



Public Comment

Grading Permit Application and SEPA Checklist for Asphalt Facility

***File No. GRDE17-0069 – Lakeside Industries
Project Site – 18825 SE Renton-Maple Valley Rd***

December 5, 2017

Presented to

***King County Department of Permitting &
Environmental Review***

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SEPA Process

The Project Description in the Notice of Application (NOA) for File No. GRDE17-0069 states:

“Grading activities including removal of stockpiles, excavation of petroleum contaminated soils, and backfill with clean soils in preparation to develop the site into an asphalt facility. Construction of the future asphalt facility will require a building permit. Approximately 8.55 acres of the total 25-acre site will be included in the grading activity.”

The NOA also states:

“[t]he responsible official has a reasonable basis for expecting to issue a SEPA Determination of Non-Significance (DNS) on this project. As such, the optional DNS/MDNS notice process is being used pursuant to WAC 197-11-355.”

The SEPA Checklist submitted for this project notes that:

“[d]uring grading activities, the applicant will submit a commercial building permit for the physical asphalt facility. Construction of the future asphalt facility will begin immediately following the commercial building permit approval.”

The SEPA Checklist for this proposal provides information not only relevant to the grading permit, but also to the construction and operation of the intended asphalt facility. In fact, the Conceptual Future Site Plan details not only the extent of the proposed grading activity, but depicts detailed site information of the asphalt facility components and layout.

The information provided in the SEPA Checklist is consistent with the requirements that *“the lead agency shall prepare its threshold determination and environmental impact statement (EIS), if required, at the earliest possible point in the planning and decision-making process, when the principal features of a proposal and its environmental impacts can be reasonably identified.”* [WAC 197-11-055(2)].

Such early and comprehensive identification and evaluation of environmental impacts for both present and future known features of a proposal are essential to be performed *“at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to seek to resolve potential problems.”* [WAC 197-11-055(1)].

The fact that a commercial building permit will be required, as well as possible other State and local permits and approvals, for the construction of the intended asphalt facility does not preclude detailed identification, consideration, and evaluation of the probable environmental impacts of the asphalt facility at this time. In fact, SEPA requires that the probable environmental impacts of the intended asphalt facility be fully identified and addressed at this juncture, and not be deferred to a later time [WAC 197-11-055(2)(a) (i) and (ii)].

It is in light of these directives, and the facts attendant this project proposal, that the GMVUAC finds quite disconcerting the responsible official’s stated position that issuance of a DNS is likely and that the Optional DNS Process in WAC 197-11-355 is being utilized. As noted in both the NOA/SEPA Notice and WAC 197-11-355(2)(ii), *“[t]his may be the only*

opportunity to comment on the environmental impacts of the proposal.”

Accordingly and in response to your invitation, the GMVUAC herein below offers its comments on Lakeside Industries’ proposal for grading permit and construction of an asphalt facility affecting the property and surrounding environs at 18825 SE Renton-Maple Valley Highway.

King County Landmark Designation

Not noted in the SEPA Checklist is the fact that this property, in its entirety because of the location thereon of the Pacific Coast Coal Company Administration Building, was designated a King County Landmark in 1993, recorded in King County under Recording Number 199308261367 [King County Code (KCC), Chapter 20.62¹].

“The nominated boundary coincides with the current legal description of the parcel which the building occupies – #1923069026. (The property is located in the southwest quarter of Section 19, Township 23 North, Range 6 East, W.M.)” [King County Landmarks and Heritage Commission, Findings of Fact and Decision (August 26, 1993)]

Although the Administration Building itself was demolished in 2016 under Certificate of Appropriateness (COA) #15.27, the original designation has not been terminated and this site continues on the King County Landmarks List. [See King County and City Landmarks List, Technical Paper No. 6] In fact, the January 26, 2016, Design Review Committee (DRC) Report on COA #15.27, at p. 2, expressly identifies *“all land area within the boundaries”* as Applicable Features of Significance.

This property is, accordingly and notwithstanding the demolition of the Administration Building, still a designated King County Landmark under and pursuant to the Landmark Commission’s original 1993 designation, including the entire property as the identified boundaries of this historic Landmark.

¹ The King County Landmarks Commission’s Design Review Committee (DRC) briefly summarized the history of this site as follows: *“Built in 1927 [the Administration Building] served several purposes for a number of different mining operations, including mine car repair shop, hospital and administration offices. It was owned by King County from the 1940s until the 80s and used for storage and as a shop with the surrounding area serving as a maintenance yard. The current owner has operated a gravel yard and hauling operation at the site for 15-20 years. The property continues to be used for that purpose.”* DRC Report to Landmarks Commission, at p. 1 (January 26, 2016).

Zoning and Permitted Uses

The site of this proposal is currently zoned Industrial - "I". [King County GIS Center, Zoning Map (September 20, 2016)]. However, this I-zoned parcel is an isolated spot in the midst of vast surrounding lands all zoned Rural Area - "RA" of from 2.5 - 5 acres/dwelling unit. The site is bordered on its immediate North by SR 169 (SE Renton-Maple Valley Rd); which adjoins the Cedar River and the Cedar Grove Natural Area. To the East and West of the property are parcels zoned RA-5; and that property to the South is zoned RA-2.5 (all residential lots). This property is located outside the Urban Growth Area (UGA) boundary and is designated under the Growth Management Act (GMA) as Rural, as is all the surrounding property.

Under the KCC, an outright permitted use on I-zoned property under the Resource Land Uses² classification includes Standard Industrial Classification (SIC) Code # 2951 "*Asphalt Paving Mixtures and Blocks*" which is described as "[e]stablishments primarily engaged in manufacturing asphalt and tar paving mixtures; and paving blocks made of asphalt and various compositions of asphalt and tar with other materials." It is also notable that the only other zones in which an asphalt facility is allowed to locate as either outright permitted or a Conditional Use are the Forest and Mineral zones [KCC §21A.08.090(A)³].

An asphalt facility is not allowed under any circumstances as a use in the Rural Area or in any Residential zones. It is, thus, inconceivable that an asphalt facility was ever intended to be an outright permitted use on an island of I-zoned property in a surrounding sea of Rural Area zoned lands.

² There is no express definition of Resource Land Uses under the KCC. However, the City of Kenmore specifically defines the term "Resource land use" as meaning "a production use on agricultural, forest, aquatic, or mineral lands, including farming, timber production, and mining." Kenmore Municipal Code, § 18.20.2326.

³ Even where a Permitted use in the Forest and Mineral zones, specific conditions of such allowance include (a) the asphalt facility is an accessory to a primary mineral extraction use, or (b) that the asphalt facility is a continuation of a mineral processing only for that period to complete delivery of products or projects under contract at the end of a mineral extraction. KCC § 21A.08.090(B)(8).

Urban and Urban-Serving Facilities

Per the 2016 update of the King County Comprehensive Plan (KCCP):

U-109 ***King County should concentrate facilities and services within the Urban Growth Area to make it a desirable place to live and work, to increase the opportunities for walking and biking within the community, to more efficiently use existing infrastructure capacity and to reduce the long-term costs of infrastructure maintenance.***

The only way to truly maintain the character and integrity of the “Rural Area” is if urban- or largely urban-serving facilities are restricted to the Urban Growth Area (UGA). The proposed Asphalt Facility is being relocated from its existing location within the UGA (in the City of Covington) to the Unincorporated Rural Area. It should be noted that the Applicant’s first attempt was to relocate its facility to the City of Maple Valley on a parcel zoned Industrial, but the City of Maple Valley quickly rezoned the property, thus precluding the move.

Also, per the 2016 update of the King County Comprehensive Plan:

R-201 ***Therefore, King County’s land use regulations and development standards shall protect and enhance the following attributes associated with rural character and the Rural Area:***
i. Rural uses that do not include primarily urban-serving facilities.

The Comprehensive Plan is clear here, to maintain the “rural character” of the Rural Area, land uses should “not include primarily urban-serving facilities.” The proposed Asphalt Facility will be a “primarily urban-serving facilit(y)” as it will primarily serve projects located throughout the UGA where the vast majority of the projects reside.

To maintain the rural character of the Rural Area, KCCP policies should be adhered to and, thus, primarily urban-serving facilities should not be placed therein and, especially, not *relocated* from the UGA seeking relatively less expensive land.

Comprehensive Plan Provisions and Constraints

The site of this proposal has a current Land Use Designation of Industrial - “i”.[King County Comprehensive Plan, Land Use Map (December 2016)]. As with its spot zoning label, all the surrounding properties carry a land-use designation of Rural Area - “ra”, except for the Cedar Grove Natural Area (located directly north) that has a designated land use of Open Space - “os”. This fact is most significant because of the prohibitive constraints placed on the location of *new* industrial uses in the Rural Area, and especially on lands designated as King County Landmarks – even if perchance on property currently zoned Industrial.⁴

“Any allowed nonresidential uses should be designed to blend with rural residential development and resource uses.” [2016 Comprehensive Plan, Attachment A to Ordinance 18427, “Chapter 3 — Rural Areas and Natural Resource Lands, III. Rural Densities and Development, D. Nonresidential Uses” at p. 3-26 (December 5, 2016)].

KCCP Policy **R-324** clearly specifies limitations on nonresidential uses in the Rural Area:

- R-324** ***Nonresidential uses in the Rural Area shall be limited to those that:***
- a. Provide convenient local products and services for nearby residents;***
 - b. Require location in a Rural Area;***
 - c. Support natural resource-based industries;***
 - d. Provide adaptive reuse of significant historic resources;***
 - or***
 - e. Provide recreational and tourism opportunities that are compatible with the surrounding Rural Area.***

A new asphalt facility not located on or within natural resource or mining lands is not required to be “locat[ed] in the Rural Area” (**R-324b.**); does not “support natural resource-based industries” (**R-324c.**); and does not “[p]rovide convenient local products and services for nearby residents” (**R-324a.**).

Regarding non-resource industrial uses in the Rural Area “(t)he third industrial area is located along State Route 169 on lands that have been and continue to be used for industrial purposes and have a designation as a King County Historic Site.” [2016 Comprehensive Plan, “Chapter 3 — Rural Areas and Natural Resource Lands, V. Rural Commercial Centers, D. Non-Resource Industrial Uses and Development Standards in the Rural Area” at p. 3-36].

The proposed asphalt facility is a new industrial use, and, as such, is subject to KCCP Policy **R-513**: “[o]ther new industrial uses in the Rural Area shall be permitted only in Rural Towns and in the designated industrial area adjacent to the Rural Neighborhood Commercial Center of Preston.” Further, KCCP Policy **R-514** “applies to all new industrial development in the Rural Area” and expressly provides that “[h]eavier industrial uses, new industrial uses producing substantial waste byproducts or wastewater discharge, or new paper, chemical

⁴ It is important to note that no prior usage of this property mirrors the intended use thereof for an asphalt facility. There is, therefore, no basis in fact for permitting a new asphalt facility as any continuation of a prior or pre-existing land use on this site. Clearly, based on documents reviewed, the proposal is for a type of use that has no nexus to the history of this site.

and allied products manufacturing uses in the urban industrial zone shall be prohibited.” (R-514(e)). It is stated the “intent of this policy is to preclude expansion of the industrial area beyond the identified boundaries and to ensure that new development (not previously constructed or vested)⁵ in the industrial area meets rural character standards.” [2016 Comprehensive Plan, at p. 3-37].

The one, absolutely prohibitive, provision of the 2016 Comprehensive Plan that applies to the Lakeside Industries’ proposed project is KCCP Policy R-515 that applies to “existing, isolated industrial sites in the Rural Area that are recognized, but are not appropriate for new industrial uses.” [2016 Comprehensive Plan, at p. 3-37].

R-515 Existing industrial uses in the Rural Area outside of Rural Towns, the industrial area on the King County-designated historic site along State Route 169 or the designated industrial area adjacent to the Rural Neighborhood Commercial Center of Preston shall be zoned rural residential but may continue if they qualify as legal, nonconforming uses.

This KCCP policy expressly directs that this specific property “shall be zoned rural residential” and that only pre-existing legal, nonconforming uses are allowed to continue thereafter. This specific property was first added to Policy R-515 in the 2008 KCCP Update. Also, it should be noted that:

“ ‘Shall’ and ‘will’ in a policy mean that it is mandatory for the county to carry out the policy, even if a timeline is not included. “Shall” and “will” are imperative and nondiscretionary – the county must make decisions based on what the policy says to do.” [2016 Comprehensive Plan, Glossary at p. G-25].

Accordingly, what King County must proceed promptly with is the rezoning of this site from Industrial to an appropriate Rural Residential zone, e.g., minimum RA-5, rather than considering the approval thereon of a new industrial use that does not qualify as any continuation of a legal, nonconforming use on this site.⁶

⁵ The date the grading permit application was determined to be complete and thus vested under then-existing rules and regulations is August 31, 2017. The proposed asphalt facility is therefore a new industrial use and/or development that must meet and qualify under all applicable provisions of the 2016 Comprehensive Plan and applicable zoning ordinances.

⁶ The historical use of this site is fairly explained in the January 26, 2016, DRC Report to the Landmarks Commission, *supra*. The nearest-in-time use of this site was for landscaping material stockpiling and processing; not in any way or form related to an asphalt facility. Thus, a use closely connected to asphalt production did not exist and cannot be the factual and legal basis for any pre-existing use that could become a legal, nonconforming use upon the property’s change in zone classification. “The general rule is that a nonconforming use in existence when a zoning ordinance is enacted cannot be changed into some other kind of a nonconforming use.” [Coleman v. City of Walla Walla, 44 Wn.2d 296, 300, 266 P.2d 1034 (1954)]. Thus, an existing art school could not be the basis for a church qualifying as a legal, nonconforming use, and as an extension, low-income apartments cannot be changed into a legal, nonconforming use as a shelter. [Open Door Baptist Church v. Clark County, 140 Wn.2d 143, 151, 995 P.2d 33 (2000)]. Here, prior use of the property for landscaping materials stockpiling and processing could continue as a legal, nonconforming use of this site even

if rezoned to Rural Residential; however, the location of an asphalt facility on this site would not constitute the continuation of a pre-existing use and thus not qualify as a legal, nonconforming use when this property is rezoned to Rural Residential as required by the 2016 Comprehensive Plan, Policy **R-515**.

GMVUAC

December 5, 2017

Site Cleanup

The subject proposal includes initial site preparation work under a grading permit from King County, one of the principal purposes of which is to effect cleanup of the site under the State Model Toxics Control Act (MTCA).

The *Critical Area Assessment Report* by Associated Earth Sciences Inc., May 23, 2017 (AES CAAR) review of available literature and reports references two Farallon Consulting reports (dated April 19, 2016, and September 1, 2016) regarding the identification and proposed clean up of hazardous materials previously discharged on this site. Apparently omitted, and notable by its absence, from the literature stated as reviewed by AES is the “King County Water District #90 - 2014 Wellhead Protection Plan” by the Pacific Groundwater Group, Appendix M dated August 14, 2014 (PGG WHPP). The Lakeside Industries property is identified therein as within the 5 - 10 year wellhead protection capture zone, and what happens on this site is reasonably probable to have an adverse affect on the groundwater withdrawn and serving KCWD #90. The concerns highlighted regarding this site (previously owned by Goodnight Properties Inc. and used by Sunset Materials and King County) by the PGG WHPP are briefly described in Section 4.2.2 “Additional Sites of Environmental Interest”:

“The additional sites of environmental interest within capture zones delineated for the District’s wellfield represent sites with industrial stormwater discharge permits and a site identified as a Hazardous Waste Generator/Planner.

The Sunset Materials is an active facility located approximately 3,000 feet southeast of the District’s Well 1 and is within the 10-Year capture zone (Figure 4). The site is located on the property owned by Goodnight Properties, Inc. and formerly owned and operated by King County. Based on their website, Sunset Materials sell commercial and residential landscaping materials and accept the following materials for recycling: land clearing debris, brush, stumps, sod, topsoil, concrete, and asphalt. An industrial stormwater general permit was issued to Sunset Materials in 1999 to regulate discharge of potentially contaminated stormwater to state waters (Appendix D).

The following information was provided by a representative of Sunset Materials (personal communication, Paula Pozzi, 2014). Brush grinding, screening bark, and concrete crushing (once a year) are the only processes at the Maple Valley facility. Company vehicles are maintained on-site at a paved, concrete loop road. Vehicles drive over a concrete pit and are worked on from below; no vehicle maintenance occurs in unpaved portions of the property. The circular tank that appears in the western portion of the site in the 1966 property survey (Appendix C) and aerial photos was removed from the property. Catch basins with filtration socks are used to manage stormwater at the site.”

The PGG WHPP included a detailed discussion regarding the King County Shops use of this site and the fact that this site is included in the State Department of Ecology’s Leaking Underground Storage Tank (LUST) clean up program with **confirmed** groundwater contamination.

“4.2.1 State Cleanup Sites

The Target Equipment Rental and King County Shops sites are state cleanup sites regulated by Ecology that are located within the District’s wellfield capture zones. . . .

The King County Shops site is located about 2,900 feet southeast of the District’s Well 1 and is within the 10-Year capture zone for the wellfield (Figure 4). The property was developed as early as the 1920s for the Indian Mine by the Jones and Cedar Mountain Coal Properties, which subsequently re-opened as the New Black Diamond Mine. Structures including a circular tank on the western portion of the property and buildings on the eastern portion of the property appear in 1930s maps and aerial photos. The driveway that currently bisects the property into west and east halves, originally connected to mining tunnels in the hillside.

A 1966 property survey indicates that site features included a fire water storage tank (originally a dorr thickener for mining operations), equipment shed, carpenter shop, electrical shop, paint shop, tire shop and storage, a wash rack, black smith shop, grease and fuel storage, and offices. The survey also indicates two wells (one artesian), and a spring were located on the property (Appendix C).

According to King County (personal communication, Jon Cassidy, 2014) they may have purchased the property from a coal mining company but the date is unknown. The main shop building was constructed in 1928, likely by the previous owner. King County Roads owned and occupied the property until the mid-1970s when they relocated to the Renton Highlands facility. After King County vacated in the mid-1970s, the property was leased. In about 1998 King County sold the property to the present owner, Goodnight Properties Inc. A search of King County Assessor’s records indicates that the property may have been owned or leased by Richard and Rose Schroeder prior to sale to Goodnight Properties, Inc. Information about current use of this property by Sunset Materials is summarized in Section 4.2.2.

Ecology’s online UST database indicates the following USTs were removed from the property in 1999 (Appendix B). King County indicated they were responsible for the 1999 UST removals (personal communication, Jon Cassidy, 2014).

- Tank 1: 1,100 gallons for leaded gasoline storage*
- Tank 2: 4,500 gallons for diesel storage*
- Tank 3: 5,000 gallons for heating fuel storage*

Information regarding potential contamination and cleanup associated with the USTs, and any Phase I Environmental Site Assessments were requested from King County, but had not been received when this WHPP was finalized; relevant information will be provided to the District separately. The facility, identified as King County Shops, has been included in Ecology’s LUST database since 1998 with associated confirmed groundwater and soil petroleum contamination (Appendix D). According to the Facility Database, an Independent Action cleanup was started.

In response to a request from PGG, Ecology reported that there are no documents in their Facility/Site database regarding the King County Shops. Copies of Ecology records in the Toxic Cleanup and Northwest Regional Office were requested, but had not been received at the time this WHPP was finalized; relevant information will be provided to the District separately.”

(our highlighting added above.)

The PGG WPP expresses the specific concern that, notwithstanding the subsurface geology that may provide some degree of protection from surface contaminants, the use of this site nevertheless poses a risk of contamination of groundwater adversely affecting the water supply of KCWD #90:

“5.0 WELLFIELD SUSCEPTIBILITY AND CONTINGENCY

Surface contamination and migration of contaminated groundwater from upgradient sources represent potential risks to water quality at the District’s wellfield. . . . The following sites likely pose the greatest risk to groundwater quality at the wellfield among the properties identified in the risk assessment for this WHPP: . . . Sunset Materials/King County Shops: potential risk of solvent or petroleum from former coal mine or Roads maintenance shops; potential risk of petroleum contamination from vehicle maintenance or leaking vehicles.”

This risk of groundwater contamination arises from any and all industrial use of this site, reasonably including the proposed asphalt facility regardless of the application of best available technology to control surficial contamination stemming from normal day to day operations, not to mention the possible catastrophic events that may occur on industrial sites (one never says never when it comes to weather, geologic events, and man-made occurrences). That groundwater contamination has been minimized and has not been fully assessed by detailed analysis for all constituents of potential concern is ostensibly borne out in the September 1, 2016, Farallon Consulting report titled “*Release Notification and Notice of Independent Remedial Action*” at p. 2:

“According to documents reviewed during the Phase I ESA provided by Ecology, impacted soil remains in localized areas of the Site. During the UST excavations performed by King County, sheen was observed in groundwater; however, the extent of groundwater impacts was not investigated. According to Ecology, the Site has confirmed the presence of petroleum in soil and groundwater at concentrations exceeding their respective regulatory cleanup levels. The Site is listed as awaiting cleanup under an independent cleanup action. Farallon found no records of closure reports or No Further Action determinations for the Site.

Based on the results of the Phase I ESA, a subsurface investigation was performed by Farallon to evaluate the potential presence of hazardous substances in soil and/or groundwater from historical and/or current operations on the Site. The subsurface investigation was conducted at the Site from March

through May 2016. The main elements of the subsurface investigation included locating subsurface utilities, advancing and sampling soil from 16 test pits, and installing and sampling soil and groundwater from seven monitoring wells. Total petroleum hydrocarbons (TPH) as diesel-range organics (DRO), TPH as oil-range organics (ORO), and benzene were detected at concentrations exceeding the Washington State Model Toxics Control Act Cleanup Regulation (MTCA) Method A cleanup levels in soil at the Site during the subsurface investigation. These substances were identified as the constituents of potential concern (COPCs) for the Site. The source(s) of the COPCs in soil are confirmed and suspected releases primarily related to historical King County operations at the Site.

Total and dissolved arsenic were detected at concentrations exceeding MTCA Method A cleanup levels in groundwater samples collected from monitoring wells MW-2 and MW-6 on the central portion of the Site. The source of the anomalous detections of total and dissolved arsenic is likely related to a localized source in shallow soil at the Site. Groundwater samples collected from the remaining monitoring wells at the Site were reported non-detect at the laboratory practical quantitation limits for all COPCs, including monitoring wells MW-4 and MW-5 at the down-gradient northern Site boundary. Based on these data, no further groundwater characterization is recommended at the Site.

(our highlighting added above.)

The obvious inconsistency between the groundwater contamination confirmed by the Department of Ecology and the apparent lack thereof as reported by the short term monitoring conducted by Farallon is neither explained nor identified and discussed in the AES CAAR – and this omission is critical in the County’s determination of whether or not a MDNS or a full EIS is necessary and appropriate for the Lakeside Industries proposal.

Another matter of interest is the current status of the Group B Water System located on and serving the property. The SEPA Checklist notes that this site is served, and will continue to be served after any further industrial development, by an onsite Group B Public Water System and an onsite sewage treatment and disposal system (septic tank and drainfield). These physical features must be carefully and fully identified and protected during all grading and cleanup operations, and any future industrial development with construction and placement of components that may include the potential for hazardous materials discharge, whether intentional or inadvertent.

AES identifies two onsite water wells; Water System No. AB892 and Water System No. 38640. [AES CAAR at pp. 11 - 13]. As depicted above, the general locations of each of these wells can be roughly fixed by legal descriptions of Agreements and Covenants filed for public record. The Group B water well (“Gr B Goodnight”) serves as the onsite potable water supply for human use and, as surmised, for future industrial purposes. See King County Group B Water Use Agreement, KC Recording No. 20051229000800. The Irrigation water well (“Irr KC Shops”) can be used solely for onsite irrigation purposes and not for any other domestic or industrial use. See Declaration of Covenant, KC Recording No. 20090624001358. Whereas the legal description of the Group B water well locates that well with fairly certain precision, the legal description provided in the Covenant for the Irrigation Well (former King

County Shops well) is confusing and does not yield any precise location with any degree of certainty. However, using past aerial photographs available in the King County GIS database via its iMap online property system, and also using information in the Farallon Report and in the PGG WHPP, the location of the old KC Shops well and now the Irrigation water well can be fairly estimated.

As stated by AES, “[t]he well is not being used by the owner and is not proposed to be used. The developer is unable to locate the wellhead onsite.” [AES CAAR, at p. 13]. However, AES imparts further confusion into the onsite water well saga by simply reciting, without any attempt to decipher, a clearly ambiguous provision in the Declaration of Covenant that “[t]he well covenant document references the original King County Group B Water Use Agreement as document number 20051229000800 [and that] **[t]he above-referenced covenant converts the Group B designation to an irrigation well.** [AES CAAR, at p. 13 (bold in original)]. This assertion very clearly is not correct; it is only the original KC Shops water well that is to be used for irrigation purposes only – not the ‘Gr B Goodnight’ water well that is and will be continued to be used for potable water supply and other lawful purposes as a regulated Group B water supply system.

Of principal concern regarding both onsite water wells is the fact that the Department of Health has designated each well as having a High Susceptibility for contamination. See DOH Group B Source Data for Well # AB892 (the Gr B Goodnight water well), and for Well #38640 (the KC Shops water well) [Washington State Department of Health, “Washington’s Source Water Assessment Program (SWAP)”, DOH Pub. #331-148, at p. 8 (June 2005 - Revised).]

“Overall, the state susceptibility rating is based on assessment of source vulnerability to contamination (hydrogeologic susceptibility); and, in the absence of direct/precise measurements of contaminant use and exposure, evaluating surrogate indicators such as the physical setting of the source and surrounding land use.

The first component, hydrogeologic susceptibility, is an evaluation of the physical potential for a source to be contaminated by the movement of chemicals from the land surface into a water supply.

The second component involves assessing the risk of source exposure to contaminants by determining whether contaminants were used in the water supply area. This can be complicated because . . . once contaminants have entered the environment they can behave very differently, making it difficult to predict ground water pollution from surface exposure.”

The High Susceptibility rating of these water sources on the Lakeside Industries’ site, and the geologic and hydrologic significance of this fact, was neither identified or discussed by AES in the CAAR.

The facts that (1) both of the onsite water wells have a High Susceptibility for contamination from surficial activities was not identified and evaluated in the AES CAAR; (2) the Department of Ecology’s previous confirmation of the presence of groundwater petroleum contamination was seemingly glossed over by AES solely based on the short term monitoring undertaken by Farallon during March - May of 2016; and (3) the location of the site within the wellhead protection area of KCWD #90, all underscore the necessity to do a more detailed geologic investigation of this site

under SEPA and to determine whether or not the proposed mitigation measures proposed by Lakeside Industries for its proposed asphalt facility are sufficient and adequate to protect the water-related aspects of the environment.

Transportation

The Washington State Department of Transportation (WSDOT) is the lead Agency for any traffic evaluations for proposed projects with direct access to/from state highways, such as SR-169. As such, the King County Department of Transportation (KCDOT) will rely on WSDOT input concerning all impact issues including that of vehicular routes.

The *Level 1 Traffic-Impact Analysis (TIA)* prepared by TENW for the Applicant makes an assumption for the growth rate of future traffic volumes along the SR-169 corridor of 2% per year (“*To estimate future 2019 baseline traffic volumes without the project, an annual growth rate of two percent was applied to the existing through volumes on SE Renton Maple Valley Rd (SR 169).*” TIA, p. 8). No rationale for such a projection is given, nor is it realistic given the ongoing and continuing growth in the City of Maple Valley, the massive Master-Planned Developments in the City of Black Diamond, and the additional Gravel Operations (e.g., Elk Heights) along Lake Francis Rd (which feeds Cedar Grove Rd, which then feeds SR-169).

Cumulative impacts are important to address along congested SR-169 and its many busy intersections:

*“This method is typically used to forecast volumes in areas that demonstrate uniform growth and exhibit only minor changes and marginal impacts to the region. It is also useful for analyzing growth in suburban areas that are experiencing rapid development, as other methods may not be as reliable. The basic concept is to add volumes for developments to the trending background traffic growth. The comprehensive plan for such areas should be consistent with the expected growth predicted by a project (and include other anticipated projects) in order to result in a reasonable estimate of cumulative impacts. Use with caution due to an inability to fully account for secondary impacts like future environmental issues, local network connectivity, public services, and multimodal demands.” [WSDOT Design Manual, Chapter 320 Traffic Analysis, **320.04(3) Cumulative Impacts**, p. 320-4 (our highlighting above)]*

“*Caution*” is indeed warranted, especially when evaluating impacts at the two major intersection closest to the site: 196th Ave SE (to the east) and 154th PI SE and bridge (to the west). Both of these intersections already experience severe congestion during the Peak-Hour AM and PM commutes, especially the former where westbound traffic backs up along the shoulder to the east in order to traverse the bridge over the Cedar River and where eastbound traffic backs up beyond two traffic signal intersections. Each of these already present unique safety hazards. In fact, the *TIA* (see *Attachment A. Detailed Collision History*) provides reported traffic crashes for an 18-mo period showing both serious injuries and deaths in the vicinity of the site.

The *TIA* did not address any intersections other than for a new driveway to access SR-169. However, WSDOT guidelines state:

“The traffic impacts of local streets and roads can impact intersections on state highway facilities. In these cases, include in the TIA an analysis of adjacent local facilities (driveways, intersections, main lines, and interchanges)

upstream and downstream of the intersection with the state highway...”
[WSDOT Design Manual, Chapter 320 Traffic Analysis, **320.06(1) TIA Boundaries**, p. 320-6 (our highlighting above)]

Clearly such “*upstream and downstream*” impacts were not evaluated. In fact, WSDOT discusses just such scenarios as presented her, yet completely unaddressed in the *TIA*:

“The procedures in the Highway Capacity Manual do not explicitly address operations of closely spaced signalized intersections, nor does WSDOT currently endorse microsimulation or roundabout guidance as noted in the HCM/S. Under such conditions, several unique characteristics must be considered, including spill-back potential from the downstream intersection to the upstream intersection; effects of downstream queues on upstream saturation flow rates; and unusual platoon dispersion or compression between intersections. ... Queue interactions between closely spaced intersections can seriously distort the results of analyses that follow the procedures in the HCM.” [WSDOT Design Manual, Chapter 320 Traffic Analysis, **320.08 TIA Methodologies**, p. 320-8 (our highlighting above)]

These present not only congestion impacts, but safety issues related to long queuing through consecutive intersections.

Finally, WSDOT is clear as to what constitutes a *TIA* and that includes:

“5. Project-generated trip distribution and assignment with a detailed description of the process involved in distributing and assigning the generated traffic, including exhibit(s).” [WSDOT Design Manual, Chapter 320 Traffic Analysis, **320.10(1) TIA Minimum Contents, (d) Traffic Analysis**, p. 320-9 (our highlighting above)]

Again, the *TIA* did not address any of this and must do so to properly evaluate potential traffic impacts of the proposed facility.

WSDOT, can and should request additional analysis at intersections east and west of the site along SR 169, as warranted per WSDOT criteria, and the Applicant be required to provide same for the required traffic analyses to proceed.

SEPA Checklist

Part A. BACKGROUND

Section 8, Environmental Information

Apparently, one of the stated purposes of the proposed grading permit is the “*excavation of petroleum contaminated soils*” on this site. Notable by its absence from the list of existing environmental information is the September 1, 2016, report by Farallon Consulting titled “*Release Notification and Notice of Independent Remedial Action*” for this site that details the fact that:

“[a]ccording to Ecology, the Site has confirmed the presence of petroleum in soil and groundwater in concentrations exceeding their regulatory cleanup levels. The Site is listed as awaiting cleanup under an independent cleanup action. . . . Total petroleum hydrocarbons (TPH) as diesel-range organics (DRO), TPH as oil-range organics (ORO), and benzene were detected at concentrations exceeding the Washington State Model Toxics Control Act Cleanup Regulation (MTCA) Method A cleanup levels in soil at the Site during the subsurface investigation [conducted from March through May 2016].” [Farallon Report, at p. 2].

Obviously, a major purpose underlying the grading permit application is to allow Lakeside Industries “*to conduct an independent remedial action to address the affected media to the maximum extent practicable in accordance with applicable requirements of MTCA . . . through the Ecology Voluntary Cleanup Program.*” [Farallon Report, at p. 3].

The fact that the foregoing information was excluded from the SEPA Checklist is very troubling, as such nondisclosure is inconsistent with the purposes underlying SEPA and deprives the public of critical information on which to evaluate this proposal and how the environment will be affected. Obviously, existing site contamination of both soil and groundwater presents a major concern to all residents of the area – especially for anyone who may be using groundwater for any purpose on their property.

Furthermore, not discussed in any of the environmental documents and SEPA Checklist is the specific protocol that will be followed for identification of soil to be excavated and removed from the site; any groundwater that will be collected, treated, and discharged; and the transport of such contaminated material and its proper disposal to a suitable location.

Section 11. Description of Proposal

It is stated that “*the proposal includes two activities that will take place under separate permits. This checklist is prepared to provide SEPA coverage for both activities.*”

Therefore, this single SEPA Checklist, in fact, covers both the grading permit for site excavation and preparation, and the commercial building permit for the construction of the asphalt facility. Under the proposed Optional DNS/MDNS Process and WAC 197-11-355, this may be the one and only opportunity to comment under SEPA for this entire proposal.

Part B. ENVIRONMENTAL ELEMENTS

Section 1 Earth, Subsection a. Description of Site

Also notable physical features of the existing environment that must be taken into due consideration are the onsite presence of two groundwater wells and an onsite sewage system (septic tank and drainfield) that will apparently continue in operation for the new asphalt facility and use by any facility personnel and visitors. Site excavation and cleanup activities must carefully consider and protect these existing physical features.

Again, absent from the SEPA Checklist is the following documents associated with the existing wells and sewage system:

- (a) A Group B Public Water Supply (i.e., new groundwater well) that is subject to a King County Group B Water Use Agreement, recorded in King County under Recording Number 20051229000800;
- (b) A Declaration of Covenant restricting use of the old groundwater well to irrigation only, recorded in King County under Recording Number 20090624001358;
- (c) Notice of Onsite Sewage System Operation and Maintenance Requirements, recorded in King County under Recording Number 20081022000389; and
- (d) Declaration of Covenant requiring single ownership of property until such time that public sewer is connected and the onsite sewage system is abandoned, recorded in King County under Recording Number 20081022000390.

These and any other documents related to the existing systems must be a part of any evaluation of the site.

Section 1 Earth, Subsection. b. Steep Slopes

The *Critical Area Assessment Report* by Associated Earth Sciences Inc., May 23, 2017 (AES CAAR) ,provided a geologic review of the site and its immediate vicinity. It states: *“Steep, undeveloped north-facing slopes up to approximately 320 feet tall with gradients between 20 and 75 percent are located within the southern portion of the property and extend upon beyond the property line to the south.”* [p. 2].

The CAAR also discusses a review of LIDAR imagery which provided high-resolution of ground surface topography [p. 3]. It stated: *“We observed bowl-shaped, or arcuate features within the sloping area of the southern portion of the property. These features can be indicative of groundwater discharge and/or evidence of small-scale landslides....There was likely deposition of a fan at the toe of the slope from the erosion and sediment transport of material derived from the bowl-shaped geomorphic features.”* [p.3].

The CAAR further discusses a review of geologic maps of the area. It states: *“Holocene mass wasting deposits are mapped on the slope in the southern portion of the site. The mass wasting deposits are most likely deposited on the site by small landslides....”* [p.4].

King County Code (KCC) **21A.06.415** defines erosion hazards. Using KCC criteria the CAAR states: *“The slopes on the southern portion of the property have a high risk of erosion and classifies as an erosion hazard area.”* [p. 6]. KCC **21A.680** defines landslide hazards.

Using KCC criteria the CAAR states: “...the southern slopes off the property classify as a landslide hazard area due to the steepness, height, continued erosion, and shallow slides as evidenced by the geomorphology.” [p. 7].

KCC **21A.06.1230** defines steep slopes hazards. Using KCC criteria the CAAR states: “The southern portion of the site classifies as a steep slope hazard area since the slope gradients exceed 40 percent and the slope height exceeds 300 feet.” [p. 7]. The steepest slope on site, as stated in the SEPA Checklist, is ~75% The clear danger of the presence of such steep slopes prone to landslide hazard is evidenced by existing landslides less than 1/2 mile southeast along the same side of SR-169 that in the recent past has closed the road for debris cleanup and sloppy reinforcing. This is indeed troubling.

KCC **21A.06.1045** defines seismic hazards. Using KCC criteria the CAAR states: “...the site classifies as a seismic hazard area...” [p. 8].

The Applicant’s critical areas consultant, Associated Earth Sciences Inc., classifies the site as an erosion hazard area, a steep slope hazard area, and a seismic hazard area. Such major concerns must be rigorously assessed and addressed before any major grading commences and, certainly, before any construction occurs.

Section 2. Air

The stated emissions expected from the asphalt facility will have more than a probable significant adverse impact on air quality affecting the surrounding environs, including the residential properties adjoining the site on the South.

Consideration of such a new industrial source must meet all best available control technology, including and not limited to the placement of all air emission-producing components in a building the exhaust from which will be collected and treated prior to discharge to the atmosphere. Such containment will also provide a certain measure of noise pollution abatement, yet this alternative was not considered in the SEPA Checklist.

Significant deleterious impacts to air quality must be properly measured and addressed due to the adjacent residential neighborhoods and the nearby Natural Areas.

Section 3. Water

The proposed site is located approximately 150 feet from the salmon-bearing Cedar River, which is a Shoreline of the State. The Applicant in response to SEPA Checklist item 3.a.1. states “The Cedar River is about 200’ feet from the site...(A) portion of the site is within the 200 ft Shoreline area. However, this area is proposed to be vegetated as part of this grading permit. It will not be part of the future asphalt facility proposal.” Besides providing inaccurate information about the distance to the Cedar River, the Applicant provides rationale that is not pertinent to the SEPA Checklist question, which asked if there is “any surface water body on or in the immediate vicinity of the site....”

The Applicant in response to SEPA Checklist item 3.a.2. states “Work will occur in near proximity of Streams A and B. One remediation area is within the 65’ buffer of Stream B....” yet, on p. 6 of the Stream & Wetland Delineation Report (SWDR) prepared by the Watershed Company (2/24/17), for the Applicant, it is presumed that “approximately six to ten feet wide...Stream B...drain(s) to the Cedar River through a culvert under the Renton-Maple Valley Road SE.” The County must ensure that such drainage from Stream B remains free from contaminants expected to be generated by the proposed Asphalt Facility.

The Applicant in response to SEPA Checklist item 3.a.5. states the site does not lie in the 100-yr flood plain. However, although the site is not within the 100-yr flood plain (now referred to as the “1% annual chance” for 10,300 cubic feet per second flow), a vast area within the 100-yr flood plain—the Cedar Grove Natural Area—is located directly across the SE Renton-Maple Valley Rd. In fact, the off-site wetland adjacent to Cedar River was not even rated in the SWDR.

Such critical concerns must be addressed.

Section 5. Animals

Grading operations on this property will also disrupt and possibly cause the relocation of a variety of animals, including bald eagles. However, in Section 5(a) it is stated as fact that “no birds, mammals, or fish exist on the site.” Bald eagles are seen frequently in the tall cottonwoods gazing down at the Cedar River—directly across the street from the site. Bald Eagle nests also are located in those same tall trees along the Cedar River (<https://m.youtube.com/watch?v=HNo4ms-Li80>). Local governments, such as King County, must comply with [national guidelines](#) under the Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act in granting land-use permits.

It is beyond presumptuous that the entire 25-acre property does not contain some identifiable and relevant species of animals that deserve discussion and mitigation. What scientific studies and on-the-ground investigations support such a claim?

Section 7. Environmental Health

Subsection a.(3) states that operation of the proposed Asphalt Facility there entails “...storage, handling, and processing of petroleum products including diesel fuel, heated asphalt cement, emulsified asphalt, and propane.” It also states these “...materials will be stored in above ground storage tanks.” Further, “(a) 30,000 gallon propane tank will supply fuel to the proposed drum mix aggregate dryer burner.”

Each of these environmental hazards present unnecessary health risks to adjacent residential neighborhoods and environmental risks to nearby Natural Areas.

Section 7. Environmental Health

Under subsection b. Noise the Applicant simply states that a “...complete noise study will be performed...” at a later time “...to evaluate long term noise impacts....”

Noise from such a facility so close to residential neighborhoods is an untenable risk that should be addressed at this stage, not later.

Section 8. Land and Shoreline Use

Under subsection a. the question regarding the current uses of “...nearby or adjacent properties” was not answered. The Applicant simply acknowledges the prevalent zoning in the area under subsection e. As stated earlier, the site is an isolated spot in the midst of the Rural Area and is bordered to the North by the Cedar River and the Cedar Grove Natural Area and to the East and West by residential neighborhoods.

Any evaluation by the County must acknowledge this reality and its ramifications, even though the Applicant has failed to do so.

Section 13. Historic and Cultural Preservation

Under subsections b. and c. regarding evidence of “*Indian or historic use*” and “*cultural and historic resources*,” respectively, there is no mention of the Native American historic site to the NE directly across the Cedar River north of the 196th Ave SE / SR-169 intersection along Maxwell Rd.

The most recent information on this site states that the “*New Black Diamond Mine (aka Indian Mine) was organized in 1924 and was producing coal by November 1, 1927.*” [King County Landmarks and Heritage Commission, Findings of Fact and Decision (August 26, 1993)]

Pre World War II maps label the area as “*Indian*” and clearly delineate “*Indian Grove*”—all in southern half of Section 19.

The County, including the Department of Natural Resources (DNRP) Historic Preservation Program (HPP), must thoroughly investigate such historic sites even though the Applicant has failed to even identify them.

Section 14. Transportation

See “**Transportation**” section herein.

Conclusions and Recommendations

The GMVUAC considers the Lakeside Industries' proposal to constitute a major project having a significant adverse effect on the environment. The likelihood that an Environmental Impact Statement (EIS) should and needs to be prepared is substantial; accordingly, the Optional DNS/MDNS Process is inappropriate for compliance with SEPA.

Although the grading permit should proceed as an integral and necessary part of the MTCA-required cleanup of this site, with adequate and appropriate safeguards and overview, it is apparent that any approval of an asphalt facility must be categorically rejected.

Although this property is still currently zoned Industrial, as a direct result of the fact that this site is a King County Landmark, the County is duty bound under its 2016 Comprehensive Plan to promptly rezone the entire site to a suitable Rural Residential classification per Policy **R-515** (this specific property was first added to Policy **R-515** in the 2008 KCCP Update). Any new industrial use on this site as an asphalt facility is not a continuation of the prior use for landscape materials stockpiling and processing and does not qualify as a legal, nonconforming use in existence and vested prior to the adoption of the Comprehensive Plan in December 2016. Clearly, in order to comply with its own Comprehensive Plan's mandatory requirements, the County cannot proceed to approve a new industrial use on this site in lieu of immediately rezoning the property to Rural Residential.