

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Appeal of a Planning Director
Decision Denying an Application for
Verification and Alteration of a Nonconforming
Use.

Case File No: Z0103-25 APPEAL
(Pat's Acres Racing Complex)

A. SUMMARY

1. The Hearings Officer received testimony and evidence at the September 18, 2025 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 and appellant is Brett Williams. 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. Chris 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. Mr. Egger agrees with and supports this application.
3. This application seeks verification and alteration of an existing nonconforming use ("NCU") involving 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, Z0474-07-E, and most recently Z0339-23, a County Hearings Officer decision issued August 6, 2024. Land use file Z0339-23 concerned an application for the verification and alteration of the nonconforming use, structures, and other improvements located on the subject property that also sought approval for use of the existing go kart track to allow "drifting" of full-size automobiles. That application was denied and subsequently appealed to the County Hearings Officer. On appeal, the Hearings Officer approved the application in part and denied the application in part, denying the requested alteration to allow "drifting" on the property. However, the Hearings Officer did approve limited use of the property for motorcycle racing, and verified the existing nonconforming uses, improvements, and structures.
4. The current application was determined by staff not substantially similar to the application in land use file Z0339-23 because the scope and intensity of the proposed use was significantly reduced, and the current application was determined complete on May 21, 2025. The subject property is not located inside an urban growth boundary. Therefore, the 150-day deadline for

final action on the application is October 20, 2025. Notice was sent to applicable agencies and owners of property within 2,640 feet. Several neighboring property owners and residents submitted comments in opposition to the application asserting that the noise from the past (unpermitted) drifting of automobiles creates more noise impact than the existing permitted nonconforming use of the property.

5. Approximately 600 written comments were submitted in support of the application. Most of these comments discussed the past (unpermitted) drifting events at Pat's Acres as providing a welcoming, supportive, and safe place for the sport, and a friendly environment. About half of the supportive comments asserted a positive public safety aspect of having Pat's Acres as a drifting venue, suggesting that the lack of a legal venue may lead to more "street takeovers" from illegal drifting events on public roads. More than half of the comments also pointed to positive economic benefits from approving the application from tourism and businesses providing food, accommodations, supplies, and services to participants. Many of the comments provided anecdotes and positive comments concerning the quality of the track at Pat's Acres, its location near the Portland Metro area, and the safety of the operation.
6. Victor Muñoz, Senior Manager, State Government Affairs, of Specialty Equipment Market Association (SEMA) also submitted a letter on behalf of SEMA and the Performance Racing Industry (PIR) in support of approving the Pat's Acres application. In his letter, Mr. Muñoz cites the economic impact of the motorsports industry in Oregon, stating that it supports 2,747 jobs and contributes economic impact of \$556 million, with associated taxes of \$54 million. Mr. Muñoz points to the impact to Clackamas County including 200 supported jobs with total benefits and wages amounting to \$16 million, and a total economic output of \$52 million within the County. Mr. Muñoz describes Pat's Acres as "a cornerstone of the local motorsports community for many years" and as renowned for its kart racing, supermoto events, and previously, its popular drifting events. Mr. Muñoz points to the limited drifting activities proposed, the positive, wholesome atmosphere and beautiful location, and the potential to help keep illegal drifting racing and activities from taking place on public roads.
7. County staff reviewed the application and determined it was not substantially similar to the decision issued August 6, 2024 in land use file Z0339-23 because the scope and intensity of the proposed use was significantly reduced in the current application. However, staff denied the requested alteration to allow "drifting" of full-size automotive vehicles on the subject property, and this appeal followed.
8. On September 18, 2025, 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, stating that in any case the record would remain open until 4:00 pm that day. 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 ordered the record to close at 4:00 pm on September 18,

2025. The Hearings Officer denied the application, finding that the applicant did not meet the burden of demonstrating that the proposed alteration will, after the imposition of conditions, have no greater adverse impact to the neighborhood than the existing use.

B. HEARING AND RECORD HIGHLIGHTS

1. At the hearing, County Planner I Nick Hart discussed the staff review of this application. Mr. Hart shared a PowerPoint presentation prepared for this hearing. In his presentation, Mr. Hart 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. Mr. Hart provided background site information, noting that the subject property consists of four tax lots surrounded by the Pudding River. He noted that the subject property is developed as Pat's Acres Racing Complex (PARC), a nonconforming use in the EFU zoning district. Mr. Hart pointed to the subject property's location within the FEMA Floodway and Floodplain, and within the Principal River Conservation Area of the Pudding River. Mr. Hart explained that as no development is proposed on site by this application no review of ZDO Sections 703 and 704 was required.
2. Mr. Hart provided discussion of the application, noting that the applicant has submitted for a Nonconforming Use Alteration pursuant to ZDO 1206. Mr. Hart pointed out that Verification of the Nonconforming Use on site has previously been determined via the Hearings Officer's decision on land use file Z0339-23 (Exhibit 7). Mr. Hart explained that applicable approval criteria for this application are contained in ZDO Sections 202, 401, 1206, and 1307, as identified on the Notice of Land Use Application the County issued (Exhibit 13). Mr. Hart then noted that the applicant adopted by reference the Hearings Officer Decision in land use file Z0339-23 to satisfy the requirement of ZDO 1206.07(B)(2). Mr. Hart provided this list of the nonconforming uses verified in that decision:
 - ½ mile 20-foot-wide paved go kart track with pit area, and timing station.
 - 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 the 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.
3. Mr. Hart described the applicant's proposed alteration of the existing non-conforming uses of the property, stating that the applicant proposes to replace 15 days of track operations as a go-kart track with 15 days of track operations for the drifting of automobiles. These 15 days would be distributed throughout the year, with no more than one period of drift use occurring per month with some periods of use spanning two consecutive days. Each day would be limited to 180 participants, with no more than 14 automobiles actively using the track at one time. Drifting use of the track is proposed to occur within the normal operating hours of the track, beginning no earlier than 10am and ending before sunset, with no more than 7 hours of use per day. Camping and other uses of the property would occur associated with drift use to the same extent as what is allowed during kart or motorcycle use of the property. Mr. Hart explained that the full details of the applicant's proposed alteration can be found in the staff decision (Exhibit 1), and in the materials submitted by the applicant (Exhibits 2, 2a, 2b, and 25).
 4. Mr. Hart explained that staff denied the application based on finding that the applicant did not demonstrate that the proposed alteration met the standard of ZDO 1206.07(B)(1): *"The 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."* Mr. Hart discussed the rationale for the staff decision, first noting that staff concurred with the applicant on a number of ways in which the proposed alteration would generate no greater adverse impact than the existing use, including traffic impacts, light/glare impacts, and odor/smoke impacts.
 5. Mr. Hart then explained that staff did not concur with the applicant that the proposed alteration (even with conditions of approval pursuant to ZDO 1206.07(B)(4) would not have a greater adverse impact to the neighborhood than the existing, verified, nonconforming kart use that it would be replaced. Mr. Hart stated that this conclusion was reached as staff do not believe the application substantiates that the noise impacts generated by the proposed drift use of the subject property would not exceed the noise impacts generated by the existing kart use. Mr. Hart explained the rationale for the staff decision, stating that staff do not concur with the applicant's arguments for the following reasons (explained in more detail in the Staff Report, Exhibit 1, Pages 13-20):
 - Staff do not believe that an accurate baseline noise level for the existing nonconforming kart use has been established by the application.
 - Staff do not concur with the applicant's interpretation of the article *Bevilacqua et al., 2024* (Exhibit 11).
 - Staff do not concur that the submitted video (see YouTube link at Exhibit 25, Page 2) is an accurate representation of noise generated on the subject property during typical kart operations.
 - Staff do not concur that the proposed technical inspection can reliably ensure that noise generated by the automobiles being drifted would not exceed the noise level generated by the existing, verified, nonconforming use.
 - Staff do not concur that the live noise monitoring proposed by the applicant will reliably result in no greater adverse impact to the neighborhood.

- Staff do not concur that the proposed plantings for noise mitigation will reliably produce such an effect, and if so, the degree of noise mitigation that would be provided by said plantings is not reliably established or guaranteed by the application.
6. The applicant/appellant Brett Williams pointed to the submitted application seeking alteration of the existing nonconforming use (NCU) involving existing go kart use to allow substitution of some of these days for “drifting” of automotive vehicles on the existing paved track on the subject property. Mr. Williams points out that the proposed alteration does not expand the footprint of the non-conforming use of the property. Mr. Williams also pointed to several ways in which the proposal seeks to mitigate potential adverse impacts of the proposed alteration, including by exchanging current uses on limited days with drifting events that have fewer participants, shortened hours, and limits on the number of attendees for the events. Mr. Williams also pointed to the proposed planting of trees and vegetation within the “buffer” area between the race track and the river, asserting that the vegetation will help mitigate the noise. Mr. Williams also points to the broad public support for the proposed drifting use, reiterating the reasons submitted by the numerous interested citizens in support of the application.
 7. Chris Egger, owner of the subject property, points to prior land use application Z0339-23 and the sound study performed on the subject property in support of that application, noting the significant expense in obtaining that study and asserting that the findings support approval of the current application.
 8. Mr. Williams provided discussion concerning the process for completing the application he submitted. Mr. Williams describes staff as initially very responsive in answering questions and providing assistance with the application, but asserts staff were not as helpful in the end particularly with explaining how to address the noise impact issue.
 9. Mr. Hart responded by stating that the drifting cars proposed in the current application are substantially different and involve a much greater number of vehicles than those involved in the study submitted with the prior application. Lindsey Nesbitt, Planning Manager, responded to Mr. Williams comments about the process for submitting the application, contending that Mr. Hart spent a lot of time providing guidance concerning the application and responding to questions. Staff continue to recommend denial of this application.

Public Comments and Testimony

10. Shane Bryant is an interested citizen who resides in NW Washington and is in support of this application to allow drifting at Pat’s Acres. He describes the “drifting” community at Pat’s Acres as positive and welcoming, and points to the use of tech analysis to help keep the cars quiet. Mr. Bryant also submitted a written statement in support of this application, describing how well Pat’s Acres is run and the important role it provides in giving drift racing a safe place. He describes an enthusiastic and friendly community willing to take steps to address noise issues. AJ Moser is an interested citizen who now resides in Texas and is in support of this application to allow drifting at Pat’s Acres. Mr. Moser indicates he is familiar with the events at Pat’s Acres, asserting the staff are strict about noise levels, do everything they can, and will kick cars off the track for excessive noise.

11. Joshua Kubic is an interested citizen who is in support of this application to allow drifting at Pat's Acres. Mr. Kubic indicated that he participates in the "drifting" activity and calls a venue first before going. Mr. Kubic describes Pat's Acres as mindful of noise and safety issues, and providing a place for people to race. Nick Prouty is an interested citizen who now resides in Oakridge, Oregon (but previously was local to the area) and is in support of this application to allow drifting at Pat's Acres. Mr. Prouty describes Pat's Acres as a "beautiful drift environment" with most of the drivers responsible adults with families. Mr. Prouty also states that the track surface at Pat's Acres is new and quieter than it was in the past, although he acknowledges the noise associated with the "drifting" activity.
12. Ross Hettel is an interested citizen who resides in Portland and is in support of this application to allow drifting at Pat's Acres. Mr. Hettel states that he participates in drifting activities and is now going to a venue in Washington. Mr. Hettel describes the live decibel meter the applicant proposes to use as similar to that used in a California venue he is familiar with. Kayla McNutt is an interested citizen who resides in Banks, Oregon and is in support of this application to allow drifting at Pat's Acres, stating she has participated in drifting activities at Pat's Acres for approximately 10 years. Ms. McNutt describes Pat's Acres as a safe place to go, and a place where she has good memories. Ms. McNutt points to the proposed changes in support of the drifting activity, and how it is a contained activity at the venue. Ms. McNutt states she now travels much further for a drifting venue, pointing to an alternative location in Walla Walla she now uses.
13. Cody Forsythe is an interested citizen who resides in Sheridan, Oregon and is in support of this application to allow drifting at Pat's Acres. Mr. Forsythe states that he has never driven an automobile at Pat's Acres but enjoys the events as a spectator and describes the venue as a great, safe community. Robin Foster is an interested citizen who lives "about 15 minutes from Canada" and is in support of this application to allow drifting at Pat's Acres, describing the venue as a welcoming community. Mr. Foster describes how he would go to Pat's Acres for 3-day weekends, and how disappointed his friends are with the closure of the venue to drifting events but also states that he understands the issues with the drifting events. Mr. Foster also submitted a written statement describing use of the Pat's Acres facility by the drifting community, and how it provided the community a safe place to both learn to drift and to ride go carts.
14. Eddi Hughes is an interested citizen who resides in Vancouver, WA and is in support of this application to allow drifting at Pat's Acres. Mr. Hughes describes living in Bellingham, WA and always going to the Pat's Acres venue particularly for Labor Day Weekend events. Mr. Hughes submitted two articles referencing dangerous public road "takeover" events, contending "drifting" enthusiasts need a safe venue for their sport. Mr. Hughes also describes growing up around drift racing and now having to travel to places such as the Evergreen Speedway in Monroe, WA, a venue in Walla Walla, and another in Metro, WA. Mr. Hughes asserts that the drifting community needs the Pat's Acres venue.
15. Dennis Colvin is an interested citizen who resides on NE Arndt Road just west of the Pat's Acres site and opposes this application to allow drifting at Pat's Acres. Mr. Colvin asserts that there is excessive noise from the drifting events. Mr. Colvin states that the motorcycles were also louder in the past, but it has been better since the motorcycles were limited to the track. Mr. Colvin describes the drifting of automobiles as "2-5 times louder than karts" and contends

that even one day of drifting is too many days. Mr. Colvin also submitted a written statement in advance of this hearing opposing the application, referencing his opposition to the drift racing proposed in the previous application (Z0339-23).

Written Statements by Neighbors

16. Dennis Colvin, who resides on NE Arndt Road just west of the Pat's Acres site and opposes this application to allow drifting at Pat's Acres, and his wife, Toni Colvin, also submitted written statements in advance of this hearing opposing the application, referencing their opposition to the drift racing proposed in the previous application (Z0339-23), and describing the noise. Ms. Colvin points out that her property is within 50 feet of the Pat's Acres' site, and reports that she and her husband (Dennis Colvin) have lived on their property for thirty-two years and their property has been in their family for 113 years. Ms. Colvin also points to her husband's uncle, who has been on another adjacent property across the river from Pat's Acres for 90 years. Ms. Colvin states that Pat's Acres was a Go-Kart track when they moved onto their property and they could hear buzzing at times, but the trees and underbrush muffled the noise and it did not affect their use of their property. However, Ms. Colvin describes the noise from more recent motorcycle use increasing the noise, and the noise from the drift cars increasing to the point where "we could not go outside. The noise could be hearing inside with all the windows closed." Ms. Colvin describes the clearing of the underbrush and trees that once muffled the sounds of the karts, issues with increased racing events bringing more participants camping, and issues with expanded hours and days for drifting, drift classes, and motorcycle racing. Ms. Colvin also referenced a video she submitted showing the drift cars racing.
17. Randal Beyers is an interested citizen who also resides on NE Arndt Road just west of the Pat's Acres site and states he and his wife are opposed to this application to allow drifting at Pat's Acres. Mr. Beyers reports that the engine noise from the current racing sometimes gets loud, but at their distance is "not terribly unpleasant" but the noise from the drifting "is an entirely different matter." Mr. Beyers describes the noise from the drift cards as much louder and penetrating inside their home "even with all our insulated windows closed." Mr. Beyers, however, suggests that Pat's Acres plant the proposed willow trees and schedule a smaller number of drift events, giving them a schedule so they could "plan to be elsewhere on those days."

C. FINDINGS AND DISCUSSION

This case involves the appeal of a Planning Director¹ 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.² The evidence presented is reliable, probative and substantial evidence upon which to base a determination in

¹ 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 I Nick Hart acted in this capacity.

² See Table 1307-1: Land Use Permits by Procedure Type.

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, 1206, and 1307, and the Comprehensive Plan. Clackamas County Land Use and Zoning Staff reviewed these Sections of the ZDO identifying the standards and criteria that are relevant to this decision and explaining the justification for their decision in conjunction with this proposal and made the following findings and conclusions, ***reviewed, adopted and/or modified by the Hearings Officer as denoted by boldface type in italics:***

Public and Agency Comments: *[The Hearings Officer reviewed and adopted this section of the staff report, finding it relevant and accurate.]*

Notice was sent to applicable agencies and owners of property within 2,640 feet. Comments received relating to the applicable approval criteria listed above are addressed in the Findings Section. Comments from the following were received:

- Neighboring property owners and residents commented in opposition to the application on the grounds that the drifting of automobiles creates a noise impact greater than the existing nonconforming use. One neighbor stated in their submitted comment that a perceived increase in trash alongside Arndt Road has historically occurred in conjunction with prior drift use of the property. Another neighbor spoke to past experiences with participants of prior events at Pat's Acres entering their property to attempt to set up camping areas, as well as alleged fire hazards and firearm discharges. These comments are addressed in the findings related to ZDO 1206.07(B)(1).
- One comment seeking more information was received from Metro. Metro did not submit further comments after being provided with application materials. Therefore, no staff response is warranted.
- 586 comments were received in support of this application. Due to the volume of comments, each was read and evaluated for common themes using a qualitative coding process to enable staff to respond to the comments as an amalgam rather than individually. Of the comments in support:
 - 73% identified the community that surrounded prior, unpermitted, drifting events at Pat's Acres as an incredibly welcoming and supportive one.
 - 52% of comments identified street takeovers, sideshows, and general reckless driving as both distinct from the drivers and proposed use of the track at Pat's Acres, but also as what commenters described as a logical outcome of preventing legal venues for this type of driving. These commenters assert that allowing Pat's Acres to be used for drifting, even on a limited scale, will promote public safety by reducing the prevalence of street drifting.
 - 33% of comments in support identified the opportunity for greater economic vitality for the community that surrounds the track (principally, the cities of Canby and Wilsonville) due to drifters needing to purchase food, accommodations, and supplies when drifting was (and would be under the proposed alteration) occurring at Pat's

- Acres. A further 5% of commenters identified the benefit of prior drifting at Pat's Acres to their own businesses – these commenters primarily represented automotive industry workers and media personnel.
- 30% of commenters identified drifting at Pat's Acres as being a tourism draw to Clackamas County. The asserted impacts of this tourism largely align with the comments related to the anticipated economic impacts of allowing drifting at Pat's Acres. It is noted that comments related to the tourism draw of prior drifting events included comments from Brazil, Canada, and a number of other US States.
 - 21% of commenters identified the location of Pat's Acres as a reason why they are keen on the possibility of being able to drift on the track, noting that the next-closest tracks that allow for drifting represent much further drives, additional equipment requirements for entering the sport (trucks, trailers, etc.). These commenters felt that the location of Pat's Acres relative to the Portland Metro area make it a valuable location for drifting.
 - 10% of commenters spoke to the quality of the track at Pat's Acres, noting the track layout, surrounding natural environment, and surface quality as a reason why they are supportive of permitting drifting at this location. Commenters also noted that Pat's Acres track has been reproduced in online drifting simulators due to the quality of its layout.

STAFF RESPONSE: Staff note that the submitted comments were effusive in their support for the return of drift use to Pat's Acre, and as described above, commenters presented a range of positions and anecdotal evidence to support their position that permitting drifting a Pat's Acres would benefit the community at large. Staff note that the prior use of the track for drifting was not permitted, and that as such, this application must compare the existing, verified nonconforming use (as discussed below in response to ZDO 1206.05) to the proposed alteration (as discussed below in response to ZDO 1206.07).

Staff further note that the bulk of comments received did not address applicable ZDO criteria. A small number of submitted comments (believed to be a form letter due to their similarity) did try to address ZDO criteria, however, this was not done in a manner that accurately portrayed the approval criteria for this application. These comments referred to:

- The ZDO 401 (EFU zone) purpose statement. Staff note that these goals are not applicable to nonconforming uses as the standards of ZDO 1206 apply to nonconforming uses.
- Environmental protection standards in ZDO 1206 and 1307. Staff note that while environmental factors may be reviewed as a component of a nonconforming use under ZDO 1206, this code section does not contain environmental protection standards, which can generally be found within ZDO Sections 700 and 1000. ZDO 1307 provides for procedures for the review of land use applications and does not include any environmental protection standards.
- A 'Modification' per ZDO 202. Staff note that 'Modification' is not a defined term in ZDO 202, and that this application is not a modification under ZDO 1309.
- 'Performance standards' related to noise and environmental impact. As above, staff note that ZDO 1307 establishes procedures for the review of land use applications and does not contain any performance standards for applicants.

As the criteria addressed in these comments do not accurately reflect the approval criteria for the application and as such, staff will not respond to them. The applicable approval criteria for this application are identified and responded to below.

[The Hearings Officer notes that additional public comments were received prior to and subsequent to the hearing, and public testimony was also received at the hearing. All public comment and input was reviewed and considered. Staff correctly identified the approval criteria. The numerous comments concerning the warm, welcoming, and supportive environment, and the economic impact to the community and state, show the strong support Mr. Egger has earned in this community.]

The ordinance allows for existing non-conforming uses such as this to continue even though current zoning would not allow the use. The ordinance also provides for proposals to alter an existing nonconforming use. However, the ordinance requires that any alteration of an existing nonconforming use not impose a greater adverse impact on neighboring properties than the current use. Thus, the public comments submitted in this matter are mostly outside the approval criteria, as stated by staff.]

Background/Overview of Applicant's Proposal: *[The Hearings Officer reviewed and adopted this section of the staff report, finding it relevant and accurate.]*

The subject property consists of four tax lots, all located adjacent to and within the floodway of the Pudding River, a Principal River under the County's River and Stream Conservation Area ordinances. The subject property contains gentle slopes but does not have substantial elevation changes. It is located partially within the Wilsonville Urban Growth Management Area, and within a Rural Reserve.

The site is home to an existing nonconforming use, Pat's Acres Racing Complex, which was initially permitted as a Conditional Use (PCU-11-67) in 1967 prior to becoming a nonconforming use. As a nonconforming use, the property has been verified and altered a number of times, including Z0810-99-E, Z0349-06-E, and Z0474-07-E.

The most recent land use file for this property, Z0339-23, was an application for the verification and alteration of the nonconforming use. On appeal, the Hearings Officer approved in part and denied in part both the verification and alteration aspects of that application. The extent of the verified nonconforming use per Z0339-23 is discussed below in response to ZDO 1206.05. The alteration of the nonconforming use proposed with Z0339-23 would have permitted the use of the track for drifting events that would have included up to 2,000 automobiles, with drifting events replacing karting events; the use of a separate dirt track for motorcycle racing; and a small dirt extension of the paved track for use during motorcycle races previously authorized. Of these proposed alterations, only the third (the small dirt extension of the existing track) was approved and the rest were denied. Therefore, as a recent land use application has sought to alter the nonconforming use to allow for drifting on the subject property and was denied, the provisions of ZDO 1307.17 *General Provisions* related to the refiling of a land use application shall apply. Findings related to these provisions are addressed in the section of the findings related to ZDO 1307 below.

The applicant proposes to alter the existing nonconforming use that allows for the use of a go-kart track for go-karts and (in a limited capacity) road motorcycles to allow for a limited number of days where the track would be used for the drifting of automobiles. The details of the applicant's proposal are as follows:

- Drifting would be allowed on up to 15 calendar days per year. The applicant does not explicitly state that use would be limited to weekends only but identifies that as the intent in their proposal.
- Drifting would occur in no more than one ‘period’ per month.
 - Some months (up to three as proposed) would allow for up to two consecutive days of drifting use, all other months would be limited to one day per month.
- Each day would be limited to 180 participants.
- The number of vehicles on track at one time would be limited to 14.
 - Vehicles in staging lanes and/or the pit area are not proposed to be accounted for in this limit.
- Drifting use is proposed to occur within the presently allowed operating hours and is proposed to begin no earlier than 10am and not actively use the track for more than seven hours in one day, ending before sunset.
- Camping and other extended use of the property would occur during the periods of consecutive drifting days, similar to what occurs for similar karting events.
- Vehicles to be used for drifting events would be automobiles.
 - Vehicles would be required to pass a ‘Tech Inspection’ prior to event participation that the applicant states is similar to the inspection required as a prior condition of approval for motorcycle use of the subject property.
 - The ‘Tech Inspection’ would require that the engine exhaust system for the automobile be “showroom stock” or otherwise “street legal”, with mufflers that comply with federal and state regulations.
 - The applicant has identified OAR 735-124-0130 and USDOT 5.1.5 Exhaust Systems 393.83 as applicable standards for these tech inspections.
 - The applicant proposes the use of trackside noise measurements using a digital decibel meter with a maximum allowable limit of 95 decibels for cars on track.
- The applicant proposes to plant 30 willow trees in the SW corner of the site along the edge of the Pudding River and 120 willow trees along the west edge of the property, also on the bank of the Pudding River. The applicant identifies that these willows will be an Oregon Hybrid Willow species and will be planted from live stakes. In addition to the planting of these willows, the applicant proposes to allow the ‘natural revegetation’ of the riverbank areas.

1. ZDO Section 401, Exclusive Farm Use (EFU)

The subject property is located in the EFU zoning district. Therefore, the standards of the EFU zone are applicable. The existing development of the site as a go-kart track and the proposed alteration of the existing use to allow for the drifting of automobiles are not allowed in the EFU zone under ZDO 401.04. Therefore, this application is reviewed as a Nonconforming Use, pursuant to ZDO 1206, as below.

ZDO 401.07 Dimensional Standards

FINDING: ZDO 401.07 establishes dimensional standards for development in the EFU zone. As no development of the site is proposed by this application, only a change of use of existing development, findings against the provisions of ZDO 401.07 are not warranted. ***[The Hearings Officer concurs with this staff finding.]***

2. ZDO Section 1206 Nonconforming Uses and Vested Rights

ZDO 1206.05 *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:*

ZDO 1206.05 (A-B)

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 Previously, the owner of the subject property applied for the verification and alteration of the nonconforming use, structures, and other improvements located on the subject property under land use file Z0339-23. The staff decision denying that application was appealed to the County Hearings Officer who conditionally approved the application in part and denied the application in part in a written decision issued on 08/06/2024.

The applicant for this file, Z0103-25, has by reference submitted the Hearings Officer decision on File Z0339-23 as evidence that the nonconforming use, structures, and other improvements located on the subject property are lawfully established. The uses, improvements, and structures verified in the Hearings Officer decision on file Z0339-23 are as follows:

- ½ mile 20-foot-wide paved go kart track with pit area, and timing station.
- 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 the 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.

ZDO Subsection 1206.04 provides standards for the discontinuation of nonconforming uses. ZDO Subsection 1206.04(A) reads: *“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.”* Therefore, as the nonconforming use verified by the Hearings Officer decision on 08/06/2024 was verified within 24 months of the submittal of this application on 03/13/2025, the prior verification is deemed sufficient.

Therefore, this criterion is met. *[The Hearings Officer concurs with this staff finding and related discussion.]*

ZDO 1206.07(B) *Alterations Not Required by Law: Except as provided in Subsection 1206.07(C), 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:*

FINDING: The proposed alteration to allow for the use of the subject property for drifting is not required by law and is being reviewed as a Type II application pursuant to ZDO 1307.

This criterion is met. *[The Hearings Officer concurs with this staff finding.]*

ZDO 1206.07(B)(1) *The 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. **[The Hearings Officer reviewed this discussion and finds it relevant and accurately taken from the application and supporting materials.]***

The applicant submits a written narrative asserting that the proposed alteration (drifting use of the property, as described in the applicant’s proposal and in the Background section, above) would not result in greater adverse impact to the neighborhood than the existing use (go kart and motorcycle use). The applicant narratively supports this position as follows:

- In addressing the potential for traffic impacts, the applicant states that the proposed use of the site for drifting would represent a decrease in participation from current go kart use due to the 180-participant cap on drift use as proposed by this application.

The applicant states that the proposed drifting events would attract spectators at a similar rate to existing go kart events. When combined with the reduced number of participants

they assert drifting use will draw, they anticipate fewer total spectators as well.

- With less participants, the applicant asserts that the impacts to traffic on Arndt Rd and other surrounding roads will be diminished when compared to the existing kart use of the subject property.
- In addressing the potential for noise impacts of the proposed alteration, the applicant constructs an argument as follows: The applicant states that during go kart use, there are up to three times the number of participants per day (250-400 for normal kart use and 250-600 for kart racing), and an average of 34 karts on track at one time.

The applicant asserts that the karts used on the property produce noise within the range of 81-100 decibels, citing the academic research article *Bevilacqua, A., Iannace, G., Gomez-Agustina, L., & Trematerra, A. (2024). Racing in Kart Dromes: Laboratory and Site Assessment of Noise Levels from Competition and Rental Karts. Acoustics, 6(4), 1180-1192.* <https://doi.org/10.3390/acoustics6040064>.

The applicant states that this level of noise generated by karts is compliant with the limit imposed by prior conditions of approval for the property of 101 decibels.

As a supplement to their application, the applicant has also submitted a video of themselves operating a sound monitoring device (model Extech SL10) on the infield of the track on the subject property during a period of kart use. No formal data from the operation of the device are provided, but the video shows readings from 82dBA to 105dBA. Without a full output of the sound monitoring to review, staff must interpret the data based on visual review of the live meter readings. When a kart (or group of karts) is not immediately adjacent to the meter, readings tended towards the low-mid 80dBA range. When a kart (or group of karts) was directly adjacent to the meter, readings in the upper 90s-105dBA range were displayed. The applicant does not identify in the video the location on track where measurements were taken (there appear to be multiple based on the background(s) of the video), the distance from the track where the measurements were taken (the applicant appears to move as they film), or the number of karts operating on track (as below, the applicant has identified up to 68 karts being used at one time as the extent of the existing nonconforming use to which the drift use should be compared).

In addition to the 34 karts being raced, the applicant identifies that another 34 karts are commonly located in the staging area being prepared for racing, a process which the applicant asserts involves revving engines to warm up. Given this, the applicant identifies the maximum extent of noise generated by the existing use as being 34 karts being raced on track and 34 karts being warmed up in the staging area but does not identify a decibel level for the noise generated by this use.

The applicant proposes two performance measures for cars to be used for drifting on the subject property, which the applicant asserts will prevent greater adverse noise impacts to the neighborhood.

The first is a proposed 'Tech Inspection', which will require that vehicles to be used for drifting will have an exhaust system that is "showroom stock" or otherwise "street-legal". The applicant identifies relevant statutes for this technical inspection as: *OAR 735-124-*

0130: Every vehicle shall be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke and USDOT 5.1.5 Exhaust Systems 393.83: All exhaust systems must be securely fastened to the vehicle and cannot be placed where likely to burn or damage electrical wiring, fuel supply and any combustible part of the vehicle. The applicant states “It is expected with a properly fitted muffler most participating vehicles will only produce 70-90 decibels.”

In addition to the Tech Inspection, the applicant proposes to employ a digital decibel meter to perform trackside noise monitoring during drifting. The applicant states that the maximum allowable noise level during this monitoring shall be 95 decibels, with any vehicle that exceeds the 95dBA limit being removed from the track. The applicant states that the meter will be the same as used in the filming of the supplemental video (Extech SL10) discussed above. The applicant does not identify the location from which the measurements will be taken, stating that it will be “in the same testing location” as in the submitted video.

With regard to non-engine related noise impacts (principally, tire squeal) of drifting, the applicant states: “It has also been in our personal experience for many years as well as the results of drifting at many other facilities around the country that noise produced by tire screeching, while audible, does not exceed that which is produced from the vehicle itself.”

Aside from performance standards for cars to be used for drifting on the subject property, the applicant proposes revegetation of areas of the property as a mitigation measure. The applicant proposes planting 30 Oregon Hybrid Willows in the SW corner of the property along the riverbank, and a further 120 of the same on the West side of the property. The applicant proposes to plant these trees from live stakes. Additionally, the applicant proposes to allow for ‘natural revegetation’ of areas within 100 feet of the riverbank along the SW and West sides of the existing track where it is ‘closest to the property lines and to neighboring properties.’

Lastly, the applicant states that by proposing reduced hours of operation for days where drifting occurs (no more than seven hours, beginning no earlier than 10am), the duration of noise generated by the proposed use would be less than the existing uses (go-karts and motorcycles).

- With regard to potential adverse impacts not related to traffic or noise associated with the proposed alteration, the applicant states: “It is also worth mentioning that during the many Drift events held previously at Pats Acres there have been no complaints of odor, smoke, debris, glare, light or anything else related to the participating vehicles in drifting and these things, if produced, do not leave the property therefore have no impact on the surrounding neighborhood”.

STAFF RESPONSE

The applicant has raised and addressed the following potential adverse impacts, arguing that the proposed alteration to allow for drifting use of the subject property will satisfy the criteria at ZDO 1206.07(B)(1) by having no greater adverse impact to the neighborhood than the existing structure, other physical improvements, or use:

Traffic, noise, odor, smoke, debris, glare, and light. The applicant further identifies “anything else related to the participating vehicles”, which staff take to mean that all other potential adverse impacts are acknowledged by the applicant and dismissed as not relevant.

Three surrounding property owners submitted comments relating specifically to their concerns about noise generated by the proposed use for drifting, noting their experiences with the prior, unpermitted, use of the site for drifting. These comments included the submittal of videos (which were previously submitted to the record in land use file Z0339-23) showing the use of the subject property for drifting from a neighboring property. Neighbors’ comments addressed both the relative loudness of the noise generated by drifting and the pitch of the noise, particularly related to tire squeal.

Staff will now respond to each of the adverse impacts identified by the applicant and neighbors in turn.

With regard to traffic impacts, staff find the following:

The applicant has asserted that the participant cap (180) proposed for drift use of the property will result in a lower overall number of trips (participants and spectators) to the site during a period of drift use when compared to the existing kart and motorcycle uses of the property. In supporting this, the applicant identifies 250-600 participants as standard for kart usage, varying dependent on whether the day is one of racing (higher attendance), or typical track usage (lower relative attendance). To support these attendance figures, the applicant has provided a table showing attendance figures for different events that have been held at the subject property for the period between 1981 and 2022. The applicant’s identified attendance figures for karting use appear to be similar to the figures for local and regional karting events, which appear to have occurred intermittently (as frequently as monthly during periods of high use, or bi-monthly during periods of low use). The applicant further states that spectators are expected to attend drifting days at a comparable rate as kart events for a given number of participants.

As the drifting use of the property as proposed by the applicant would be similarly intermittent to the existing race event schedule, staff find that the applicants argument that these periods of drift use will be most comparable to race events is plausible. Similarly, staff find the applicants argument that spectator attendance will be of a similar ratio of participants to spectators as existing kart use to be plausible. Therefore, staff concur with the applicant that the traffic impact of the proposed use will be no greater than the existing nonconforming use with participation limited to 180 participants.

[The Hearings Officer concurs in this discussion and these staff findings and is persuaded by the applicant’s assertion that the participant cap proposed for drift use of the property (which is essentially a proposed mitigation) will result in no greater traffic impact for the proposed drift use than the existing nonconforming use.]

With regard to noise impacts, staff find the following:

The applicant has identified the existing noise levels generated by the existing nonconforming use in three ways. Firstly, the applicant has cited the laboratory measurements of go-karts identified in *Bevilacqua et. al., 2024* as being 81-100 decibels. Second, the applicant has also identified a ‘Decibel Limit’ for the property of 101 Decibels. Thirdly, the applicant has

submitted a video showing noise generated on track during a period of kart use ranging from 82-105dBA.

The applicant has characterized the standard operations of the track for karting use as including 34 karts operating on track at one time, with 34 karts being ‘warmed up’ by being revved continuously in the pit lane.

The applicant has asserted that the noise level generated by drifting use of the property will be lower than the existing nonconforming use in several ways. These are: 1) a technical inspection that will require all vehicles have at a minimum “street legal” exhaust systems, 2) a live monitoring of noise levels at an unspecified point on the track using a digital decibel meter with readings not to exceed 95 decibels, 3) a reduction in use hours when compared to existing kart use, and 4) revegetation of areas of the property with willow stakes and by natural process.

Staff begin the analysis of noise in relation to the proposed alteration by attempting to ascertain an accurate understanding of existing noise levels generated by the verified nonconforming use on the site. Staff begin with a review of the article *Bevilacqua et. al, 2024*, and find that they do not concur with the applicant regarding the conclusions reached by the authors of this article. The applicant has cited Section 2.1 of this article, which reported results from laboratory measurements taken at 4 meters (approximately 13 feet) distance from both ‘rental’ and ‘competition’ karts being operated at high engine RPMs. Under these conditions, the authors identify noise levels of 81dB(A) for the ‘rental’ kart and 100 dB(A) for the ‘competition’ kart. Section 2.2 of this article is not cited by the applicant and includes information staff believe is material to the application. Section 2.2 includes sound level data from the side of a test track, which was collected at a distance of 10m (~33 feet) from the centerline of the track. Data from these tests found that the real-world noise measurement of a ‘rental’ kart was 68dB(A), and a ‘competition’ kart 74dB(A) (see Table 3), with an absolute maximum for a ‘competition’ kart identified as 80dB(A) in Section 6. Section 3.2.1 further states that “the noise levels emitted by a competition kart in motion are lower than those measured under laboratory conditions. This discrepancy suggests that factors such as circuit design and driving dynamics significantly influence noise emission to the surrounding environment. In contrast, laboratory measurements reflect maximum engine RPMs, which may not be consistently achieved during on-track operation.” Staff acknowledge that the submitted study only includes data for a single ‘competition’ kart, and up to five ‘rental’ karts (measured at 70dB(A) in Table 1) at a single time, while the applicant asserts that as many as 68 karts (unspecified if these karts are more comparable to ‘rental’ or ‘competition’ karts as classified in *Bevilacqua et. al*) presently operate at one time. Further, staff note that Section 6 specifically notes that the findings of this article may not be transferrable to other tracks, for reasons given in the article. Based on this, staff do not concur with the applicant that the article establishes a maximum noise level generated by karts at Pat’s Acres of 81-100dB(A).

[The Hearings Officer concurs in the staff review of the applicant’s submitted article Bevilacqua et. al, 2024, particularly noting that the authors directly point out that their findings may not be the same for other tracks and involves far fewer vehicles. Thus, the article does not establish a baseline for the noise generated by the existing use of the track at Pat’s Acres.]

The applicant asserts that a maximum noise level of 101dB(A) has been established for the

track, and that this represents a threshold level under which any noise can be understood as not having a greater adverse impact than the existing nonconforming use. Staff have reviewed the conditions of approval associated with prior land use files PCU-11-67, Z0810-99, Z0349-06, Z0484-07, and Z0339-23; no evidence within any of these files supports that a limit of 101dB(A) has been placed on the subject property. Therefore, staff do not concur with this applicant that 101dB(A) is a ‘maximum noise level’ for the property as established by any prior land use decision. Further, staff do not concur that any ‘maximum’ noise level, should one have been established at some point in the past, represent a baseline for the purposes of evaluating ZDO 1206.07(B)(1) as the standards for nonconforming use alterations relies on what has been verified as lawfully nonconforming and not discontinued. Therefore, even if a maximum had been in place at some point in the property’s history, in the absence of evidence that use of the property lawfully has consistently reached that maximum, it would not be admissible as a threshold level for proving no greater adverse impact.

The applicant has also submitted a video as described above and available within their application materials of them collecting sound readings from the track using an Extech SL10 sound meter. Staff have reviewed the video and have sought documentation for the sound meter used in the video. Beginning with the sound meter, the Owners Manual for the device (accessed from <https://www.flir.com/support/products/sl10/#Documents>, 07/11/2025) identifies the meter as having an accuracy of +/- 3.5dBA under 94dBA reference conditions (page 5 of owner’s manual). Page 3 of the owner’s manual identifies calibration as a necessary step in operating the device. The applicant’s submitted video does not make assurances that the device was properly calibrated prior to use in recording the submitted video. The prior sound study performed on the subject property in support of the prior land use application Z0339-23 provided Table 1 (reproduced below for clarity), which identifies the subjective quality of a 3.5dB change in sound levels as somewhere between ‘Just Perceptible’ and ‘Clearly Perceptible’. Based on this, staff are uncertain that the meter used (even if reliably calibrated) is of a sufficient quality to provide assurance that the no greater adverse impact standard can be met, given its rated accuracy appears to be such that a perceptible difference in sound levels may not be conveyed in recordings from the device.

Table 1. Subjective effects of changes in sound levels

Change in Sound Level	Change in Apparent Loudness
1 – 3 dB	Just perceptible
4 – 5 dB	Clearly perceptible
10 dB	Twice or half as loud
20 dB	Much louder or quieter

Adapted from *Engineering Principles of Acoustics* by Douglas D. Reynolds (1981)

The applicant’s video shows approximately 54 seconds of sound measurements during kart use, with the average ‘clip’ length between cuts in the video being 3-5 seconds. Clips shown are limited to moments where a kart or multiple karts pass by the sound meter, which is identified in *Bevilacqua et al.* as having been the loudest moments recorded during their study (see Figure 5, *Bevilacqua et. al.*). ‘Ambient’ noise levels during kart operations are not provided by the video as the provided scenes are during moments of peak noise generation at that point on track in that operating configuration. Staff also note that the applicant’s narrative has portrayed a complement of 68 karts (34 on track and 34 being prepared) as being ‘typical’ for the operation of kart use at Pat’s Acres, and the baseline to which drift use should be

compared, but the video is not clear on what number of karts are being run at the time of measurement. Further, the applicant has not provided evidence that the described complement of 68 karts is a typical use pattern for the track on the subject property.

Lastly, a fixed location for the measurements captured in the video is not identified, as the applicant appears to move both during recording periods (as evidenced by motion in the recording), and between clips (as evidenced by different backgrounds between clips), which introduces additional uncertainty into the data provided.

Based on the above reasons, staff do not concur with the applicant that the submitted video provides for an accurate, reliable, baseline measurement of noise generated by the existing nonconforming use in the manner they state that it frequently operates (68 karts with 34 on track and 34 being prepared) for the following reasons:

- The limited duration of sound measurements and their bias to the loudest moments of operation at a given point on the track, as per the discussion in *Bevilacqua et. al.*
- Concern over the adequacy of the chosen instrument (Extech SL10) for the task and the lack of clarity about the manner in which the device was operated, considering the manufacturer's instructions for its operation.
- An apparent lack of consistent location for sound readings, and a lack of clarity about where on the subject property the readings were taken from.
- A lack of clarity about the operation of the track at the time the video was recorded, particularly with regards to the number of karts being operated at the time of recording.

[The Hearings Officer concurs in the above discussion and findings. I also reviewed each of the prior land use files and found no established "maximum noise level" for the nonconforming use of the Property. Further, a stated "maximum" would not provide an actual baseline for the noise generated by the kart use of the track at Pat's Acres. Rather, the actual noise generated by the existing nonconforming use must be measured to provide a comparison with the proposed alteration. The applicant must show that the proposed use generates no more noise as an identified adverse impact of the proposed use than the existing use.]

The applicant has constructed an argument that the noise that would be generated by the proposed drifting use will be less than that generated by the existing nonconforming use of the track for karts. While staff have found that no reliable noise level for the existing nonconforming use has been established by the application, the applicant's argument related to the noise levels of the proposed use are responded to below. This argument relies on three parts: a technical inspection, live noise monitoring, and mitigation plantings around the periphery of the property; each of these will be addressed in turn.

Technical Inspection

The applicant states that vehicles to be used for drifting shall have exhaust systems that are "showroom stock" or otherwise "street legal", with this to be verified by a technical inspection. The applicant identifies as applicable standards for this technical inspection OAR 735-124-

0130: *“Every vehicle shall be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke”* and USDOT 5.1.5 Exhaust Systems 393.83: *“All exhaust systems must be securely fastened to the vehicle and cannot be placed where likely to burn or damage electrical wiring, fuel supply and any combustible part of the vehicle.”* Staff note that these standards do not themselves address a maximum noise level than can be generated, only that such a noise level cannot be ‘excessive’ or ‘unusual’.

Staff research has found that for a vehicle to be considered “street legal” in Oregon, the standards at OAR 340-035-025 and OAR 340-035-30 would apply and provide allowable noise levels for the sale of cars newer than 1978 (80dBA at 50’), and for all cars (95dBA at 20” while stationary), respectively. These standards are not explicitly addressed in the application but would apply to any car used on site and registered in Oregon as a component of being “street legal”.

The applicant states “It is expected with a properly fitted muffler most participating vehicles will only produce 70-90 decibels.” Staff find this conclusion to be anecdotal and not supported by a review of the text of the proposed regulations that would be applied in the technical inspection. Even with the expanded scope of the technical inspection to incorporate the standards from OAR 340-035, staff do not concur with the applicant that this technical inspection will ensure no greater adverse impact to the neighborhood than the existing nonconforming use as the standards proposed to be used for the technical inspection do not provide for a maximum noise generated by engine exhaust, do not address other sources of noise generated by drifting (principally, tire squeal, as raised by neighbors who submitted comment), and are primarily intended to apply to automobiles driven in a less intensive manner than drifting, a use which is demonstrably more challenging for cars than standard operation.

Noise Monitoring

The applicant states that a digital decibel meter would be placed at an unspecified location alongside the track and used for continuous live monitoring of noise levels generated by cars as they pass by. The applicant proposes a threshold level of 95dBA for this test. In the applicant’s last submission, they state that the noise monitoring would be performed using the same Extech SL10 sound meter used in the video, and that the monitoring would occur from the same location as in the video (this location is not specified). Staff find that this proposal is somewhat similar to that employed at another area track, Portland International Raceway (PIR), who publish the following on the ‘Noise’ section of their website (https://portlandraceway.com/?/about/noise_information, accessed 12:44pm, 06/27/2025): *“The maximum decibel level at trackside is 105 dBA, per city code, which sound engineers determined should translate to no more than 65 dB at the property line of the closest residence to the track. (NOTE: for all motorsports events, the top limit used is 103 dBA, rather than the city code 105 dBA as it has been found to be closer to the ratio of 65 in the neighborhood. Vehicles must operate under 103)”* and *“PIR operates a fixed microphone, 50 feet from the track, just past the bleacher on the front straight. This spot was chosen by an independent noise consultant to best capture highest sound levels from the various kinds of events held at PIR.”*

In the case of PIR, the location of the sound monitoring device has been specified by an

independent noise consultant to be a location capable of capturing the highest sound levels generated on the property, making it a reliable instrument for determining the noise impact of the use of the property.

No evidence of a similar study for the Pat's Acres property has been submitted with this application, and no location for the microphone has been specified except that it will be the same as in the submitted video. As staff are confident that the noise generated by the proposed use will vary at different locations on the track (areas of acceleration, deceleration, drifting, standard driving), it is unclear from the applicant's proposal that a representative noise level would be obtained from the noise monitoring device as proposed. Therefore, staff do not concur with the applicant that noise monitoring as proposed will ensure a noise level generated by the use of less than 95dBA.

Mitigation Plantings

Lastly, the applicant proposes planting 30 willows in the SW corner of the site and 120 willows along the west edge of the site (areas shown generally on the applicant's site plan), along the banks of the Pudding River, and to allow for 'natural revegetation' of a 100 foot buffer along the riverbank. The applicant proposes these plantings as a way to help mitigate potential impacts of the proposed use. Staff find that the proposed planting plan is insufficiently detailed to provide any assurance of mitigating effects of either the willow plantings or the 'natural revegetation'. While both live staking of willows and allowing natural reseeding of riparian areas via floodwaters are considered viable restoration practices, no assurances are given that these practices are appropriate for the subject property given the extensive nature of regrading previously done in these areas of the property and as documented in the appeal documents for land use file Z0339-23. Further, no guarantees are provided by the applicant for the survival of plantings, or that the proposed restoration will provide a sufficient screen to provide mitigating effects, or on what time frame such an effect can be achieved. Therefore, staff can concur with the applicant that there may be some mitigating effect as a result of these plantings, at some time in the future when the riparian buffer has revegetated to maturity, but do not concur that conclusions about mitigation effects of these plantings can be drawn due to the lack of detail and assurances provided by the plan submitted.

With regard to all other impacts raised by the applicant or by neighbors in submitted comments, staff find the following:

The applicant has asserted that "It is also worth mentioning that during the many Drift events held previously at Pats Acres there have been no complaints of odor, smoke, debris, glare, light or anything else related to the participating vehicles in drifting and these things, if produced, do not leave the property therefore have no impact on the surrounding neighborhood".

Neighbors who have submitted comment on this land use application have identified trespass, increases in litter off of the subject property along Arndt Road, fire hazard due to overnight use of the property, and firearm discharge as adverse impacts experienced during prior, unpermitted, use of the subject property for drifting.

As no neighbors submitted comment relating to increases in light pollution, odor, track-related debris, or smoke having perceptibly increased in conjunction with the prior use of the subject property for drifting, staff concur with the applicant that the proposed use will not create any

greater adverse impacts in these domains than the existing verified use.

To address comments regarding litter off of the subject property and firearm discharge, staff find that neither of these activities are proposed by the applicant as a part of their application. Both activities are likely to represent violations of other County ordinances or governing statutes, but as they are not proposed with this application they could not be approved on the subject property with this decision. Therefore, staff are unable to evaluate the role of the proposed use in generating these impacts. Further, with regard to littering, use of the subject property is subject to Condition of Approval 15 of land use file Z0349-06, which states “*To mitigate littering problems along Arndt Rd., the applicant shall participate in the County Adopt-a-Road program to provide for regular litter pick-up along Arndt Rd. within one mile of the facility...*” The current contact information for the Adopt-a-Road program can be found at <https://www.clackamas.us/roads/adopt.html>.

Therefore, as staff have found that no reliable, accurate, baseline noise level for the existing nonconforming kart use of the property has been established by the applicant, and as no verifiable level of noise impact from the proposed use has been established by the applicant, staff cannot find that the proposed alteration will not have any greater adverse impact to the neighborhood than the existing use.

This criterion is not met.

[The Hearings Officer concurs with this staff finding, noting again that the actual noise generated by the existing nonconforming use must be measured to provide a comparison with the proposed alteration. The applicant must show that the proposed use generates no more adverse impact (noise) than the existing use. The applicant has appropriately identified and proposed technical inspections, noise monitoring, and mitigation plantings as methods to ensure that, once a noise baseline is established, uses on the property do not exceed that level of noise, causing a greater adverse impact to the neighborhood than already exists. I note that the current land use approvals include conditions addressing littering, glare, lights, and other impacts from the current use.]

ZDO 1206.07(B)(2) *The nonconforming use status of the existing use, structure(s), and/or physical improvements is verified pursuant to Subsection 1206.05.*

FINDING The applicant has submitted a prior 2024 land use decision (Z0339-23) verifying the nonconforming use to be altered.

This criterion is met. *[The Hearings Officer concurs with this staff finding.]*

ZDO 1206.07(B)(3)(a-b) *The alteration or change will not expand the nonconforming use from one lot of record to another unless: a) The lot of record on which expansion is proposed and the lot of record on which the nonconforming use currently is established have been part of the same tract continuously since the date the nonconforming use became nonconforming; or b) The expansion would allow only for facilities necessary to support the nonconforming use, such as driveways, storm water management facilities, and on-site wastewater treatment systems.*

FINDING The applicant does not propose to expand the nonconforming use from one lot of

record to another.

This criterion is met. *[The Hearings Officer concurs with this staff finding.]*

ZDO 1206.07(B)(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 This criterion is advisory to the County. Conditions are not included in this decision as the decision is a Denial. However, if the application could have been approved, conditions of approval from prior land use files would be adopted by reference in association with the verification portion of this application and new conditions as necessary to ensure the mitigation of adverse impacts would be adopted. As staff have not found that the alteration proposed by this application can be approved, no new conditions of approval are warranted.

[The Hearings Officer concurs with this staff finding, as the Hearings Officer is also denying the application.]

3. ZDO Section 1307, Procedures

As this application is a refiling of a previously denied request for the alteration of a nonconforming use, it is necessary to evaluate the procedural allowances for the refiling of a Type-II land use application as provided for at ZDO 1307.17(K).

ZDO 1307.17(K) *Re-filing an Application: If a Type II, II-E, or III land use permit application is denied, or a Type II, II-E, or III land use permit is revoked pursuant to Subsection 1307.17(L), an applicant may re-file for consideration of the same or substantially similar application only if:*

- 1. At least two years have passed after either final denial of an application by the County or revocation of a permit; or*
- 2. The review authority finds that one or more of the following circumstances render inapplicable all of the specific reasons for the denial:*
 - a. A change, which is material to the application, has occurred in this Ordinance, the Comprehensive Plan, or other applicable law; for the purposes of this provision, “change” includes amendment to the applicable provisions or a modification in accepted meaning or application caused by an interpretation filed pursuant to Section 1308;*
 - b. A mistake in facts, which was material to the application, was considered by the review authority;*
 - c. There have been changes in circumstances resulting in new facts material to the application;*
 - d. A change has occurred in the zoning of the subject property, or adjacent property, that substantially affects the merits of the application; or*
 - e. There have been substantial changes in the surrounding area, or on the subject property,*

such as availability of services or improvements to public facilities, that affect the merits of the application.

FINDING: The applicant has not addressed the criteria at ZDO 1307.17(K) directly in their application, nor have they provided evidence that any of the circumstances at ZDO 1307.17(K)(2)(a-e) have occurred. Staff review of evidence in the record does not support that any of these circumstances have come to pass in the intervening time and note that two years had not passed between the Hearings Officer's final written denial of the prior application (dated 08/06/2024), and the submittal of this application (03/13/2025). Therefore, in order for this application to be reviewable, it must be found to not be substantially similar to the preceding application.

The standard at ZDO 1307.17(K) has previously been subject to appeal – both to the County's Hearings Officer(s) and to the Land Use Board of Appeals (LUBA). Staff have reviewed the case in *Henkel v. Clackamas County*, 56 Or LUBA 495 (2008), which constructed an interpretation of the term 'substantially similar' based upon definitions found in Black's Law Dictionary 6th Edition. In their review of the case at issue in *Henkel*, LUBA determined that based on the plain language definition of 'substantially similar', the proposed use was not substantially similar because despite being the same in both applications (in *Henkel*, a construction contracting business), the scope and intensity of the proposed use was significantly reduced in the second application. In the case of land use files Z0339-23 and Z0103-25, a comparable situation is at play – in both applications, the proposed alteration is the same (drifting of automobiles on the subject property), but the scope and intensity of the proposals differ. Pertinently, the applicant has reduced the number of proposed participants from 2,000 to 180, proposed reduced operating hours for the track when used for drifting, and altered the proposal for drifting frequency to the terms described elsewhere in this decision from the more nebulous 14 'events' of undefined length and frequency. Therefore, as the scope and intensity proposed by Z0103-25 is notably different from that proposed in Z0339-23, staff find that this application is not substantially similar to the previous.

Therefore, this application may be reviewed and the prohibition on the submittal of a substantially similar application at ZDO 1307.17(K) is not applicable.

This criterion is not applicable. [The Hearings Officer concurs with the above discussion and in this staff finding.]

D. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer DENIES application Z0103-25.

Dated: October 1, 2025



Carl D. Cox

Clackamas County Hearings Officer

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.