

Recommended Changes—KCCP Chapter 3—Rural Area & Natural Resource Lands

III.—Rural Densities & Development

D. Nonresidential Uses

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.**

These uses shall be sited, sized and landscaped to complement rural character as defined in policy R-101 and R-201, prevent impacts to the environment, limit burden and maintain safety on rural roads and function with rural services including on-site wastewater disposal.

R-325 Golf facilities shall be permitted when located outside of Rural Forest Focus Areas, Regionally Significant Resource Areas and Locally Significant Resource Areas, as a conditional use, in the RA-2.5 and RA-5 zones. King County will seek willing sellers to buy out with Conservation Futures funds to convert into farmland, salmon habitat, new river channels, or other environmental improvements.

R-328 Large airports, as well as sSmall airfields beyond those already established in the Rural Area, shall should not be permitted, due to their large and/or cumulative impacts on air traffic and nearby uses.

IV. Rural Public Facilities & Services

R-401 King County shall work with cities and other agencies providing services to the Rural Area and Natural Resource Lands to adopt standards for facilities and services in the Rural Area and Natural Resource Lands that protect basic public health and safety and the environment, but are financially supportable at appropriate densities and do not **require an urban level of infrastructure or encourage urban development.**

R-402 Public spending priorities for facilities and services within the Rural Area and Natural Resource Lands should be as follows:

- a. First, to maintain existing facilities and services that protect public health and safety;**
- b. Second, to upgrade facilities and services when needed to correct level of service deficiencies without unnecessarily creating additional capacity for new growth; and**
- c. Third, to support **rural-serving** sustainable economic development that is sized and scaled at levels appropriate for Rural Areas and Natural Resource Lands and does not foster urbanization.**

R-403 In the Rural Area and Natural Resource Lands, standards and plans for utility service should be consistent with long-term, low-density development and resource industries. Utility facilities that serve the Urban Growth Area but must be located in the Rural Area or on Natural Resource Lands (for example, a pipeline from a municipal watershed) should be designed and scaled to serve **primarily the Urban Growth Area. Sewers needed to serve previously established urban “islands,” Cities in the Rural Area, Rural Towns, or new or existing schools pursuant to R-327 and F-264 shall be tightlined and have access restrictions precluding service to other lands in the Rural Area and Natural Resource Lands... **The use of the word “primarily” in the second sentence is superfluous, since the policy already refers to “facilities that serve the UGA.”****

Recommended Changes—KCCP Chapter 3—Rural Area & Natural Resource Lands

V. Rural Commercial Centers

D. Non-Resource Industrial Uses & Development Standards in the RA

R-512 The creation of new Industrial-zoned lands in the Rural Area shall be limited to those that have long been used for industrial purposes, do not have potential for conversion to residential use due to a historic designation and that may be accessed directly from State Route 169. **We've always seen this Policy as only specific to the site where the recently approved Lakeside Industries' Asphalt Facility will be located (moved from the City of Covington). However, is it more than that ???**

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 Rural Neighborhood Commercial Center of Preston. **We understand "Rural Public Infrastructure Maintenance Facilities," per KC Code Title 21A.06.1014F, allows Materials Processing Facilities and Composting Facilities such as Cedar Grove Compost, etc. [NOTE: According to 21A08.080--MANUFACTURING LAND USES, Materials Processing Facilities are permitted (Condition 16) "Only [on] a site that is ten acres or greater and that does not use local access streets that abut lots developed for residential use" or subject to a Conditional Use.]**

R-514 Development regulations for new industrial development in the Rural Area shall require the following:

- a. Greater setbacks, and reduced building height, floor/lot ratios, and maximum impervious surface percentage standards in comparison to standards for urban industrial development;
- b. Maximum protection of sensitive natural features, especially salmonid habitat and water quality; **This needs much stronger language such as defining what exactly is meant and expected by "maximum protection." Does DNRP have a definition for "maximum protection" ?**
- c. Building and landscape design that respects the aesthetic qualities and character of the Rural Area, and provides substantial buffering from the adjoining uses and scenic vistas;
- d. Building colors and materials that are muted, signs that are not internally illuminated, and site and building lighting that is held to the minimum necessary for safety;
- 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; and
- f. Industrial uses requiring substantial investments in infrastructure such as water, sewers or transportation facilities, or facilities that generate substantial volumes of heavy-gross weight truck trips, **must shall be reduced in size to avoid the need for public funding of the infrastructure prior to permit application review.**

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

Recommended Changes—KCCP Chapter 3—Rural Area & Natural Resource Lands

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.

In the GMVUAC's December 5, 2017, Comments to KC DLS-Permitting on "Grading Permit Application and SEPA Checklist for Asphalt Facility; File No. GRDE17-0069 – Lakeside Industries Project Site – 18825 SE Renton-Maple Valley Rd" it specifically addressed KCCP Policies R-513 to R-515 and how they do not allow the siting on an Asphalt Facility on the parcel in question:

"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)**). 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].

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.

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

Recommended Changes—KCCP Chapter 3—Rural Area & Natural Resource Lands

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

⁶The 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**.

Although the issue is now in the courts, we stand by our legal analyses. We seek these policies be strengthened to ensure another industrial facility not be sited in the Rural Area. But how can they be strengthened in such a way that the County does not ignore them ???