

Community Planning Organization (CPO) for Area:

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Community Planning Organizations (CPOs) are part of the county's community involvement program. They are advisory to the Board of County Commissioners, Planning Commission and Planning and Zoning Division on land use matters affecting their communities. CPOs are notified of proposed land use actions and decisions on land within their boundaries and may review these applications, provide recommendations or file appeals. If this CPO currently is inactive and you are interested in becoming involved in land use planning in your area, please contact Clackamas County Community Engagement at 503-655-8751.

Opportunity to Review the Record and Decision: The complete decision, including findings and conditions of approval, and the submitted application are available for review online at <https://aca-prod.accela.com/CLACKAMAS>. Select the **Planning** tab and enter the file number to search. Select **Record Info** and then select **Attachments** from the dropdown list, where you will find the submitted application. A copy of the decision, application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost by contacting the Planner listed above. Copies of all documents may be purchased at a cost established by the County fee schedule.

Appeal Rights: **This decision will not become final or effective until the period for filing an appeal with the County has expired without the filing of an appeal.** Any person who is adversely affected or aggrieved or who is entitled to written notice of the decision pursuant to Subsection 1307.09(C) of the Clackamas County Zoning and Development Ordinance may appeal this decision to the Clackamas County Land Use Hearings Officer by filing a written appeal. An appeal must include a completed Appeal Form available at www.clackamas.us/planning/supplemental.html and a \$250.00 filing fee and must be **received** by the Planning and Zoning Division by the appeal deadline identified above.

Appeals may be submitted in person during office hours (8:00 am to 4:00 pm Monday through Thursday, closed Friday and holidays). Appeals may also be submitted by email or US mail.

A person who is mailed written notice of this decision cannot appeal this decision directly to the Land Use Board of Appeals under ORS 197.830.

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Site Plan



APPLICABLE APPROVAL CRITERIA

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 401, 1206, and 1307.

PUBLIC AND AGENCY COMMENTS

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.

FINDINGS

The findings below identify the standards and criteria that are relevant to this decision, state the facts relied upon in rendering the decision, and explain the justification for the decision.

Background/Overview of Applicant's Proposal:

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.

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.

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.

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 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.

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 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 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.

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.

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.

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.

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.