

March 21, 2012

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REPORT AND DECISION

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

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

Location: 31001 44th Avenue SE

Appellants: Race Track LLC, Proformance Racing School and
Pacific Grand Prix LLC
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SUMMARY OF RECOMMENDATIONS/DECISION:

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

EXAMINER PROCEEDINGS

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

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

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

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

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

FINDINGS:

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

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

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

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

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

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

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

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

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

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

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

“1. Testing and Racing Operation.

“a. “Closed Mondays and Tuesdays

“b. “Quiet weekend days

(1) (1984 quiet weekend days are listed)...

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

13. The CUP includes condition no. 17, which provides:

“No auxiliary use of the race track or facilities beyond motoring, bicycle racing, training and motor-related events shall be allowed. No rock concerts or other non-racing entertainment shall be allowed prior to or after the times of the actual racing events. There shall be no expansion of events without a proper public hearing by the Building and Land Development Division of King County. SIR shall present to Building and Land Development for approval a list of auxiliary uses and events (e.g. rock concerts and swap meets) and demonstrate such events are to ‘fill in’ time between races and are not in fact the primary event”. CUP, p. 14

14. The subject property is currently zoned RA-5 (Residential Rural Area) and I-P (Industrial). A motor race track is not permitted in the RA-5 zone; it is permitted in the I zone, subject to approval of a Special Use Permit. KCC 21A.08.100. Accessory uses, including driving school, motocross and skid pad, are allowed if approved as part of the special use permit. KCC 21A.08.100(24).

15. The CUP also includes condition no. 18, requiring an annual meeting with representatives of SIR, the community, and other agencies, “. . . to review compliance with this permit and any problems of operation. Such a meeting will determine whether the conditions are met and, if they are not being met, will establish procedures to bring about compliance.” CUP, p. 14

16. On October 8, 1985, King County Zoning Adjustor Irving Berteig conducted a public hearing to consider rule changes to address issues raised during the immediately past race season, and to simultaneously satisfy the requirement for the annual meeting to be held between SIR and the community to evaluate the past racing season and effectiveness of the CUP conditions. This public hearing was followed by the Zoning Adjustor’s order dated February 7, 1986 (exh. no. 7). Among the items addressed by that order was a request by SIR to permit some flexibility concerning changing of the quiet weekend days subsequent to those dates being posted for the season. The Zoning Adjustor’s action was to make it clear that no late changes are permitted, stating “Quiet weekend days shall not be changed after May 1st” (exh. no. 7, page 2).

17. On April 17, 1986 Zoning Adjustor Berteig addressed a memorandum to the community, advising that the King County Building and Land Development Division had designated Gordon Thomson as the conditional use permit administrator for SIR (exh. no. 8). On September 29, 1989, SIR wrote a letter to Mr. Thomson, in which Jim Rockstad asked seven questions (exh. no. 9). The questions were preceded by Mr. Rockstad’s general statement,

“As each year rolls by and Seattle International Raceway moves toward additional road racing events and performance driving schools, it gets harder and harder to both fulfill the needs of the clubs and organizations and meet *the five quiet days as required for weekends* in May through September. (Italics added)

“I need clarification on the ‘quiet day’ issue of the SIR conditional use permit:”

Among the specific questions asked were:

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

“Does ‘quiet day’ mean non-spectator, non-impacting (muffled vehicles) no noise above ambient and no traffic problems?”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24. Race Track and Pacific, through their attorneys, asserted that the request to move the go kart track was not a change in use or modification of the CUP conditions, that would trigger the need for an amended conditional use permit, but was a relocation of a use from one part of the property to another part of the property. Although the appellants' attorney's letter contained the statement, "The use, which is motor vehicle racing, will remain the same," a reading of the entire letter (Exh. no. 17) would lead a reasonable person to understand that the specific type of motor vehicle racing that was under consideration was kart racing. DDES subsequently agreed that the request to relocate the go kart track would be reviewed and acted upon as a grading permit application.
25. As part of the grading permit application review, King County requested and received from Pacific a revised Track Operations Summary ("Summary") dated June 9, 2005. (Exh. no. 21) The introduction to the Summary stated that Pacific proposed to relocate the existing kart track from the east end of the drag strip to a 20 acre site approximately 1,300 feet west. The introduction further stated, "The information presented in this Operations Summary document is preliminary in nature. Actual kart track use and operation will be adjusted to suit actual demand and be in conformance with operations allowed under the existing King County Conditional Use Permit #A-71-0-81." The Summary further stated, ". . . There are currently no formal daily 'arrive and drive' or kart rental activities although kart owners are allowed to rent the road race track and do so irregularly by making reservations. The existing kart track surface is also used as a pit area and parking lot which has over the years damaged the track surface. The damaged track surface has caused fewer event sponsors to utilize the Pacific Raceways facility for karting events. It is the intent of the applicant to bring karting events back to Pacific Raceways by relocating and reconstructing a top notch kart track." (Exh. no. 21, pg. 2). The summary also states, "in addition to daily track rental, a weekday 'Arrive and Drive' program will allow the opportunity for up to 20 people to be trained, provided all required equipment and then drive a performance kart. . .". Ibid pg. 3.
26. A revision, dated September 12, 2005, to the track Operations Summary was filed with DDES on September 14, 2005. In the revision, it was repeated that the track (Pacific Raceways) is closed Monday and Tuesday year around, and it was added that "there are also certain weekends during which there is no motorized vehicle racing allowed. These weekends are determined on a yearly basis." (Exh. no. 24, pg. 2) The revised document then adds:

"No motorized activities whatsoever shall be allowed on the shift kart track on Monday and Tuesday year around and on Pacific Raceways certain quiet weekend days from May 1 through September 30." (Exh. no. 24, pg. 3)

The section of the document describing "Daily Track Operations" was also modified, to change "Track rental may occur 7 days per week. . ." to "Track rental will occur mostly during the allowable operating weekdays. . ."

The same section, in the second paragraph, was modified to change, "The arrive and drive program is proposed to operate on average five days per week. . ." to, "The arrive and drive program is proposed to operate Wednesday, Thursday, Friday. . ."

The final change was an addition made to the third paragraph of the same section, "In general proposed operations will adhere to the existing Conditional Use Permit until such time as those conditions change." (Exhs. 21 and 24) In all other material respects, the September 12, 2005 Revision retained the language of the June 9, 2005 Track Operations Summary.

27. Other significant documents submitted to King County in 2005 in support of the re-location of the Kart Track stated or implied that use of the relocated track would be exclusively by go karts or shift karts. They were the Environmental Checklist, which stated, "Exhaust and emissions from karts will continue to occur as a result of kart track operations", and "Long term effects will be

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

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

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

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

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

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

“1. . .

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

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

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

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

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

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

CONCLUSIONS:

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

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

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

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

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

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

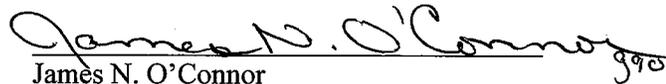
DECISION:

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

“TO BRING THIS PROPERTY INTO COMPLIANCE:

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

ORDERED March 21, 2012.


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

NOTICE OF APPEAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JNOC/gao