

March 27, 2015

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Permitting and Environmental Review File No. **TEMP140011**

PACIFIC RACEWAYS
Temporary Use Permit Appeal

Location: 34500 SE 99th Street, Snoqualmie

Applicant: Pacific Raceways
represented by **John Ramsey**
31001 144th Avenue SE
Kent, WA 98042
Telephone: (253) 639-5927
Email: johnr@pacificraceways.com

Appellant: Soos Creek Area Response
represented by **Linda Worden**
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King County: Department of Permitting and Environmental Review
represented by **Cristy Craig**
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department’s Preliminary Recommendation:	Approve with Conditions
Department’s Final Recommendation:	Approve with Conditions
Examiner’s Decision:	Grant Appeal in Part; Approve with Modified Conditions

EXAMINER PROCEEDINGS:

Hearing Opened:	January 27, 2015
Hearing Closed:	January 27, 2015
Record Closed:	March 4, 2015

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

FINDINGS and CONCLUSIONS:

1. General Information

Applicant:	Pacific Raceways John Ramsey, Pacific Raceways 31001 144th Avenue SE Kent, Washington 98042 (253) 639-5927
Location:	31001 144th Avenue SE, Kent
Parcels:	1221059035, 1021059002, 1021059003, 102059008, 1021059019, 1021059029, 1524079002
Size:	Approximately 330 acres
Zoning:	Industrial (I) P-SO
Proposal:	Expansion of race participant overnight camping for the O’Reilly Auto Parts NHRA NW National and Lucas oil NHRA Regional races. 2014 camping dates are July 29-August 4th and August 12-18th.

- The Department of Permitting and Environmental Review (DPER) approved a Temporary Use Permit (TUP) for Pacific Raceways (Applicant) for 4 additional overnight camping areas in connection with the O’Reilly Auto Parts NHRA NW National (NW Nationals) and Lucas Oil Regional races (Lucas Oil) held in July-August, 2014.
- Soos Creek Area Response (Appellant) timely appealed the TUP.

4. As the Appellant, SCAR bears the burden to prove that DPER’s decision is in error. Hearing Examiner Rule of Procedure XI.B.8.

Background

5. The history of Pacific Raceways is both lengthy and complicated. Key dates are set forth in Examiner O’Connor’s March 21, 2012 Report and Decision in Development and Environmental Services (DDES)(now DPER) File E1000334 (O’Connor Decision).¹ Briefly summarized, Pacific Raceways operates under Conditional Use Permit #A-71-0-81 (CUP), first issued in 1972 and reinstated in 1984. The 1984 CUP requires all uses, including camping, to conform to locations mapped on a required “plot plan.” The CUP expressly limits camping to the areas designated on the plot plan and restricts camping to “race participants,” a term it, unfortunately, does not define. CUP Rules and Procedures ¶15(5).
6. The plot plan designates an area in the northeast portion of the property adjacent to the “Drag Strip Pit Area” for “Camping – Participants Only.”
7. The TUP seeks to legalize camping for two week-long events which have occurred outside of the camping area shown on the plot plan. The TUP explains that these two events “have been on-going for several years,” while the Applicant explains that it they have been on-going for 26 years (now 27). (Ex. 19). The TUP expands the camping areas from the 1 area shown on the CUP plot plan to 5 areas.
8. Each racing event occurs over 3 days (Friday-Sunday). Staging of rigs for the event begins at 7 am on Tuesday, with rigs queuing up on the entrance road before 7 am. Staging is generally complete by 10 pm Wednesday. Maintenance of racing vehicles generally occurs on Thursday. Clean up and departure takes place on Monday, with some vehicles exiting on Tuesday.
9. All race rigs are staged and parked according to NHRA policy under the direction of NHRA staff.
10. Campers camp in self-contained motorhomes and other types of recreational vehicles.
11. Pacific Raceways and NHRA set noise limits for NHRA overnight participants: 10 pm Sunday-Thursday and 11 pm Friday-Saturday. Once the curfew begins, participants are required to be noise-free at their pit sites and are subject to NHRA sanctions and penalties if they violate the curfew.
12. The racetrack requires overnight campers to adhere to a Code of Conduct.
13. The Prehearing Order sets forth 6 issues, each of which is addressed below.

Issue A: When a conditional use permit (CUP) authorizes overnight camping in specified areas, may the County authorize additional camping areas through a temporary use permit (TUP)?

¹ The O’Connor Decision was not entered into the hearing record. The Hearing Examiner has taken official notice of the Decision.

14. The December 9, 2014 Order Denying Appellant’s Motion to Set Aside answered this issue in the affirmative.

Issue B: Did the Department of Permitting and Environmental Review (DPER or Department) properly interpret and/or apply KCC 21A.32.100 in approving the TUP? Does KCC 21A.32.100.A apply to the proposed additional overnight camping areas?

15. The TUP applies KCC 21A.32.100, as amended in 2014 by Ordinance 17841. However, as DPER points out in its Report to the Hearing Examiner (Staff Report), DPER determined the TUP application to be complete on June 19, 2014, 5 days before the Metropolitan King County Council adopted Ordinance 17841. (Ex. 28) Therefore, the version of KCC 21A.32.100 in effect on June 19, 2014 governs. KCC 20.20.070.
16. As adopted by Ordinance 10870, KCC 21A.32.100 provides:
- Except as provided by K.C.C. 21A.32.110, a temporary use permit shall be required for:
- A. Uses not otherwise permitted in the zone that can be made compatible for periods of limited duration and/or frequency; or
- B. Limited expansion of any use that:
1. is otherwise allowed in the zone but which;
2. exceeds the intended scope of the original land use approval.
17. In her Appeal Statement, the Appellant contends that DPER wrongly interpreted KCC 21A.32.110 to allow “an ‘expansion of a use approved by a land use permit’ when that statute clearly states that it allows for any use that is ‘otherwise allowed in the zone’” and that racing and camping are not otherwise permitted in the zone.
18. By its plain terms, KCC 21A.32.110 allows a limited expansion if DPER makes two findings: (1) the use is allowed in the zone; and (2) the use exceeds the intended scope of the original land use approval.
19. The property is zoned Industrial (I) with a P-suffix SC-P02: Seattle International Raceway. A racetrack is permitted in the I zone with a Special Use Permit. KCC 21A.08.100. Therefore, the first criterion is satisfied.
20. The original land use approval is the CUP. The CUP authorizes camping by race participants in locations mapped on the required plot plan. The TUP expands that use. Therefore, the second criterion is satisfied.
21. DPER properly interpreted KCC 21A.32.100 to allow a limited expansion of the camping areas. But that is not the end of the analysis required under KCC 21A.32.100.
22. The questions presented are whether: (1) the expansion from 1 area of the racetrack property to 5 areas for a total of 14 days is a “limited expansion;” and (2) whether the

expansion complies with other terms of the CUP, most notably Condition 1, relating to “quiet days.”

23. In evaluating the question of whether the expansion is limited, one must take into account when these 14 days occur. The Staff Report correctly observes that 14 days constitute fewer than 4% of calendar days of the year. But, that analysis overlooks the fact that the 14 days are in July and August when community members are most likely to be outside and/or have their windows open.
24. The question of whether the expansion is limited also involves an analysis of the area occupied by camping and of the number of campers, the latter of which is addressed below in the discussion of what constitutes a “race participant.”
25. The preponderance of the evidence is that the geographic expansion of the camping areas is not limited. As shown on the reverse side of Ex. 11 camping will occupy: both sides of the race track for a substantial length (Area 3); a substantial area south of the drag strip (Area 4); two large areas in the northeast portion of the property (Areas 1 and 2), and a smaller area in Lot “A” (Area 5), which the Applicant testified is reserved for professional drivers. These areas are collectively many times larger than the area the CUP authorizes for camping. Areas 1 and 2 abut a residential neighborhood immediately to the north and appear to be multiple times larger than the camping area authorized by the CUP, which is in the same vicinity.
26. The Appellant has shown that DPER erred in finding that the expansion is limited.

Issue C: Whether the CUP requirement for “quiet days” applies to non-racing activities authorized by the TUP?

27. CUP Condition 1, the “quiet days” condition, provides:

The hours of track operation shall be limited to 9:00 a.m. to 5:30 p.m.,² for both testing and racing with the following exceptions:

- a. [Pacific Raceways] will be closed to all race testing and racing on Monday and Tuesday year-round, provided that these days may be used for racing when a rained out event could not be scheduled for the following weekend, or when a holiday which has a major event associated within it falls on a Monday or Tuesday. Race testing is not meant to exclude police and emergency vehicle testing and training, or other non-race related testing functions that are quiet, non-impacting.
- b. [Pacific Raceways] shall provide a minimum of one quiet weekend day (Saturday or Sunday) per month during the May through September racing season. [Pacific Raceways] shall notify Building and Land Development³ in writing of the five designated quiet days prior to May 1st each year. [Pacific Raceways] should notify interested community representatives in the interest of community relations.

² The hours were subsequently revised.

³ Now DPER.

28. The O’Connor Decision, interprets “quiet” as:

“The ordinary meaning of “quiet” is, “still; calm; motionless. . .not noisy; hushed. . .” Webster’s New World Dictionary, 2nd Concise Edition 1975, p. 612; or “making no noise; silent. . .free of noise; hushed. . .” American Heritage Dictionary, 2nd College Edition 1985, p. 1016.”
29. The O’Connor Decision also held that CUP Condition 1 authorizes only “non-race related testing functions” on a Monday, Tuesday or weekend quiet day and that it does not authorize use of the track by car clubs or for similar functions or a driver training school.
30. On September 2, 2014, in *Race Track, LLC v. King County*, Cause No. 70553-9-I, an unpublished decision, Division I of the Court of Appeals concluded that Examiner O’Connor erroneously concluded that a driver training school is not permitted under the CUP, but upheld his ultimate conclusion that the school violated the CUP because it was not “quiet” and “non-impacting.” (Ex. 8). The Court of Appeal, thus, applied the quiet days requirement to uses other than racing and race-testing.
31. On mandate from Superior Court, Examiner O’Connor modified his decision to provide that driving school activities on required quiet days must be either inaudible beyond Pacific Raceways’ boundary or observe a 35 mile-per-hour speed limit and be otherwise quiet and non-impacting. (Ex. 21).
32. The Appellant contends that Condition 1 applies to the camping and that the camping activities are neither “quiet” nor “non-impacting.”
33. The Applicant contends that Condition 1 does not apply to camping or to ingress/egress in connection with these racing events.
34. DPER has taken inconsistent positions on the question of whether Condition 1 applies to camping. In the TUP and in its Hearing Brief, DPER contends that Condition 1 does not apply to camping because it is not “racing or race-testing.” Yet, in the Staff Report, dated the same date as the Hearing Brief, DPER takes the position that the Court of Appeals decision held that uses that are not racing or race testing are allowable on Mondays and Tuesdays so long as they are “quiet and non-impacting,” in effect applying Condition 1 to all uses. The Staff Report then concludes that the TUP included conditions on the camping use intended to minimize noise impacts. *See*, Findings/Conclusions 42-49 below.
35. The Appellant presented photographs she took of rigs lined up for the NW Nationals on the Pacific Raceways entrance road, 144th SE, starting before 7a.m. on the Tuesday preceding the event, then turning into a grassy area to “stack” while awaiting entry to the track and pitting areas. (Ex. 9). 144th SE is labeled “access road” on the plot plan and appears to run approximately ½ mile in a north-south direction before vehicles can turn into the grassy area (the area on the plot plan labeled “out” and marked with an “X”). (Ex. 7). Ex. 9 shows rigs queued along the length of 144th SE.
36. The grassy area where the rigs stack abuts a housing development to the east, Pacific Park Estates Division I.

37. The Appellant testified that the vehicles' motors and generators are not quiet.
38. The Applicant agreed that the photographs accurately reflect queuing up and pitting.
39. The Applicant concurred that the ingress/egress is "impactful" but contended that the noise generated by ingress/egress would be the same whether or not camping is allowed and that the camping in and of itself does not increase impacts on the surrounding community.
40. Camping Area 1 (and possibly Area 2) is immediately to the south of Pacific Park Estates Division I. Campers park along the common property boundary. Thus, staging is immediately to the west of Pacific Park Estates and camping in motorized vehicles with generators is immediately to the south.
41. A resident of Pacific Park Estates presented written evidence that on the Tuesday before the NW Nationals, when rigs were lined up to be staged, there was yelling and verbal fighting and that, in prior years, there was excessive noise and drunkenness, although it is not clear whether those impacts in prior years occurred on required quiet days. (Ex. 27).
42. In its Staff Report, DPER concludes that the TUP places conditions on the camping use intended to minimize noise impacts, referencing p. 2, ¶ 3; p. 7 re allowable noise levels; Conclusions 6 and 15; and Condition 2.
43. Given the fact that, at the time it issued the TUP, DPER contended that CUP Condition 1 did not apply to camping, it is difficult to understand how the TUP conditions were intended to minimize noise impacts from camping. Even had that been the intent, the Hearing Examiner concludes that these provisions do not minimize noise impacts or achieve compliance with CUP Condition 1.
44. TUP page 2, ¶ 3 recites the noise curfew for overnight participants discussed in Finding/Conclusion 11 above. For the "quiet days" it would be 10 p.m. A 10 p.m. curfew does not mitigate impacts from the time campers arrive until 10 p.m. It does not afford the community a "quiet day."
45. TUP page 7 simply recites the maximum permissible sound levels established by KCC 12.88.020.
46. TUP Conclusion 6 states that the "quiet days" condition does not apply to non-racing activities or race track operations, such as camping. It offers no mitigation whatsoever for noise that may be generated by the greatly expanded camping areas.
47. TUP Conclusion 15 is simply DPER's conclusion that noise impacts are sufficiently mitigated by the Pacific Raceways and NHRA noise policy and curfew for overnight participants.
48. Condition 2 requires compliance with King County noise limits and the Applicant's noise policy and curfew.

49. Taken together, these TUP provisions do no more than require compliance with the County’s maximum noise levels and Pacific Raceways and NHRA noise policy and curfew for overnight participants. These provisions do not sufficiently mitigate noise from staging, pitting, generators, and boisterous campers.
50. The preponderance of evidence at the hearing established that noise from vehicles lining up on 144th SE from some time before 7 a.m. when Pacific Raceways opens its gates on the Tuesday before the events and stacking in the grassy area throughout the day, and departing from Pacific Raceways throughout Mondays, use of generators on Mondays and Tuesdays, and noise generated by campers could be heard by surrounding residents.
51. The expanded camping does not comply with CUP Condition 1.

Issue D. Does the ability to renew a TUP annually for up to a total of five consecutive years transform the use into a use which is no longer temporary?

52. KCC 21A.32.120 (2014) allows DPER to renew a TUP annually for up to 5 years if the applicant makes a written request and pays the applicable fees 70 days before the end of the permit period; DPER determines that the temporary use is being conducted in compliance with the TUP conditions; and DPER determines that the site conditions have not changed since the original TUP was issued. DPER must give notice to property owners within 500 feet of the property that the applicant has requested a renewal at least 45 days before the end of the permit period.
53. The King County Code allows a TUP to be renewed annually under the circumstances enumerated above. The Hearing Examiner does not have the authority to rewrite the Code.

Issue E. Did DPER correctly understand the scope of camping permitted by the CUP when it issued the TUP?

54. The CUP restricts camping to race participants. In her Appeal Statement, testimony, and post-hearing brief, the Appellant argues that Pacific Raceways allows persons who are not race participants to camp. The Appellant requested a clear definition of the term “race participant.”
55. In 1979, the County advised the Seattle International Raceway, the predecessor to Pacific Raceways, that camping by race participants is allowed as an accessory use to the racing and interpreted race participants to be those who raced vehicles. (Ex. 12). In 1982, the County reiterated that camping is an accessory use limited to race participants. (Ex. 16)
56. The Applicant testified that it defines “participants” as a drivers of a motorized vehicle in a competition for the weekend (either the main event or a support race), crew, and family. Participants are identified by a Technical Inspection Card or Competitor Number.
57. The CUP limits campers limited to participants, i.e. those who *actually* drive a motorized vehicle in a competition, the driver’s crew, and the driver’s family members.

Issue F. Has the applicant violated the terms of the TUP? If so, should DPER revoke the TUP? If so, should the violation be considered in any future request to renew the TUP?

58. The TUP was issued for two events on July 29-August 4 and August 12-18, 2014. Inexplicably, the Staff Report states that the events have not yet occurred under this TUP.
59. DPER issued the TUP on August 19, the day after the second event. The Applicant may well have violated the CUP by holding the 2014 events before the TUP was issued. However, it could not have violated a permit which had not yet been issued.

DECISION:

The Appeal is **GRANTED** as to Issues B and C and **DENIED** on all other issues.

It is ordered:

1. Overnight camping in motorized vehicles is not permitted on the quiet days established by CUP Condition 1. Required quiet days are Mondays, Tuesdays, and designated week-end quiet days.
2. Overnight camping locations shall conform to the site plan Attachment A to the TUP.
3. Pacific Raceways and the NHRA shall adhere to the King County Noise ordinance as well as their noise policy and curfew.
4. For the NW Nationals, or equivalent event, the Raceway shall continue to contract with off-duty King County Sheriff's Deputies to provide 24-hour onsite security during the TUP dates. In addition, Pacific Raceways shall continue to obtain Mountain View Fire District 44 or equivalent overnight fire and aid crew. During the Lucas Oil Regional, or equivalent event, Pacific Raceways shall continue to provide for onsite after hours security with Pacific Raceways' management staff or its equivalent during all TUP camping on a 24-hour basis.
5. All TUP camping related activities shall be confined within TUP designated areas. All camping associated parking shall occur within the designated parking/camping areas. NO camper parking on neighboring streets is allowed.
6. The track's and the NHRA's codes of conduct shall be observed.
7. Expanded overnight camping is only allowed for the two designated NHRA events, for a period not to exceed 5 days each and occurring within the months of July and August.
8. This TUP was issued for 2014 and may be renewed up to an additional 4 consecutive years pursuant to KCC 21A.32.120. If renewals are requested in future years, Pacific Raceways shall notify DPER of the dates for the expanded camping and associated event with the renewal request. The camping locations and number of days and number (2) of camping events may not be expanded through the renewal process.

9. Failure to comply with the above described conditions may result in revocation of this permit and subsequent renewals as set forth in KCC 21A.050.

ORDERED March 27, 2015.

Alison Moss
Hearing Examiner pro tem

NOTICE OF RIGHT TO APPEAL

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

MINUTES OF THE JANUARY 27, 2015, HEARING ON THE APPEAL OF PACIFIC RACEWAYS, PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. TEMP140011.

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were Cristy Craig and Ty Peterson for the department; John Ramsey for the Applicant, Jason Fiorito, the Applicant; Linda Worden representative for the Appellants, Billy Orcutt and John Ramsey.

The following exhibits were offered and entered into the record:

- | | |
|----------------|--|
| Exhibit no. 1 | DPER Report and Decision |
| Exhibit no. 2 | Zoning Adjustor Memorandum dated May 4, 1984 with attached Report and Decision |
| Exhibit no. 3 | Code section on recreational/cultural land uses |
| Exhibit no. 4 | King County Ordinance dated January 26, 1971 |
| Exhibit no. 5 | Department preliminary report to the zoning adjustor dated June 23, 1981 |
| Exhibit no. 6 | King County signature report dated March 20, 2012 |
| Exhibit no. 7 | Letter to Joel Timmerman from Gerald W. Marbett of BALD dated June 7, 1984 with attached corrected plat plan |
| Exhibit no. 8 | Court of Appeals decision dated September 2, 2014 |
| Exhibit no. 9 | Photographs of vehicles lined up waiting to enter the facility |
| Exhibit no. 10 | Photographs of vehicles parked along 148th SE by Bill Orcutt's home and the emergency access gate |
| Exhibit no. 11 | Notice of Application dated June 19, 2014 with a colored map showing parking areas |

- Exhibit no. 12 Letter to Edward Sand, Manager of BALD from Robert D. Jones dated July 31, 1979 where it indicates camping is an accessory use
- Exhibit no. 13 January 21, 2015 email to Linda Worden and Cristy Craig from John Ramsey
- Exhibit no. 14 Compilation of material on Northwest Nationals
- Exhibit no. 15 Events at a Glance on Pacific Raceways – Motorhome and RV Parking
- Exhibit no. 16 Letter to Eugene Oliver, Jim Rockstad and Jack Burgeson from Stephen Kenyon, PAO dated July 13, 1982
- Exhibit no. 17 Letter to Jim Rockstad from Gordon Thomson of BALD dated June 13, 1988
- Exhibit no. 18 Letter to Jim Rockstad from Mark Carey of DDES dated December 12, 1995
- Exhibit no. 19 Pacific Raceways TUP Submittal Meeting response from Nancy Hopkins received by DPER June 19, 2014
- Exhibit no. 20 Notice of Violation on E1000334 dated January 21, 2011
- Exhibit no. 21 Modified Report and Decision on Remand dated December 11, 2014
- Exhibit no. 22 Signature Report – Ordinance 17841 dated June 25, 2014
- Exhibit no. 23 Application Acknowledgement from DPER dated June 19, 2014
- Exhibit no. 24 Compilation of Comments from DPER on Pacific Raceways Track
- Exhibit no. 25 Resolution no. 25851 dated May 6, 1963
- Exhibit no. 26 Recorded document on Resolution no. 25851 dated May 8, 1963
- Exhibit no. 27 Email string from numerous individuals on the August 2014 drag race competition along with other documents

AM/gao

March 27, 2015

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CERTIFICATE OF SERVICE

SUBJECT: Permitting and Environmental Review File No. **TEMP140011**

PACIFIC RACEWAYS
Temporary Use Permit Appeal

I, Ginger Ohrmundt, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

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

DATED March 27, 2015.



Ginger A. Ohrmundt
Legislative Secretary II

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