

April 17, 2019

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

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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **LUT4170003**
Proposed ordinance no.: **2018-0295**

RACE TRACK LLC

Interim Use Permit

Location: 31001 144th Avenue SE, Kent

Applicant: Jason Fiorito
represented by **Donald Marcy**
524 Second Avenue Suite 500
Seattle, WA 98104
Telephone: (206) 587-0700
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King County: Department of Local Services
represented by **Ty Peterson**
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to revised conditions
Examiner's Decision:	Approve, subject to revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened:	August 16, 2018
Hearing Record Closed:	March 27, 2019

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

FINDINGS:

1. General Information:

Date of application:	December 11, 2017
Date of application completeness:	December 18, 2017
Applicant:	Race Track LLC Attn: Jason Fiorito 31001 144th Avenue SE Kent, WA 98042 (206) 547-4099
Location:	31001 144th Avenue SE Kent, WA 98041 Parcel nos: 1021059003, 1121059035
Proposal:	Excavation of 1,000,000 cubic yards of gravel and construction of approximately 205,000 sq. ft. of commercial/industrial space in six buildings ranging in size from 5,000 sq. ft. to 40,000 sq. ft.
Zoning:	I-P Industrial (with P suffix development condition)
Community Plan:	Soos Creek
Drainage Basin:	Duwamish-Green River WRIA 9
STR:	NE-10-21-5

2. Except as modified herein, the facts set forth in the Department of Local Services, Permitting Division (Department) report to the Examiner (Staff Report), Ex. D-22, are found to be correct and are incorporated herein by reference.

Background

3. In 2012, the King County Council adopted regulations authorizing a Regional Motor Sports Facility Master Planning Process Demonstration Project (Regional Motor Sports Facility Demonstration Project). Ex. D-21. The regulations are codified in KCC 21A.55.105. Race Track LLC has commissioned the preparation of a draft Master Plan, Ex. A-3, with attendant significant design and engineering costs, but has not yet begun preparation of the required environmental impact statement. Testimony of Jason Fiorito.
4. In 2014, the Washington State Department of Commerce designated Race Track LLC/dba Pacific Innovation Center/dba Pacific Raceways as a Project of Statewide

Significance pursuant to Chapter 43.157 RCW. Ex. A-7, April 1, 2014 Letter from Department of Commerce to Pacific Raceways; KCC 21A.55.105.Y.2.

5. Prior to making application for a master plan, KCC 21A.55.105.U allows the applicant to undertake, as an interim use, the construction of up to 400,000 square feet of buildings, including required excavation and processing of materials, for uses allowed as part of a regional motor sports facility under KCC 21A.06.973C. These uses include certain accessory uses, including on-site sale of racing- or event-related items, repair and service, and modification or storage of motor vehicles used primarily at the facility. KCC 21A.06.973C.C.1. and C.2.
6. KCC 21A.55.105.V-Y include detailed provisions governing the application process, application requirements, required conditions, and appointment of a special project manager for an interim use. Consistent with those regulations, the Department engaged Environmental Science Associates as the special project manager. Ex. 22, p. 3.
7. The interim use requires an Interim Use Permit (IUP). KCC 21A.55.105.U. An IUP is a type of permit that is unique to the Regional Motor Sports Facility Demonstration Project and is a matter of first impression for the Hearing Examiner (Examiner).
8. Race Track LLC (Applicant) proposes approximately 196,000 square feet¹ of commercial/industrial space in five buildings² around the perimeter of an approximately 42 acre site referred to in some of the application materials as Lot C or Parking Lot C (referred to herein as IUP Site), located to the north of the Pacific Raceways Road Course, west of 148th Avenue SE, and east of 144th Avenue SE. The proposed buildings consist of four 40,000 square foot buildings along the south and west portions of the site and one 36,000 square foot building along the east portion of the site. In addition, the Applicant proposes a 4,000 square foot retail building on an approximately 8,000 square foot area to the southeast of the IUP site near the participant parking area of the racetrack. Ex. D-8, Business Park Site Plan; Ex. D-9, sheet 1 of 3.
9. The Applicant will continue to use the open central area of the IUP Site for staging racing events and spectator parking as it has for many years. Testimony of Jason Fiorito. To ensure that excavation will not interfere with parking for large events, the operators of the excavation operation will prepare the site for parking prior to the event. Testimony of Jason Fiorito.
10. With the exception of the retail building, the buildings will be used as garages for storing and working on race vehicles. The rectangular garage buildings will have roll up doors on both long sides. Testimony of Jason Fiorito.

¹ The Staff Report, Ex. D-22, erroneously indicates that 205,000 square feet of buildings are proposed, including a retail building which it variously describes as 4,000 square feet and 5,000 square feet. Based on the approved site plan, Ex. D-29, the five proposed garage buildings total 196,000 square feet. The approved site plan does not show the retail building, although its location is shown on Ex. D-9, sheet 1 of 3, with a size of 4,000 square feet.

² The draft Master Plan states that there will be six 40,000 square foot buildings in the IUP Site, although this appears to be an error, as only five buildings are shown on the plans included in the draft Master Plan and included in the table entitled Pacific Raceways Parkin[g] Lot C Complex. Ex. A-3, Chapter 5, Parking Lot C Complex and Master Plan Summary.

11. The garages provide the opportunity to support the automotive technology innovation industry, drawing on Washington state's excellent research facilities, including University of Washington, Washington State University, Central Washington University, and Green River Community College; providing an available testing facility for autonomous and renewable-energy driven vehicles; and proximity to skilled labor. Testimony of Jason Fiorito.
12. The sale of excavated materials and leasing of the garages will generate income which will allow the Applicant to progress in its master planning process. Testimony of Jason Fiorito; Ex. A-2, Executive Summary.

Mitigated Determination of Non-Significance

13. The Department issued a Mitigated Determination of Non-Significance (MDNS) on April 30, 2018. Ex. D-6. It was not timely appealed.
14. Don Huling, a board member of Soos Creek Area Response (SCAR), and Sandra Gaither contend that the Department should have required an environmental impact statement. Sandra Gaither also testified that the Department should have imposed conditions relating to cultural and heritage sites under the State Environmental Policy Act (SEPA).

Conditional Use Permit A-71-0-81

15. At the hearing in this matter, the Department and the Applicant concurred that the IUP is subject to the terms of Conditional Use Permit (CUP) A-71-0-81. Ex. C-2.

Excavation

16. KCC 21A.55.105.U.1 authorizes the construction of 400,000 square feet of buildings, including required excavation and processing of materials (emphasis added). KCC 21A.55.105.U.2 provides that the excavation of materials "shall be only as is necessary to construct the buildings and any required site improvements associated with the construction of the buildings" (emphasis added). KCC 21A.55.105.U does not include revenue generation as a rationale for excavation of materials.
17. The Applicant proposes to excavate 1,000,000 cubic yards of material. Cuts would range from approximately 6 feet near the southwest corner of the site to 25 feet in the northeast corner of the site. Ex. D-22; Ex. D-23.
18. The Applicant contends that King County Council understood that the interim use would entail excavation of 1,000,000 cubic yards of materials and not only intended that that amount be authorized but indeed authorized extraction of that amount constrained to an approximately 40 acre site. Testimony of Jason Fiorito; Applicant's closing argument.
19. While it is evident from the IUP regulations that the King County Council understood that some quantity of excavation would be necessary for the construction of the interim use buildings, there is no evidence in the record regarding the Council's intent that the

Examiner approve any particular quantity. Rather, the IUP regulations require that the Examiner determine whether the proposed volume of excavation is “required” for the construction of the proposed buildings and “is only as necessary” to construct the buildings and associated site improvements.

20. The Applicant contends that excavation of 1,000,000 cubic yards is necessary for the following reasons:
 - A. Building placement is key for function, use, marketing, and phasing of the Project. Ex. D-22.
 - B. Excavating the building sites necessitates excavating utilities, so that they may rely on gravity flow for best function and operation. Ex. D-22; Testimony of Trevor Stiff and David Jensen.
 - C. Lowering the site mitigates noise, light, and aesthetic impacts. Ex. D-22.
21. The Department did not provide any independent analysis of the necessity of excavating 1,000,000 cubic yards of materials for building construction and/or associated site improvements. At the hearing in this matter, in response to questions from the Examiner, Ty Peterson testified that the Applicant’s arguments are valid. He also opined that the excavation will provide long-term mitigation of noise, light and glare, and aesthetic impacts.
22. Existing access roads to the IUP site are well above the proposed finished grade. Ex. D-23, sheet 4 of 5. Access to the Road Course is at the lower southwest corner of the site plan where the least amount of excavation is proposed.
23. To preserve the ability to provide parking for large numbers of spectators on the IUP Site, the garage buildings must be located around its perimeter.
24. The record contains no analysis of the minimum depth necessary to construct the proposed garage buildings. It contains no analysis of the effect of excavation of fewer than 1,000,000 cubic yards on building construction or associated site improvements. Therefore, the Examiner is unable to find that the excavation is necessary for building function as contended by the Applicant.
25. The stormwater will be collected in a storm system, conveyed to water quality facilities, and then routed by gravity flow to an infiltration trench system in the middle of the IUP site. The King County Code requires gravity flow. Thus, the filtration system cannot be located at an elevation higher than the floor of the proposed garage buildings and parking. Testimony of Trevor Stiff.
26. Although it has not determined whether soils are suitable, the Applicant intends to locate the septic drainfield in the northeast corner of the IUP site, the area requiring the greatest depth of excavation. Ex. D-29; Ex. A-2. The choice of this location, together with the excavation for the stormwater infiltration system, necessitates the depth of excavation. If the drainfield location were not excavated, it would sit 12 to 15 feet above

the infiltration trenches, creating a risk that the septage would weep into the cut bank. Due to required setbacks from the top of slope, that scenario would also constrain the area that could be used for the drainfield. Testimony of David Jensen.

27. While it may be true that the stormwater infiltration system and septic drainfields must be located at or below the depth of the floor of the buildings, it is equally true that the utilities would not require the depth of excavation proposed if depth of excavation for the building placement were less. In other words, it is the building placement that is driving the volume of excavation for utilities. Therefore, the Examiner is not able to find that the volume of excavation is necessary for associated site improvements.
28. Therefore, the question of whether the excavation is “required” for the construction of the proposed buildings and “is only as necessary” to construct the buildings comes down to a question of whether the excavation is necessary to mitigate the impact of the garages on the surrounding neighborhood. The Examiner finds that this is a very close question. The Sound Control Plan, discussed further below, requires a permanent noise barrier along the eastern property line extending north from the southeast corner of the IUP site 450-550 lineal feet. With no excavation, the height of the noise barrier would have to be at least 10 feet to limit the noise received at the four modeled receiving sites (residences on the east side of 148th Avenue SE east of the eastern proposed garage building) to 55 db(A). Ex. A-14, Table 4. With excavation, this result could be achieved with an 8 foot noise wall. Ex. A-14, Table 5. While excavation will have adverse impacts on the surrounding neighborhood, given the time limits imposed by KCC 21A.55.105.X.5, it will be a relatively short-lived activity, while the noise barrier will be a permanent structure. Therefore, the Examiner finds that the proposed excavation is “required” for the construction of the proposed buildings and “is only as necessary” to construct the buildings.
29. The excavation will also mitigate light, glare, and aesthetics impacts.

Vehicles Used Primarily at the Facility

30. The IUP uses are limited to those included within the definition of a regional motor sports facility, KCC 21A.06.973C. KCC 21A.55.105.U. KCC 21A.06.973C, in turn, requires that vehicles repaired, serviced, modified, stored, or fabricated at the facility must be “used primarily at the facility.”
31. In response to questions from the Examiner, Mr. Fiorito explained that the rents to be charged for the garages will be set such that only those vehicle owners who need proximity to the racetrack will rent the garages, in effect, creating a self-enforcing condition.
32. The Applicant expects most garages to be leased by amateur racers who typically race no more than 2-3 times/year; the remainder of the year (49-50 weeks) the garages will be used primarily to store vehicles.
33. Approximately 100,000 square feet of the proposed garages have been reserved. Testimony of Jason Fiorito.

Noise/Sound Control Plan

34. Ramboll US Corporation prepared an Environmental Noise, Air Quality, GHG, and Light & Glare Report, Ex. D-14. The IUP site is located in a typical, quiet, rural area. Testimony of Kevin Warner. Sound measurements, taken over three days in February 2016 to document and characterize the existing noise environment in the IUP vicinity, indicate ambient sound levels typical of a relatively quiet suburban area with few continuous sources of dominant noise. Ex. D-14, p. 6. Daytime (7:00 a.m.–10:00 p.m.) noise levels ranged from 45 to 57 Leq, with an average of 51 Leq. Nighttime (10:00 p.m.–7:00 a.m.) noise levels ranged from 39 to 54 Leq, with an average of 48 Leq. Ex. D-14, Table 3. Ex. D-14 provides relevant information regarding ambient noise and noise impact assessment. The Sound Control Plan discussed in the following Finding supersedes its recommendations regarding noise mitigation. Testimony of Kevin Warner.
35. As required by MDNS Condition 1 and the Examiner’s August 17, 2018 Order of Remand, the Applicant has prepared a Sound Control Plan. Ex. D-33.
36. The MDNS requires that the Sound Control Plan identify the appropriate performance standards in terms of A-weighted decibels dB(A) for non-exempt events and operations. Ex. D-6. The Sound Control Plan utilizes the County’s environmental sound levels in KCC 12.86.110 for non-exempt activities. Pacific Raceways is an industrial source. The surrounding area is rural. For an industrial noise source received in a rural area, for relevant limits are:
- | | |
|--------------|--|
| 57 dB(A) Leq | 7:00 a.m.–10:00 p.m. weekdays
9:00 a.m.–10:00 p.m. weekends |
| 47 dB(A) Leq | 10:00 p.m.–7:00 a.m. weekdays
10:00 p.m.–9:00 a.m. weekends |
37. To facilitate the recording and review of noise received at the eastern Project boundary, the Applicant will install two Noise Monitoring Terminals, one (NMT1) along the eastern property boundary and one (NMT2) within the Project area. As conditioned below, the Noise Monitoring Terminals will continuously monitor sound throughout the life of the excavation, construction, and operation of the garages. NMT1 must be equipped with a noise level-triggered video fee to aid in determining the source of noise.
38. While Kevin Warner, Senior Managing Consultant with Applicant’s expert, Ramboll, testified that he has never needed to review raw data older than one year, the Applicant agreed to store the data for the duration requested by Soos Creek Area Response. In its March 15, 2019, letter to the Examiner, SCAR requests that data be stored for five to ten years. Ex. C-1.
39. At the hearing in this matter, the Applicant agreed to enforce the Pacific Raceways Code of Conduct on activities in the IUP site. Testimony of Jason Fiorito.

40. To ensure that tenants of the garages are aware of the conditions imposed in this IUP to mitigate impacts on the surrounding neighborhood, the Applicant should prepare rules incorporating relevant mitigating conditions and post those rules in each garage.

Potential Duration of IUP

41. KCC 21A.55.105.X.5 requires that all grading and construction activities be completed within 60 months of February 27, 2016, except as allowed to be extended in accordance with KCC 20.20.105, which allows a one-year extension. Thus, all grading and construction must be complete by February 26, 2021 (February 26, 2022, if the one-year extension is granted).
42. The Applicant anticipates that it will request the permissible one-year extension. Testimony of Jason Fiorito.
43. Greg Heath prepared a Traffic Impact Analysis of excavation of 1,000,000 of cubic yards of sand and gravel over five years and subsequent operation of the proposed garages, assuming that excavation and operation of the garages would be sequential, not simultaneous. Ex. D-11; Testimony of Greg Heath. The Traffic Impact Analysis estimates that, during excavation, 100 trips per day will be generated (80 truck trips plus 20 employee trips). It estimates that, during garage operation, 1,366 daily trips and 170 p.m. peak hour trips would be generated. The Traffic Impact Analysis used the Institute of Transportation Engineers (ITE) Trip Generation, 9th ed., Land Use Code for Industrial Parks (LUC 130); the current edition Trip Generation, 10th ed. uses approximately half the trip generation for LUC 130. The Traffic Impact Analysis concludes that, in the year 2023, level of service at the three area intersections studied will operate at level of service D or better.
44. At the hearing in this matter, Mr. Heath testified that, if the duration of excavation were compressed to twelve months rather than the initially assumed five years, the operation would generate 800 truck trips (400 in and 400 out) and 20-30 employee daily trips and 40-50 p.m. peak hour trips. Mr. Heath then compared the PM peak hour truck and employee traffic from a compressed excavation operation (40-50) to the p.m. peak hour traffic projected to be generated by the operation of the garages (170), opining that traffic generated by a compressed excavation operation would be approximately one third of the traffic he originally studied and, therefore, would not result in adverse impacts.
45. Mr. Fiorito clarified that construction of the initial garage buildings may overlap with excavation. If the extraction operation generates 800 daily truck trips and 20 employee trips, simultaneous operation of the garages could generate 546 daily trips without exceeding the number of trips analyzed in the Traffic Impact Analysis. Using 6.83 trips per thousand square feet of garage building (see, Table 3, Ex. D-11), 546 daily trips translates into 79,941 square feet of garage buildings or two 40,000 square foot buildings.
46. The Environmental Noise Assessment contained in Ex. D-14 assumed that, during excavation, 40 trucks per day would operate eight hours per day. Mr. Warner testified that, even if the truck traffic were to double, it would not change the result of the

environmental noise analysis because the main source of noise is operations closer to the east end of the IUP site.

47. Any Finding which is more properly considered a Conclusion of Law is hereby adopted as a Conclusion of Law.

CONCLUSIONS:

1. Any Conclusion of Law which is more properly considered a Finding is hereby adopted as a Finding.
2. In Ex. C-4, Mr. Huling raised a number of issues which are outside of the Examiner's jurisdiction and are not addressed in this Decision including: designation of Pacific Raceways or of the IUP as a project of statewide significance and a request that the Examiner invalidate KCC 21A.55.105.Q.1. He also contends that the Department should have required an Environmental Impact Statement. The avenue for pursuing this contention would have been an appeal of the MDNS. However, the MDNS was not appealed and so stands. He also contends that the plans are faulty for not designating the location of the septic drainfield for the racing school and office. While these components may be part of Pacific Raceways draft Master Plan, see Ex. A-3, they are not within the scope of the requested IUP and are not before the Examiner.
3. Finding that KCC 21A.55.105 lacks specific review criteria for an IUP, the Department applied the Special Use Permit (SUP) criteria found in KCC 21A.44.050. Ex. D-22, p. 2, paragraph entitled "Review." However, KCC 21A.55.105.Z.1.i provides that the Department's recommendation "shall be based on the conformance of the proposal with the requirements of this section..." Therefore, the Examiner evaluated the IUP application for conformance with the requirements of KCC 21A.55.105.U-Y and did not apply the SUP criteria.
4. The Applicant bears the burden of proof by a preponderance of the evidence that its proposal conforms with KCC 21A.55.105.U-Y. King County Hearing Examiner Rules of Procedure and Mediation, rules XV.E and XV.F.
5. In KCC 21A.55.105.U the King County Council did not approve or express an intent that the Examiner approve excavation of 1,000,000 cubic yards. If it had such an intent, it clearly could have expressed it, as it did with building square footage by imposing a maximum square footage of 400,000 square feet.
6. KCC 12.86.500.P exempts noise created by motor vehicle racing events and motor vehicle testing and training "governed by and conducted in accordance with applicable King County permit conditions." CUP A-71-0-81 establishes applicable permit conditions. So long as the activities within the garages constitute (a) "motor vehicle testing and training" of (b) vehicles used primarily at the facility, the noise generated by these activities is exempt from Chapter 12.86 KCC during the hours the CUP permits race testing and racing.

7. CUP Condition 1 requires that the facility be closed to all race testing and racing on Monday and Tuesday year-round, provided that these dates 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 with it falls on a Monday or Tuesday. CUP Condition 1 also requires a minimum of one “quiet” weekend (Saturday or Sunday) day per month during the May through September racing season. The Examiner may impose conditions pursuant to KCC 12.86.500.P to effectuate the intent of CUP Condition 1 within the IUP site.
8. Non-exempt noise may constitute a public disturbance noise pursuant to KCC 12.86.410 even if the noise complies with the maximum sound limits. In particular, KCC 12.86.410.A.2 and A.6 define as public disturbance noises: frequent, repetitive or continuous sound in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle; and frequent, repetitive or continuous sound where the sound is plainly audible and can be felt at 50 feet or more from the source of the sound when the sound is received in a residential or rural district.

DECISION:

The interim use permit of Race Track LLC, is APPROVED subject to the following conditions of approval.

1. All grading and construction activities shall be completed within sixty months of February 27, 2016, (February 27, 2021), unless extended in accordance KCC. 20.20.105.
2. Grading, building, and development shall be in substantial conformance with the approved site plans and grading plans and consistent with the recommendation within the special studies, Sound Control Plan, and SEPA MDNS Condition 2.
3. As required in Exhibit D-20, prior to issuance of a grading permit, a wildlife report shall be provided to the Department. The report shall evaluate the presence or absence of protected species listed in KCC 21A.24.382 and be prepared by a qualified wildlife biologist, based on observation of the site for three days during the breeding season.
4. Use of buildings shall be limited to the accessory uses enumerated in KCC 21A.06.973C.
5. All work on vehicles at the IUP Site shall be limited to vehicles used primarily at the facility and shall take place within the garage buildings.
6. The Applicant shall provide to the Department, prior to issuance of the grading permit, its Code of Conduct and shall enforce its Code of Conduct within the IUP Site.
7. The Applicant shall post within each garage and provide with each rental agreement a copy of its Code of Conduct and rules incorporating IUP Conditions 4-6 and 8.
8. Comply with the Sound Control Plan prepared by Ramboll US Corporation, dated January 2019, as modified by this Condition:

- A. All garage doors must be closed on Mondays, Tuesdays, and the monthly weekend (Saturday or Sunday) quiet day required by CUP A-71-0-81 at any time any of the following activities is occurring: use of air-powered tools, grinding, hammering, banging, or high RPM revving of engines.

The CUP allows race testing and racing on a Monday or Tuesday when a rained out event could not be scheduled for the following weekend or when a holiday which has a major event associated with it falls on a Monday or Tuesday. In these circumstances, the garage doors may be open during permitted race track hours, but must be closed during the day of the rained-out event.

- B. In addition to the limits in Condition 8.B, the east-facing garage doors of the eastern garage must be closed at 10:00 p.m., provided that in May-August they must be closed at 11:00 p.m. on Friday and Saturday. They may not be opened until 7:00 a.m. Monday-Friday and 9 a.m. Saturday-Sunday.
- C. The Noise Monitoring Terminals required by the Sound Control Plan shall be installed and maintained by an independent third party.
- D. The Noise Monitoring Terminals shall be equipped with an ANSI Type I integrated sound level meter and all-weather microphones, telemetry, and battery backups.
- E. Noise Monitoring Terminal 1 shall be equipped with the noise level-triggered video feed to aid in determining the source of noise. The video feed shall be installed and maintained by an independent third party.
- F. The sound level meters shall be factory- and field- calibrated on the schedule recommended by the manufacturer. Annually in September, the Applicant shall provide documentation to the Department of compliance with this condition for the prior year.
- G. Continuous sound monitoring shall occur continuously throughout the life of the excavation, construction, and operation of the garages. Data shall be stored for 5 years.
- H. An independent third party shall submit monthly sound monitoring reports to the Department every month beginning with the first month of excavation and continuing through twelve months following the issuance of a certificate of occupancy for the fifth/final garage building and annual reports in September of each year thereafter.
- I. The permanent noise barrier along the eastern property line extending north from the southeast corner of the IUP site 450-550 lineal feet shall be constructed prior to the issuance of a certificate of occupancy for the first garage building.
- J. Construction hours shall be limited to those assumed in the Environmental Noise Report (Ex. D-14) and limited by KCC 21A.55.105.U.2.c:

- i. Excavation: 7:00 a.m.–7:00 p.m. Monday-Friday; 9:00 a.m.–7:00 p.m. Saturday.
- ii. Materials processing/screening: 8:00 a.m.–5:00 p.m. Monday-Friday.
- iii. Building construction: 7:00 a.m.–7:00 p.m. Monday-Friday; 9:00 a.m.–7:00 p.m. Saturday.
- iv. Sundays: no building construction, excavation, or materials processing.

Note that these construction hours are more limited than those identified as permissible hours of operation in the GRDE18-0083 Condition 6, Hours of operation. The construction hours in this condition control.

9. Any non-exempt noise generated by this proposal shall comply with KCC Title 12.
10. Comply with SEPA Condition 2 associated with cultural resources.
11. Permits must be obtained for grading, building, and/or site development construction purposes. Grading permits must be renewed annually.
12. Approval from with the Washington Department of Health or King County Public Health is required for industrial waste water and on-site septic, depending on the size of the system, prior to building permit approval for buildings. Building permits for retaining walls and/or sound walls do not need Health approval.
13. Financial guarantees must be posted prior to issuance of the grading permit. Financial guarantees for site development also are required prior to building permit issuance.
14. A copy of the required NPDES permit from the Washington Department of Ecology must be provided to King County prior to construction approval.
15. Final approval of the phase 2 (site development) drainage system proposed under this IUP will be conducted and finalized under the subsequent building permits and prior to phase 2 of the grading plan implementation. The technical information report and civil engineering plans will be reviewed for compliance with applicable King County Surface Water Design Manual and must be consistent with this approval.

DATED April 17, 2019.



Alison Moss
Hearing Examiner pro tem

NOTICE OF RIGHT TO APPEAL

A person appeals this Examiner decision by following the steps described in KCC 20.22.230, including filing with the Clerk of the Council a sufficient appeal statement and a \$250 appeal fee (check payable to the King County FBOD). Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal. KCC 20.22.230 also requires that the appellant provide copies of the appeal statement to the Examiner and to any named parties listed on the front page of the Examiner’s decision.

Prior to the close of business (4:30 p.m.) on *May 13, 2019*, an electronic copy of the appeal statement must be sent to Clerk.Council@kingcounty.gov and a paper copy of the appeal statement must be delivered to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. If the Office of the Clerk is not officially open on the specified closing date, delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

Unless both a timely and sufficient appeal statement and filing fee are filed by *May 13, 2019*, the Examiner’s decision becomes final.

If both a timely and sufficient appeal statement and filing fee are filed by *May 13, 2019*, the Examiner will notify all parties and interested persons and provide information about “next steps.”

MINUTES OF THE AUGUST 16, 2018 AND MARCH 21, 2019, HEARINGS ON INTERIM USE PERMIT APPLICATION RACE TRACK LLC, DEPARTMENT OF LOCAL SERVICES FILE NO. LUT4170003, PROPOSED ORDINANCE NO. 2018- 0295

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were Ty Peterson, Donald Marcy, Jason Fiorito, Trevor Stiff, David Jensen, Greg Heath, Kevin Warner, Sandra Gaither, Denee Kaveny, Jennifer Nowland, and Don Huling.

The following exhibits were offered and entered into the hearing record on August 16, 2018:

Department-Offered Exhibits

Exhibit no. D-1	Department of Local Services file no. LUT4170003
Exhibit no. D-2	Preliminary department report, transmitted to the Examiner on August 9, 2018
Exhibit no. D-3	Permit application acknowledgement, dated December 11, 2017
Exhibit no. D-4	Project overview; and Letter from Cairncross & Hempelmann Attorneys at Law with response to general comments, dated December 8, 2017
Exhibit no. D-5	State Environmental Policy Act (SEPA) checklist, dated April 13, 2018
Exhibit no. D-6	SEPA mitigated determination of non-significance, issued April 30, 2018
Exhibit no. D-7	Affidavit of posting notice of application, posted on January 2, 2018

Exhibit no. D-8	Notice of application, mailed on January 5, 2018
Exhibit no. D-9	Plat site plans, dated March 22, 2018
Exhibit no. D-10	Technical information report by ESM Consulting Engineers, dated December 11, 2017
Exhibit no. D-11	Traffic impact analysis (TIA) by Heath & Associates, dated December 8, 2017
Exhibit no. D-12	TIA with material extraction, dated February 28, 2018
Exhibit no. D-13	TIA response to comments, dated March 26, 2018
Exhibit no. D-14	Air quality, noise, GHG, light/glare response by Ramboll US Corporation, dated March 26, 2018
Exhibit no. D-15	Geotechnical engineering & hydrogeologic report by GeoResources, dated November 6, 2017
Exhibit no. D-16	Geotechnical engineering and hydrogeologic report supplemental data by GeoResources, dated March 20, 2018
Exhibit no. D-17	Preliminary assessment of potential water quality impacts to Soosette Creek and Big Soos Creek by Ramboll US Corporation, dated September 5, 2017
Exhibit no. D-18	Notice of recommendation and public hearing, mailed on July 25, 2018
Exhibit no. D-19	Public comments
Exhibit no. D-20	Critical areas designations no. CADS170419 and CADS170420
Exhibit no. D-21	Ordinance no. 18184
Exhibit no. D-36	Comments from Don Huling for Soos Creek Area Response, received August 15, 2018
Exhibit no. D-37	Comments from Aaron Smith for Soos Creek Area Response, dated August 15, 2018

The following exhibits were offered and entered into the hearing record on March 21, 2019:

Department-Offered Exhibits

Exhibit no. D-22	Revised preliminary department report, transmitted to the Examiner on March 7, 2019
Exhibit no. D-23	Early clearing and grading plans sheet no. CV-01, EX-01, GR-01, GR-02, and GR-03, dated January 08, 2019, and sheet no RP-01, dated January 22, 2019
Exhibit no. D-24	Grading permit no. GRDE180083 conditions, dated January 24, 2019
Exhibit no. D-25	Temporary emergency fire access lane plan, approved January 22, 2019
Exhibit no. D-26	Fire engineering review with permit approval conditions, dated February 12, 2019
Exhibit no. D-27	Revised clearing and grading technical information report, dated September 17, 2018
Exhibit no. D-28	Restoration narrative by ESM Consulting Engineers, dated September 17, 2018
Exhibit no. D-29	Site plan, dated November 15, 2018
Exhibit no. D-30	Preliminary landscape plan sheet no. L1.0, L1.1, L1.2, L2.0, and L2.1, dated November 13, 2018
Exhibit no. D-31	Electrical site plan drawing no. E0.01, E1.01, E1.11, and E1.12, dated October 3, 2018;

- 7-page spec sheet dated July 25, 2018; and
4-page spec sheet dated October 25, 2017
- Exhibit no. D-32 Request for pedestrian waiver pursuant to KCC 21A.18.10 from ESM Consulting Engineers, dated December 5, 2018
- Exhibit no. D-33 Sound control plan by Ramboll US Corporation, dated January 2019
- Exhibit no. D-34 Directors decision pursuant to KCC 21A.18.100.F (waiver of pedestrian requirements), dated March 6, 2019
- Exhibit no. D-35 Technical review of sound control plan by ESM Consulting Engineers, dated March 7, 2019

Applicant-Offered Exhibits

- Exhibit no. A-1. Not admitted: Sound control plan, dated January 2019*
- Exhibit no. A-2. Memo on Pacific Raceways on-site sewage disposal system project phasing, dated December 7, 2017
- Exhibit no. A-3. Master plan, dated February 2019
- Exhibit no. A-4. Brief to Hearing Examiner re review criteria, dated March 13, 2019
- Exhibit no. A-5. Aerial photograph of property
- Exhibit no. A-6. Pacific Raceways hours of operation
- Exhibit no. A-7. Letter from Councilmember Larry Phillips to Washington Department of Commerce with support for designation as project of statewide significance, dated March 10, 2014; and
Washington Department of Commerce approval of designation as project of statewide significance, dated April 1, 2014
- Exhibit no. A-8. Letter from Councilmembers Pete von Reichbauer and Rod Dembowski to Executive Dow Constantine with intent of Race Track interim use permit, dated July 10, 2017
- Exhibit no. A-9. Letter from Covington Water District to Dan Fiorito with annexation updated, dated March 6, 2019
- Exhibit no. A-10. Resume of Trevor Stiff
- Exhibit no. A-11. Resume of David Jensen
- Exhibit no. A-12. Resume of Gregory Heath
- Exhibit no. A-13. Resume of Kevin Warner

Community-Offered Exhibits

- Exhibit no. C-1. Comments from Aaron Smith for Soos Creek Area Response, dated March 15, 2019
- Exhibit no. C-2. Department of Planning & Community Development file no. A71081 reinstatement order and rules of procedures, dated May 1, 1984
- Exhibit no. C-3. Information on sound control in walls
- Exhibit no. C-4. Comments from Don Huling for Soos Creek Area Response, dated March 17, 2019

The following exhibits were offered and entered into the hearing record on March 22, 2019:

Community-Offered Exhibits

- Exhibit no. C-5. Comments from Karen Meador

Exhibit no. C-6. Conditional use permit map marked “out”; and
Letter from Department of Planning and Community Development to
Meriwether Leachman Associates with corrected plat plan, dated June 7,
1984

The following exhibit was offered and entered into the hearing record on March 27, 2019:

Applicant-Offered Exhibits

Exhibit no. A-14. Memorandum with summary of noise barrier modeling results by Ramboll
US Corporation, dated March 27, 2019

AM/ld

April 17, 2019

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **LUT4170003**
Proposed ordinance no.: **2018-0295**

RACE TRACK LLC
Interim Use Permit

I, Liz Dop, 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/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED April 17, 2019.



Liz Dop
Legislative Secretary

Biggerstaff, Brad

Hardcopy

Bottheim, Steve

Department of Local Services

Carlson, Joanne

Department of Local Services

Casey, Laura

Department of Local Services

Chan, Jim

Department of Local Services

Cooper, John/Marjorie

Hardcopy

Department of Local Services

Elkins, Andrea

Hardcopy

Fiorito, Jason

Race Track LLC

Hardcopy

Gaither, Sandra

Hardcopy

Goll, Shirley

Department of Local Services

Heath, Gregory

Heath & Associates Inc

Hardcopy

Huling, Don

Hardcopy

Jackson, M J

Hardcopy

Jacob Crawford, Lisa Daniels

Hardcopy

Jensen, David

Jensen Engineering Inc

Hardcopy

Johnston, Geraldine

Hardcopy

Kaveny, Denee

Hardcopy

Larson, Patricia

Hardcopy

Marcy, Donald

Cairncross & Hempelmann

Hardcopy

Meador, Karen

Hardcopy

Neighbours, Bryan

Hardcopy

Nowland, Jennifer

Hardcopy

Peterson, Ty

Department of Local Services

Smith, Aaron

Law Office of Aaron M Smith

Hardcopy

Stiff, Trevor

ESM Consulting Engineers LLC

Hardcopy

Warner, Kevin

Ramboll

Hardcopy

Worden, Linda

Hardcopy