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January 8, 2018

To: King County Council council@kingcounty.gov

Subject: Public Hearing on Ordinance 18611

Honorable Councilmembers,

We support the King County Council's 6-mo Moratorium enacted through Ordinance 18611 on November 13, 2017.

We call for the Moratorium to be immediately followed by a rezone of the Lakeside Industries' proposed project site located, in close proximity to the Cedar River, at 18825 SE Renton-Maple Valley Rd (ref.: KC DPER File No. GRDE17-0069) from Industrial to an appropriate Rural Residential zone, e.g., minimum RA-5. There should be no approval thereon of a new industrial use that does not qualify as any continuation of a legal, nonconforming use on this site.

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 KC Code, an outright permitted use on I-zoned property under the Resource Land Uses 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." Please note 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.

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)—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).].

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.

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. 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.

“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 and allied products manufacturing uses in the urban industrial zone shall be prohibited.” (R-514(e)). 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. 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) 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. The historical use of this site is fairly explained in the January 26, 2016, DRC Report to the Landmarks Commission. 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.

Thank you for your due consideration of our comments herein.

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