



Public Comment

Combined Notice of Applications & Environmental Review Process

File No. COMM 18-0014 & SHOR18-0032

Lakeside Industries

Project Site – 18825 SE Renton-Maple Valley Rd

January 30, 2019

Presented to

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

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

Table of Contents

<u>Section</u>	<u>Page</u>
I. EXECUTIVE SUMMARY	3
II. BACKGROUND	5
III. DOCUMENT REVIEW	7
A. Lakeside Industries Commercial Building Permit Application Documents COMM18-0014	7
13. Applicant Response to DPER Comments—November 2018: Finalized Applicant Response to GRDE17-0069 Comments	7
14. Updated SEPA Checklist—November 2018: SEPA Checklist 18-1105	9
15. Noise Study—November 2018: Noise Study 18-1101	13
17. Updated Traffic Impact Analyses—November 2018: SR-169 Updated Transportation Impact Analysis 18-1102	14
18. Critical Areas Report—September 2018: Critical Area Report 18-0906	16
B. Lakeside Industries Shoreline Substantial Development Permit Application SHOR18-0032	17
5. Shoreline Management—November 2018: Management Questionnaire	17
IV. CONCLUSIONS	19
V. RECOMMENDATIONS	20
APPENDIX	21

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

I. EXECUTIVE SUMMARY

In late 2017 King County Executive's office began its *Cedar River Sites Industrial Moratorium Study (CRSIM Study)* in response to King County Council Ordinance 18611. In looking at the Rural Area site along the Cedar River that Lakeside Industries has proposed moving its Asphalt Facility from the City of Covington inside the Urban Growth Area the *CRSIM Study* identified:

“Potential Steep Slope Hazard, Landslide Hazard, Erosion Hazard, Coal Mine Hazard, Seismic Hazard, Wetlands, Stream, Shoreline (rural), Chinook Distribution, Wildlife Corridor, Critical Aquifer Recharge Area (Categories 1 & 2), sole source aquifer related to Cedar River basin.”

It also identified that the site is:

“(a)cross State Route 169 and the King County Cedar River Trail, distance is approximately 150 feet.”

All the above-identified issues are critical to the evaluation of the site for a proposed Asphalt Facility. Herein, we have addressed some of these issues, as time has allowed.

Even from our partial review of the applicable documents provided by the Applicant and its technical consultants, it is clearly apparent and factually shown that Lakeside Industries' proposed move of its Asphalt Facility operations from the City of Covington to the Rural Area along the Cedar River constitutes a major project that will have significant adverse effect on the local and surrounding environment. The likelihood that an Environmental Impact Statement (EIS) under the State Environmental Policy Act (SEPA) should and needs to be prepared is substantial.

Consequently, we strongly urge and highly recommend that, in light of the potential far-reaching environmental impacts, King County require an EIS be prepared by the Applicant. The preparation of an EIS will allow a proper assessment of all the short- and long-term environmental issues and allow the County and the Public to review same in an orderly and timely process.

In his King County Comprehensive Plan 2020 Midpoint Update *“Recommended Scoping Document”* released to the KC Council on January 2, 2019, KC Executive Constantine states (**B. Topic Areas, I. Text and Policy Proposals—8th bullet**):

“Review Comprehensive Plan policies, and associated development regulations and permitting processes, to ensure that the range of impacts from the extraction, processing, production, transport, storage, and use of fossil fuels, including the impacts from construction and operation of fossil fuel infrastructure, are identified, avoided and mitigated, in order to protect public health and safety, air and water quality, habitats, natural resource lands, and other resources and functions.”

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

We applaud the Executive Constantine for his steadfast focus to: “*protect public health and safety and safety, air and water quality, habitats.*” We call on KC DPER to follow this goal as well in reviewing all Public comments submitted regarding this *Combined Notice of Applications & Environmental Review Process*.

In addition, we have provided in an Appendix, a detailed review of the overarching issue of zoning, specifically, King County policies related to zoning of the proposed site. We believe King County Council legislative analysts erred in their interpretation of these policies and request King County consult with the its Prosecuting Attorneys’ Office as to the proper legal interpretation of said policies. We believe that once such a legal review is complete, it will be determined this site cannot host the new proposed *use* of an asphalt facility.

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

II. BACKGROUND

The GMVUAC has followed this proposed project for many years starting with the OakPointe's proposed Master-Planned Development on and following its purchase of the site of Lakeside Industries' "existing" Asphalt Facility in the City of Covington from Jimmy & John Hawk.

The GMVUAC has conducted research on the proposed site of Lakeside Industries' move of its Asphalt facility from the City of Covington, inside the Urban Growth Area, to the Rural Area along the Cedar River. The GMVUAC also has reviewed all related Lakeside Industries' permit applications for nearly two years. The GMVUAC has held meetings, reviewed many documents, and prepared and submitted detailed comments and written testimony to King County officials.

On December 4, 2017, the GMVUAC held its Monthly Meeting. Invited guests from both the Applicant, Lakeside Industries—President, Mike Lee, and Environmental and Land-Use Director, Karen Deal—and the King County Department of Permitting and Environmental Review—Product Line Manager - Commercial, Ty Peterson—spoke to and answered questions of the GMVUAC and a standing-room-only crowd of attendees from the Public.

A sampling of the questions and the Applicant's responses follow below:

- Odor?: Lakeside Industries uses controls to reduce odor.
- Noise?: Lakeside Industries will meet King County noise standards. There was a lot of back-and-forth discussion on noise concerns, especially within the confined Cedar River corridor.
- Hours of Operation?: Lakeside Industries stated there will be some off-hours operation including some 24-hr days in the summers.
- Truck Traffic?: Lakeside Industries stated there will not be an impact to SR-169.
- Landslide Hazards?: No response.
- Environmental Impact Statement (EIS)?: King County Department of Permitting and Environmental Review's, Ty Peterson, stated the project would have to be subject to a Determination of Significance (DS) in order for a need for an EIS to be triggered and DPER does not expect a DS will result from its evaluation of Lakeside Industries' permit application.
- Location?: The GMVUAC asked if Lakeside Industries looked at moving its current city operation (in Covington) to other cities. Lakeside Industries answered, yes, it looked at, for example, the City of Maple Valley. However, the city rezoned a Lakeside Industries' property there that would have been suitable. Members of the GMVUAC then stated that the City of Maple Valley protected its citizens through rezoning and that is what many members of the Public are asking King County to do to protect its citizens.
- Trapped pollution?: How will the entire Cedar River corridor be evaluated in terms of trapped pollution, particulates, etc.?: No response.

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

The following detailed written comments and written testimony have been submitted to King County officials. All are in the Public Record and available on the GMVUAC's web site: www.gmvuac.org.

1. *Review of the Grading Permit Application and SEPA Checklist for Proposed Asphalt Facility*; File No. GRDE17-0069 – Lakeside Industries Project Site – 18825 SE Renton-Maple Valley Rd; submitted to the King County Department of Permitting and Environmental Review; December 5, 2017 (24 pp)
2. *Written Testimony for Public Hearing on King County Council Ordinance 18611*; submitted to the King County Council; January 8, 2018 (4 pp)
3. *Review of the Cedar River Sites Industrial Moratorium Study* (conducted in response to King County Council Ordinance 18611); submitted to the King County Council; February 28, 2018 (6 pp)

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

III. DOCUMENT REVIEW

As part of its efforts described herein the GMVUAC was only able to review only some of the documents provided by the Applicant to the King County Department of Permitting and Environmental Review. The documents reviewed and listed below accompanied by the GMVUAC's comments:

A. Lakeside Industries Commercial Building Permit Application Documents COMM18-0014

13. Applicant Response to DPER Comments—November 2018: Finalized Applicant Response to GRDE17-0069 Comments

D. The State Environmental Policy Act (SEPA) Review: 5. Air quality and odor:

The Applicant replies:

(t)he asphalt plant to be relocated and operated on the site was issued an Order of Approval for Notice of Construction No. 11175 by PSCAA on November 7, 2016. The plant is registered with PSCAA as a portable plant (Registration No. 14103) with current installation address listed as 18808 SE 256 St, Covington, WA. In accordance with PSCAA Regulation /, Section 6.03(b)(3), a Notice of Construction application and Order of Approval are not required for relocation of portable batch plants for which an Order of Approval has been previously issued by the Agency provided a complete notification is filed with the Agency. Lakeside will submit the proper notifications to PSCAA prior to relocating to 18825 SE Renton-Maple Valley Road, Renton. In addition, Lakeside will submit notification to PSCAA of plans to install additional silo loudout fugitive emission collection and controls to “mitigate odor concerns expressed during public comment. Lakeside will require that all trucks leaving the site with asphalt have covered loads. These controls are for odor mitigation and not necessary for compliance with emission limitations.”

The Applicant implies its existing facility located in the City of Covington is considered “portable” and, thus, covered under an existing Order of Approval from the PSCAA.

According to **WAC 173-400-030(75)**:

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

“‘Portable source’ means a type of stationary source which emits air contaminants only while at a fixed location but which is capable of being transported to various locations. Examples include a portable asphalt plant or a portable package boiler.”

However, based on industry standards and other analogous regulatory sources, the existing Lakeside Industries’ Asphalt Facility in the City of Covington is not a “*portable source*.” It does not fit the customary meaning of “*portable*” when applied to asphalt facilities. For example, is the Lakeside Industries’ Asphalt Facility on trailers, skids, wheels, chassis, or anything other than structures that are fixed to the ground or concrete pads? If not, then it is fairly incapable of being transported and should, in fact, be deemed “*permanent*.” By industry standards a portable asphalt batch plant is defined as follows:

*“Portable asphalt plant actually means mobile type asphalt mixing plant. It is specially designed for construction projects of **short construction period, less project quantities, construction site is uncertain and needs to change sites quickly and frequently.** We can understand portable asphalt mixing plant from two aspects: asphalt mixing plant and mobility. Firstly, asphalt plant refers to a complete set of equipment used in batch production of asphalt concrete, it can produce **asphalt mixture, modified asphalt mixture and colored asphalt mixture.** Therefore, asphalt batch plant is key equipment in highway construction, classified highway construction, urban road construction, airport construction and port construction, etc. As for mobility, small asphalt plant is easy to assembly and disassembly and convenient to transport. Because it adopts modular design and mobile chassis. And according to the construction period, it can transfer flexibly in different construction sites, which greatly reduces equipment transport costs.” — **emphases** include per source, see: <https://aimixgroup.com/portable-asphalt-mixing-plant/>.*

Further, from Lakeside Industries (our **emphases**): <http://lakesideindustries.com/maple-valley-plant/>:

*“We are moving our existing facility in Covington to Maple Valley, along State Route 169, where we’ll produce high-quality asphalt used for local roads, highways, schools, businesses and residences. **Once we are permitted, construction will take about 6-8 months.** Our new facility will help us respond to the needs of our local customers while we protect local air and water quality using industry-leading environmental technology.”*

By industry standards (size, type, and time stated to move) the Lakeside Industries’ Asphalt Facility is not considered “*portable*.” Lakeside Industries’ unsupported claim of “*portability*” cannot and must not preclude the need to obtain the necessary air permits from PSCAA.

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

14. Updated SEPA Checklist—November 2018: SEPA Checklist 18-1105

Part A. BACKGROUND

8. Environmental Information

Of the new environmental information listed by the Applicant we have provided comments on the following herein:

Lakeside-Maple Valley Asphalt Plant Noise Assessment; Ramboll US Corporation, November 1, 2018

Updated Traffic Impact Analysis; Transportation Engineering Northwest (TENW), dated November 2, 2018

Revised Critical Area Assessment, Associated Earth Sciences, Inc. (AESI), dated September 20, 2018

Critical Areas Report; The Watershed Company, dated September 2018

Part B. ENVIRONMENTAL ELEMENTS

There are many issues related to the site itself. The site location is identified on the following *King County Hazard Maps* as lying within a hazard area: Coal Mine, Erosion, Flooding—Liquefaction, Seismic, Landslide, Critical Aquifer Recharge, and Steep Slope.

1. Earth

b. Steep Slopes

As listed above, the site lies within a hazard area with greater than 75% slopes.

As previously documented in our past comments, 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:

“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].

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

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

transport of material derived from the bowl-shaped geomorphic features.” [p. 3] — following a review of LIDAR imagery, which provided high-resolution of ground surface topography.

“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].

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

*“...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] — using KCC **21A.06.680** which defines landslide hazards.*

*“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] — using KCC **21A.06.1230** defines steep slopes hazards.*

*“...the site classifies as a seismic hazard area....” [p. 8] — using KCC **21A.06.1045** defines seismic hazards.*

The steepest slope on site, as stated in the SEPA Checklist, is in excess of 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 later “*protected*” by completely inadequate black plastic reinforcing.

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 in an Environmental Impact Statement (EIS) *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 wasn’t considered in the SEPA Checklist.

GMVUAC Comments—Notice of Application: COMM 18-0014 & SHOR18-0032

While we understand the Applicant will have to obtain air permits from the Puget Sound Clean Air Agency (PSCAA), due to the adjacent residential neighborhoods and the nearby Natural Areas significant deleterious impacts to air quality must be properly measured and addressed through an EIS prior to KC DPER issuing any permits.

Section 3. Water

a. Surface 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 its original 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....”* In the Applicant’s subsequent response to the SEPA Checklist item 3.a.1 it simply references The Watershed Company’s *Critical Areas Report* without providing specific citations in that report to answer the SEPA Checklist item.

The Applicant in its original 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. In the Applicant’s subsequent response to the SEPA Checklist item 3.a.1 it simply references The Watershed Company’s *Critical Areas Report* and Triad’s *Site Engineering Plans* without providing specific citations in those reports to answer the SEPA Checklist item.

The Applicant in its original response to SEPA Checklist item 3.a.5. states the site does not lie in the 100-yr flood plain and in its subsequent response to the SEPA Checklist item referees to the David Evans and Associates, inc. *Floodplain Analysis and Delineation* report. 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 in an EIS.

b. Groundwater:

Absent from the SEPA Checklist is the following documents associated with the existing wells and sewage system:

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

- (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 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 not credible to state the entire 25-acre property contains no identifiable and relevant species of animals that deserve discussion and mitigation. KC DPER should require the Applicant to supply scientific studies and on-the-ground investigations that support such a claim as part of an EIS.

Section 7. Environmental Health

Subsection a.(3) states that operation of the proposed Asphalt Facility entails *“... storage, handling, and processing of petroleum products including diesel fuel, heated asphalt cement, emulsified asphalt, and propane or natural gas.”* It also states these *“... materials will be stored in above ground storage tanks.”* In its earlier SEPA Checklist the Applicant stated that *“(a) 30,000 gallon propane tank will supply fuel to the proposed drum mix aggregate dryer burner.”* This is not mentioned oil the updated SEPA Checklist—why?

Each of these environmental hazards present unnecessary health risks to adjacent residential neighborhoods and environmental risks to nearby Natural Areas and should be fully assessed in an EIS.

GMVUAC Comments—Notice of Application: COMM 18-0014 & SHOR18-0032

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. 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 adverse ramifications on people and the environment, even though the Applicant has failed to do so. This should be more fully explored in an EIS.

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. This would be part of an EIS

Section 14. Transportation

See comments herein on TENW’s *Updated Traffic Impact Analyses*.

15. Noise Study—November 2018: Noise Study 18-1101

In reviewing Ramboll’s “*Noise Study*” per *Table 1. King County Maximum Permissible Sound Levels* (p. 2), there is a large difference between permissible sound levels between sites zoned Rural [49 (day) / 39 (night) dBA] and sites zoned Industrial [57 dBA] in the Rural Area. Per KCC 12.86.110 the limitations for noise received in Rural Districts are reduced by 10 dBA between 7 AM and 10 PM weekdays and between 9 AM and 10 PM weekends. This brings permissible sound levels between sites zoned Rural [39 (day) / 29 (night) dBA] and sites zoned Industrial [47 dBA] in the Rural Area between 7 AM and 10 PM weekdays and between 9 AM and 10 PM weekends.

GMVUAC Comments—Notice of Application: COMM 18-0014 & SHOR18-0032

As the GMVUAC has identified in multiple written comments and oral conversation with King County officials, this particular site, although still currently zoned Industrial, because it an identified King County Landmark, the County is duty bound under the *2016 King County Comprehensive Plan (KCCP)* to 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 KCCP in December 2016. Clearly, in order to comply with its own KCCP's mandatory requirements, King County cannot proceed to approve a new industrial use on this site in lieu of immediately rezoning the property to Rural Residential.

Consequently, the *Table 4. Model-calculated Sound Levels* (p. 8) of 38 - 49 dBA (day) and 35 - 47 (night) must be compared to King County permissible sound levels for sites zoned Rural [39 (day) / 29 (night) dBA] in the Rural Area between 7 AM and 10 PM weekdays and between 9 AM and 10 PM weekends (ref.: *Table 1. King County Maximum Permissible Sound Levels* (p. 2)). **When making this assessment, 6 of 7 of Ramboll's location modeled sound levels exceed the daytime 39 dBA King County permissible sound level limit and all exceed the nighttime 29 dBA King County permissible sound level limit for sites zoned Rural.**

Further, Ramboll developed noise-level contours for both daytime (Figure 3, p. 10) and nighttime (Figure 4, p. 11) operations in its assessment of sound-level compliance in surrounding areas of the proposed site. **Once again, when assessing such effects, there is an even more pronounced impact, especially when compared to King County permissible sound level limits for sites zoned Rural.**

The flaws in the noise analyses described above must be fully addressed and rectified in an EIS.

17. Updated Traffic Impact Analyses—November 2018: SR-169 Updated Transportation Impact Analysis 18-1102

Proposed Mitigation

We agree with the following suggested mitigation:

- *“A new eastbound deceleration/acceleration lane on SR 169 is proposed at the site access as part of the new proposed Transportation Facility. The widening and lane addition would occur along the property frontage.”*

CONCERN: While the proposed eastbound deceleration/acceleration lane on SR 169 is good, it in itself does not resolve the cross-traffic-lanes safety issues. Trucks leaving the site traveling westbound must cross eastbound traffic and trucks traveling westbound back to the site must cross eastbound traffic. These crossings especially will be critical during

GMVUAC Comments—Notice of Application: COMM 18-0014 & SHOR18-0032

high AM and PM peak-hour congestion times. Further, there is a concern that with the ingress/egress access road to the site proposed to be moved 130 for to the east, the Applicant's trucks will be entering SR-169 very close to the point where it changes from one to two lanes going west. This presents additional safety concerns that have not been even identified, nor addressed. These issues must be addressed through a supplemental Traffic-Impact Analysis.

- *Widen proposed access to accommodate a truck-trailer combo for site entry and exit and align access point to optimize new acceleration/deceleration lanes."*

CONCURRENCE: We concur with such a proposed mitigation for safety reasons.

- *Lakeside Industries will prohibit its trucks from using local neighborhoods (including the Renton Highlands neighborhoods via 154th Place SE) as a cut-through route to access SR 405."*

CONCERN: The traffic backups to get onto the bridge at 154th Ave SE are major. During AM peak-hours SR-169 eastbound traffic backs up 2 to 3 traffic lights queued in the "turning" lane to get onto the bridge, while SR-169 westbound queues on the shoulder for over a mile. It is important KC DPER include conditions that ensure the Applicant's use of trucks on the bridge actually is enforced. If not, what remedies will be put in place as a fail-safe mechanism?

Proposed Operations

Trip Counts: It is not technically supported, nor prudent, to "discount" trips from the previous Sunset Materials facility, which has not been operational for some time (see "Net New Trip Generation," p. 15). As depicted in Table 6 (p. 16) a total of 165 daily trips are discounted, thus reducing the proposed use daily trips by 36%. This simply is not justified. It must be corrected through a supplemental Traffic-Impact Analysis.

Trip Distribution: Figure 4 (p. 17) indicates the Applicant proposes a good number of AM peak-hour trips eastbound on SR-169 (a 60% / 40% split), while one would surmise that most of its customers would require westbound trips to the job with eastbound trips to return to the site. TENW states this is based on "truck routing information provided by the Applicant." These assumptions should be verified and rationale for same provided based on anticipated manifests. As stated above, we particularly concerned with impacts to traffic queuing for the bridge at 154th Ave SE. Further, any changes in trip distribution must be carried over through revised intersection analyses. These concerns must be addressed in a supplemental Traffic-Impact Analysis.

Future Potential Operations

It also is important KC DPER include conditions that address the event that site operations grow to a higher level, as often occurs. Such growth will generate more traffic than predicted with unknown, but clearly adverse impacts. It must be kept in mind that assumptions used in TENW's traffic-impact analyses directly impact the results, as

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

is often the case with such modeling. TENW has analyzed the size of operations the Applicant says it will conduct at this site, but how will KC DPER enforce same? With such a large land area to work within, it is plausible there could be a larger scale of operations than proposed. Consequently, once approved and occupied, there must be controls in place on future scale of operations to remain within the parameters of TENW's traffic-impact analyses.

Recommendation

A supplemental Traffic-Impact Analysis is clearly called for to address the deficiencies in the TENW *Updated Traffic-Impact Analysis* identified above. **Such a supplemental Traffic-Impact Analysis should part of an EIS.**

18. Critical Areas Report—September 2018: Critical Area Report 18-0906

The Applicant's technical consultant, The Watershed Co., states: "*the proposed project will result in a net improvement of critical area and buffer functions.*" This might indeed be the case, but it is only true because of past degradation allowed by King County on the site. It does not constitute what is actually necessary for this rural site in such close proximity to the Cedar River.

Further, there is some conflict regarding referenced reports/studies here. On p.3 of the Triad *Technical Information Report* (<https://www.kingcounty.gov/~media/depts/permitting-environmental-review/dper/documents/Special-Interest/COMM18-0014-DEA-Lakeside-MV-TIR-18-1002.ashx?la=en>) it states (our emphasis):

"Refer to the Critical Areas Exhibit and Critical Aquifer Recharge map at the end of this section, as well as, the report by Associated Earth Sciences, Inc. entitled Revised Critical Area Assessment for more information regarding these onsite hazard areas."

Consequently, we contacted KC DPER and was told the above-referenced-to report is actually the September 2018 *Critical Areas Report* authored by The Watershed Company. However, when we looked at that report (<https://www.kingcounty.gov/~media/depts/permitting-environmental-review/dper/documents/Special-Interest/COMM18-0014-Watershed-Lakeside-MV-Critical-Area-Report-18-0906.ashx?la=en>) on p. 14 it states (our emphasis):

"3.5 Geologically Hazardous Areas

Seismic hazards, potential steep slopes, and erosion hazard areas are identified in the southern and eastern portions of the parcel on King County iMap. Geologically

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

hazardous areas are addressed in a separate report by the geotechnical engineer, and are not addressed further in this report.

This appears to be a case of *circular referencing*. As a result, we were never able to find the “*separate report by the geotechnical engineer*” referenced above, nor review it?

B. Lakeside Industries Shoreline Substantial Development Permit Application SHOR18-0032

Per the proposed shoreline plan the approximate areas of disturbance identified are:

1. Within the arc of the Shoreline Jurisdiction—56,918 sf (~1.3 ac).
2. Within the SR-169 right-of-way—19,890 sf (~0.5 ac).
3. On the proposed site—37,028 sf (~0.9 ac).

The Applicant states the “*portion of the property subject to the Shoreline Substantial Development Permit Application is a small arc of the Rural Shoreline Jurisdiction of the Cedar River. This small area is separated from the Cedar River by the 5 lane State Highway 169 and the former railroad right of way and berm that is now a pedestrian and bicycle trail. The arc of the Shoreline jurisdiction intersects with the Lakeside property from 0.0 feet to a maximum of 60.8 feet.*”

5. Shoreline Management—November 2018: Management Questionnaire

Item 9. “*Have interested community groups or neighboring property owners been notified about the proposed development? If yes, who has been contacted and what was their reaction?*” We are unaware that any members of the Public have been contacted regarding the addition of acceleration/deceleration lanes on SR-169. We certainly were not.

Site work is within the 200-ft arc of the Cedar River’s “*Rural Shoreline Jurisdiction,*” thus triggering the need for a Shoreline Substantial Development Permit.

The proposal is to add a “*deceleration and acceleration lane*” to SR-169 adjacent to the proposed site, as well as an “*access point*” to the proposed site (this includes: “*a guardrail, relocation of a utility pole, drainage and landscaping*”). This has not been previously disclosed to the Public and, as such, there is no way to ascertain whether or not safety concerns will be properly assessed on SR-169, an extremely congested highway during both AM and PM “*peak-hour*” commutes, which now last from 5 - 9 AM and 3 - 7 PM, respectively. SR-169 already carries an inordinate amount of trucks—small, large, and extended, especially to and from the many commercial operations along Cedar Grove Rd and Lake Francis Rd, plus the County’s Cedar Hills Landfill on Cedar Grove Rd.

***GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032***

Further, as mentioned above under the TENW *Updated Traffic-Impact Analysis*, there is a concern that with the ingress/egress access road to the site proposed to be moved 130 feet to the east, the Applicant's trucks will be entering SR-169 very close to the point where it changes from one to two lanes going west. This presents additional safety concerns that have not been even identified, nor addressed.

The above concerns must be addressed in an EIS.

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

IV. CONCLUSIONS

Clearly, Lakeside Industries' proposed move of its Asphalt Facility operations from the City of Covington to the Rural Area along the Cedar River constitutes a major project that will have significant adverse effect on the environment. The likelihood that an Environmental Impact Statement (EIS) under the State Environmental Policy Act (SEPA) should and needs to be prepared is substantial.

We believe KC DPER SEPA responsible official must determine that this proposal may have a probable significant adverse environmental impact under **WAC 197-11-360** and, thus, issue a SEPA Determination of Significance (DS). This would trigger an EIS be prepared. The Washington State Department of Ecology states:

“An Environmental Impact Statement (EIS) is prepared when the lead SEPA agency determines a proposal is likely to have significant adverse environmental impacts. The EIS process is a tool for identifying and analyzing: Probable adverse environmental impacts; Reasonable alternatives; and Possible mitigation.”

An EIS also will allow the public, government agencies, and tribal governments to participate in developing and analyzing key environmental information. An EIS will identify adverse environmental impacts—both short-term and long-term; potential alternatives including identification of other possible sites with significantly less environmental impact; and possible mitigation and its likelihood to reduce the severity of adverse impacts.

This is especially important for the proposed move of Lakeside Industries' Asphalt Facility operations from the City of Covington to the Rural Area along the Cedar River, because it will affect the daily lives of so many: nearby residents, commuters along SR-169, users of the adjacent Cedar River trail, and abundance of wildlife along the Cedar River corridor.

Each of the steps in preparing an EIS is important to this proposal:

1. Scoping of what should be analyzed in the EIS;
2. Preparation of a draft EIS;
3. Review/comment on the draft EIS;
4. Preparation of a final EIS; and
5. Issuance of the final EIS to be used to decide whether to approve the proposed move, approve it with conditions, or deny it.

The County, the Public, and the Applicant will best be served by the EIS process.

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

V. RECOMMENDATIONS

In light of the potential far-reaching environmental impacts related to the proposed move of Lakeside Industries' Asphalt Facility from the City of Covington to the Rural Area along the Cedar River, we strongly urge King County to issue a State Environmental Policy Act (SEPA) Determination of Significance (DS) and require an Environmental Impact Statement (EIS) be prepared by the Applicant.

The preparation of an EIS will allow a proper assessment of all the short- and long-term environmental issues and allow the County and the Public to review same.

Finally, the KC Executive's King County Comprehensive Plan 2020 Midpoint Update "*Recommended Scoping Document*" released to the KC Council on January 2, 2019, states (**B. Topic Areas, I. Text and Policy Proposals**—8th bullet):

"Review Comprehensive Plan policies, and associated development regulations and permitting processes, to ensure that the range of impacts from the extraction, processing, production, transport, storage, and use of fossil fuels, including the impacts from construction and operation of fossil fuel infrastructure, are identified, avoided and mitigated, in order to protect public health and safety, air and water quality, habitats, natural resource lands, and other resources and functions."

We applaud the KC Executive for his steadfast goal to: "*protect public health and safety and safety, air and water quality, habitats.*" We call on KC DPER to follow this goal as well in reviewing all Public comments submitted regarding this *Combined Notice of Applications & Environmental Review Process*.

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

APPENDIX

Although there are many, many concerns related to potential impacts to the environment, noise levels, and traffic/safety (further discussed herein in **III. Document Review** and provided by the GMVUAC as described herein in **II. Background**), we are compelled to again stress the Zoning issues involved.

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 a completely isolated island of I-zoned property in a surrounding sea of Rural Area zoned lands (the classic definition of “spot” zoning).

Applicable KCCP Policies (our emphases):

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.***

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.***

In looking at Policy **R-324**, 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.**). 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.

R-513

Rural Public Infrastructure Maintenance Facilities, and agriculture and forestry product processing should be allowed in the Rural Area. Other new industrial uses in the Rural Area shall be permitted only in Rural Towns and in the designated industrial area adjacent to the

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

Rural Neighborhood Commercial Center of Preston.

The proposed asphalt facility is a new industrial use on the site and, thus, clearly is subject to Policy **R-513**. The site is *restricted* by **R-513**, which legally is an express limitation on future uses. Clearly, an asphalt facility is both factually and legally a new industrial use of the site.

R-514

Development regulations for new industrial development in the Rural Area shall require the following:

- e. Heavier 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;...***

Policy **R-514** “...*applies to all new industrial development in the Rural Area*” (see text preceding the Policy prescription). Also stated in the text is: “*(T)he 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.*” It should be noted that 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.

The above-cited KCCP policies all provide sufficient rationale for not allowing the proposed Asphalt Facility move from the City of Covington to the Rural Area along the Cedar River. However, the one, absolutely prohibitive, provision of the KCCP that applies to the proposal is 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.*” (see text preceding the Policy prescription):

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.

KCCP Policy **R-515** 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.” [KCCP, Glossary].

**GMVUAC Comments—Notice of Application:
COMM 18-0014 & SHOR18-0032**

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, Design Review Committee Report on the Certificate of Appropriateness #15.27 to the KC 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, the 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 KCCP Policy **R-515**.

To date all of the above has been completely ignored by KC officials with no explanation for why. We believe KC Council Legislative Analysts clearly provided *erroneous* positions in Staff Reports to Councilmembers, e.g., (original EMPHASIS):

“In 2008, as part of the Comprehensive Plan Update, the Council approved the land use designation and zoning change to Industrial....As part of the land use and zoning change, text was added to the policy regarding where Industrial lands could be located in the rural area. That policy limits where NEW industrial land can go...”
— 2/23/18 e-mail

Such language essentially means that the:

- (1) Proposed project is OK because the site is zoned "I" and an asphalt facility is an approved use on that site and
- (2) KCCP policies we cite relate only to rezoning of land, not whether it is a specific allowed use of that land.

However, there is a very significant difference between the *zoning* of the land itself and the *use* of the land. KCCP policies **R-513**, **R-514**, and **R-515** all expressly relate to, and impose restrictions on, the “*use*” of land, e.g., for a new asphalt facility. We strongly urge that the KC Prosecuting Attorneys’ Office be fully consulted on this.