noise is equal to or quieter for drifting than it is for bike noise. The report states that the noise associated with drifting is no greater than noise associated with the existing authorized racing at the site, concluding that the drifting activity has no greater adverse impact to the neighborhood than the existing use. Therefore, Mr. Smith contends that drifting up to 6 cars on the track meets the requirements of ZDO 1206.07.B.1., citing the engineers' report. He also discusses the graphs comparing the various noise measurements, pointing out the measurements show the noise from drifting is at or below that of the motorcycles, and not much different than the background noise or ambient noise levels. Further, Mr. Smith asserts this is not much different than the findings in the 2007 decision.



32. Mr. Chris Egger, applicant and owner of the subject property and Pat's Acres Racing Complex, provided testimony in support of the application, providing background and clarification as well. He described working closely with the local Fire Marshall to improve safety, and ensure access for ambulance and emergency vehicles. He noted that the motorcycle races involve regular minor injuries every weekend, such as a broken ankle, and the Fire Marshall directs safety improvement efforts and access for emergency vehicles, as well as inspections for the tent structures and other improvements. Mr. Egger describes large pasture areas at the site with mixed grass and gravel used for parking. Mr. Egger described the site use by 3<sup>rd</sup> parties for music concerts and activities such as "Hairfest" and "Warrior Dash" drawing 2,500 to 3,500 attendees, with the racetrack use drawing much less attendance. Mr. Egger asserts there have never been constraints on his use of the site, such as for the number of attendees, or cars parked at the site, contending the site has plenty of room to accommodate the use.
33. Mr. Egger stated that he took over the subject property in 1998 and initiated hearings in 1999 by submitting applications for verification and documentation of the nonconforming use of the site. He refers to the oval Super Speedway motorcycle track that was determined a discontinued use, but points to the 2006 decision stating that it authorized use of motorcycles on the paved asphalt track and on an adjacent dirt track. Mr. Egger describes the nature of the dirt section as ever-changing, many times weekend to weekend, with staff mowing grass and scraping the ground to make a path. Mr. Egger asserts he is authorized to use the whole area between the paved track and the river for this activity. Mr. Egger states that he does not bring any fill to the site but moves existing dirt and materials, pushing the dirt around to make berms and trails for the motorcycles. He notes that the entire facility goes underwater as it is within the Floodway for the Pudding River, with the river width itself varying from 50-60 feet in summer to 100s of feet in winter. Mr. Egger does not dispute that there is a 100-foot setback for the river, only asserting that he was and is operating there.
34. With respect to the drift cars, Mr. Egger states that the "drifting" activity on the racetrack typically involves no more than 8 cars. Mr. Egger explained that he had 8 cars on site for the

noise study, but 2 of them broke down. He points to the noise study results as showing the difference between 3-5 cars and 6 cars is only about 0.5 dBA. Mr. Egger states that the racetrack is used 6 days per week (not on Mondays) approximately 200 days each year, and he is seeking to replace an existing activity with a new activity. Further, Mr. Egger states that the drifting activity is shorter and takes less time than other activities, and thus the substitution will make no more noise than the current activities. With respect to motorcycles, Mr. Egger asserts that the restriction requiring non-modified motorcycles referred to the Super Speedway motorcycles, and not the Supermoto motorcycles that run on dirt or asphalt or a combination. He describes the race karts as using the same motors as the Supermoto motorcycles and contends that the noise study compares what is permitted with the noise from the proposed drifting cars activity.

### ***Public Comments and Testimony***

35. Dennis Colvin is a neighbor who owns the property across the river just west of the PARC site and has lived there more than 30 years and his family has owned it since 1912. Mr. Colvin reports he was at the meeting where the motorcycles were approved. He describes the noise from the karts on the racetrack as “buzzing bees” and describes the noise from the motorcycles as “2-3 times the volume” and the noise from the drift cars as “5-10 times as much” describing screeching tires, backfires, and loud motors. He asserts the noise study is faulty, contending that the noise from the racetrack was much less in the past. Mr. Colvin reports that the dirt motorcycle track runs just 30-40 feet from the river, stating the applicant has cleared much of the vegetation between the paved racetrack and the river to make the dirt motorcycle run. Mr. Colvin contends that the clearing of this vegetation has destroyed the sound barrier that existed. With respect to traffic, Mr. Colvin describes Arndt Rd. as a major byway with lines of cars to the traffic light in front of Pat’s Acres, reporting delays of 5-10 minutes when there are events taking place. He also contends the activity is diminishing the value of his own property.
36. Mr. Colvin submitted a written statement in advance of the hearing, noting that when his family moved onto his property in June 1993 there were just go-karts running at Pat’s Acres and the noise they made was minimal, calling the sound liker “killer bees.” Mr. Colvin reports that at that time there was a lot of undergrowth, brush, and trees between the kart track and the Pudding River, which is the border between their properties. Mr. Colvin notes that in 2006 an alteration to the non-conforming use allowed motorcycles, which he describes as an increase in the amount of noise generated by the racing, and a nuisance. Mr. Colvin reports that over the next several years the clearing of the land, brush, trees, etc. has eliminated the noise buffer, and a new dirt bike track was created between the kart track and the river. He states that parts of the motorcycle track are within 30 feet of the river and asserts that the noise from the motorcycles is much louder than the karts. [Exhibit 7]
37. In his written statement Mr. Colvin reports that in about 2012 Pat’s Acres began racing full size cars for drifting on the race track, describing the noise as “about 10 times as much.” Mr. Colvin states: “The noise created by the drift cars, accelerating of engines, the screeching of tires as they drift, and the backfiring of engines as they accelerate and brake, makes it unbearable to be outside. It infringes upon our ability to use our property, to host our gatherings, our family events and just enjoy the pleasant quiet atmosphere of not living with the noises of a city.” Mr. Colvin is opposed to approval of this application, describes a large Memorial Day weekend

event at Pat's Acres and describes various complaints he and his wife have made about the noise from Pat's Acres. He also states that his uncle, Norman Colvin, and his aunt Joyce Colvin, who are also neighbors on Arndt Rd. across the river from Pat's Acres, are also opposed to this application and agree with this letter.

38. Tommy Snow is an interested citizen who resides in Gresham. Mr. Snow states he has been driving at Pat's Acres since 2018 and supports the application. Mr. Snow points to the people coming into the community for the events taking place at Pat's Acres, and the revenue brought into the community.
39. Randal Beyers is a neighbor residing on Arndt Rd. who submitted a written statement in advance of the hearing stating that: "Our household is adamantly ***opposed*** to allowing drift cars at Pats Acres Racing Complex." Mr. Beyers states that his home is 2000 feet from the main track and they can clearly hear the engines with the windows closed, and must raise their voices to be heard when their windows are open. He describes the constant scream of drifting tires as much louder and highly irritating. [Exhibit 6]
40. Toni Colvin is a neighbor residing on Arndt Rd. (Dennis Colvin is her spouse), who submitted a written statement in advance of the hearing opposing this application. Ms. Colvin reports that when her family moved to the property, Pat's Acres was only a Go-Kart track, and while they could hear the buzzing at times the trees and underbrush muffled the noise and it did not affect them. Ms. Colvin further reports, however, that when the County approved racing of motorcycles on the track in 2006 the noise increased quite a lot and around 2021 Pat's Acres started having drift car events, and the noise increased so they could not go outside and it could be heard inside with the windows closed. Ms. Colvin asserts that the noise can be heard every day, all day and into the evening with night racing. Further, Ms. Colvin reports that about this same time Pat's Acres also started having Moto racing with motorcycles (and racing with cars) that do not have mufflers and backfire continuously. Ms. Colvin states that they have also clear cut much of the underbrush and trees that once had muffled the sounds of the karts, and describes issues with campers right on the riverbank, further increasing erosion within the riparian buffer. Ms. Colvin states that: "We can no longer enjoy our property and the home that we have created with all our time, energy, and resources." Ms. Colvin contends that Pat's Acres is not in compliance with County requirements, and the activity has affected their way of life and property value. In addition to her written statement, Ms. Colvin submitted a video showing the racing and drifting of full-size cars on the paved track, with the sound of roaring engines and screeching tires from the activity. [Exhibits 8, 9]

### ***Rebuttal Arguments***

41. Ms. Nesbitt provided rebuttal arguments to appellant's arguments and assertions in support of the application. Ms. Nesbitt points to Mr. Smith's assertion that the County's zoning regulations for the floodplain were enacted in the 1970s, not 2014 as Mr. Smith stated. She points out that the subject property is entirely within the Floodway where development is very restricted, requiring a "no-rise" certificate that the applicant has not provided. Further, Ms. Nesbitt points to the existing 100-foot setback for the Pudding River consistent with the County's Principal River Overlay.



42. Ms. Nesbitt addresses the applicant and appellant's arguments with respect to traffic impacts, contending that the information submitted with this applicant shows an increase in traffic and the size of the events held on the subject property, yet no traffic study was conducted to show these additional impacts. Ms. Nesbitt agrees that the motorcycle use was approved, but points to statements in the approval that there would be occasional motorcycle use that would take the place of karting and would take place on weekends on the paved track and a small dirt extension of that track within its NW corner, pointing to the aerial photo showing the designated area. Ms. Nesbitt asserts that the expanded dirt motorcycle track currently in use was never approved.
43. With respect to the noise study, Ms. Nesbitt points to data taken of motorcycles using the paved and dirt tracks, again pointing out that the large dirt track is not approved and asserting that the study omits noise data from the paved track, which is lower. Further, Ms. Nesbitt contends that the noise measurements of the drifting were not taken during an actual event. In addition, Ms. Nesbitt contends that the approval decision required the motorcycles to be limited, and also points out that the noise study has no data for the original kart racing activity.
44. Mr. Egger provided rebuttal testimony and arguments, asserting that the 2006/07 decisions approved the track extension. With respect to the photo with the circled area produced by the County, Mr. Egger notes it is a circle over a highly shaded area. He asserts that the approval was general to extend the track and had no parameters. Mr. Egger stated that he started the drifting activities in 2009 and ran an event every month except when the track was flooded. With respect to traffic impacts, Mr. Egger states he has never seen an adverse traffic impact from his activity. He agrees that people have to wait 2-5 minutes for the light, but states that where the application describes 500-2000 participants it is talking about people, not cars. Mr. Egger explains that he will typically have around 120-140 cars on site for a drifting event, perhaps 200 cars drifting at a bigger event, but spectators and attendees come and go. Mr. Egger agrees that Arndt Rd. is a very busy major road and he sits at the light and waits all the time but disagrees it is an issue, or that the few hundred extra vehicles coming to his site impacts the traffic.
45. Mr. Smith also provided rebuttal argument, contending that Ms. Nesbitt's testimony alone is not substantial evidence. He asserts that even if the proposed drifting activity is found to have adverse impacts it can be approved with conditions to ensure the impact is not greater than the original use. Further, he notes that the proposal is to swap one use for another, contending that the uses have similar impacts.

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### **C. FINDINGS AND DISCUSSION**

This case involves the appeal of a Planning Director<sup>1</sup> decision denying an application for an alteration to a previously verified nonconforming use. The application was initially processed by the County under ZDO Section 1307 as a land use permit for a nonconforming use alteration, not required by law, a Type II procedure whereby the Planning Director is the initial decision review authority, and the Hearings Officer is the appeal review authority.<sup>2</sup>

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<sup>1</sup> ZDO 1307.3(B) provides that the Planning Director includes "Any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO]." County Planner II Anabelle Lind, and County Planning Manager Lindsey Nesbitt, acted in this capacity.

<sup>2</sup> See Table 1307-1: Land Use Permits by Procedure Type.

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. The appeal discussed below is reviewed subject to the appeal procedures contained in ZDO 1307.14. These procedures provide for de novo review of the application whereby all issues of law and fact are heard anew, and no issue of law or fact decided by the lower-level review authority is binding on the parties in the hearing. The record of the initial proceedings shall, however, be made a part of the record of the appeal. New parties may participate, and any party may present new evidence and legal argument by written or oral testimony.

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 401, 813, 1206, and 1307, and the Comprehensive Plan. Clackamas County Land Use and Zoning Staff reviewed these Sections of the ZDO in conjunction with this proposal and makes the following findings and conclusions, *reviewed, adopted and/or modified by the Hearings Officer as denoted by boldface type in italics*:

### **1. Property History:**

The “subject property” is identified as Tax Lots 31E31 01100, 31E31 01200 & 31E31 01290, which is an approximate 42.87 acre lot outside of the City of Canby. The subject property is “lot of record” as defined in ZDO Section 202, Definitions, for development purposes and considered its own “tract” as defined in Section 202.

#### **Zoning History**

The first zoning applied to the subject property was the General Use Zone adopted December 14, 1967. The General Use zone allowed all principal, accessory, transitional, and conditional uses allowed in residential and commercial zones. Race tracks were listed as a principal use in the C-3 district when the race track use was no closer than 200 feet to a residential district.

The subject property was rezoned to General Agriculture (GAD) on June 18, 1979. Racetrack uses were not listed as permitted, accessory, or conditional uses in the GAD zone.

The property is currently zoned Exclusive Farm Use. EFU zoning was applied to the property on November 3, 1993 and was officially adopted in November 1996. Race tracks are not listed as permitted, accessory, or conditional uses in the EFU zone.

***Hearings Officer: The current Clackamas County Zoning and Development Ordinance, including the current Floodway development regulations as amended, became effective on July 14, 1980, replacing the prior zoning ordinance adopted in the 1970s which also included Floodway development regulations. Mr. Smith’s assertions that the floodway development provisions of the County’s ZDO did not apply to the Property until 2014 are incorrect.***

#### **Nonconforming Use Land Use Application History**

The site was originally developed as a private park for employees of the Blue Bell Potato Chip Company and was used for town meetings, concerts, dances, and other events that were held in the pavilion building. In approximately 1962 a dirt motorcycle track was developed on the site.

#### **1967 Conditional Use Permit (PCU-11-67)**

In 1967 the County approved a Conditional Use (PCU-11-67) application to establish:

- ½ mile 20 foot wide paved go kart track

- All events were to be run under the supervision of the Willamette Valley Karting Association.
- All karts must be equipped with quiet mufflers.
- Renovation of bathrooms, dance hall (pavilion) and care takers house.

### **1999 Nonconforming Use Verification and Alteration Z0810-99-E**

#### Nonconforming Use Verification

The property owner submitted land use application Z0810-99-E and Z0811-99-F for the verification of a nonconforming use and for an alteration to the use.

The Z0810-99-E and Z0811-99-F decision found the following uses and structures were lawfully established prior to adoption of the GAD zoning on June 18, 1979:

- ½ mile paved go kart track, pit area, and timing station
- Pavilion building used in conjunction with kart racing activities
- Overnight camping in conjunction with weekend racing events
- Kart racing was generally limited to weekend events during day light hours and on a seasonal, weather permitting basis. The application verified that track was used for members of the Willamette Valley Karting Association, but not general public, 6 days per week.

#### The Hearings Officer approved the following nonconforming use alterations and associated conditions of approval:

- Expansion of existing paved go kart track
- Installation of bleacher type seating
- New lean- to storage shed
- Freight vans and tents for seasonal kart repair in conjunction with racing activities. The use of freight vans/trailers for kart repair and parts sales activities shall be limited to race events only. These trailers shall be road ready at all times to allow for prompt removal in the event of imminent flooding.
- Official race events and other use of the site by PKA members shall be limited to 6 days per week, Tuesday through Sunday, during daylight hours after 9 am.
- Kart racing and kart rentals to the public, other than participants in official race events, shall be limited to weekends and during day light hours after 9 am only.
- Recreational paintball activities shall be limited to daylight hours and specifically between the hours of 9 am and 6 pm.
- On-site camping by race participants shall be allowed in conjunction with racing events or for practice purposes on the days leading up to an event.
- No racing events or recreational use of the kart track or subject property by motorcycles, dirt karts, quads, quarter midgets, etc. shall be permitted.
- Short term seasonal placement of a recreational vehicle for use as a caretaker/watchman residence. The recreational vehicle proposed for on-site watchman/caretaker use shall be placed and used on site for no more than 180 days in any calendar year.

#### In the 1999 decision the Hearings Officer found that the applicant failed to demonstrate the following:

- That motorcycle racing was not discontinued for more than 1 year after loss of the track due to flooding in 1979.

- That lights were used to extend hours of site operation.
- That the track was open to the public (It was determined that public use ceased in 1974).
- The uses established on site for public use

#### Denied Nonconforming Use Alterations

In the 1999 decision, the Hearings Officer determined that the requested alteration to include track lighting, motorcycle racing, construction of a dirt track, live music, and other public events will have an adverse impact on the neighborhood with increased noise and traffic and did not approve these additional uses.

The Hearings Officer also denied the following requested alterations:

- Construction of a dirt oval track.
- Racing of motorcycles on the site discontinued for a period of more than 12 months. Use of the site for racing of motorcycles, dirt karts, kage karts, quarter midgets, and quads.
- Installation and use of lights for nighttime operations.
- Use of the site for additional public events such as car and motorcycle shows, live music or similar public events (due to traffic and noise impacts)
- Public use of the site for karting (not associated with a race event) is not permitted.

***Hearings Officer: The 1999 decision found that alteration of the existing use to include motorcycle racing and other uses of the dirt track would have a significant impact on the neighborhood because it would increase the number of vehicles operating on the site at one time, generating additional noise and traffic. I believe this finding related to the dirt oval motorcycle track the applicant built without approval, referred to as the “super speedway” track or similar. Likewise, the hearings officer denied proposals to alter the existing use to include motorcycle shows, live music, and similar public events on the site, finding the additional public events unrelated to the existing go-kart track would generate increased traffic impacts, Further, he found noise from live music likely audible on adjacent properties, increasing noise impacts.***

***With respect to proposed development in the floodplain, and most of the underlying findings, the hearings officer noted there was no dispute on appeal and adopted the planning director’s findings. The specific relevant findings from the underlying staff decision with respect to the floodplain and other uses asserted by the applicant, such as public uses like picnics or concerts, or motorcycle racing, state: “There is little, if any, substantial evidence to confirm that the facility was used for anything other than kart racing, generally limited to weekend events, during daylight hours, and on a seasonal, weather-permitting basis at the time of the adoption of restrictive zoning regulations in 1979.” [pp. 4-5] The findings also note that: “... in 1984, the County issued a Flood Hazard Development Permit and Principal River Conservation Area Permit for the placement of fill and riprap along the bank of the Pudding River just downstream of the entrance to protect the property from being physically cut-off by the river.”***

**~~2006 Nonconforming Use Verification and Alteration (Z0349-06-E)~~**

***2000 Nonconforming Use Verification and Alteration (Z0810-99-E)***

Nonconforming Use Verification:

Z0810-99-E was appealed to the Hearings Officer and the Nonconforming Use verification and Alteration Decision was issued on March 1, 2000.

***Hearings Officer: The hearings officer found limited, non-public weekday use, whereas the planning director's decision found only weekend use. Otherwise, the hearings officer affirmed the planning director decision finding no public use of the track, no use of lights to extend hours of operation, no motorcycle racing, and no other uses by the public such as dances, concerts, company picnics, etc.***

The Findings in the Nonconforming Use verification and Decision for Z0349-06-E state: Based on review of County code enforcement activities since the Hearings Officer's decision on Z0810-99-E, and upon the staff's contacts with the applicant about the use since that time, the staff finds that the nonconforming use has not been discontinued for any period in excessive of 12 months since March 1, 2000. Based on the HO decision for Z0810-99-E the NCU uses and structures were verified in Z0349-06-E:

See summary above for Z0810-99-E for verified and authorized alterations for the nonconforming use.

***[Hearings Officer: As is the case with the current application, in addition to having already proven the existence of a nonconforming use, the applicant was required in Z0810-99E, Z0349-06-E, and again in Z0484-07 discussed further below, to show that the nonconforming use status had not been discontinued for a period exceeding 12 consecutive months pursuant to subsection 1206.07.B.2. of the ZDO, which states: "The nonconforming use status of the existing use, structure(s), and/or physical improvements is verified pursuant to Subsection 1206.05. Mr. Smith correctly points to ZDO 1206.07.B. Alterations Not Required by Law as containing the standards for review of this application. He does not explain why ZDO 1206.07.B.2. contained within that subsection should not apply, or why the applicant should not be required to submit information verifying the continued nonconforming use status of the existing use, structures, and/or physical improvements. Mr. Smith cites ODOT v. City of Mosier, 36 Or LUBA 666 (1999) to support his assertion that even if the applicant had stopped some aspect of his nonconforming use, under Oregon law it is the entirety of the use that must stop when a government is considering whether a nonconforming use right was lost because the nonconforming use was discontinued, rather than only some small portion of the nonconforming use. However, the underlying decision of the City of Mosier finding discontinuation of the nonconforming use at issue was upheld in the subsequent decision ODOT v. City of Mosier, 41 Or LUBA 21 (2001). Regardless, I believe Mr. Smith's assertion that staff should not have required the applicant to again meet these standards is incorrect.]***

#### ***2006 Nonconforming Use Verification and Alteration (Z0349-06-E)***

##### **Approved Alterations and Associated Conditions:**

- Changed the required club affiliation from Portland Karting Association (PKA) to Pat's Acres Race Complex (PARC).
- Allowed weekday use of the PARC facility for kart and remote controlled car uses, including kart rental to individuals and groups that are PARC members only (weekday kart rentals to general public not permitted). Use of the site is limited to Tuesday through Friday between 9 am and sunset. No racing, practice, rental kart, or other use of the track before or after these times is permitted.
- Approved motorcycle and kart racing events and kart rentals to non PARC members for weekends only and only during the hours between 9 am and sunset only. No racing events or

recreational use of the track or subject property by dirt bikes, dirt karts quads, quarter midgets, etc. shall be permitted

Condition of approval: The kart and motorcycle racing uses are limited to the existing paved track.

- Allowed use of the paved track for occasional motorcycle race events to occur in place of kart events on weekends only. No increase in track use was approved in association with the motorcycle racing events.

Adopted condition of approval: Motorcycle racing shall be limited to the existing paved track and an extension of the track (as shown on the site plan) and shall occur on weekend only between 9 am and sunset. Motorcycle events shall be limited to showroom stock or otherwise street legal motorcycles with mufflers complying with federal and state noise regulations. No additional race dates are permitted any motorcycle events shall be scheduled in place of regularly scheduled kart events and the total number of annual race events shall not be increased. All motorcycles to be raced at the PARC facility shall be transported to and from the site by trailer, truck, etc., and not ridden to and from the site. Slight track expansion for racing to use the dirt section located immediately to the west of the first turn of the existing track and north of the most westerly section of the existing track.

- Allowed use of a portion of the pavilion building for kart pro shop uses, including the sale, repair and rental of karts and accessories during weekend race events.
- Allowed use of a portion of the pavilion building for kart and pro shop uses including sales of karts and accessories and kart repair uses is permitted during approved facility hours.
- Approved use of a small-dirt surfaced remote controlled car racing track in the field area north of the kart track with a 100 square foot scoring tower. Hours limited to approved hours for the PRAC facility and used for electric motor powered cars only Formal race events shall not exceed a total of 4 in a calendar year.
- Permitted use of up to 10 shipping containers for the storage of equipment and materials used in conjunction with the nonconforming use.
- Permitted construction a 40 foot x 60 foot shop for storage and maintenance of materials and equipment used to maintain the facility.

## **2007 Nonconforming Use Verification and Alteration Request: Z0484-07**

### Nonconforming Use Verified

The Findings in the Nonconforming Use verification and Decision for Z0484-07-E state:

Based upon review of County permitting and code enforcement activities since the Hearings Officer's decision on Z0810-99-E and upon the staff's contacts with the applicant about the use since that time, the staff finds that the nonconforming use has not been discontinued for any period in excess of twelve (12) consecutive months since the date of the Hearing's officer decision on March 1, 2000.

### Approved Nonconforming Use Alterations:

- Permitted parking/storage of private kart trailers in the paved pit area
- Permitted gas powered RC scale racing in addition to the electric RC cars
- Permitted placement of one recreational vehicle for caretaker/watchman with a 180 day limitation.

- Permitted placement and use of large temporary tents for shelter of racers and other patrons during the racing season.
- Conditions of approval of County Planning Division files Z0810-99-E and Z0349-06-E shall remain in effect except as modified in the Z0484-07-E decision.

Denied Nonconforming Use Alterations:

- Modify signage to include additional signing, oversized signing, portable signs and other non-anchored signs.
- Modify condition requiring additional paving of the facility access drive. (required condition- the site access drive approach to Arndt Road shall be paved a minimum width of 22 feet with a minimum length from the edge of pavement of Arndt road of 100 feet to provide adequate and safe means of ingress and egress for two way traffic.

Current Application Z0339-23-E

**Unauthorized Use of Subject Property**

Application materials demonstrate that the subject property is being used or has been used for a number uses that have not been authorized through prior land use applications. The uses identified below are not allowed to take place on the subject property without obtaining approval of a nonconforming use verification and alteration land use application:

- Use of the site for full size automobiles, including practice, racing, testing, autocross, and drifting.
- Creation and use of a dirt motorcycle track.
- Hosting of concerts, obstacle course races, movie filming, cyclecross races.
- Comments received indicate the site is used for motorcycle racing on a dirt track adjacent to the paved track. Creation and use of a dirt motorcycle track was never authorized through the previous nonconforming use verification applications.

***Hearings Officer: The hearings officer concurs with the above staff findings concerning unauthorized use of the subject property. The established non-conforming uses of the subject property determined in Z0841-99-E include the paved kart racing track, pit area, timing station and a structure known as the pavilion, with limited use of the track six days per week, and on-site camping in conjunction with race events. The established non-conforming use has subsequently been altered to include limited weekend motorcycle racing on the track and on a small extension of the paved track discussed further below. However, creation and use of the current dirt motorcycle track in the floodway was never approved, nor was use of the site for full size automobiles for practice, racing, testing, autocross, drifting, or events such as auto shows. Likewise, any kind of event hosting such as concerts, obstacle course races, movie filing, cyclecross races, or any event not related to the approved karting or motorcycle racing on the one approved track on this property has not been approved.***

**2. ZDO Section 202, Definitions:**

This section of the ZDO provides definitions to terms used elsewhere in the ZDO. Section 202 defines a “nonconforming use” as:

*“A use of any building, structure or land allowed by right when established or that obtained a required land use approval when established but, due to a change in the zone or zoning regulations, is now prohibited in the zone.”*

The application materials represent, and this decision ultimately concludes with the findings further below, that the existing use of the subject property for a go-kart and motorcycle racing complex meets the Section 202 definition of a “nonconforming use”. ***The hearings officer concurs with this finding.***

**3. ZDO Section 401, Exclusive Farm Use (EFU):**

ZDO Section 401, Exclusive Farm Use District (EFU): Table 401-1, Permitted Uses in the EFU District, of ZDO Section 401 lists the land uses that are allowable in the subject EFU zoning district and the terms under which those uses may be conducted. Commercial recreational uses such as kart tracks and related uses are not listed as permitted, accessory or conditional uses within the EFU zoning district.

**4. ZDO Section 841, Marijuana Production, Processing, and Retailing:**

*841.02 MARIJUANA PRODUCTION*

*Marijuana production shall be subject to the following standards and criteria:*

- A. *MAXIMUM NUMBER OF LICENSED PREMISES/REGISTERED SITES: In the AG/F, EFU, and TBR Districts, only one premises licensed for marijuana production by the Oregon Liquor Control Commission or one medical marijuana grow site registered with the Oregon Health Authority may be located on a tract.*

**Finding:** The nonconforming use does not involved marijuana production, therefore this criterion is not applicable. ***The hearings officer concurs with this finding.***

**5. ZDO Section 1206, Nonconforming Uses and Vested Rights**

This section of the ZDO provides standards, criteria, and procedures under which a nonconforming use may be verified, continued, restored, replaced, maintained, altered, and changed. The applicant’s request for verification and alteration of a nonconforming use is therefore subject to the criteria and standards of Section 1206 that are outlined and responded to with findings below:

*1206.02 STATUS*

*A nonconforming use may be continued although not in conformity with the regulations for the zone in which the use is located. Nonconforming use status applies to the lot(s) of record on which the nonconforming use is located and may not be expanded onto another lot of record, except as provided under Subsection 1206.06(B)(3)(a) and (b) or, in the case of nonconforming*



*premises for marijuana production, with an alteration approved pursuant to Subsection 1206.06(C). A change in ownership or operator of a nonconforming use is permitted.*

**Finding:** *The applicant does not propose to expand a nonconforming use onto another lot of record that was previously approved under Z0810-99-E, Z348-06, and Z0484-07. The proposed alteration will not expand onto another lot of record. The application does not concern marijuana production. This criterion is met. **The hearings officer concurs with this finding.***

### **1206.03 DISCONTINUATION OF USE**

- A. *If a nonconforming use is discontinued for a period of more than 12 consecutive months, the use shall not be resumed unless the resumed use conforms to the requirements of the Ordinance and other regulations applicable at the time of the proposed resumption.*
- B. *Notwithstanding Subsection 1206.03(A) and pursuant to Oregon Revised Statutes (ORS) 215.130(7)(b), a nonconforming surface mining use shall not be deemed to be discontinued for any period after July 1, 1972, provided:*
  1. *The owner or operator was issued and continuously renewed a state or local surface mining operating permit, or received and maintained a state or local exemption from surface mining regulation; and*
  2. *The surface mining use was not inactive for a period of 12 consecutive years or more. Inactive means no aggregate materials were excavated, crushed, removed, stockpiled, or sold by the owner or operator of the surface mine.*
- C. *Notwithstanding Subsection 1206.03(A), marijuana production may not be resumed on a premises for which a marijuana producer holds a production license issued under ORS 475B.070 and which is nonconforming to the regulations for the zoning district in which the production is located if the premises is not used for marijuana production for a period of at least 12 calendar months, unless the marijuana production conforms to any zoning requirements or regulations applicable at the time of the proposed resumption.*

**Finding:** After initial review of the submitted application staff deemed the application incomplete and requested the applicant submit additional information and documentation as follows:

- Additional documentation to verify the nonconforming use of the existing race complex.
- Detailed site plan
- Narrative and supporting documentation demonstrating how the nonconforming use has remained the same and how it has been in continuous use without exceeding a gap of 12 consecutive months.
- Suggestions of additional materials comparing the drifting events to previously approve events to demonstrate no greater impacts.

Staff met with the applicant on 9/21/2023 to discuss the incomplete letter and discussed that the code requires staff to verify that the nonconforming use and structures have not been discontinued for more than 12 consecutive months and that additional information should be submitted in order for staff to

make this type of verification. After discussing the incomplete letter with staff, the applicant submitted a revised narrative that states: All pre-existing nonconforming uses have continued uninterrupted and not been discontinued for more than 12 months. There are other less specific events, normal days, and proof of proper and legal continued usage available if needed for the other related uses (storage, remote control car racing, pavilion, tents, caretaker, etc) but those are not relevant or disputed and are not a part of this request.

Staff reached out to the applicant one additional time to inquire if they intended to submit additional information. The applicant submitted additional information relating to the noise study that was conducted and is included in the application materials.

The table below summarizes the previously permitted nonconforming uses and structures, a summary of submitted application materials, and staff analysis of the materials.

***[Hearings Officer: The County submitted the following Revised Table of Nonconforming Use Status (Exhibit 19) following review of additional materials submitted by appellant. (Exhibit 18)]***

REVISED July 2024: Revisions shown in underline. The table below summarizes the previously permitted nonconforming uses and structures, a summary of submitted application materials, and staff analysis of the materials.

<b>Verified NCU</b>	<b>Applicant Submittal</b>	<b>Staff Analysis</b>
Paved go kart track (Z0810-99-E)	The applicant submitted evidence demonstrating that the track has been in continuous use since the nonconforming use was last verified in 2007. Evidence includes aerial photograph of the site, track photographs, and event schedules dating back to 2008.	The applicant has provided sufficient evidence to demonstrate that the go kart track has not been discontinued for a period of more than 12 consecutive months since the NCU was last verified in 2008.
Pavilion building (kart accessory sales and services, kart repair, kart rental) during approved facility hours. (Z0349-06-E)	The applicant submitted an undated aerial site photo graph that shows the pavilion building. However, <u>on appeal</u> , further evidence supporting approved uses for the pavilion were provided (photographs Exhibit 18).	Staff can verify that the pavilion building is present on the site. <u>Sufficient evidence has been provided demonstrating use of the pavilion has not be discontinued for more than 12 consecutive months since the NCU was last verified in 2008</u>
Bleacher seating area (Z810-99-E)	<u>On appeal, photographic evidence was provided that the bleacher seating is still on site and regularly used.</u>	<u>The applicant provided documentation demonstrating use of the bleachers has not be discontinued for more than 12 consecutive months since the NCU was last verified in 2008.</u>
Lean to storage shed	<u>On appeal, the applicant provided photographic evidence that the lean to shed remains on site and it utilized for storage of maintenance equipment.</u>	<u>The applicant provide documentation demonstrating the use continues to exist on the subject site and has not be discontinued for more than 12 consecutive months since the NCU was last verified in 2008</u>
Temporary care takers recreational vehicle. (Z0484-07-E)	<u>On appeal, the applicant submitted photographic evidence that the care taker RV is present on site</u>	<u>The applicant provided adequate documentation demonstrating that use of the site for a care takers</u>

	<u>and provided a narrative explaining the use.</u>	<u>recreational vehicle has not discontinued for a period greater than 12 months since 2008.</u>
Freight vans and seasonal tents for kart repair limited to race events only. (Z0810-99-E)	<u>On appeal, the applicant provided photographic evidence and a narrative explaining continued use of freight vans.</u> An undated aerial photo with an arrow identifying tents was also provided.	<u>The applicant provided adequate documentation to demonstrate that freight vans and seasonal tents continue to be used for kart repair during race events. Since the last nonconforming use verification in 2008.</u>
10 shipping containers for storage purposes. Must obtain building, floodplain and PRCA permit(s). (Z0349-06-E)	An undated aerial photograph was provided showing various structures labeled as storage. <u>On appeal, the applicant provided additional photographic evidence and a narrative demonstrating the shipping containers remain on the site and have been in continuous use.</u>	<u>Evidence has been provided demonstrating this use has not been discontinued for more than 12 consecutive months since the NCU was last verified in 2008.</u>
40 by 60 shop for storage and maintenance equipment. (Z0349-06-E)	Evidence relating to the location and use of the 40 ft by 60 shop was not provided in the application materials.	The applicant did not provide adequate documentation that the storage and maintenance shops exist on the site.
Use of track for go kart racing/events and practice for <u>PARC members</u> : Tuesday-Friday 9am-sunset. <u>Non-PARC members</u> : Weekends only 9am-sunset. (Z0349-06-E)		Evidence provided demonstrated gap did not occur for hours of operation of the track for go karts. Evidence included use of the track for full size automobiles, as discussed above, the track and site was never authorized for automobile use. An alteration to the NCU is required to allow use of the site for automobile racing, practice, testing, and drifting.

		Evidence was not provided demonstrating membership use limitation for weekdays.
Use of track for motorcycle events and practice on weekends between 9am – sunset. (Z0349-06-E)	<p>Application materials include yearly racing and practice schedules for go karts and motorcycles. The schedules do not list motorcycle racing practice or events for 2012 and from 2014 to 2023. The applicant provided a table of events/site uses (exhibit 1) hosted at the subject site dating back to 1981. The table indicates the site has been used for motor cycle training and endorsement classes.</p> <p><u>Dirt track expansion over the years does not have required land use approvals. Aerial photographs demonstrate that the track was expanded beyond the original approved area. This expansion took place within the floodway. A Floodplain Development Permit (including a no rise certificate) and a Principal River and Stream Conservation (PRCA) Permit were not obtained for the track expansion. Additionally, an Alteration of a Nonconforming Use to expand the track beyond the approved expansion under Z0484-07 was not obtained.</u></p>	<p>Original application materials demonstrate that motorcycle racing and practice was discontinued for a period greater than 12 consecutive months beginning in 2014. <u>On appeal the applicant provided written testimony that motorcycle use of the track was not discontinued. However, additional information such as motorcycle race schedules between 2014 and 2023 were not provided. Aerial and site photos of the dirt track demonstrate it has been maintained and is not overgrown with vegetation which demonstrates the track continues to be used.</u></p> <p>Some evidence was provided that the site was used for motorcycle training and endorsement classes and has not been discontinued.</p>
Storage of private go karts on site in 40x60 shop.	No evidence provided in application materials.	The applicant did not provide documentation

(Z0349-06-E)		relating to the use of the site for storage of private gold karts,
Use of site for paintball activities. (Z0810-99-E)	No evidence provided in application materials.	The applicant did not provide documentation demonstrating if the use continues to exist on the subject site, therefore staff cannot verify if the use exists or has been discontinued
Temporary camping in association with race events. (Z0484-07-E)	Memo from Todd Gary – Fire District Community Risk Reduction Division Chief 2008-2019 <u>On appeal the applicant provided a narrative description and photographs demonstrating use of the site on occasion for camping associated with race events.</u>	<u>The applicant provided documentation demonstrating the use continues to exist on the subject site, and has not been discontinued for more than 12 months.</u>
Small dirt track to operate remote control scale model race track with 100 square foot scoring tower. Hours limited to approved hours for the PRAC facility. Permit gas powered and electric RC scale racing (Z0484-07-E)	No evidence provided in application materials.	The applicant did not provide documentation demonstrating if the use continues to exist on the subject site, therefore staff cannot verify if the use exists or has been discontinued
100 s.f. scoring tower in conjunction with remote-controlled car track. (Z0349-06-E)	<u>On appeal the applicant submit photographs of the scoring tower which demonstrate it is furnished and has routinely been maintained and used.</u>	<u>The applicant provided documentation demonstrating the use continues to exist on the subject site, and has not been discontinued for a period exceeding 12 months.</u>

1206.05 VERIFICATION OF A NONCONFORMING USE

Verification of nonconforming use status requires review as a Type II application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

- A. The nonconforming use lawfully existed at the time of the adoption of zoning regulations, or a change in zoning regulations, which prohibited or restricted the use, and the nonconforming use

*has not been subsequently abandoned or discontinued. Once an applicant has verified that a nonconforming use was lawfully established, an applicant need not prove the existence, continuity, nature, and extent of the nonconforming use for a period exceeding 20 years immediately preceding the date of application for verification; or*

- B.** *The existence, continuity, nature, and extent of the nonconforming use for the 10-year period immediately preceding the date of the application is proven. Such evidence shall create a rebuttable presumption that the nonconforming use, as proven, lawfully existed at the time of, and has continued uninterrupted since, the adoption of restrictive zoning regulations, or a change in the zoning or zoning regulations, that have the effect of prohibiting the nonconforming use under the current provisions of this Ordinance.*

**Finding:** The uses and structures identified below were verified and authorized by land use applications PCU-11-67, Z0810-99-E, Z0349-06-E, and Z0484-07-E.

**[Hearings Officer: the staff findings below are based on information submitted with the application. The findings below were revised by staff in the REVISED July 2024 table.]**

### **Approved Track and Amenities**

- ½ mile 20 foot wide paved go kart track with pit area, and timing station. A slight track expansion for racing to use the dirt section located immediately to the west of the first turn of the existing track and north of the most westerly section of the existing track was approved in 2006.
- Pavilion building used in conjunction with kart racing activities. Allow use of an existing building for kart accessories sales and services in parts. Use of a portion of the pavilion building for the sale, repair and rental of karts and accessories during approved facility hours (PARC Members: Tuesday-Fridays between 9am-sunset. Non-PARC Members: Weekends only between 9am-sunset for kart and remote-controlled car uses. Motorcycle racing limited to weekends only between 9am-sunset.)
- Installation of bleacher type seating
- New lean to storage shed
- Freight vans and tents for seasonal kart repair in conjunction with racing activities. The use of freight vans/trailers for kart repair and parts sales activities shall be limited to race events only. These trailers shall be road ready at all times to allow for prompt removal in the event of imminent flooding.
- To permit use of up to 10 shipping containers for storage of equipment and materials in conjunction with the use.
- To construct a 40 foot by 60 foot shop for storage and maintenance of materials and equipment used to maintain the facility.
- Permit placement and use of large temporary tents for shelter of patrons and equipment.
- 2007 alteration condition of approval: Conditions of approval of County Planning Division files Z0810-99-E and Z0349-06-E shall remain in effect except as modified in the Z0484-07-E decision.

### **Staff Analysis:**

The applicant submitted an undated aerial photograph of the site which shows the paved go kart track. The applicant also provided supporting documentation that the paved go kart track was in continuous use since the last NCU verification in 2007 which includes photographs of the track and practice and racing schedules from 2008 to 2023. Staff finds that the applicant has adequately demonstrated that the go kart track continues to be an active nonconforming use.

Staff is able to verify that the pavilion building continues to exist, but the applicant did not provide documentation demonstrating current use of the pavilion building. Staff is unable to verify if the current uses of the pavilion building continue to be in compliance with the approved nonconforming uses from the 1967 (CU), 1999, 2006, and 2007 NCU applications.

As discussed above, the applicant did not submit documentation demonstrating that the bleacher seating, lean to storage shed, use of freight vans for seasonal kart repair, temporary care taker recreational vehicle, and use of temporary seasonal tents were established and maintained on site since the 2007 nonconforming use verification. Therefore staff is unable to verify if these nonconforming uses continue to exist. The applicant did not submit documentation demonstrating the 40 foot x 60 foot shop for storage and maintenance building was constructed or that the installation of 10 shipping containers occurred. The 2006 NCU conditions of approval required the applicant to obtain building permits and Principal River Conservation Area (PRCA) application for the proposed structures (PRCA was not required for all structures). County records indicate that these permits were not obtained. Therefore, staff is unable to verify that the following uses were established and maintained: bleacher seating, lean to storage shed, use of freight vans for seasonal kart repair, temporary care taker recreational vehicle, and use of temporary seasonal tents, 40 ft x 60 ft foot storage and maintenance building, and the installation of 10 shipping containers.

***Hearings Officer:*** *The hearings officer notes that the applicant submitted additional information through his attorney, Mr. Smith, as part of this appeal, and that staff reviewed the information and submitted a REVISED July 2024 table. [Exhibits 18, 19]. The hearings officer concurs with the staff findings in the REVISED July 2024 table above with respect to the continued use of: the paved go-kart track (Z0810-99-E), the pavilion building (Z0349-06-E), the bleacher seating (Z810-99-E), the lean-to storage shed (Z810-99-E), the temporary caretaker's RV (Z0484-07-E), the freight van and seasonal tents for kart repair limited to race events only (Z0810-99-E), the 10 shipping containers for storage purposes (Z0349-06-E), the use of the track for go kart racing/events and practice for PARC members Tuesday-Friday 9am – sunset and Non-PARC members weekends only, 9am -sunset (Z0349-06-E), the use of the paved track for motorcycle events and practice on weekends between 9am – sunset (Z0349-06-E), temporary camping on site in association with race events (Z0810-99-E), and the 100 s.f. scoring tower in conjunction with remote controlled race track (Z0349-06-E).*

***I reviewed all of the exhibits and information submitted to the record in this matter and found no evidence provided with respect to: continued use of a 40 X 60 shop for storage and maintenance equipment (Z0349-06-E), continued use of the approved dirt track expansion for motorcycle racing (Z0349-06-E), continued storage of private go karts on site in a 40 X 60 shop (Z0349-06-E), continued use of the site for paintball activities (Z0810-99-E), or continued use of a small dirt track for remote control scale model gas powered and electric RC scale racing (Z0484-07-E). I note here that the findings in the December 7, 2023 staff decision appealed here alerted the applicant to the fact that the application they reviewed contained no evidence of the continuation of the above nonconforming uses.***



*With respect to use of the approved dirt track expansion, or extension of the paved track for motorcycle racing, there is a dispute between the applicant and County staff concerning exactly what was authorized. The specific relevant findings taken from the Z0349-06-E decision beginning at page 6 are reproduced below for clarity:*

*“e) The third request is also a modification of condition of approval no. 2 of Planning file no. Z0810-99-E. The applicant is seeking approval to permit use of the existing paved track, not an additional track as in the past, for motorcycle racing events in addition to karting race events.”*

*“The staff notes that the applicant specifically states that he is not requesting approval of an increase in track usage; e.g. additional event dates, but is requesting approval to replace some current kart racing dates with motorcycle racing dates on the annual track racing schedule. The total number of race events, kart and motorcycles combined, would not be increased if this part of the request is approved. The applicant states that the type of motorcycles raced would not be the same as the highly modified “speedway motorcycles” raced at the site in the late 1990’s on a dirt track then in use.”*

*“The applicant states that the motorcycles allowed would meet Federal noise limits set for stock/showroom “sport” motorcycles and that these are also street legal motorcycles. These motorcycles generate lower noise levels than race karts which have highly modified engines. The applicant states that allowing motorcycle racing events in place of some regularly scheduled kart events would not increase overall track usage and would generally result in lower noise levels than a permitted kart race event.”*

*“Provided that the motorcycles are not highly modified and are muffled, street legal motorcycles, the expected noise levels generated are similar or less, than for a kart racing event and other operational characteristics of the use, such as days and hours of operation, would not change. Therefore, the staff finds that permitting occasional motorcycle race events in place of kart events on weekends only would not cause additional adverse impacts upon the surrounding community.”*

*“The applicant also seeks approval to allow use of a short section of dirt track connected to the paved track for this use. The applicant does not state whether or not he is proposing to extend the length of the existing asphalt-paved track by paving this new section, however, whether paved or not, the use of this additional track section would be the same. This dirt section is located immediately to the west of the first turn of the existing track and north of the most westerly section of the existing track. In consideration of the location in close proximity to the track area currently in use, the distance to nearby residential uses, the limited area of the proposed track expansion and the fact that approval of this expansion would have no effect on overall track usage, the staff finds that expansion of the track as described, whether dirt or- or asphalt-surfaced, would not cause additional adverse impacts to surrounding properties and residents.”*

*The Z0349-06-E decision includes the following relevant Conditions of Approval at page 11:*

*“1. This decision is based upon the application materials, including a site plan submitted by the applicant, the Findings discussed above and the conditions of approval contained*

*herein. Any changes to the proposal, except as required by these conditions and approved by the Planning Div., shall be reviewed by the Planning Div. as a separate application.”*

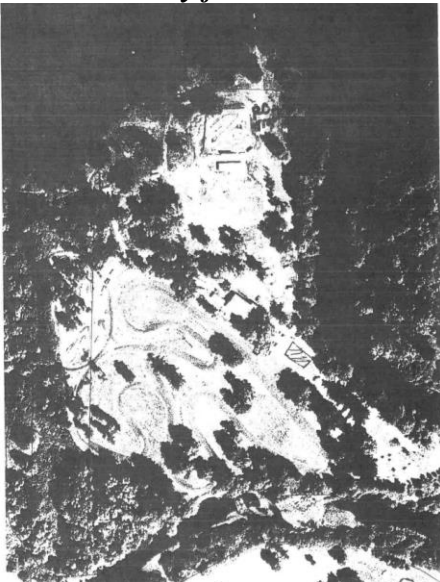
*“4. Motorcycle racing shall be limited to the existing paved track and an extension of the track (see following condition) and shall occur on weekends only between 9:00 a.m. and sunset. Motorcycle events shall be limited to showroom stock or otherwise street-legal motorcycles with mufflers complying with federal and state noise regulations. No additional race dates are permitted. Any motorcycle events shall be scheduled in place of regularly scheduled kart events and the total number of annual events shall not be increased. All motorcycles to be raced at the PARC facility shall be transported to and from the site by trailer, truck, etc. and no ridden to and from the site.”*

*“5. The kart and motorcycle uses are limited to the existing paved track and an extension of the track at the northwesterly corner of the track area as demarcated upon an aerial photo in the County file. This track extension may be paved in future. The applicant shall obtain Flood Hazard Development and Principal River Conservation Area Review permits from the County Planning Division for any future importation of fill, gravel, rock, concrete or asphaltic paving from off-site prior to placement of such materials on site if the track extension is to be paved.”*

*“18. No new structures, access roads, track improvements, tree or other significant native vegetation removal or other development shall occur within 100 ft. of the mean high water line of the Pudding River.”*

*“19. Compliance with these conditions of approval is mandatory and non-compliance may be cause for revocation of this permit.”*

*Attached to the County file in the Z0349-06-E decision is the following photo:*



*I agree with the comment by the applicant, Mr. Egger, that the photo produced by the County appears to be a circle over a highly shaded area. I disagree with Mr. Egger's assertion that the approval was general to extend the track and had no parameters.*

*After carefully reviewing the previous decisions and record in this matter, I find that the approval was for a small dirt extension of the existing paved track that is within the northwest corner of the existing track and was completely contiguous with the existing track. Meaning the approval was for motorcyclists racing on the existing paved track to have a short dirt extension in the northwest corner of the track included as part of their race. The approved area lies to the north of the western edge of the track, does not extend any further west than the existing paved track, does not extend south of the western-most point of the paved track at all, and does not extend north past the turn shown in the photo in the County's file. The approved location for this small dirt racetrack extension is contiguous with the paved race track and is shown more clearly in the 08/02/2005 photo showing the dirt extension section of the existing paved track used for motorcycle racing. Locations where motorcycle racers exited the paved track and entered the dirt extension, and then existed the dirt extension and re-entered the paved race track, are visible and show dirt on the paved track.*

*I find that the approved motorcycle racing was required to always use the paved track such that the paved track was not available for another use. As described, the request was for "... approval to permit use of the existing paved track, not an additional track as in the past, for motorcycle racing events in addition to karting race events." Thus, no separate track was ever authorized or approved.*

*Further, the approval specifically did not allow an increase in track usage. Mr. Egger is operating a second track on the site without authorization for such second track, greatly increasing the track usage on the site in a manner not consistent with the verified non-conforming use. Mr. Egger stated that kart races involve up to 40 karts racing on the paved track at once, and motorcycle races involve up to 50 motorcycles, and Mr. Smith provided the same description of use. By using two separate tracks Mr. Egger has increased potential race track usage 2.25 times the usage by karts alone, racing as many as 90 vehicles on the site at a time.*

*The use of the small dirt track extension shown in the circled area of the photo in the County's file for Z0349-06-E has long been discontinued and replaced by the separate dirt motorcycle track that was not approved, as shown in the 2012, 2015, and 2023 aerial photos, and the photos included with the applicant's noise study. These photos show that the dirt track is no longer contiguous with the paved racetrack and is entirely a separate track that does not require use of the paved track at all. Figure 2 in the applicant's noise study clearly shows the approved nonconforming paved race track marked in blue and the completely separate unapproved dirt motorcycle track in yellow. This is consistent with the 2012, 2015, and 2013 aerial photos showing a separate dirt motorcycle track. This is also consistent with Table 4 in the applicant's noise study which includes data for dirt bikes alone, road bikes alone, road + dirt bikes, and different numbers of drifting cars on the road [meaning paved track surface].*

*ZDO Subsection 1206.04.A. of the ZDO states: "If a nonconforming use is discontinued for a period of more than 24 consecutive months, the use shall not be resumed unless the resumed use conforms to the requirements of this Ordinance and other regulations applicable at the time of the proposed resumption." I find substantial evidence that use of the small dirt extension approved in Z0349-06-E has been discontinued and replaced with the unauthorized separate dirt motorcycle*

*track. I will consider the issue whether or not the separate dirt motorcycle track AND/OR the small dirt track extension previously approved in Z0349-06-E, but discontinued for several years, will be allowed as an alteration to the existing nonconforming use, reviewing and considering each as part of this application for alteration of the nonconforming use.*

**Authorized Uses for the race track (go karts and motorcycle use)**

The 1967 (CU), 1999, 2006, and 2007 NCU applications authorized the following uses and limitations for the subject site:

- Official race events and other use of the site by Pat's Acres Racing Complex (PARC) members shall be limited to 6 days per week, Tuesday through Sunday, during daylight hours after 9 am.
- Weekday use of the PARC facility for kart and remote controlled car uses, including kart rental to individuals and groups shall be limited to PARC members only, Tuesday through Friday between 9 am and sunset. No racing, practice, rental kart, or other use of the track before or after these times is permitted.
- Kart racing and kart rentals to the public, other than participants in official race events, shall be limited to weekends and during day light hours after 9 am only.
- Motorcycle and kart racing events and kart rentals to non PARC members shall be limited to weekend only and only during the hours between 9 am and sunset only. No racing events or recreational use of the track or subject property by dirt bikes, dirt karts quads, quarter midgets, etc. shall be permitted.
- All karts must be equipped with quiet mufflers.
- Use of the paved track for racing of motorcycles. No increase in track use was proposed, but motorcycle racing is to take place in place of existing karting events on weekends only between 9 am and sunset. Motorcycle events shall be limited to showroom stock or otherwise street legal motorcycles with mufflers complying with federal and state noise regulations. No additional race dates are permitted any motorcycle events shall be scheduled in place of regularly scheduled kart events and the total number of annual race events shall not be increased. All motorcycles to be raced at the PARC facility shall be transported to and from the site by trailer, truck, etc, and not ridden to and from the site.

**Staff Analysis:**

Motorcycle use of the property

As demonstrated above weekend use of the paved track was authorized and the events were required to occur in place of go karting events. The applicant provided a list of uses for the site from 1981 through 2023 in Exhibit 1 and provided a list of scheduled events for the site from 2008 through 2023. In some cases the information on these two exhibits conflict. For example the motorcycle races and events shown in Exhibit 4 do not appear to be represented on Exhibit 1. The applicant did not provide documentation of what karting events were omitted in order to accommodate the motorcycle events. Exhibit 1 demonstrates that 13 go karting events were held each year from 1981 through 1999 (but no data was provided to demonstrate/document this). Exhibit 1 demonstrates the number of events increased to 34 events in 1999, but again Exhibit 1 does not list motorcycle practice or racing events.

Exhibit 4 provides the racing schedules for all activities on the subject site which demonstrates that in 2012 and from 2014 through 2013 motorcycle races and practices were not listed on the PARC schedules. Based on this information staff finds that motorcycle racing and practices on the subject

site stopped for more than 12 consecutive months in 2014 and the nonconforming use of motorcycle racing is no longer allowed because the use was discontinued for a period exceeding 12 consecutive months.

Applicant's Exhibit 1 demonstrates that the site was routinely used for motorcycle training (approximately 2 per year) and motor cycle endorsement classes (approximately 10 per year). Further documentation supporting this was not provided by the applicant. The prior NCU decisions allowed motorcycle events and practices. It is possible these uses could be considered events, but the applicant did not submit documentation demonstrating which go karting events were omitted in order to accommodate the training and endorsement classes. Schedules and dates for the classes and trainings were not provided and it was not demonstrated that they were only held on the weekend. Staff cannot verify continued use of the motorcycle training and endorsement classes or that the use was consistent with the adopted conditions of approval for the 1967, 1999, 2006, or 2007 applications.

#### Go Karting use of the property:

The applicant provided two exhibits to demonstrate use of the race track. Exhibit 1 demonstrates that participation for the go karting events ranged between 250 to 600 participants between 1981 and 2023. In 2000, 2001, and 2004 one or two events were held each year that had between 1,500 and 1,800 participants.

Exhibit 1 demonstrates that between 1981 and 1999 approximately 13 go karting events were held. Exhibit 1 demonstrates that between 1999 and 2005 approximately 20 go karting events were held each year. According to Exhibit 1 the number of go karting events continues to decline from 2007 on demonstrating that 4 go karting events were held in 2020, 7 go karting events were held in 2021, and 9 go karting events were held in 2022. Go karting schedules for 2023, or 2022 or other supporting data were not provided for the number of events listed in Exhibit 1. Based on documentation provided by the applicant in Exhibit 1, go kart use of the site has significantly decreased over the years and the go karting use is currently for 4 to 9 events per year with 250 to 600 participants per event. The reduced use of the track for go karting purposes occurred for a period of more than 12 consecutive months, meaning the more intense use of the track for go kart racing and practice has decreased and current use of the track is limited to 4 to 9 go karting events per year with 250 to 600 participants per event.

#### **Other Uses Authorized on Site:**

- Recreational paintball activities shall be limited to daylight hours and specifically between the hours of 9 am and 6 pm.
- On-site camping by race participants shall be allowed in conjunction with racing events or for practice purposes on the days leading up to an event.
- Placement of a recreational vehicle for use as a caretaker/watchman residence shall be placed and used on site for no more than 180 days in any calendar year.
- Use of a small dirt track in the field area north of the kart track to operate remote control scale model race track with 100 square foot scoring tower. Hours limited to approved hours for the PRAC facility. Permit gas powered and electric RC scale racing

#### **Staff Analysis**

Application materials did not address use of the site for paintball, or on site camping of race participants, or use of the dirt track for RC scale racing. Staff cannot verify if these nonconforming uses continue to exist. A photograph of a camper van labeled current care taker van was submitted

with the application materials, but additional documentation demonstrating that there was not a lapse in 12 consecutive months of the recreation vehicle being placed on site was not provided.

Applicant's Exhibit 1 and 4 demonstrate that the site has been used for a variety of uses that were not authorized from the prior land use decisions. Use of the site for full size automobile racing, testing, and drifting is not authorized. Use of the site to host relay and obstacle races, cycle cross races, and concerts is not authorized.

### **1206.06 Nonconforming Use Alteration**

**Applicant's Proposal:** The applicant is requesting to alter the nonconforming use to allow use of the track for drifting events. The applicant asserts that automobile drifting is a modern version of driving that is a cross between the elements of art show driving and precision control of a vehicle. Specifically, drifting is not a race but more of a driving demonstration. The applicant is proposing to replace existing scheduled events with drifting events.

**1206.06(D) Alterations Not Required by Law:** An alteration of a nonconforming structure or other physical improvements, or a change in the use, requires review as a Type II application pursuant to Section 1307, *Procedures*, and shall be subject to the following standards and criteria:

1. The alteration or change will, after the imposition of conditions pursuant to Subsection 1206.06(B)(4), have no greater adverse impact to the neighborhood than the existing structure, other physical improvements, or use.

**Finding:** The applicant proposes to swap out previous approved go karting events with drifting events and stated in their narrative that traffic impacts will not be increased. The applicant's narrative states that traffic along Arnt Road is not expected to change at all much less cause any new adverse impacts as the uses, whether motor cross, autocross, shows, karts, or other driver or automobile testing in the area is already taking place. The narrative further states that use of the site for automobile drifting "should be precisely the same as the existing conditions and existing impacts that are already factored into the current permits.

The applicant also provided a noise study indicating the noise associated with automobile drifting does not exceed the noise allowed by Clackamas County Code Chapter 6.05. However, this is not the standard applied to nonconforming use alterations. The standard identified above, is the applicable standard used for determining NCU alterations where the applicant has the burden of proof to demonstrate that the proposed alteration, or change will, after the imposition of conditions pursuant to Subsection 1206.07(B)(4), have no greater adverse impact to the neighborhood than the existing structure, other physical improvements, or use".

Staff disagrees with the applicant's assessment that swapping out events will not create any additional adverse traffic or noise impacts. Staff finds that the increased participation associated with the automobile drifting events increases impacts to surrounding areas relating to noise and traffic. The proposal would allow up to 2,000 automobiles to participate in a drifting event, compared to up to 600 go karts participating in an event. Noise and traffic generated from 1,400 more vehicles on the site would cause significant impacts to surrounding properties. The applicant has also failed to demonstrate how the proposed drifting events would be incorporated with the existing conditions of approval regarding facility hours for PARC, non-PARC and motorcycle events as approved in Z0349-06-E.

The applicant did not provide data supporting the traffic assumptions provided in their narrative such as a traffic analysis or a letter from a traffic engineer supporting the assessments that no traffic impacts will occur with allowing use of the site for automobile drifting events and practice. As demonstrated in the applicants Exhibit 1, the go karting activities generated between 250 and 600 participants and drifting events generated between 500 and 2,000 participants. The site has been hosting up to 14 drift events per year with up to 2,000 participants. The applicant's documentation demonstrates that vehicle trips to and from the site associated with drifting events has significantly more trips than vehicle trips associated with go karting events. Drifting events will create additional traffic impacts to surround areas due to significantly more trips entering and leaving the site for auto drifting events.

Staff finds, the applicant failed to demonstrate that noise associated with drifting is less than noise associated with the racing of go karts or other authorized uses of the paved track. In support of impacts associated with noise from the automobile drifting concerns and comments were received from nearby property owners indicating noise impacts from the drifting events were greater than noise impacts from go karting events.

Staff finds that the applicant failed to demonstrate that impacts associated with automobile drifting will have no greater adverse impact to the neighborhood than the existing nonconforming use. **The applicant's request to alter the nonconforming use to allow use of the site for full sized automobile drifting events and practice is denied.**

***Hearings Officer: I read the applicant's noise study and considered Mr. Smith's arguments that the submitted noise study is the only substantial evidence in this matter. I noted that the study found a slight 1.5 dBA increase in the noise associated with some of the drifting activity by comparison to the existing motorcycle use on the site but concluded that this was negligible. I do not find that a negligible increase is the same as no greater adverse impact to the neighborhood than the existing use. I also considered Ms. Nesbitt's arguments at the hearing that the noise study is flawed because it includes comparison noise data from dirt bikes on the separate unapproved dirt track, also includes noise data from dirt bikes and road bikes at the same time (an unapproved activity), contains no noise data from the originally verified nonconforming use by comparison – no noise data from race karts, and does not verify that the motorcycles used were themselves compliant with conditions of approval (i.e. unmodified street-legal "sport bikes" with conforming mufflers). The only data taken in Table 4 of the applicant's noise study showing road/racetrack motorcycles alone on the track measured 96.5 dBA. The data for combinations of 3-6 drifting cars on the road/racetrack ranged from a low of 97.4 to a high of 99.6. Even if I accepted the study's assertion that an increase of 1.5 dBA is negligible, the data from the study reflects a potential increase in trackside sound pressure levels of 3.1 dBA, or twice the amount the applicant's sound engineers describe as negligible. I do not know if the actual increase is as substantial as described by Mr. Colvin and his family; however, the increase in noise is also not negligible either. In comparing photos of the site taken before the separate and unapproved dirt motorcycle track was created in the floodway and in the buffer area for the Pudding River with current photos, I find substantial amounts of the trees and vegetative buffer completely removed consistent also with the description by Mr. Colvin and find credible his assertion that in past years this vegetative buffer helped reduce the noise. The difference is particularly evident when looking at photos showing both sides of the riverbank, with Mr. Egger's property now missing over half the vegetative buffer with large areas of completely bare ground visible. I find no recommendations within the applicant's noise study or other***

*submissions for conditions of approval that can be imposed to mitigate the impacts of the additional noise and am unaware of any. Therefore, the hearing's officer concurs in the staff findings above that the applicant failed to demonstrate that impacts associated with automobile drifting will have no greater adverse impact to the neighborhood than the existing nonconforming use. The applicant's request to alter the nonconforming use to allow use of the site for full sized automobile drifting events and practice is denied.*

2. The nonconforming use status of the existing use, structure(s), and/or physical improvements is verified pursuant to Subsection 1206.07.3.

**Finding:** As demonstrated above, only a portion of the previous nonconforming use and structures could be verified. As discussed in the findings above, criterion not met.

**Hearings Officer:** *The hearings officer concurs in the staff findings above that only a portion of the previously approved alterations of the verified nonconforming use were verified not discontinued. As discussed, I found substantial evidence that the previously approved alteration of the verified nonconforming use allowing a small dirt extension of the race track for use by motorcycles was discontinued and replaced with a separate dirt motorcycle track that was not approved.*

3. The alteration or change will not expand the nonconforming use from one lot of record to another.

**Finding:** Not applicable, the applicant is not proposing to move the nonconforming use from one lot of record to another. ***The hearings office concurs in this finding.***

4. Conditions of approval may be imposed on any alteration of a nonconforming structure or other physical improvements, or a change in the use, permitted under Subsection 1206.07(B), when deemed necessary to ensure the mitigation of any adverse impacts.

**Finding:** Not applicable, the nonconforming alteration is denied as discussed above. ***The hearings office concurs in this finding with respect to the proposed drifting activity.***

**Hearings Officer:** *Additional discussion and findings with respect to applicant's proposal to alter the nonconforming use to allow use of a separate dirt motorcycle track AND/OR a short section of dirt motorcycle track extension connected to the paved track for motorcycle racing.*

### **Applicant's Proposed Alterations**

*Consistent with prior land use decisions, I find that allowing the alteration of the existing use to include motorcycle races on a separate dirt track will have a significant impact on the neighborhood because it will increase the number of vehicles operating on the site at one time, generating additional noise and traffic. As discussed, operating the second track increases the potential number of vehicles racing on the property from 40 to 90. Therefore, I find this current use potentially generates roughly 2.25 times the noise and traffic, imposing significant adverse impacts to the surrounding area well beyond the noise and traffic associated with the approved uses, and thus this separate dirt race track cannot be approved.*



*Consistent with the application for alteration of a nonconforming use that was approved in file no. Z0349-06-E, I find that allowing motorcycle races involving up to 40 motorcycles racing on the paved track at once (no more than the race kart use, substituting one use for the other), and utilizing a small dirt motorcycle track extension that is contiguous with the paved track and consistent with the applicant's proposal in Z0349-06-E, will still cause additional adverse impacts to the surrounding area beyond those associated with the verified nonconforming kart racing use, including (perhaps minor, but not negligible either) additional noise impacts as shown in the applicant's noise study (one of the dirt bike samples was 2.4dBA greater than the road bike sample, and the floodway along the Pudding River no longer has the vegetated noise buffer to lessen this impact), visual impacts (again, the floodway area along the Pudding River no longer has the vegetated screening to provide a visual buffer for this proposed use), or traffic impacts. (the applicant has not conducted a traffic impact study to provide guidance regarding adverse impacts to the neighborhood, if any, from approval of this proposal, but agreed to do so). This approval is consistent with the prior decision in Z0349-06-E. Therefore, I find that imposing conditions designed to mitigate the impacts described above are warranted. Among other things, I find that imposing the conditions of approval in Z0349-06-E are warranted to ensure that the applicant's use of the approved dirt race track extension has no greater adverse impact to the neighborhood than the existing approved structures, other physical improvements, or use, consistent with ZDO 1206.07.B.1. Therefore, I adopt the conditions of approval from the decision approving application Z0349-06-E, also noting that other conditions of approval from prior land use decisions remain in effect, modified as indicated in the Conditions of Approval section below, including substituting the below annotated photograph designated "Conditions of Approval Figure 1" for the photograph in the County's file in the Z0349-06-E matter, and impose conditions of approval designed to mitigate the discussed noise, visual, and possible traffic impacts associated with approval of this alteration to the existing nonconforming use.*

*I also noted the staff finding with respect to the 2006 NCU conditions of approval requiring the applicant to obtain building permits and submit a Principal River Conservation Area (PRCA) application for the proposed structures (PRCA was not required for all structures). Staff stated in the December 2023 decision that County records indicate these permits were not obtained. The applicant is reminded that these conditions of approval are mandatory, and non-compliance may be cause for revocation of the permit.*

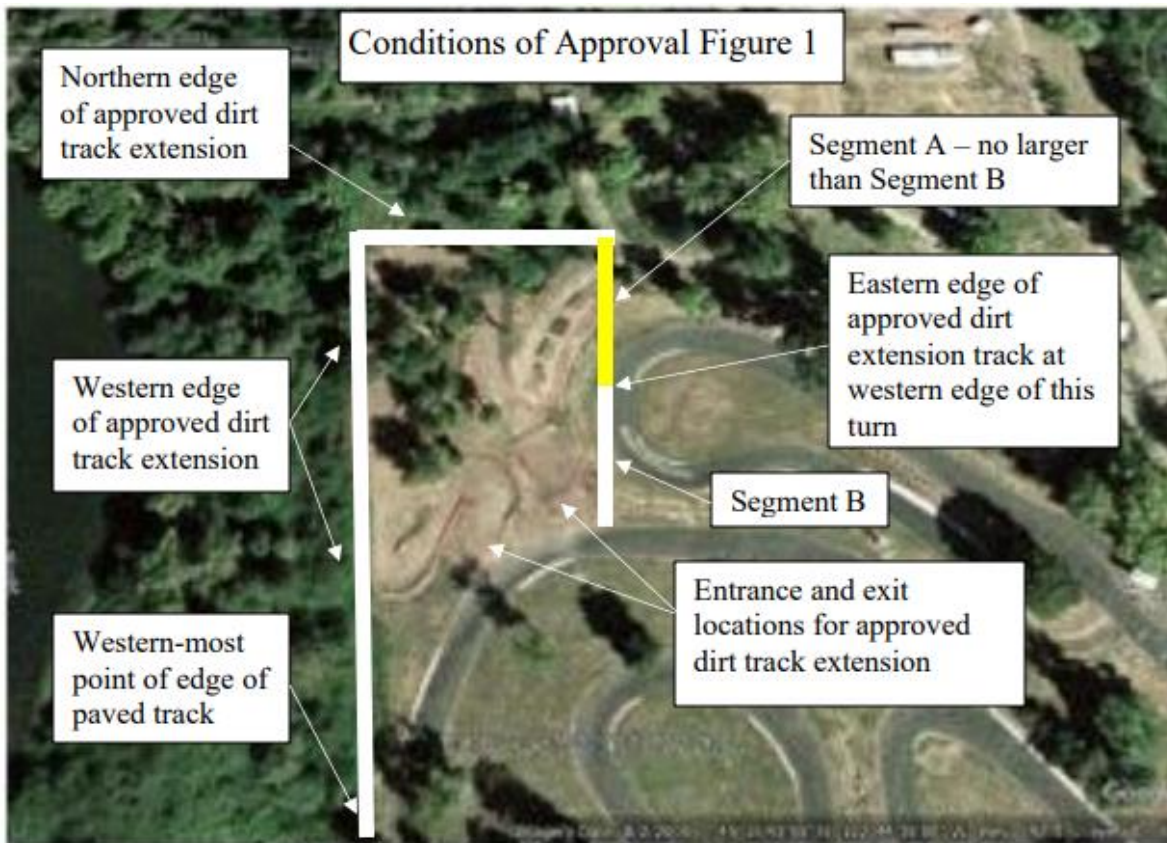
#### **D. CONDITIONS OF APPROVAL**

*The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parentheses.*

- 1. This decision is based upon the application materials, including a site plan submitted by the applicant, the Findings discussed above, and the conditions of approval contained herein, and those from previous land use decisions in this matter. Any changes to the proposal, except as required by these conditions and approved by the Planning Department, shall be reviewed by the Planning Department as a separate application. Approval of this land use application is based on the record in File no. Z0339-23-E. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the*

*conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.*

2. *The conditions of approval in File no. Z0810-99-E shall remain in effect except as modified by File no. Z0349-06-E. The conditions of approval in File no. Z0349-06-E shall remain in effect except as specifically modified herein. The conditions of approval in File no. Z0484-07-E shall remain in effect except as specifically modified herein.*
3. *Condition of approval no. 4 in File no. Z0349-06-E is modified to read as follows: “Motorcycle racing shall be limited to the existing paved track and contiguous dirt extension of the track as shown in Conditions of Approval Figure 1 below and shall occur on weekends only between 9:00 a.m. and sunset. Motorcycle events shall be limited to 40 participants using showroom stock or otherwise street-legal motorcycles with mufflers complying with federal and state noise regulations. No additional race dates are permitted. Any motorcycle events shall be scheduled in place of regularly scheduled kart events such that the total number of annual race events shall not be increased. All motorcycles to be raced at the PARC facility shall be transported to and from the site by trailer, truck, etc. and not ridden to and from the site.”*



4. *Condition of approval no. 5 in File no. Z0349-06-E is modified to read as follows: “The kart and motorcycle uses are limited to the existing paved track and an extension of the track at the northwesterly corner of the track area as shown in Conditions of Approval Figure 1. This track extension or a portion thereof may be paved in the future. The applicant shall obtain all necessary permits (including for example Floodway Development Permit and Principal River Conservation Area Review permits) from the County Planning Division prior to any future importation of fill, gravel, rock, concrete or asphaltic materials on site if the track extension is to be paved.*

5. *With respect to the substantial removal of the vegetative buffer in the floodway of the Pudding River associated with the applicant's use of the area for an unapproved dirt motorcycle track, and the need to restore this vegetative buffer for a number of reasons, including to mitigate noise and visual impacts from approval of the small dirt motorcycle track extension shown in Conditions of Approval Figure 1 above, the applicant shall submit a Natural Resource Assessment, or other documentation as required by the County Planning and Zoning Division to repair the floodway and the buffer for the Pudding River, and complete any required mitigation plans prior to use of the conditionally approved dirt motorcycle extension track.*
6. *With respect to evaluating and mitigating the adverse impacts to the neighborhood, if any, from additional traffic to the site resulting from approval of this proposal, the applicant shall submit a traffic impact study, or other documentation as required by the County Planning and Zoning Division, and complete any required mitigation plans prior to use of the conditionally approved dirt motorcycle extension track.*

**E. DECISION**

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer DENIES in part and APPROVES in part application Z0339-23-E, subject to conditions of approval.

Dated: August 6, 2024



Carl D. Cox

Clackamas County Hearings Officer

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**APPEAL RIGHTS**

ZDO 1307.11(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.