



Rebuttal

to

Lakeside Industries Asphalt— Re-submittal/Response to Comments

***File No. COMM 18-0014 & SHOR18-0032
Lakeside Industries
Project Site – 18825 SE Renton-Maple Valley Rd***

October 12, 2020

Submitted to

***King County Department of Local Services—
Permitting Division***

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

October 12, 2020

To: Fereshteh Dehkordi, King County (KC) Department of Local Services (DLS)-Permitting Division, Senior Project Manager, fereshteh.dehkordi@kingcounty.gov

cc: KC Council, council@kingcounty.gov
John Taylor, KC DLS Director, John-Dir.Taylor@kingcounty.gov
David Daw, KC DLS External Communications Manager, ddaw@kingcounty.gov
Ivan Miller, KCCP Manager, ivan.miller@kingcounty.gov
KC Rural Area UACs/UAs/Organizations (seven)

The Greater Maple Valley Unincorporated Area Council (GMVUAC) provides herein a detailed point-by-point **Rebuttal** to Lakeside Industries' (LIs') Response to Public Comment and to King County's Department of Local Services-Permitting (DLS-P) November 18, 2019, Comment Letter, which sought a substantial amount of additional information.

We have been following LIs' proposal since its genesis in OakPointe's proposed Master-Planned Development prior to and following its purchase of the site of LIs' "existing" Asphalt Facility in the City of Covington adjacent to SR-18 from Jimmy & John Hawk, thus necessitating a move sometime in the future.

We convened a Public Forum with the Applicant, LI, and its representatives to discuss its proposed move from the City of Covington inside KC's Urban Growth Area (UGA) to the Rural Area (RA) on a site along the Cedar River. We met with you and other KC DLS--Permitting Division (formerly DPER) personnel on this proposal. We have submitted two detailed sets of Public Comment in December 2017 and January 2019.

Our **Rebuttal** herein is informed by much research, discussions with technical consultants, and our long history of working with King County on the Countywide Planning Policies (CPPs), King County Comprehensive Plan (KCCP), and the King County Code (KCC).

We appreciate your diligent attention and time to evaluate the many issues we raise in our **Rebuttal** to LIs' Response, which, in many cases, falls far short of a credible acknowledgement of the many key code, policy, and, especially, environmental issues associated with its proposed siting of its Asphalt Facility and clearly necessitates the need to prepare an Environmental Impact Statement (EIS) under SEPA.

Thank you.

Prepared by:

LarKen Buchanan
imbuch@outlook.com
Chair, Environment Committee
GMVUAC

Peter Rimbo
primbos@comcast.net
Chair, Growth Management Committee
GMVUAC

Susan Harvey
susandharvey@hotmail.com
Chair, Transportation Committee
GMVUAC

Approved by:

Steve Hiester
steve.Hiester@oldcastle.com
Chair
GMVUAC

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

Table of Contents

<u>Section</u>	<u>Page</u>
I. EXECUTIVE SUMMARY	4
II. BACKGROUND	6
III. DOCUMENT REVIEW	8
Environmental Reports and Comments	8
Other Documents	8
IV. REBUTTAL TABLE	9
V. DETAILED REBUTTAL	17
Policy and Zoning Issues	18
Critical Areas Issues	25
Emissions/Health Issues	30
Geological Concerns	33
Odor Issues and PSCAA Permits Needed	36
Traffic Issues	40
Water Supply/Groundwater Contamination Issues	43
VI. CONCLUSIONS	48
VII. RECOMMENDATIONS	50
REFERENCES	51

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

I. EXECUTIVE SUMMARY

Because of the numerous critical environmental issues discussed herein, many of which remain unanswered or only partially answered, **we call for the King County Department of Local Services-Permitting Division (DLS-P) to issue a Determination of Significance (DS) to trigger the preparation of an Environmental Impact Statement (EIS) under the State Environmental Policy Act (SEPA).**

We see that only through the use of the SEPA process can environmental impacts be more thoroughly identified, subject to more detailed analyses, and undergo full Public disclosure through both a Draft EIS and a Final EIS to help guide DLS-P decisions related to issuing any permits related to the proposed project. Further, through the SEPA process the LI proposal can be modified and conditioned to mitigate and compensate for probable impacts or it can be denied to avoid significant impacts to Public health and irreversible environmental harm, especially to the adjacent Cedar River, the subject of many habitat improvements and salmon restoration efforts over many years of County investment.

SEPA law requires all state and local governments to:

"Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on the environment." (RCW 43.21C.030a)

Because of the combination of siting a toxins-producing industrial-scale Asphalt Facility in such close proximity to residential neighborhoods, the salmon-bearing Cedar River, the well-used King County Cedar River Trail, and an already congested state thoroughfare (SR-169) in the King County Rural Area clearly represents potential major impacts to people and the environment, **a DS should be issued and an EIS process commenced through SEPA.**

We agree with the comments of and support the concerns identified by both the Muckleshoot Tribe and the Suquamish Tribe. We find LI and its consultants' responses wanting technically. In addition, in terms of impacts to society, in general, and economics, in particular, all the decades of efforts in protecting the Cedar River, restoring habitat, and preserving its salmonoid species are being ignored. The Tribes, King County, State of WA, all taxpayers, and future generations have a very big stake in the Cedar River—a public treasure not to be destroyed for short-term private profit. **This alone calls for the preparation of an EIS.**

Herein we provide formal **Rebuttal** to LIs' August 24, 2020, *Response to Public Comment* and its referenced documents therein as posted by DLS-P. Our **Rebuttal** specifically addresses LIs' [A-1-Lakeside Response to Public Comments Matrix](#) and its accompanying documents.

Our **Rebuttal** addresses several key issues: King County Comprehensive Plan Policies; Critical Areas; Emissions and Public Health; Geology and Steep Slopes; Noise; Industrial Odors and Puget Sound Clean Air Agency (PSCAA) Permitting; Traffic; and Water Supply and Groundwater Contamination. Many of these issues were identified in *Cedar River Sites Industrial Moratorium Study (CRSIM Study)* in response to King County Council Ordinance 18611. While looking at the Rural Area site along the Cedar River that LI 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.

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

From our review of the applicable documents, it is clearly apparent and factually shown that LIs' 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 EIS 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, as is both prudent and required by law.**

The GMVUAC has reviewed and prepared detailed Comments on updates to the King County Comprehensive Plan (KCCP) for two decades. The KCCP has been very clear about its strong focus on "*protect(ing) public health and safety, air and water quality, habitats, and other resources and functions...*" That strong focus must be applied to LIs' proposed move of its Asphalt Facility from inside the UGA to the Rural Area along the Cedar River.

Finally, we urge the County to address the one KCCP Policy that clearly disallows the site in question from hosting a new proposed use of an Asphalt Facility:

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.

Inexplicably, KCCP Policy **R-513** was completely ignored in the *CRSIM Study* mentioned above. The construction of a new Asphalt Facility on the proposed site constitutes an "*other new industrial use in the Rural Area*" and pursuant to KCCP Policy **R-513** "*shall be permitted only in Rural Towns and in the designated industrial area adjacent to the Rural Neighborhood Commercial Center of Preston.*"

The proposed move of an Asphalt Facility to the site in question constitutes a "*new industrial use(s) in the Rural Area*" and, thus, is outright disallowed by KCCP Policy **R-513**. The proposed Asphalt Facility constitutes a new industrial use given that past uses were for the Mining, King County Maintenance Shops, and the Sunset Materials operation.

We cannot overemphasize that, although a parcel may be zoned "*Industrial,*" County decisions on any proposed development application must be consistent with KCCP Policies approved—and enacted through Ordinance—by the King County Council. There is no discretion at issue here as KCCP Policy **R-513 is clear, unambiguous, and mandatory and, thus, constitutes a duty with which King County officials and its departments must comply.**

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

II. BACKGROUND

Herein we provide a timeline of major activities.

2013

As we have described in past sets of Comments, the GMVUAC has followed this proposed project for many years. This process first started in 2013 with OakPointe's proposed Master-Planned Development following its purchase of the site of LIs' "existing" Asphalt Facility in the City of Covington from Jimmy & John Hawk.

2017

Since early 2017 the GMVUAC has conducted research on LIs' proposed 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 LIs' 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. Because the Q&A was so revealing, below, as a reminder, is a summary of some of the questions and the Applicant's responses provided in one of our previous sets of Comments:

- Odor?: LI uses controls to reduce odor.
- Noise?: LI will meet KC noise standards. There was a lot of back-and-forth discussion on noise concerns, especially within the confined Cedar River canyon corridor.
- Hours of Operation?: LI stated there will be some off-hr operations & some 24-hr days in the summers.
- Truck Traffic?: LI stated there will not be an impact to SR-169.
- Landslide Hazards?: No response even though a particular concern of many present.
- Environmental Impact Statement (EIS)?: King County Department of Permitting and Environmental Review's (DPER's), Ty Peterson, stated the project would have to be subject to a 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 LIs' permit application.
- Location?: The GMVUAC asked if LI looked at moving its current city operation (in Covington) to other cities. LI answered, yes, it looked at, for example, the City of Maple Valley. However, the city rezoned LIs' property that would have been suitable. Members of the GMVUAC then stated 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: *Protect its citizens*.
- Trapped Pollution?: How will the entire Cedar River canyon corridor be evaluated in terms of trapped pollution, particulates, etc.?: No response, again, even though a particular concern of many present.

Following much research, the GMVUAC submitted to the KC DPER on December 5, 2017, detailed Public comments entitled: *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 (24 pp).

2018

The following detailed written comments and written testimony were prepared and submitted to KC officials.

1. *Written Testimony for Public Hearing on King County Council Ordinance 18611*; submitted to the King County Council; January 8, 2018 (4 pp)
2. *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**

2019

On January 30, 2019, in response to the *Combined Notice of Applications & Environmental Review Process* the GMVUAC prepared and submitted to the KC DPER *Public Comment on File No. COMM 18-0014 & SHOR18-0032 — Lakeside Industries — Project Site – 18825 SE Renton-Maple Valley Rd (23 pp)*.

In November, 2019, the GMVUAC reviewed the *Request for Additional Information* letter dated November 18, 2019, sent to LI by King County Department of Local Services-Permitting Division (DLS-P). We supported many of the questions asked by DLS-P and the need for the additional information it requested in the letter.

2020

In late August 2020, KC DLS-P posted several documents it received from LI related to its responses to Public Comments and the KC DLS-P November 18, 2019, letter referenced above. We have studied these materials carefully in preparing our **Rebuttal** herein.

Please note that all GMVUAC-submitted Comments to the County related to this proposed project are in the Public Record and available on the GMVUAC's web site: www.gmvuac.org.

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

III. DOCUMENT REVIEW

As part of its efforts described herein the GMVUAC reviewed many documents—both those provided earlier (not listed below, but posted by KC DLS-P) and the following documents recently provided by the Applicant to the KC DLS-P and posted online:

Environmental Reports and Comments

- [A-1-Lakeside Response to Public Comments Matrix](#)
- [A-2-Combined SEPA Checklist \(Plant and Transportation Facility\)](#)
- [A-3-PERM-120-Kent PSCAA NOC#11175 REG#14103](#)
- [A-4-DEA-Lakeside MV-Technical Information Report 2020-06-08 and appendices](#)
 - [A-5-DEA-Floodplain Analysis and Delineation and Flood Hazard Cert](#)
 - [A-6-TWC-CAR Revised](#)
 - [A-7-AESI-Critical Area Assessment- Revised](#)
 - [A-8-AESI-Subsurface Exploration Infiltration - Revised](#)
 - [A-9-TENW-Lakeside SR 169 Updated Transportation Impact Analysis 18-1102](#)
 - [A-10-DEA-StormTech Chamber Adjustment Package](#)
- [A-11-DEA-Roadside Ditch Hydrology Memo](#)
- [A-12-PERM-123-WSDOT Frontage Plans Permit](#)
- [A-13-AESI-Response Letter](#)
- [A-14-AESI Response Letter - Supplement](#)
- [A-15-BQWS Critical Areas King County-Lakeside](#)
- [A-16-TWC-Response to Muckleshoot Tribe Comments](#)
- [A-17-TWC-Response to Suquamish Tribe Comments](#)
- [A-18-TWC-Watershed Responses to King County Comments](#)
- [A-19-Fire Protection Plan Approved Fire Flow and Tank Sizing](#)
- [A-20-Ramboll-Updated Noise Assessment Report](#)
- [A-21-Mitigation Area Trade Email RE Comment F47](#)

Critical Areas Report (CAD) for Associated Septic Permit

[CADS19-0259 Complete Letter & Map](#)

Other Documents

[Transmittal Letter RE Response to 11.18.19 KC Comments](#)
[Response to 11.18.19 KC Comments](#)

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

IV. REBUTTAL TABLE

In this section we provide basic rebuttal to LIs' "Responses to Public Comments Matrix," in which comments submitted by the GMVUAC were mentioned, by our count, at least 20 times. We include a **Rebuttal Table** below which takes the basic contents of LIs' "Matrix" and adds an additional column on the right-hand side:

"REBUTTAL."

A concern we must point out is that although the plethora of Public Comments covered many, many issues, LI has grouped them into the *Topics* listed in the left-hand column in the Rebuttal Table. However, LIs' groupings are arbitrary and do not account for the fact that so many issues affect each other and create *cumulative* impacts, which also must be addressed, but are not.

Please note in the next section (**V. Detailed Rebuttal**) we provide an in-depth look into many of the *Topics* listed in the **Rebuttal Table** and provide reference to same.

Rebuttal Table

<i>Topic</i>	<i>Response</i>	REBUTTAL
<p><i>Comprehensive Plan Inconsistency</i></p> <ul style="list-style-type: none"> • <i>Plant is inconsistent with Comp. Plan re rural area and constitutes a spot zone.</i> 	<p><i>Comprehensive Plan and Zoning issues were addressed and resolved in the 2018 King County DPER Cedar River Sites Industrial Moratorium Study. The referenced public comments on these issues are based on a misreading of the Comprehensive Plan. The Lakeside Application is consistent with the provisions of the Comprehensive Plan and is permitted by the Industrial Zone.</i></p>	<p>[LIs' response is incomplete and inaccurate, please see Section V. for our detailed <u>Rebuttal</u> on "Policy and Zoning Issues."]</p> <p>In addition, please note now that LI has expressly admitted in writing that historical site designation as no longer applicable (see LI Response under "Historic Landmark/Landmark Designation" elsewhere in this Table), it can no longer rely on KCCP Policies 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.") and 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."), along with the arguments it made related to each.</p>
<p><i>Critical Areas</i> [See Section V. for a subtopic listing]</p>	<p>[See Section V. for a listing of LI Responses]</p>	<p>[LIs' response is incomplete, please see Section V. for our detailed <u>Rebuttal</u> on "Critical Areas Issues."]</p> <p>In addition, in LIs' responses to KC Comments it refers to The Watershed Company's "Response to Muckleshoot Tribe comments," June 4, 2020. We will let the Muckleshoot Tribe and the Suquamish Tribe speak for themselves, but we also find LI and its consultants' responses wanting technically. The potential major impacts to the Cedar River <u>alone</u> call for the preparation of an EIS.</p>

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

<p>EIS</p> <ul style="list-style-type: none"> • An EIS should be required to analyze significant adverse impacts and to provide alternatives. 	<p>Please see The Watershed Company Letters to Karen Deal dated June 4, 2020. “[T]he project will not result in significant adverse impacts to salmon habitat in the Cedar River basin and will result in positive, though relatively small, habitat improvements.” An EIS is only required if there are probable significant adverse impacts. Per application regulations, mitigation has been incorporated into the project proposal such that net degradation of habitat will not occur, either on-site or downstream. Because an EIS is not required, there is no requirement to study alternatives.</p>	<p>There are “probable significant adverse impacts” expected. in light of the potential far-reaching environmental impacts, an EIS under SEPA should and needs to be prepared.</p> <p>Lis’ 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 EIS before any major grading commences and, certainly, before any construction occurs.</p> <p>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.</p> <p>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 must acknowledge this reality and its adverse ramifications on people, wildlife, and the environment. This should be more fully explored in an EIS.</p> <p>The Washington DOE states:</p> <p>“The EIS process is a tool for identifying and analyzing: Probable adverse environmental impacts; Reasonable alternatives; and Possible mitigation.”</p> <p>That is exactly what is called for here.</p> <p>Finally, The Watershed Company Letters state:</p> <p>“...the proposed project will result in a net improvement of critical area and buffer functions.”</p> <p>This might indeed be the case, but it is only true because of past degradation allowed by the County on the site. It does <u>not</u> constitute <u>what is actually necessary</u> for this rural site in such close proximity to the Cedar River.</p> <p>Throughout this Rebuttal we address both the need for and the rationale supporting pursuit of an EIS through the SEPA process.</p>
--	--	--

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

<p>Emissions/Health •[See Section V. for a subtopic listing]</p>	<p>[See Section V. for a listing of LI Responses]</p>	<p>[LIs' response is incomplete, please see Section V. for our detailed Rebuttal on "Emissions/Health Issues."]</p> <p>In addition, LI states its existing facility located in the City of Covington is considered "portable" and, thus, covered under an existing Order of Approval from the Puget Sound Clean Air Agency (PSCAA). According to WAC 173-400-030(75):</p> <p>" '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."</p> <p>However, based on industry standards and other analogous regulatory sources, the existing LIs' Asphalt Facility in the City of Covington is <u>not</u> a "portable source." It does <u>not</u> fit the customary meaning of "portable" when applied to asphalt facilities. For example, is LIs' 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 easily transported and should, in fact, be deemed "permanent."</p> <p>By industry standards a portable asphalt batch facility is defined thusly:</p> <p>"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... Moreover, the installation of small asphalt plant[s]... can be accomplished in four hours, and the plant will be equipped with asphalt tank and finished product storage bin, which will reduce the construction period and construction costs." — emphases included per source, see: https://aimixgroup.com/portable-asphalt-mixing-plant/.</p> <p>By industry standards (size, type, and time of "construction" to move) the LI Asphalt Facility is not considered "portable." Also, see: "Technical Support Document for The Asphalt Plant (Portable and Stationary) General Order," WA DOE, January 25, 2011.</p> <p>Also, see the discussion on "Portability" in Section V. under our detailed Rebuttal on "Odors Issues & PSCAA Permits Needed."</p>
--	---	--

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

<p>Fire/Public Services</p> <ul style="list-style-type: none"> • Concern whether there are adequate fire safety public services provided. • Notes there is one fire hydrant about a mile away. 	<p>The King County Fire Marshal has prescribed the requirements for fire suppression systems at the facility and those requirements have been approved by the King County Building Official.</p>	<p>The siting of a high-risk petroleum-based asphalt facility in such close proximity to a heavily wooded, residential area presents a higher level of hazard to both human and animal life and property than just the fire considerations of the asphalt facility itself and should be evaluated by zoning officials accordingly.</p> <p>The fact that this area has limited fire mitigation resources because it is in the KC's Rural Area must be recognized and accounted for in any risk-level planning.</p> <p>The recent example (October 11, 2020) of the Garner Fields asphalt facility fire, which reportedly started due to faulty supply lines to the liquid petroleum asphalt silos, shows that even with the vast fire resources available to the urban center of Tacoma, the fire and natural gas crews were unable to get control of the fire because the gas shutoff was located inside the facility and the fire became intense too quickly due to the nature of petroleum. The toxic fumes released by the fire caused residential areas that are much farther away than those near the proposed Asphalt Facility to be evacuated due to the hazardous air quality. (see: https://www.kiro7.com/news/local/fire-explosions-erupt-asphalt-plant-tacoma-causing-damage/KGIPEHIXIAU3MZV7NJMY3BYS4/).</p> <p>Comparisons between the surroundings in Tacoma above (e.g., waterfront industrial, flat, no nearby residences or environmentally protected areas, etc) to those at the LI proposed site (e.g., rural area, steep cliffs in a canyon, residences, and environmental jewels, etc.) are stark!</p> <p>Also, since the proposed site is known to have underlying coal mine shafts, what is the mitigation plan (including extra precautions) in case the coal catches fire? (see: https://www.sciencedirect.com/science/article/pii/B9780444595096000272)</p> <p>There was a fire at Sunset Materials in one of the compost piles, which burned for over a week. Also, there was a Cedar Grove Composting fire in 2009 resulting in dangerous fire fumes (see: https://www.seattletimes.com/seattle-news/substantial-compost-fire-burning-in-maple-valley/).</p> <p>Yes, we understand https://www.kingcounty.gov/~media/depts/permitting-environmental-review/dper/documents/Special-Interest/COMM18-0014-A-19-Fire-Protection-Plan-2020_08.ashx?la=en discusses fire protection plans, but what about catastrophic fires like the Tacoma fire described above? In those cases, what type of fire-suppression systems will be used? Will fire suppressing foams be employed? if so, such foams have become a major contributor to injecting PFA's into the environment. It would be a disaster to have these foams introduced into the soil and Cedar River https://www.cleanwateraction.org/features/pfas-containing-firefighting-foams</p> <p>In the County's Rural Area, fire response depends on water trucks, which cannot in any way handle an industrial-scale fire. These are just some of many, many reasons why high-risk petroleum-based industries, such as asphalt facilities, are kept in areas dedicated to industries.</p>
--	--	---

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

<p>Geological Concerns</p> <ul style="list-style-type: none"> Coal mining activity undermined the soil and lands thereby creating instability, which is worsened by the presence of fault lines and likelihood of earthquakes. Inquiry whether site is in an earthquake liquefaction zone and there is adequate mitigation. 	<p>[See Section V. for a listing of LI Responses]</p>	<p>[LI's response is incomplete, please see Section V. for our detailed Rebuttal on "Geologic Concerns."]</p> <p>In addition, there are very steep slopes that potentially are hazardous, as described in Associated Earth Sciences' "Revised Critical Areas Assessment" October 18, 2018 (our emphases):</p> <p>"Steep, undeveloped north to northwest-facing slopes up to approximately 320 feet tall with gradients of between 20 and 75 percent are located within the southern and eastern panhandle portion of the property and extend up beyond the property line to the south and southeast." (p.2) and "The sloping portions of the property to the south, southeast, and east are considered landslide hazard areas, ..., due to a combination of steepness, height, continued erosion, shallow slides evidenced by the geomorphology (southern portion), mapped landslides (eastern portion, ...), seepage/wetlands at the base of slopes, and presence of low-permeable units on the slope as indicated by the referenced geology map" (p. 8) and "Portions of the site to the south, southeast, and on the eastern "panhandle" classifies as steep slope hazard areas since slope gradients exceed 40 percent and the slope heights range from about 200 feet to over 300 feet (Figure 4)." (p. 9)</p> <p>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 <u>existing</u> 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.</p> <p>LI'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." Again, such major concerns must be rigorously assessed and addressed in an EIS before any major grading commences and, certainly, before any construction occurs.</p>
<p>Historic Landmark/ Landmark Designation</p> <ul style="list-style-type: none"> Site is located on land that previously contained a historic landmark. 	<p>There are no historic landmarks remaining on the site. Before Lakeside Industries purchased the property, the historic Pacific Coast Coal Administrative Building landmark was approved for demolition by entities with jurisdictional authority including King County Landmarks Commission.</p>	<p>We are glad to see that LI in its response states that: "There are no historic landmarks remaining on the site." In our research we found, in 1993, the Landmarks Commission provided landmark designation for the Pacific Coast Coal Company (PCCC) Administration Building, cited as Recording No. 199308261367. We further found, in 2016, the PCCC Administration Building was demolished per the Landmarks Commission Certificate of Appropriateness (COA) No. 15.27 (Type III).</p> <p>LI cannot rely on KCCP Policies R-512 and R-515, as they do <u>not</u> apply to this site, which has <u>no</u> historic landmarks, as admitted to by LI.</p> <p>As we state elsewhere herein under our Rebuttal to "Comprehensive Plan Inconsistency" and "Zoning," only KCCP Policy R-513 applies here as LI seeks a permit for a <u>new industrial use</u> in the Rural Area.</p> <p>For a further description on each of these KCCP Policies please see "Policy and Zoning Issues" in Section V. Detailed Rebuttal.</p>

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

<p>Noise Pollution</p> <ul style="list-style-type: none"> • Noise from the plant will adversely impact residents and wildlife. • Topography of the site will enhance these adverse impacts. 	<p>Noise modeling of the proposed Lakeside facility was conducted to evaluate the facility's compliance with the County noise limits of 57 dBA during daytime hours (7 AM to 10 PM) and 47 dBA at night (10 PM to 7 AM). Lakeside incorporated numerous noise-reducing measures into their plans for the site, taking into consideration the unique topographic features surrounding the site. The noise mitigation measures included perimeter structures/sheds, noise suppression for some equipment, enclosure of the loadout area, and noise attenuation walls. With these noise-reducing measures, noise modeling indicates the facility would comply with the applicable daytime or nighttime noise limits at the property boundaries. The noise levels would be even lower at the nearest residences, and noise from the facility would result in minimal increases in noise at these residences. Please see: Updated Noise Assessment Report, dated June 4, 2020, by Ramboll US.</p>	<p>Tonal qualities and noise peaking, which are important to quality of life, are not measured in Ramboll "Lakeside-Maple Valley Asphalt Plant Noise Assessment Report" of Nov. 1, 2018. Ramboll focuses on average energy or "dBA".</p> <p>Although the noise contours (Fig. 3 daytime; Fig. 4 nighttime found in the Ramboll report) represent what its noise model predicts 3-dimensionally for the vicinity of the site, the proposed 12-ft high noise-attenuating walls would mean little to people living on the canyon rim 300 ft above.</p> <p>No indication is given as to how the proposed site will amplify (add to) the character of noise coming from SR-169 (including resonances inside the canyon walls, which may amplify the energy inside some tonals by a factor of 3 or more).</p> <p>Tables A-1 and A-2 (found in the Ramboll report appendix) are, again, for <u>average</u> readings. They do not accommodate equipment being suddenly loaded or strained, or the noise spikes that happen from transients passing through a system.</p> <p>In terms of impacts on wildlife, it is perceptions of what is not normal that draws their immediate attention and alarm. The Ramboll report does not address this, even though these tonal properties are important to animal life and the many natural areas that surround proposed site. We reference KCCP Policy:</p> <p>R-514 Development regulations for new industrial development in the Rural Area shall require the following:</p> <p>...</p> <p>b. Maximum protection of sensitive natural features, especially salmonid habitat and water quality;</p> <p>The proposed site is adjacent to the Cedar River, a salmon-bearing waterbody. KCCP Policy R-514b. above calls for "maximum protection of ... salmonid habitat." Noise impacts must account for this.</p> <p>Within the acoustical range of the proposed site along the Cedar River lay many King County Natural Areas, many ponds, wetlands, and streams and the deleterious noise impacts must be identified and properly assessed (see: "The Effects of Noise on Wildlife", CA Department of Transportation 1998).</p>
--	--	---

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

<p>Odor</p> <ul style="list-style-type: none"> • Odor from Cedar Hills Composting Site is already present and injurious, and will be enhanced by Plant. • Listed complaints re odors generated by a “similar Lakeside facility.” • Topography of the site will enhance adverse impacts. 	<p>See response to Emissions/Health. Moreover, the Lakeside proposal includes enclosing the truck loading area at the plant and requiring all trucks leaving the site with asphalt to have covers on truck beds.</p>	<p>[LIs' response is incomplete, please see Section V. for our detailed Rebuttal on “Odor Issues and PSCAA Permits Needed.”]</p> <p>In addition, LI states:</p> <p>“The proposed portable HMA plant is not expected to cause any adverse impacts, including odor or health impacts, to the areas surrounding the facility. At the SR 169 site, loading trucks will be in an enclosed area below the silos where emissions will be captured and processed. Trucks leaving the site will be required to cover loads.”</p> <p>The statement, “not expected”, is an unacceptable response when dealing with the health of the residents and environment. The physical responses to odors, including but not limited to asthma attacks, headaches, nausea, and trouble breathing (especially for those with COPD) are adverse impacts to those suffering from them.</p> <p>Odors don’t necessarily have to be toxic in nature to be considered a nuisance, which signals a condition, activity, or situation that interferes with a person’s use or enjoyment of property. (See: Public Health Law: Environmental Odors and Public Nuisance Law, US Center for Disease and Control—CDC). According to the PSCAA permit, LI is required to establish a complaint response program. We found no phone number or webpage addressing a complaint response program. This program is to be serviced by LI, with written records required and submitted to PSCAA.</p>
<p>PSCAA Air Permits Needed</p> <ul style="list-style-type: none"> • The plant is not “portable” and therefore additional air permits are required. 	<p>The plant is portable by design and was properly permitted in accordance with PSCAA regulations.</p>	<p>[LIs' response is incomplete, please see Section V. for our detailed Rebuttal on “Odor Issues and PSCAA Permits Needed.”]</p> <p>As we describe in this table’s Rebuttal column under the Topic “Emissions/Health,” LIs' unsupported claim of “portability” cannot and must not preclude the need to obtain the necessary air permits from PSCAA.</p> <p>It cannot be overemphasized the air circulation and temperature inversion conditions at LIs’ existing site in the City of Covington differ markedly from those present at the proposed site within the Cedar River Canyon butted up directly against its south wall. Such concerns are magnified by our dealings with the PSCAA related to the Cedar Hills Regional Landfill where PSCAA stated it does not take into account area meteorology, air circulation patterns, and geomorphology (e.g., the lay of the land).</p> <p>While we understand the Applicant will have to obtain air permits from the 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 DLS-P issuing any permits.</p>
<p>Traffic</p> <ul style="list-style-type: none"> •[See Section V. for a subtopic listing] 	<p>[See Section V. for a listing of LI Responses]</p>	<p>[LIs' response is inaccurate, please see Section V. for our detailed Rebuttal on “Transportation Issues.”]</p>

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

<p>Water supply/ groundwater contamination</p> <ul style="list-style-type: none"> •[See Section V. for a subtopic listing] 	<p>[See Section V. for a listing of LI Responses]</p>	<p>[LIs' response is incomplete. LIs' proposed new industrial use must be fully enclosed to provide the required protection of the surrounding environment and identified critical areas. Please see Section V. for our detailed Rebuttal on "Water Supply/Groundwater Contamination Issues."]</p> <p>With respect to water supply, we remain concerned the proposed site is in a Sole Source Aquifer Area—Cedar Valley Aquifer Area—designated by the U.S. Environmental Protection Agency (EPS). Clearly, King County should recognize the King County Water District #90 "2014 Wellhead Protection Plan" when making any decisions on the permit application.</p> <p>Again, to ensure environmental protection of these critical areas, full enclosure must be required. Simply requiring spill cleanup plans does not suffice when the environmental integrity of such sensitive resources re at stake. More reasons to call for an EIS to be done.</p>
<p>Zoning</p> <ul style="list-style-type: none"> • Site is not zoned for Plant. • Plant is inconsistent with surrounding property uses. 	<p>The site is zoned Industrial and the Plant is expressly permitted by the King County Code. This issue was definitively addressed, and the zoning was confirmed, in the 2018 King County DPER Cedar River Sites Industrial Moratorium Study. Industrial uses at the site have been ongoing for almost a century. There are no other uses proximate to the site. The Vowell residence is south of the Plant site and Mr. Vowell supports approval of the Plant.</p>	<p>[LIs' response is incomplete and inaccurate, please see Section V. for our detailed Rebuttal on "Policy and Zoning Issues."]</p> <p>In addition, although the site is zoned "Industrial," that does not automatically preclude any County review of applicable Code and Policies, which govern any subsequent decisions on permitting. This is what the State's Growth Management Act (GMA) dictates and the County must follow. Under RCW 36.70A—GROWTH MANAGEMENT—PLANNING BY SELECTED COUNTIES AND CITIES, in several sections/subsections, it clearly is stated the County must adopt development regulations consistent with the KCCP and that implement the KCCP. So, State law dictates that comprehensive plan policies, in this case KCCP Policies, control review of all proposed permit applications for development including LIs', proposed new Asphalt Facility in the Rural Area.</p> <p>To LIs' last two responses: Given subsequent changes in King County Code and Policies it is irrelevant that "Industrial uses at the site have been ongoing for almost a century."</p> <p>It is irrelevant the residence south of the proposed site "supports approval of the Plant," as all that matters is King County Code, Policies, and Regulations.</p>

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

V. DETAILED REBUTTAL

Herein we provide our detailed rebuttals for Topics listed in LIs' "*Response to Public Comments Matrix*."

For ease of reading we reproduce in total LIs' description of the **TOPICS** as presented in its "*Response to Public Comments Matrix*." We also reproduce LIs' **RESPONSES** as presented in its "*Response to Public Comments Matrix*." These then are followed by our detailed **GMVUAC REBUTTALS**.

Again, we wish to emphasize that LI has made an arbitrary grouping into Topics of the avalanche of Public Comments received by KC DLS-P which covered a wide variety of issues. Although we have followed this listing in our Detailed Rebuttals in this section, we again emphasize that **such arbitrary groupings do not account for *cross-issue impacts*, nor *cumulative impacts*, both of which must be addressed. This is simply another reason—of many—for an EIS to be required for a proposed project with so many impacts still to be evaluated and with as yet *unidentified* impacts to be assessed.**

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

Policy and Zoning Issues

(We've combined these two Topics in this detailed rebuttal)

TOPICS:

“Comprehensive Plan Inconsistency:

- *Plant is inconsistent with Comp. Plan re rural area and constitutes a spot zone.”*

“Zoning

- *Site is not zoned for Plant.*
- *Plant is inconsistent with surrounding property uses.*

LAKESIDE INDUSTRIES' RESPONSES:

“Comprehensive Plan and Zoning issues were addressed and resolved in the 2018 King County DPER Cedar River Sites Industrial Moratorium Study. The referenced public comments on these issues are based on a misreading of the Comprehensive Plan. The Lakeside Application is consistent with the provisions of the Comprehensive Plan and is permitted by the Industrial Zone.”

“The site is zoned Industrial and the Plant is expressly permitted by the King County Code. This issue was definitively addressed, and the zoning was confirmed, in the 2018 King County DPER Cedar River Sites Industrial Moratorium Study. Industrial uses at the site have been ongoing for almost a century. There are no other uses proximate to the site. The Vowell residence is south of the Plant site and Mr. Vowell supports approval of the Plant.”

GMVUAC REBUTTALS:

Introduction

The LIs' proposed site is located in close proximity to the Cedar River, at 18825 SE Renton-Maple Valley Rd, and should be reclassified 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. This constitutes a new industrial use given that past uses were for the Mining, King County Maintenance Shops, and the Sunset Materials operation and, thus, does not meet KCCP Policy R-513.**

Industrial Uses

The proposed site currently is zoned Industrial - “I”. [King County GIS Center, Zoning Map (September 20, 2016)]. However, this I-zoned parcel is isolated 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 (Open Space designation). 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. **An asphalt facility is not allowed under any circumstances as a use in the Rural Area or in any Residential zones. It is 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.**

Under the King County Code (KCC), 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

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

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. Further, there is no express definition of “Resource Land Uses” in the KCCP either. **Finally, the County must recognize that it mis-identified the proposed LI use of the site as “Asphalt/Concrete Mixtures and Block” leading to it conclude it was an allowed use on Rural I-zoned land. LI repeats this mistake on p. 4 of its Responses to Muckleshoot Tribe comments, The Watershed Company, June 4, 2020.**

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. Under KCC 21A.08.090(A) even where a Permitted use in the Forest and Mineral zones, KCC 21A.08.090(B)(8) specifies the following conditions of such allowance: “(a) as an accessory to a primary mineral extraction use, or (b) as 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, . . .” Neither of which apply here.

The proposed site is an isolated Industrial-zoned parcel and this is most significant because of the prohibitive constraints placed on the location of *new* industrial uses in the Rural Area 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 use, such as the proposed asphalt facility, as any continuation of a prior or pre-existing land use on this site. Clearly, the proposal is for a type of use that has no nexus to the history of this site.

Non-Residential Uses

“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, and unchanged in the 2020 Comprehensive Plan Mid-Point Update, p. 3-25)].

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 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.**). **Thus, the proposed Asphalt Facility does not meet any of the “(n)onresidential uses” limitations of KCCP Policy R-324.**

Rural Uses

Rural character and land uses are clearly discussed in State law, King County Countywide Planning Policies, and King County documents (our **emphases** below):

Revised Code of Washington (RCW) 36.70A.011: “The legislature finds that **this chapter is intended to recognize the importance of rural lands and rural character to Washington’s economy, its people, and its environment**, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state’s overall quality of life. . . . [T]he legislature finds that in defining its rural element under RCW 36.70A.070(5), a **county should foster land use patterns and develop a local vision of rural character that will: Help**

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

*preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; **be compatible with the use of the land by wildlife and for fish and wildlife habitat**; foster the private stewardship of the land and preservation of open space; and **enhance the rural sense of community and quality of life.**"*

King County Countywide Planning Policy (CPP) DP-1: "All lands within King County are designated as: Urban land within the Urban Growth Area, where new growth is focused and accommodated; **Rural land, where farming, forestry, and other resource uses are protected, and very low-density residential uses, and small-scale non-residential uses are allowed**; or Resource land, where permanent regionally significant agricultural, forestry, and mining lands are preserved."

King County Executive (as quoted from his 2020 KCCP Mid-Point Update Recommended Plan): "Based on data from 2006 through 2011, the 2014 Buildable Lands Report evaluated the actual housing constructed, densities of new residential development, and the amount of actual land developed for commercial and industrial uses within the Urban Growth Area. **Based on that data, it projected that there is a sufficient amount of land within the Urban Growth Area to accommodate housing, commercial and industrial uses through 2031 and beyond.**"

Cedar River Sites Industrial Moratorium (CRSIM) Study

The construction of a new industrial use (*i.e.*, a use *other* than continuation of a pre-existing use and that is not vested) such as a new asphalt facility on the old Sunset Materials' Cedar River/SR 169 site is outright prohibited as a matter of fact and law by King County Comprehensive Plan Policy **R-513**: ". . . **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**" (**emphasis** added).

This key Policy and its mandate were never addressed by DPER (now DLS-P) in its CRSIM Study required under Council Ordinance 18611. If it had been, the one and only recommendation DPER and the King County Executive could make is that, regardless of the Industrial zoning of the SR 169 parcel, LIs' proposed construction and operation of a new industrial facility (e.g., an asphalt facility) on this site is prohibited. [see: *Concrete Nor'West v. Western Washington Growth Management Hearings Board*, 185 Wn. App. 745, 755-56, 342 P.3d 351; review denied, 183 Wn.2d 1009 (2015): "Once a comprehensive plan is in place, the GMA gives effect to the plan's provisions by requiring that "[e]ach county and city that is required or chooses to plan under RCW 36.70A.040 shall perform its activities . . . in conformity with its comprehensive plan." RCW 36.70A.120. This provision thus turns the failure to conform to a comprehensive plan into a GMA violation that the Board may remedy."].

In spite of the recommendations of the CRSIM Study, enforcement of the provisions of KCCP Policy R-513 is required. The King County Council should refer to the Hearing Examiner the matter of rezoning the site back to its original RA-5 land use and zoning designations.

KCCP Policies

KCCP Policy R-513

The proposed asphalt facility is a new industrial use in the Rural Area, and, as such, is subject to KCCP Policy **R-513**, as discussed earlier (our **emphases**):

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.

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

Again, the County's CRSIM Study – Response to Ordinance 18611 (Moratorium) erred in completely ignoring this policy.

Because KCCP Policy **R-513** is so critical to any decisions related to the proposed Asphalt Facility, more background is warranted here. In February 12, 2020, the Staff Report to the King County Council's Mobility and Environment Committee agreed that: "...removal of this sentence [the one we **emphasized** above] could effectuate a different policy direction." Clearly, it was understood that such a change would open up the Rural Area to new Industrial uses. Please recall the language that first was enacted as part of the *2000 KCCP Update* and designated as Policy **R-412** (which subsequently became **R-513**) was:

"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 of Preston."

Also recall that the Goodnight property on SR-169 was not rezoned until 2008 in order to accommodate Sunset Materials—a recycling operation on that site (see: *Area Zoning Studies* under "*Goodnight Properties*" in the 2008 KCCP Major Update). Former Policy **R-412** (quoted above) was, at that time, amended and is now the *existing* language of **R-513** to which LI is vested and, thus, is required to meet. So, at the time the subject property was rezoned by the Council to Industrial, the Council also amended and adopted Policy **R-513**—which has the effect of limiting new "*industrial uses*" in the Rural Area—a **new "use" is a proposed project that was not vested at the time the 2008 KCCP Update was enacted**. There was a good reason for the Council to adopt this policy in 2008 as it did so in recognition that Sunset Materials and the site rezone was a very special and limited circumstance—and new industrial uses in the Rural Area would necessarily be restricted to Rural Towns and the Preston area. **This Policy did not restrict in any way the siting of new industrial uses in the UGA portion of unincorporated King County.**

There was no "*mistake*" or error in the adoption of Policy **R-513**—and the former Policy **R-412**. It is the law that the County's Zoning Code must be consistent with and implement this KCCP Policy. Accordingly, any changes that are to be made must necessarily be to *amend* the Zoning Code to be *consistent* with this current Policy. The County appears to be making every effort to legitimize the siting of the LIs' proposed Asphalt Facility on the SR-169 property—which is contrary to the State's Growth Management Act (GMA) and adopted Rules thereunder.

We stress again that the construction of a **new** industrial use (i.e., a use other than continuation of a pre-existing use and that is not vested) such as a new asphalt facility on the old Sunset Materials' Cedar River/SR 169 site is outright prohibited as a matter of fact and law by Policy **R-513**. We repeat (with **emphases** added): "... *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*". As stated earlier, this key Policy—and its mandate—were **never** addressed by **CRSIM Study** required under Council Ordinance 18611, and, if it had been, the one and only recommendation DPER (now DLS-P) and the King County Executive could make is that, regardless of the Industrial zoning of the SR 169 parcel, LIs' proposed construction and operation of a **new** industrial facility (e.g., an asphalt facility) on this site is prohibited. **It cannot be over emphasized that although a parcel may be zoned "Industrial," it is the KCCP Polices that govern the County's decisions on any proposed development application, as development regulations must be consistent and implement comprehensive plans, as cited below.**

The Revised Code of Washington, **RCW 36.70A Growth management—Planning by selected counties and cities**, clearly describes this hierarchy as follows (our emphases):

RCW 36.70A.040 Who must plan—Summary of requirements—Resolution for partial planning—Development regulations must implement comprehensive plans (3)(d) — "...if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan...."

The Washington Administrative Code, **WAC 365-196 Growth Management Act—Procedural criteria for adopting comprehensive plans and development regulations**, further describes this (again, our emphases):

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

WAC 365-196-500(3) Internal consistency. — “The development regulations must be internally consistent and be consistent with and implement the comprehensive plan.”

WAC 365-196-800(1) Relationship between development regulations and comprehensive plans. — “... Development regulations must be consistent with and implement comprehensive plans adopted pursuant to the act...”

WAC 365-196-810 Review for consistency when adopting development regulations. (1) — “When adopting any development regulation intended to carry out a comprehensive plan, the proposing county or city should review its terms to ensure it is consistent with and implements the comprehensive plan...”

The King County Council has left KCCP Policy **R-513** *unchanged* since 2008—including through its months of deliberations on the 2020 Mid-Point Update and final approval in July 2020.

We seek the County’s rejection of the recommendations of the **CRSIM Study** and enforcement of the provisions of Policy **R-513**. We recommend the Council refer to the Hearing Examiner the matter of rezoning the site back to its *original* RA-5 land-use and zoning designations. Further, **the County should use KCCP Policy R-513 as the mechanism to restrict any use of this property to only those industrial uses that are consistent with a continuation of the pre-existing materials recycling operation (e.g., Sunset Materials) in use at the time the policy was conceived.**

KCCP Policy R-514

Further, KCCP Policy **R-514** applies to new industrial development in the Rural Area:

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;**
- 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, shall be reduced in size to avoid the need for public funding of the infrastructure.**

As **highlighted** above, “(d) evelopment regulations for new industrial development in the Rural Area shall require” ... “[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 LI grading permit application was determined to be complete by KC DPER (now DLS-P) and, thus, vested under then-existing rules and regulations, was November 14, 2018. The proposed asphalt facility therefore, is a *new* industrial use and/or development that must meet and qualify under all applicable provisions of the 2016 Comprehensive Plan (s updated in 2018) 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, p. 3-37]. **The County’s CRISM Study – Response to Ordinance 18611 (Moratorium)** cites this policy, but did not recognize the express details therein.

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

The above-cited KCCP policies—R-513 and R-514—provide necessary and sufficient rationale for not allowing LIs' proposed move of it Asphalt Facility from the City of Covington inside the Urban Growth Area (UGA) to the Rural Area along the Cedar River.

KCCP Policy R-515

Finally, we wish to point out the tortured wording (i.e., missing commas, missing parentheses, and poor use of words) of KC Policy **R-515** is easily prone to multiple readings. This apparently is why LI in its responses stated: *"The referenced public comments on these issues are based on a misreading of the Comprehensive Plan."* We acknowledge our reading, as described in our past comments, is not how the County reads it. However, many at the County have told us the wording should be changed. That all said, our *Rebuttal* herein does not rely on KCCP policy **R-515**]

Conclusions

We strongly take issue and expressly disagree with LIs' "brush-off" of our multiple detailed comment letters that were based on deep research of documents cited therein. Yes, we did correctly cite multiple key KCCP Policies. No, the *County's Cedar River Rural Industrial Study – Response to Ordinance 18611 (Moratorium)* did not "address and resolve" all "Comprehensive Plan and Zoning issues," as we cite clearly herein.

King County must proceed promptly with 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* to the King County Landmarks Commission:

"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." (p. 1)

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.**

We consider LIs' proposal to constitute a major project having a significant adverse effect on the environment. **The likelihood that an EIS should and needs to be prepared is substantial; accordingly, the Optional DNS/MDNS Process is inappropriate for compliance with SEPA.**

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.**

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

To date all of the above seems to have been overlooked and/or evaded by KC officials without explanation. 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 and R-514 expressly relate to, and impose restrictions on, the "use" of land, e.g., for a new asphalt facility. We strongly urge the KC Prosecuting Attorneys' Office be fully consulted on this.**

Finally, we conclude the County's *Cedar River Rural Industrial Study – Response to Ordinance 18611 (Moratorium)* clearly erred in completely ignoring KCCP Policy **R-513** and provided no explanation for doing so:

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.

The proposed move of an Asphalt Facility to the site in question constitutes a “*new industrial use(s) in the Rural Area*” and, thus, is outright disallowed by KCCP Policy **R-513**. The wording of **R-513** is clear, precise, and unambiguous.

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

Critical Areas Issues

TOPIC: "Critical Areas:

- *Plant will result in adverse impacts to Cedar River environment, specifically contamination from chemicals entering the water system from air particulates (fumes and vehicles) and chemical leaching.*
- *Spill or leak will likely contaminate the water system because the groundwater in the area is very shallow, wetlands and culvert are present, and the Plant is located within the Cedar River Floodplain.*
- *SEPA failed to identify wildlife that will be adversely impacted, e.g., salmon, bald eagles, orcas, bears, bees, etc.*
- *Cedar River Trail will be adversely impacted, including from potential pollution as well as access and parking availability.*
- *Steep slopes pose a significant risk of mudslides and landslides.*
- *Classification as a steep slope, erosion hazard, and seismic hazard area merit an EIS.*
- *Plant is contrary to protective and costly efforts to preserve and enhance the Cedar River.*
- *Adverse impacts to economic profits from recreation.*
- *AESI's opinion is valid, but DPER needs to review stormwater plan for BMP compliance. Need to develop SWPP and Spill Plan.*
- *The culvert under SR 169 at Stream C should be made fish passable. More information is required to assess the culvert conveying Stream B under SR 169."*

LAKESIDE INDUSTRIES' RESPONSE:

- *The proposed development will improve water quality by treating all stormwater discharged from pollutant generating surfaces, consistent with all current stormwater requirements. The site will be paved in order to capture all stormwater discharge, prevent pollutant discharge to surface water and prevent untreated infiltration to groundwater. As a result of the project, the amount of impervious surfaces at the site will be reduced by more than 6 acres. The total existing impervious area will be reduced by 42%. The water treatment infrastructure will include lined biofilter swales, oil/water separators, detention vault, a large sand filter, and an infiltration gallery. This treatment system will provide "enhanced basic" treatment for all stormwater discharged from pollutant generating surfaces before being released into the environment.*
- *The entire development area and most of the existing critical area buffers, are currently unvegetated and, therefore, unable to support most wildlife species, including those mentioned in the public comments. The proposed development will incorporate buffers consistent with King County Code (KCC). Please refer to the Critical Areas Report (CAR) by The Watershed Company dated September, 2018 and revised June, 2020. Buffer areas will be restored by regrading to amend the compacted and degraded soils and planting to establish a dense native vegetation community, including trees, shrubs, and groundcover. These plantings will be monitored over a three-year period to ensure successful establishment of all buffer areas. These buffers will significantly improve ecological functions, including wildlife habitat availability on-site for all critical areas and better connect the on-site critical areas with the surrounding forested region. This is consistent with the County's efforts to improve fish and wildlife habitat and ecological functions.*
- *The proposed development is not anticipated to alter trail access, trail use or current parking availability.*
- *Geologic hazard areas were evaluated in AESI's Critical Areas Assessment dated October 2, 2018 and its letter responding to King County Comments dated June 8, 2020. AESI's Assessment and Letter provide an assessment of landslide, steep slope, coal mine and erosion hazards. AESI described geologic hazards and proposed mitigation in its Assessment and Letter. A surface geologic map disclosing the extent of mass wasting deposits is included as Figure 3 in the 2018 Report. A map showing the approximate limits of a historic landslide area east of the proposed plant is included as Figure 4 of the 2018 Report. Steep slope hazards and recommended mitigations are described on pages 9 and 10 of the 2018 Report. Coal mine hazards are described on page 10 of the 2018 Report, and as documented in the Report the reviewed mine shaft maps "only showed workings beneath the slope of the property". No coal mine hazard mitigations were required for the proposed plant since there is no evidence mining activity occurred under the proposed development footprint. Seismic hazards are described on pages 10 and 11 of the 2018 Report. The analysis included an assessment of liquefaction potential and specifically recommended further study to evaluate "seismically induced settlement during a design-level earthquake". The analysis would be performed during the design phase of the project, and appropriate mitigations would be recommended as needed. The seismic hazards analysis included an evaluation of*

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

the potential for surface ground rupture due to currently active faults. There are no known active faults in the project area. Faults identified in documents contained in letter 82 are related to faulting of the Tertiary Renton Formation and have not be active for millions of years. The potential for surface ground rupture from active faulting impacting the project site was described on page 11 of the 2018 Report and was identified as low.

- *Regarding the culvert under SR 169 at Stream C, please see The Watershed Company Letter to Karen Deal dated June 4, 2020 and Critical Areas Report and Update, dated June 2020. Stream C is a Type N Stream. In addition, the referenced culvert is not connected directly to the Cedar River. A concrete box bridge will be placed at the south end of the culvert to accommodate the acceleration lane. The Stream B culvert is not located adjacent to, or in the immediate vicinity of, the project and no roadway modifications are proposed that would affect the culvert.”*

GMVUAC REBUTTAL:

Wildlife

LI claims there are no wildlife living on this site because of a lack of vegetation. Any resident from this community will tell you bald eagles use this plot to hunt on the river. They can be seen in the sky over this area daily. In addition to the many birds who call this area home, the immediately adjacent Maple Valley Heights neighborhood is home to bear, coyotes, bobcats, hare, badgers, deer, and many other wild creatures. This is why King County has invested significant time and money to restore the wetland area on the south side of the neighborhood. These creatures roam the woodland around the neighborhood, including the wooded area directly surrounding the proposed site. King County also has invested significant time and money to restore the wetland areas and ponds over wide areas of the adjacent Cedar River corridor. The entire area, including the proposed site, is natural feeding area for raptors (such as bald eagles) which capture salmon on the Cedar River. The proposed new Asphalt Facility will disturb and displace these important feeding and breeding activities. **Further industrial use of the proposed site will drive away the natural circulation of animal behaviors that may cause the natural rebuilding of subject site.**

While the efforts of LI to re-vegetate and re-connect wildlife habitats on the proposed site is to be applauded, it is not coupled with a transformation in equipment, buildings, parking structures, noise isolating structures and walls, product-creating processes (including transportation equipment and site loading machinery), and product safeguards needed to compliment and bring to fruition the desired intent. **In fact, the “buffer” areas proposed will not provide the type and scale of vegetation needed, and will not be deep enough to provide the functions needed, nor help support wildlife that frequent the area.**

In reviewing the The Watershed Company *Critical Areas Report (CAR)* updated June 2020, we found it limits itself to what can see as a matter of convenience on the proposed site, and within a given small radius. No observer time on site is given, nor what time of year. **In the CAR no evaluation of migratory birds is present, even though the proposed site is along an important flyway from mountain to sound.**

Looking at p. 4, fig. 2, of the *CAR* the study area used is exceedingly and unreasonable small, especially when we are dealing with migratory animals, many of which are seasonal travelers. A high percentage of the study site has been rendered barren by both LI and previous property owners, and kept so over time. **To look at how the site was actually used, and the wildlife present, we need to look at how the site was in its virgin state, or by comparison, also look at similar sites and how the wildlife used them. The “Cedar River Watershed Habitat Conservation Plan” by D. Gale et al., City of Seattle, April 2000, provides a very good explanation of the characteristics in play here as they relate to wildlife and their habitat.**

In past sets of Comments from both the GMVUAC and members of the Public there have been numerous citations to peer-reviewed studies and research on impacts to salmon and wildlife that could occur due to the siting of the proposed new Asphalt Facility. As those already are in the Public Record, we see no reason to cite them herein. That said, we call on King County’s scientists and specialists to carefully review such literature to understand the depth of such concerns expressed by the public and the potential long-term impacts.

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

Floodplain

Flood protection of the proposed site relies on a fragile Cedar River levy resting on unstable liquefaction susceptible soils and gravels, which **have had a recent history of frequent repair by King County.**

LI claims the area is in a 100-year flood plain and treating retention ponds will be enough to keep polluted runoff from entering the Cedar River. In reality, due to impacts from ever-accelerating human-caused climate change, this area currently is experiencing expensive and catastrophic flooding every five years or so—which will only get even worse in the future. During such flood events polluted runoff will *bypass* the retention pond systems and flow directly into the river endangering both people and the salmon who call the river home. **We cannot design for the last century, we must design for this century!**

Wetlands

Again in reviewing the The Watershed Company *Critical Areas Report (CAR)* updated June 2020, on p. 114, (or appendices p. 5, under “*D1.4 Characteristics of seasonal ponding or inundation*”) we find no information detailing when these seasonal events were measured. There is no consideration given in terms of what level of rainfall was received (and how long the event was and any break in the weather pattern) and discussion of the drainage patterns. Were these observations/measurements made after a week or so of rain in the winter (not unusual in the Maple Valley area) or during a long dry spell? **In the winter, over 25% of the property may be a seasonal wetland. In fact, in the not-too-distant past, the entire property likely was a wetland.**

On p.13, in the *CAR* under “*SC 2.0 Natural Heritage Wetlands,*” questions “*SC 2.1*” and “*SC 2.2*” about wetland area should be noted “*YES,*” instead of “*NO,*” as the area historically received water from Wetland 14 and, if properly restored and used, would be an important feeding zone for salmon and other wildlife. This area would receive many types of food source insect forms and naturally channel them through the wetland and into the river. Such an answer should trigger WA Natural Heritage Program/Department of Natural Resources (WNHP/DNR) review. Instead, **the *CAR* classified the wetland as receiving flows from only seeps and springs, and dismisses seasonal creek flows from above.** As mentioned herein under **Wildlife**, this is an important site relative to other potentially useful salmon feeding and rearing sites, as well as other animals and plants.

Beginning on p. 51 of the *CAR* we see “*Check List for Wetlands That May Need Additional Protection....*” in which all the boxes are checked “*NO.*” **This runs counter to what is regularly viewed and experienced by residents and visitors in the Cedar River canyon, such as raptor flyover’s and other wildlife feeding patterns—all dependent on these wetlands.**

Vegetation

In reviewing the The Watershed Company *Critical Areas Report (CAR)* updated June 2020, on p. 7 under “*H 1.1 Vegetation structure,*” a rating of “*0*” is given. Again, over the years the proposed site has been cleared, filled, and graded and most plant species killed off. These grounds are regularly maintained to clear or force off, or even kill, many plant and animal species (including potential descendants). Sections such as “*H 1.2. Hydroperiods*” and “*H 1.3. Richness of Plant Species*” are similarly impacted for reasons above. The web of life has been seriously disrupted and not allowed to re-emerge. **The location of the proposed site as a meandering turn against the Cedar River Canyon Rim, and the classes and lifecycles of plants and animals typically inside this geomorphology and climate, must be considered.**

Geologic Hazard Areas

[Please see elsewhere in this section (V.) our detailed **Rebuttal** on *Geologic Concerns.*]

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

Culvert

In LIs' Response to KC Comments, p. 5 under **F. 3.** it is stated:

3. Proposing a Contech Storm Chamber for the infiltration system. Contech Chamber is not an option in the 2016 KCSWDM. This will have to be reviewed and approved through a SWDM Variance Adjustment application.

RESPONSE: An adjustment application was submitted for approval on May 27, 2020.

We do not see a “SWDM Variance Adjustment application” posted. Such an application should be made available to the Public, as well as any response from KC DNRP/SWD (either approval or disapproval), along with its supporting rationale.

We are particularly concerned that exceeding the collection and processing capacity of the site by overwhelming volume, or reduction in capacity of “CP Separator/Pre-settling Vault/Sand Filter treatment train,” possibly due to age and/or lack of maintenance to peak-capacity standards (e.g. filtration gets plugged up like a used filter does) **results in overflows being diverted to the Cedar River.**

“The StormTech Chamber infiltration gallery consists of 176 SC-740 chambers (85.4” x 51” x 30”) confined within an envelope of clean crushed drain rock (46” thick), and is located under the pavement in the northeast portion of the project site. Drainage is released to the gallery following pre-treatment using a CP Separator/Pre-settling Vault/Sand Filter treatment train. The facility is sized to fully infiltrate 100-yr storm flows; however, an emergency overflow route is provided should flows exceed design or should infiltration performance diminish. This overflow route consists of pipe and open channel elements that will safely convey drainage to an 18” CMP culvert under highway SR 169 (Culvert 3), which discharges to the Cedar River. The infiltration gallery will be privately owned and maintained.” (see: TRIAD Job No. LKSD0000-0002 Report of October 2, 2018, “MAPLE VALLEY ASPHALT FACILITY TECHNICAL INFORMATION REPORT King County, Washington,” or “Technical Information Report”, p. 4-10)

The Stormtech Chamber infiltration gallery (the septic drain field, so to speak) was designed for a facility footprint of “6,490 square feet” (*Ibid.*, p. 4-10). The Stormtech installation design elevation is 168.73 feet. The Western WA Hydrology Model (WWHM) peak-water elevation for the facility is indicated as 166.92 feet (e.g., the top of the aquifer). This gives a distance of 1.81 feet above the water table (168.73 - 166.92 ft). As the water table rises, the drainage capacity (i.e., flowthrough rate) diminishes. **If the water table rises to the height of the Stormtech Chamber, flowthrough would substantially be reduced and odds of an overflow into the Cedar River (and surroundings) increased.**

The “cleared or graded” area of subject site is “12.59 acres” (see: “Site Information”, TRIAD Job # LKSD0000-0002 “Lakeside Industries, Inc. MAPLE VALLEY ASPHALT FACILITY King County, Washington”, sheet 1 of 32). 12.59 acres is 548,420 sq ft, so with an infiltration gallery designed area of “6,490 sq ft”, only ~1.2% of this area is being “treated” (by whatever efficiency that represents).

No maintenance condition is mentioned for “Infiltrations Facilities” when toxic or even lethal water soluble pollutants are discovered in the water (*Ibid.*, see *Technical Information Report pp. A-3 to A-4*). A similar condition exists for “NO. 19 – SAND FILTER POND” (*Ibid.*, p. A-26), where the “Contamination and pollution” condition indicates “Condition of Maintenance is Needed” when “Any evidence of contaminants or pollution such as oil, gasoline, concrete slurries or paint,” and where “Results Expected When Maintenance is Performed,” then becomes “Materials removed and disposed of according to applicable regulations. Source control BMPs implemented if appropriate. No contaminants present other than surface film.” **No testing is conducted as to drinking quality safety of water and possible additional treatment needed (note water is to be discharged into close proximity aquifer). King County must require such testing.**

The design condition for 8.5-ac “rational method” system is “1.5 X 10 yr 24 hr” storm event, with precipitation at 4.5 in and runoff volume of 934,788 gal, with duration of 1440 min and precipitation intensity of 0.19 in per hr produces a flow volume of 649 gpm (*Ibid.*, see *Technical Information Report at page 60*). It is stated that:

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

*“(a)dditionally, a Storm Water Pollution Prevention Plan (SWPPP) will be prepared as an element of the required NPDES Construction Discharge permit, administered through the Department of Ecology” (Ibid., page 7-2). **How will such overflow discharges into the Cedar River for 10-yr or greater storms (which are getting more frequent than 10 years), and especially if combined with earthquake events where significant discharges of contaminants (e.g., from rupturing fuel tanks and reservoirs) be handled?***

Clear Water Services *“Project No. 18DEA2 550-GPM TREATMENT SYSTEM PROCESS FLOW DIAGRAM” (Ibid, p. 128)* indicates the pretreatment and filter pumps rely on motor-driven pumps. If these pumps are electric, will emergency *“standby electric power”* be supplied? If these are engine driven pumps, will service personnel and emergency start-up be supplied? In both cases, how will monitoring services be supplied, along with emergency protocols, such that the system will never be overloaded, nor contaminate the Cedar River? Liability for contamination is the responsibility of site owner as *“All storm drainage facilities serving the project site are to be privately maintained and operated.” (op. cit. above).*

Industry-wide recognized hazards for operation of the proposed Asphalt Facility are across a much larger area than even the 12.59 ac identified. The limited surface water skimming and clarification by *“Separator/Pre-settling Vault/Sand Filter treatment train”* seems only designed for a footprint close to the facility itself. **Due to such undersizing, water that makes its way across all other areas—parking lot, storage areas (including used asphalt and crushed asphalt, and gravels, etc.), parked vehicles and equipment, and storage tanks and storage buildings and their transfer points (including asphalts, fuels, greases, oils, paints, etc.)—will drain away to the Cedar River and its surroundings.**

Clearly, not contaminating the Cedar River seems impossible, as contaminating the Cedar River is part of system design.

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

Emissions/Health Issues

TOPIC: “Emissions/Health:

- Some asphalt fumes are carcinogenic and injurious to health (cite to studies).
- Air quality will be compromised and adversely impact residents.
- Fumes will compound existing adverse impacts from Cedar Hills Composting Site.
- Unique topography of the site creates an enclosed environment that traps fumes and pollutants resulting in a thermocline and acid rain.
- Notes complaints from other Lakeside facility re emissions.
- Increase in traffic will generate additional emissions that will adversely impact health.”

LAKESIDE INDUSTRIES’ RESPONSE:

- “Lakeside’s portable hot mix asphalt (HMA) plant is permitted by Puget Sound Clean Air Agency (PSCAA) for operation at Covington location. Emissions evaluations and testing demonstrate no issues with air pollutants. PSCAA rules for moving a portable HMA plant do not require re-permitting or modeling. However, a new modeling analysis was done for the proposed Maple Valley location, identical to what would be submitted to PSCAA for a new permit. The new analysis also indicates no issues with air pollutants. If the portable HMA plant were applying for an air permit from PSCAA, it is highly likely that it would receive a permit, similar to the permit for Lakeside’s Covington location.
- There are different types of asphalt. The International Agency for Research on Cancer (IARC) determined that “occupational exposures to straight-run bitumens and their emissions during road paving are possibly carcinogenic to humans” (IARC, 2013). Exposures in areas surrounding an HMA plant will be considerably less than an occupational exposure. Thus, PSCAA issues permits for HMA plants, including Lakeside Industries’ portable HMA plant proposed for relocation from Covington to Maple Valley, since there is no issue with air pollutants.
- The proposed portable HMA plant is not expected to cause any adverse impacts, including odor or health impacts, to the areas surrounding the facility. At the SR 169 site, loading trucks will be in an enclosed area below the silos where emissions will be captured and processed. Trucks leaving the site will be required to cover loads.
- Every HMA facility incorporates varying air emission control technologies; however, the production process is generally the same. The portable HMA plant proposed for relocation from Covington to Maple Valley is a state-of-the-art facility and was permitted by PSCAA after being subjected to one of the most stringent minor-source air emissions permitting programs in the country.
- The change in use of the site will increase traffic along SR 169, but the increase will be a small fraction of the existing traffic and, therefore, additional emissions from vehicles operating on SR 169 will be insignificant.”

GMVUAC REBUTTAL:

Emissions

LI, instead of addressing the real concerns the community has regarding the release of toxic asphalt fumes that are known to cause cancer in humans, focuses *solely* on the assumption it will not need to apply for a new permit from the PSCAA, and even if it does, it likely will be approved. **What a blatant and wanton disregard for Public health!**

We confirmed with PSCAA that LI would be eligible to use its current permit even in the new location much closer to the residential area than their current site, *only if* there are no changes made to the facilities equipment or it’s configuration. **Thus, any changes would trigger the need for a new permit. A new permit and analysis will also be needed should King County require an EIS, which it most certainly should based on the many arguments put forth in the rebuttal herein.**

LI states large diesel trucks will emit more air pollutants than the site currently does, but this would have minimal impact on the residents or wildlife. LI does not take into consideration the *combined* impact these diesel trucks will

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

have, along with both their exposed load-releasing asphalt fumes and the emissions from the facility itself. This itself should be enough to require an EIS to be completed. LI claims its trucks leaving the facility would be required to cover their loads to reduce impact, but these trucks will not be owned directly by LI, therefore LI has no authority to require these trucks to cover their loads, rendering LIs' claim useless.

LI states: "...a new modeling analysis was done for the proposed Maple Valley location, identical to what would be submitted to PSCAA for a new permit." Where is a description of that modeling: type of model used, inputs, conditions imposed, results, etc.?

LI further states: "*The new analysis also indicates no issues with air pollutants.*" This statement might lead people to believe there are virtually no air pollutants. However, according to the Washington State Department of Ecology, *Technical Support Document for the Asphalt Plant (Portable and Stationary)*, dated January 25, 2011, for drum mix, there are several Toxic Air Pollutants (TAP) that are emitted. **While such air pollutants may not exceed EPA "acceptable" limits, that doesn't mean they are not harmful to people and wildlife. In fact, some of these air pollutants have cumulative effects that are not expelled by the body and, thus, must be assessed to protect human health.**

LI states: "*If the portable HMA plant were applying for an air permit from PSCAA, it is highly likely that it would receive a permit, similar to the permit for Lakeside's Covington location.*" "Highly likely" is not acceptable from a legal standpoint. If there is any doubt this new Asphalt Facility constructed on the Rural Area site proposed would have any difference in permit conditions, restrictions, etc., no matter how small, then a new permit should be required. **In fact, the topographical, meteorological and atmospheric conditions of the proposed site, being in a canyon, differ markedly from the Covington location that would necessitate changed and additional conditions being placed upon the new Asphalt Facility.**

Health

Siting of the proposed Asphalt Facility at the floor of a narrow canyon, with many residents living the above as well as adjacently along the canyon walls, and have unhealthy fumes routinely captured by the canyon walls and by temperature inversions such that concentrations continue to rise above published "occupational exposure limits" will be very dangerous to the health of local residents.

The young and the elderly especially are at risk. Even higher risks go to those who have respiratory issues. There are no area-wide population studies on health affects related to the proposed Asphalt Facility. Such studies should be required and should cover an area representing at least a six-mile radius, while the 3-mile radius study area is suitable for less obtrusive cases, such as Cedar Grove Composting odors particularly due to local temperature inversions (see: *Gingrasso, et al. v. Cedar Grove Composting Facility, Inc., Washington State Sup. Ct. Case No.: 15-2-22623-1 KNT*).

Asphalt production facilities can create a toxic plume around them that settles onto the ground and can create harmful amounts of contamination build-up, which can impact the soils suitability for agricultural farming and grazing uses (see: A.U. Itodo, M Ubimago, and R. A. Wuana, "*Environmental Impact of Abandoned Asphalt Production Site on Soil, Water and Vegetables from Near Farmlands*", *Journal of Geoscience and Environment Protection*, 2018, 6, 107-122, ISSN [Online] 2327-4344. Available: https://file.scirp.org/pdf/GEP_2018032914400455.pdf). This study measured the presence of cadmium and lead, among other toxic substances. **The presence of such carcinogenic substances such as these are of grave concern.**

LIs' proposed Asphalt Facility will not capture and process volatiles and, thus, they will be discharged freely into the air. The only filtration proposed is to catch loose dust through a staged dust-filtration system when processing gravels and sands, where they are mixed with asphalt(s), oils, and other modifiers consistent with the needs of the customer and the gases generated therefrom are freely discharged. There is no condensing and catalytic conversion system or filtration system for treating and collecting the volatiles. There is no collection system for capturing dusts and volatiles when the material is discharged into loading containers and vehicles. There is no collection system when asphalt is transported on trucks and/or trailers, only "covered" at the option of the vehicle operator and, even if covered, will not hold in the volatiles, as there are many gas leaking points in the truck structure and around and through any covering. **These represent major omissions.**

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

Public Safety

The *Safety Data Sheet for Hot Mix Asphalt*, which conforms to HazCom 2012 (see: https://www.lehighhanson.com/docs/default-source/safety-data-sheets/sds-hot-mix-asphalt.pdf?sfvrsn=7a0a4c5e_4), include the following:

“May cause cancer by inhalation

Causes damage to organs (lungs/respiratory system) through prolonged or repeated exposure (inhalation)

This product is a mixture or liquid asphalt and aggregates. Aggregates may contain variable degrees of Respirable Crystalline Silica (RCS) which may cause cancer. Repeated inhalation of respirable crystalline silica (quartz) may cause lung cancer according to IARC and NTP; ACGIH states that it is a suspected cause of cancer. Other forms of RCS (e.g., tridymite and cristobalite) may also be present or formed under certain industrial processes. Release of silica should only occur if product is hammered, ground, or otherwise broken/damaged.

Most important symptoms/effects, acute and delayed

Direct contact can product thermal burns. If ingested, Hot Mix Asphalt may be absorbed by the gastrointestinal tract with possible systemic effects (gastrointestinal irritation, vomiting, diarrhea, and CNS depression) and possible aspiration into the lungs. Inhaling dust may cause discomfort in the chest, shortness of breath, and coughing. Prolonged inhalation may cause chronic health effects. This product contains crystalline silica. Prolonged or repeated inhalation of respirable crystalline silica liberated from this product can cause silicosis, and may cause cancer. Inhalation of vapor when product is heated can cause headache, nausea and respiratory tract irritation, and nervousness due to the formation of hydrogen sulfide gas. Inhalation of hydrogen sulfide gas can cause upper respiratory tract irritation and, if exposure if prolonged at levels above the occupational exposure limits, pulmonary edema and even coma or death.

Inhalation

Repeated inhalation of respirable crystalline silica (quartz) may cause silicosis, a fibrosis (scarring) of the lungs. Silicosis is irreversible and may be fatal. Silicosis increases the risk of contracting pulmonary tuberculosis. Some studies suggest that repeated inhalation of respirable crystalline silica may cause other adverse health effects including lung and kidney cancer.”

Rural Area residents (and wildlife) should not be subject to such concerns simply so that a private business can make profits at the Public's expense!

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

Geological Concerns

TOPIC: “Geologic Concerns:

- Coal mining activity undermined the soil and lands thereby creating instability, which is worsened by the presence of fault lines and likelihood of earthquakes.
- Inquiry whether site is within an earthquake liquefaction zone and there is adequate mitigation.”

LAKESIDE INDUSTRIES’ RESPONSE:

- “Geologic hazard areas were evaluated in AESI’s Critical Area Assessment dated October 2, 2018 and AESI’s letter responding to King County Comments dated June 8, 2020.
- Coal Mine hazards are described on page 10 of the 2018 Assessment, and as documented in the Assessment the reviewed mine shaft maps “only showed workings beneath the slope of the property”. No coal mine hazard mitigations were required for the proposed plant since there is no evidence mining activity occurred under the proposed development footprint.
- Seismic hazards are described on pages 10 and 11 of the 2018 Assessment. The analysis included an assessment of liquefaction potential and specifically recommended further study to evaluate “seismically induced settlement during a design-level earthquake.” The analysis would be performed during the design phase of the project, and appropriate mitigations would be recommended as needed. The seismic hazards analysis included an evaluation of the potential for surface ground rupture due to currently active faults. There are no known active faults in the project area. Faults identified in documents contained in comment letter #82 are related to faulting of the Tertiary Renton Formation and have not be active for millions of years. The potential for surface ground rupture from active faulting impacting the project site was described on page 11 of the 2018 Assessment and was identified as low.”

GMVUAC REBUTTAL:

We have serious concerns due to the significant geologic risks and hazards associated with the proposed site location including, at a minimum, seismic, erosion, steep slope/landslide, and underlying abandoned coal mines.

Seismic Hazards

The proposed site is located in the Puget Lowland, a region with a substantial seismic hazard, which has experienced at least four past surface ruptures indicating moderate to large earthquakes in the last 3,500 years with the most recent between 380 and 940 years ago (see: “Diverse rupture modes for surface-deforming upper plate earthquakes in the southern Puget Lowland of Washington State”, by Alan R. Nelson et al.; Geological Hazards Science Center, USGS, MS966, PO Box 25406, Denver, CO 80225, USA; © 2014 Geological Society of America). **Mapping indicates an earthquake on the Seattle Fault could have an intensity of Magnitude 8 within the Cedar River canyon** (see: “Information Regarding Geologic Faults and Folds, Liquefaction, Seismic Risk, Landslides, and Coal Mines. Washington Department of Natural Resources Washington Geologic Information Portal. <https://geologyportal.dnr.wa.gov/>”).

KC’s Department of Natural Resources & Parks / Solid Waste Division, in its evaluation of the Cedar Hills Regional Landfill (in relative close proximity to the proposed site), classifies this region’s seismic hazard as “*substantial*” (*ibid*), while LIs’ Consultant assesses risk as “*low*.” **These are major discrepancies.**

In Associated Earth Sciences’ “Revised Critical Areas Assessment” October 18, 2018, it was indicated the potential for liquefaction due to poor soils structure and relatively high levels of water found in monitoring wells. **Given there will be several storage structures on-site for volatile and toxic fluids and compounds, there is high potential for uncontrolled spills and migration thereof off-site during an earthquake event.**

The hazards on the site cannot be readily addressed with minor engineering solutions. Rather, the site needs a full geotechnical investigation that would require borings above and below the slope to determine the stratigraphy of geologic deposits and their potential for movement.

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

Erosion Hazards

In Associated Earth Sciences' "Revised Critical Areas Assessment" October 18, 2018, it unequivocally states:

"The sloping portions of the property ... have a high risk of erosion and classify as erosion hazard areas. These areas are underlain by Alderwood and Kitsap soils (AkF) on 25 to 70 percent slopes derived from glacial till and glacial lake deposits." (p. 6)

Alderwood and Kitsap soils (AkF) specifically are listed in KC Code **21A.06.415 Erosion hazard area** as *"classified as having a severe to very severe erosion hazard...."* Incredibly, AES states: *"(i)n our opinion, this portion of the site has a low risk of erosion"* (p. 7). However, the facts and data show the proposed site is near steep canyon walls and contains **unstable soils that possess a high potential for movement, especially during an earthquake event or simply during routine high-rainfall events. Either event would tend to lower the strengths of the underlying soils.**

In *Surficial Geologic Map of the Maple Valley Quadrangle, King County, Washington, Miscellaneous Field Studies Map 2297, 1995, D.B. Booth, <https://doi.org/10.3133/mf2297>* detailed the classes of soils present on and around the proposed site. It is clearly stated that: *"(d)eposits...include abundant discrete landslides 1-10 m in lateral extent."* **Such movements—which could even be triggered by routine heavy rain events—in excess of 30 ft would be catastrophic on the site and its infrastructure containing storage of volatile and toxic materials.**

Steep Slope / Landslide Hazards

In Associated Earth Sciences' "Revised Critical Areas Assessment" October 18, 2018, it was made clear that there can be no *"guarantee of stable slopes"* (p. 2). This sobering statement should be of no surprise given the *"(s)teep, undeveloped north to northwest-facing slopes up to approximately 320 feet tall with gradients of between 20 and 75 percent"* (p. 2). AES also documented its observations of areas of vegetation and areas of concern where little vegetation was present to provide structural support to the slopes.

AES observed *"slope gradients exceed 40 percent and the slope heights range from about 200 feet to over 300 feet"* (p. 9), classified by the County as a *"steep slope hazard area"* as it exhibits *"an area on a slope of forty percent inclination or more within a vertical elevation change of at least ten feet"* (see: KC Code **21A.06.1230**).

AES observed *"site classifies as a seismic hazard area, and further study should be done to evaluate the probability and magnitude of seismically induced settlement"* (p. 11) This could cause extensive damage due to liquefaction of the geologic deposits underlying the proposed construction site. The materials are a combination of fill and alluvium with a large percentage of coarse material (e.g., sand and gravel) and low amounts of clay. The AES pit logs show high water tables and moderate to severe caving of the side walls. This indicates a lack of soil cohesion. **The factors of coarse textures, poor cohesion, and high water tables all increase the potential for liquefaction during a seismic event.**

In the past there has been slope movement (or mass movement) down the steep slopes—common called mass wasting. The mapped of which at the base of the slope with outwash material sitting at higher elevations shows a significant risk. Future conditions with climate change indicate that "statistically significant positive trends in various metrics of extreme precipitation" are shown for our region (see: Rath et al., 2017). Combining the risk factors of unstable deposits, abandoned coal mine shafts, and increasing wetness precludes accepting that the risk of landslides is low.

Underlying Coal Mine Hazards

The area, in general, and the proposed site, in particular, possessed past active coal mines for many years. All those coal mine shafts were excavated prior to the imposition of modern safety standards and are subject to collapse. In fact, we have documented in past Comments the proposed site historically contained many coal

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

mines, especially those operated by Pacific Coast Coal Company—see: *Pacific Coast Coal Co., Bulletin of March 1, 1931, p. 9:*



AES surmised through its review of maps and information that:

“...the entrance of the New Black Diamond Mine also known as the Indian Mine owned and operated by the Pacific Coast Coal Company was located on this property. The maps indicate two openings located near the base of the southern slope at the west and east ends of the “bench.” The maps show the mine entrances extending into the hillside to the southwest and southeast, respectively, and extending offsite.” (p. 10)

Based on this abbreviated review of the information, AES provided its *“opinion”* that:

“...eventual development will not be underlain by the abandoned subsurface coal mine workings. The mine shaft maps that we reviewed only showed workings beneath the slope of the property, therefore development of the lower regions of the site should be unaffected.” (p. 10)

When making a *“forever”* decision about the proposed Asphalt Facility to be sited along the Cedar River directly under a >300-ft cliff, one cannot rely on *“opinion,”* but rather hard facts and data, deep research, and supporting modeling and analyses to make any assessment of such risks.

Clearly, from AES’ assessment—and our review of the available maps, etc.—that it is not known what effects such mining has had on the steep slopes directly above the mine shafts identified by AES above. **The combination of the underlying coal mine shafts and tunnels, the steep hazardous slopes, and the poorly structured soils could very well be a disaster waiting to happen under normal circumstance (e.g., successive heavy rain events), let alone an earthquake event.**

Conclusions

We conclude that an EIS must be conducted to assess the seismic, erosion, steep slope/landslide, and underlying abandoned coal mine risks, both individually and in the combination, to understand the severity thereof and to determine what, if any, mitigations are even possible to ensure Public safety and protection of the surrounding environs.

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

Odor Issues and PSCAA Permits Needed

(We've combined these two Topics in this detailed rebuttal)

TOPICS:

“Odor Issues:

- *Odor from Cedar Hills Composting Site is already present and injurious, and will be enhanced by Plant.*
- *Listed complaints re odors generated by a “similar Lakeside facility.”*
- *Topography of the site will enhance adverse impacts.”*

“PSCAA Permits Needed:

- *The plant is not “portable” and therefore additional air permits are required.”*

LAKESIDE INDUSTRIES' RESPONSES:

- *See response to Emissions/Health. Moreover, the Lakeside proposal includes enclosing the truck loading area at the plant and requiring all trucks leaving the site with asphalt to have covers on truck beds.*
- *The plant is portable by design and was properly permitted in accordance with PSCAA regulations.”*

GMVUAC REBUTTALS:

Controlling Odors/Emissions

No asphalt facility can contain *all* odors and emissions, unless fully enclosed, with proper venting and filtering. All asphalt facilities will have some fugitive emissions. According to the Washington State Department of Ecology (DOE), *Technical Support Document for the Asphalt Plant (Portable and Stationary)*, dated January 25, 2011, there are multiple fugitive emission sources at a batch mix facility. They include, but are not limited to aggregate storage piles and bins, conveyor belts, hoppers at the ends of the conveyor belts, the hot asphalt cement storage tank, truck load-out, truck traffic on haul roads, the hot mix asphalt mixer, the hot mix asphalt storage tank, the RAP bin and conveyor, and yard emissions.

The large volume of semi trucks loaded with asphalt is not *“insignificant”*. Not only will the facility have odors and emissions, the trucks themselves, even if covered, will produce both asphalt odors and truck exhaust. Further, covering, if even enforced by LIs' contractors or KC, will not overcome the fact that those covers are not sealed along all the edges and, thus, odors and emissions can and will escape. The presence of that many asphalt trucks along SR-169 and all ancillary routes will spread odors throughout the Cedar River canyon.

PSCAA Permits/Regulations

The analyses in the documentation reviewed assume the proposed Asphalt Facility will operate optimally and within the regulations set forth by PSCAA. There are many conditions that may cause a facility to not operate optimally, e.g., parts failure, operator error, etc. Since the permit only would require source compliance testing at the time of initial installation and, then, every 5 years after that for emissions, there is a lot of room for non-compliance. For asphalt facilities there is typically only an annual inspection by PSCAA personnel. An asphalt facility's emissions are not tested specifically for toxic or hazardous air pollutants (TAPs or HAPs) because DOE has determined, in general, the levels are within the ASIL's (Acceptable Source Impact Levels). As such, rules are set forth to test for only criteria pollutants (NO_x [Nitrogen Oxide], SO₂ [Sulfur Oxides], CO [Carbon Monoxide], and Particulate matters [e.g., smaller than 2.5 microns, 10 microns, and total suspended particulates] *ibid*, p. 6) and opacity of emissions. **The assumption for this is that such facilities all operate within the regulatory limitations set up by DOE and PSCAA.**

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

During 2018, a violation occurred at the current location of LI's Asphalt Facility in the City of Covington, when an inspector recorded 21 times within a 3-hr period where visible emissions from the storage tanks were observed. There is no way to know how long this violation had occurred prior to the inspection. Only because an inspector happened to be there was it recorded. If it were to happen several times during the year, there would be no record. **When a facility exceeds the limitations written in the PSCAA permit, and given that PSCAA assumes that visible emissions limits also relate to the presence (and increase) of toxic air pollutants, then one could conclude that a violation would also exceed the emissions for the TAP's and HAP's.**

Unfortunately, for the public and the environment, an asphalt facility basically is *self regulating*, except for the annual PSCAA inspection and the 5-yr compliance testing. The public may really never know how many times a facility exceeds its regulatory limitations or what and how many toxins are truly emitted. Of the 24 TAP's listed (*ibid*, p. 7), 12 of them are considered either hazardous or very toxic to aquatic life, with some being classified as having long term effects. **Given the proximity to the Cedar River, where the County is spending millions to restore the salmon habitat to bring back the salmon runs, an EIS should be done to assess the impact of any and all of these chemicals.**

The ASIL's associated with TAPs that DOE has cited are associated with human health and harm. However, ASIL's for salmon and aquatic life may be much lower, so again, an EIS is needed for assessment.

PSCAA Regulation I, ARTICLE 9: EMISSION STANDARDS, SECTION 9.11 EMISSION OF AIR CONTAMINANT: DETRIMENT TO PERSON OR PROPERTY Adopted 03/13/68 (12) Revised 06/09/83 (536), 03/11/99 (882) states (our **emphases**):

“(a) It shall be unlawful for any person to cause or allow the emission of any air contaminant in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.”

PSCAA must enforce such regulations on any proposed Asphalt Facility relocation by LI and not support its so-called “portability” argument (see below).

“Portability”

Regarding PSCAA permits needed and the “portability” claimed by LI, please see our rebuttal in the Section **IV. REBUTTAL TABLE** under the “Emissions/Health” topic. We did communicate with PSCAA Engineering Manager, John Dawson, who stated the following regarding “portability”:

“Agency regulations do not define the term “portable.” As a matter of interpretation of Agency Regulation I, Section 6.03(b)(3) Agency generally looks at it in a case-by-case basis but, that some features of portability have to be present to qualify for using the exemption. While not necessarily limited to this list features of portability include things such as: equipment equipped with wheels, tow hitches, being set on skids, and modularity that allows for a reduced amount of effort to move a plant in comparison to plants without such features....A company would inform the Agency whether they view the equipment as portable but, the Agency makes the determination as to whether the criteria in 6.03(b)(3) have been met sufficient to claim the exemption.”

Thus, “portability” is not formally defined by the PSCAA, yet it makes such determination based, in part, on what an applicant states. The County should question this process, since it is not based on hard and fast rules, but human judgement only.

In fact, **RCW 70A.15 Washington Clean Air Act** (dispositioned from **RCW 70.94**) does not include any definition of “portable source” and that the administrative definition expressly provides that to legally constitute a “portable source” an asphalt plant must factually be “portable.” **Again, there are both temporal and mobility components incorporated in such a factual determination, and as a matter of fact, the proposed Lakeside Industries' Asphalt Facility is not a portable source.**

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

LI asserts its original Notice of Construction for the Asphalt Facility proposed to be constructed on its SR 169 property identified this facility as a “portable asphalt batch plant,” and, thus, should now be exempt from obtaining a new Notice of Construction from the PSCAA. We urge the County to consult with the PSCAA to re-examine a critical issue of whether the proposed construction and operation of the subject Asphalt Facility is both factually and legally exempt from the requirement to obtain a new Notice of Construction in accordance with PSCAA Regulation I, § 6.03(b).

Further, from LI (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.”*

As we cited earlier (*Portable Asphalt Mixing Plant*, 2016 @ Aimix Group Co., Ltd. Construction Machinery Manufacturer) in the Section IV. **REBUTTAL TABLE** under the *Emissions/Health* topic: “...*the installation of small asphalt plant[s]...can be accomplished in four hours...*”, not “6-8 months,” as LI states above. **Clearly, the LI Asphalt Facility is not to be considered “portable,” and, thus, PSCAA will have to address the issuance of permits accordingly.**

To summarize:

Based on LIs’ own admission, **the existing Asphalt Facility is a permanent, stationary source** that is proposed over a **6 - 8 mo period to be deconstructed** at its present location and **then reconstructed** at and on its new permanent location on SR-169.

Based on temporal and mobility standards, **the existing Asphalt Facility is not in fact portable**. Accordingly, as a matter of law, **it is not exempt from the requirement to obtain a new Notice of Construction from the PSCAA**. We cite:

RCW 70A.15.2210 Notice may be required of construction of proposed new contaminant source—Submission of plans—Approval, disapproval—Emission control (dispositioned from **RCW 70.94.152**):

(3) Within thirty days of receipt of a notice of construction application, the department of ecology or board may require, as a condition precedent to the establishment of the new source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary to determine whether the proposed new source will be in accord with applicable rules and regulations in force under this chapter. If on the basis of plans, specifications, or other information required under this section the department of ecology or board determines that the proposed new source will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted under this chapter, it shall issue an order denying permission to establish the new source.

(4) The determination required under subsection (3) of this section shall include a determination of whether the operation of the new air contaminant source at the location proposed will cause any ambient air quality standard to be exceeded.

This issue must be resolved in consultation with the PSCAA in order to provide and ensure the greatest protection to air quality and human health. We cite:

RCW 70A.15.1005 Declaration of public policies and purpose. (dispositioned from **RCW 70.94.011**):
“...to provide for the use of all known, available, and reasonable methods to reduce, prevent, and control air pollution...It is the intent of the legislature that air pollution goals be incorporated in the missions and actions of state agencies.”

The County has the power invested in it by the State to protect the Public. We cite:

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

RCW 70A.15.3040 Powers and rights of governmental units and persons are not limited by act or recommendations. (dispositioned from **RCW 70.94.370**):

“No provision of this chapter or any recommendation of the state board or of any local or regional air pollution program is a limitation:

(1) On the power of any city, town or county to declare, prohibit and abate nuisances.

....

(4) On the right of any person to maintain at any time any appropriate action for relief against any air pollution.”

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

Traffic Issues

TOPIC: *“Traffic:*

- *Increase in vehicles trips and traffic will generate pollution (emissions and oil from vehicles) that will adversely impact the residents and environment.*
- *SR 169 is already very dangerous and trip generated by the Plant will increase danger.”*
- *Insufficient improvements to deal with additional traffic will create dangerous driving conditions.*
- *Cedar River trail access and popularity creates a traffic and parking overflow issue that will exacerbated by plant. Proposal to construct acceleration lane and improvements will further adversely impact traffic and parking and is incompatible with the SMA. Could set dangerous precedent to allow siting of more facilities within the shoreline.*
- *Traffic analysis improperly discounts trips from previous Sunset Materials facility, and information provided by Lakeside to evaluate trip distribution should be verified - a supplemental report should be prepared.*
- *Discrete request for response to specific traffic concerns, e.g., sight line distance, blind spots, increase in recreational traffic during summer months, limited movability of freight traffic, etc.*
- *Traffic analysis incomplete and based on unsupported presumptions.*
- *WSDOT analysis of TIA and request for additional information.*
- *Concern re traffic impacts to City of Renton.*
- *Approval from WSDOT required.*
- *Treatment of runoff from roadwork should be addressed.”*

LAKESIDE INDUSTRIES’ RESPONSE:

- *“Transportation Engineers Northwest (TENW) conducted a comprehensive traffic analysis for the project based on King County and WSDOT guidelines and standards.*
- *A Level 1 Traffic Impact Analysis (TIA) was initially prepared in June 2017 which documented trip generation, sight distance at the driveway, LOS at the driveway, parking demand, and identified frontage and right-of-way requirements.*
- *An updated and more comprehensive Traffic Impact Analysis was prepared in November 2018 to update the Level 1 TIA and also address comments received from WSDOT, City of Renton, and King County. Issues related to treatment of runoff from the road improvements and potential impacts on culverts are addressed in the updated DEA Report dated July 6, 2020 and The Watershed Company letter to Karen Deal dated June 4, 2020. Also see below on pages 18-19 concerning culverts under SR 169.*
- *The updated TIA documented trip generation and compared it to Lakeside’s Covington operation, evaluated LOS and sight distance at the site access, evaluated LOS and queues at the two intersections to the east and west of the site on SR 169, confirmed there will be adequate sight distance at the access onto SR 169, identified frontage improvements, and proposed mitigation with widening of SR 169 at the site access to provide deceleration and acceleration lanes and a wider driveway to accommodate the larger truck/trailer combo units. Increased surface water runoff will be treated and infiltrated by the on-site stormwater treatment systems.*
- *The TIA determined that traffic impacts to SR 169 would be minimal with increases of less than 3 percent and no degradation in LOS at either of the adjacent intersections. The section of SR 169 in the site vicinity has not been identified as a high accident location by WSDOT, and the documented collision rates are not significant. Trucks and heavy equipment have been accessing the site from SR 169 for many decades. The improvements to SR 169 at the site and the access to the site have been approved by WSDOT.*
- *Adequate parking will be provided to accommodate on-site uses, and no off-site parking spillover is anticipated.*
- *The project will mitigate its impact to SR 169 by widening SR 169 to provide a deceleration lane for vehicles and trucks entering the site, and an acceleration lane for exiting trucks and vehicles, which will help maintain traffic flow on the highway. The TIA addresses comments provided by all neighboring and interested agencies including WSDOT, City of Renton, and King County.”*

GMVUAC REBUTTAL:

The updated traffic impact analysis (TIA) by TENW Northwest in November 2018 addresses some but not all concerns about this proposal. The addition of an eastbound lane along the site frontage for eastbound trucks to

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

enter/exit the highway, and the relocation of the site entrance further east, are positive improvements in terms of site design. **But other serious external impacts have yet to be resolved.**

Safety of Westbound Left-turns

The updated site access plan now provides adequately for eastbound right turns in and out. However, the same cannot be said for westbound traffic. Left turns into and out of the site will, introduce a significant new risk of accidents due to the high volume of eastbound through trips passing the site at highway speed versus the sluggish performance of large trucks crossing that traffic - especially outbound with a full load. The currently low accident experience reported for this section of SR 169 is irrelevant here because **previous land uses on this site involved far less truck traffic – especially heavily loaded trucks - than will be generated by the proposed new Asphalt Facility.**

The level of service E condition with or without the proposed action is also irrelevant to safety concerns. The TIA argues that traffic volume conditions at this site are adequate because that is the volume standard used by the governing agencies. But that notion has no relevance at all for traffic safety. In fact, Level of Service E by definition means that traffic is at or very near to the capacity of the roadway. With Level of Service E there are very few gaps available in the highway traffic flow to allow for crossing traffic. And when that traffic consists of heavily loaded trucks, the suitable gaps available are far fewer than for cars. The Truck Equivalency Factor used in traffic operations analysis varies from 2 to 10 depending on the loaded weight of the truck. If outbound left turns by trucks are weighted as 10 car-equivalents, the level of service so calculated might well fall from “E” to “F”, and require mitigation on that basis. Thus the undisputed fact of LOS E conditions for traffic volumes underscores the prospect that traffic safety will be severely worsened by the proposed asphalt facility. **It is inevitable somebody will make a bad choice and turn in front of traffic that can't stop in time - resulting in the type of high speed “T-bone” accidents that often involve serious injuries. And some serious injuries become fatalities.**

Given such inescapable prospects, **this clear safety issue must be averted by requiring additional site design changes including traffic controls.** One option is to signalize the site access intersection. Alternatively, without signalization outbound left turns should be prohibited and a U-turn facility be added somewhere to the east of the site – assuming that such a U-turn can be safely provided anywhere between the site and 196th Avenue SE considering the sight distance and terrain issues in that area. We therefore recommend that **King County and WSDOT first prohibit left turns at the site without a traffic signal, and require WSDOT approval of any alternative to that mitigation.** This may require a WSDOT “deviation from standards” approval as well. We would encourage that in order to prevent the emergence of such an easily foreseeable safety problem. **At a minimum KC and WSDOT should reserve the right to impose left-turn restrictions should such a safety problem develop and require offsetting mitigation at the site owner's expense.**

Limit on Approved Trip Generation

Regarding trip counts, it is not technically supported, nor prudent, to “discount” trips from the previous Sunset Materials facility because that facility has not been operational for some time. The updated TIA is now two years old and Sunset Materials has been closed longer than that. This discount should be removed in any subsequent traffic analyses.

Further, all traffic analysis depends numerically on the assumptions adopted regarding site trip generation. For this unique land use and business model, there is no good reference data to draw on in the ITE Trip Generation Manual (the usual standard reference). The TIA has instead derived its trip generation numbers instead from LIs' existing operations at its Covington site and then scaled that to fit LIs' stated plan of operations at the proposed site. Although this is a good approach, it relies on the accuracy of LIs' described business plan, which could change any time. The TIA's estimate of how trips split to the west and to the east is also unavoidably subjective and may change.

We therefore recommend King County set permit conditions to prohibit site trip generation in excess of what's been evaluated, without further evaluation of additional impacts – especially safety considerations. In fact, such evaluations should be part of an EIS before any consideration of potential permits or conditions thereon.

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

Routing of Trips via 154th/156th Ave SE

The TIA acknowledges that existing conditions at SR 169 / 154th Place SE are congested and unsafe, with very long queues waiting to make the westbound to northbound turn from SR 169 to 154th Place SE, and the reverse left-turn southbound to eastbound. The TIA states that LI will instruct its truck drivers not to use the route via 154th Place SE and instead go through Renton to reach I405 and/or SR900. We are unfortunately all too familiar with a lack of diligent enforcement by King County of similar requirements on other developments in the past. **Therefore we recommend that King County implement an enforcement procedure that has “teeth”.** This may include placing the burden of responsibility on the individual driver and/or the driver’s employer, rather than the development, the acceptance of documentary evidence (time-stamped photos, etc.) submitted by citizen observers, and if necessary a new ordinance from the Council to properly frame the issue in regulatory terms. **The permit to operate might also be conditioned on satisfactory review of compliance with such conditions, perhaps every 5 years, with penalties for cumulative observations of non-compliance. Again, such evaluations should be part of an EIS**

Adverse Environmental Impacts of Heavy Truck Traffic

Impacts on noise and air quality, salmon habitat, etc., are addressed in detail elsewhere in this detailed Rebuttal. Suffice it to say, the site traffic generation is a substantial, significant alteration of the existing traffic conditions at the site location and nearby vicinity. The high volume of heavy truck traffic containing asphalt mix does unquestionably generate significant external impacts on the environment. That is a totally new impact, unlike the proponent’s existing operation in Covington which enjoys direct access to/from SR 18 via the SE 156th St interchange with little or no use of the arterial street system in that area. Here all of the truck traffic is immediately mixed with general traffic on SR 169. **Consequently, the transfer of such impacts from a benign location (Covington) to a sensitive location (SR 169/Cedar River canyon) represents a significant new impact in environmental terms, directly proportional to the volume of heavy truck activity generated by the site. Again, an EIS is called for to ensure all such impacts are fully evaluated and disclosed.**

We see no mention of any potential agreements, such as a Haul Route Agreement (HRA), between LI and KC DLS-Roads. An HRA would have to be reached and then enforced throughout the life of the facility. A well-executed HRA should guarantee LI is responsible for road damage or maintenance requirements to road surfaces attributed to its operation, and that these repair costs will not be paid by the taxpayers.

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

Water Supply/Groundwater Contamination Issues

TOPIC: *“Water Supply/Groundwater Contamination”*

- *Concern that domestic water will be provided via an existing class B well and potential contamination to groundwater.*
- *King County Water District objects and indicates site is within a well recharge area, and will result in water contamination “when” a spill occurs.*
- *Fault lines, potential earthquakes and aquifer recharge area creates potential for contamination of water.*
- *General opposition statement re locating plant over an “EPA-designated sole source aquifer” and noting District 90’s opposition.*
- *There have not been any studies re adverse impacts to drinking water supply and effects on salmon.*
- *Soils are “well drained” such that any spill or leak poses a serious threat to groundwater.*
- *Document that all uses of the existing well are within the water right.*

LAKESIDE INDUSTRIES’ RESPONSE:

- *The proposed development will improve water quality by treating all stormwater discharged from pollutant generating surfaces, consistent with all current stormwater requirements. The site will be paved in order to capture all stormwater discharge, prevent pollutant discharge to surface water and prevent untreated infiltration to groundwater. The water treatment infrastructure will include lined biofilter swales, oil/water separators, a settling vault, a large sand filter, and an infiltration gallery. This treatment system will provide “enhanced basic” treatment for all stormwater discharged from pollutant generating surfaces before being released into the environment.*
- *Critical Aquifer Recharge Areas (CARA’s) were evaluated in AESI’s Critical Area Assessment (CAA) dated October 2, 2018. The CAA specifically discloses the relevant King County CARA code (KCC 21A.06.253C), which identifies both areas with high and medium susceptibility to contamination. The referenced King County Code (KCC) specifically identifies the relationship between high or medium susceptibility and “wellhead protection areas for a municipal or district drinking water system” well. King County adopted a CARA map under KCC 21A.24.311.*
- *Figure 4 of the letter-report includes the map areas identified by King County as having either a high or medium susceptibility. The map indicates the entire Cedar River valley classifies as either high or medium susceptibility, with most of the Cedar River valley and the northern portion of the project site classified as high susceptibility. Please see the AESI Letter of July 16, 2020 that addresses these issues in great detail.*
- *Areas mapped as highly susceptible to contamination are considered Category I, and medium susceptibility areas are considered Category II under KCC 21A.24.313. Development standards in CARAs are identified under KCC 21A.24.316. The CARA discussion discloses the proposed use of two 30,000-gallon heated asphalt cement storage tanks, one 10,000-gallon diesel tank, and one 10,000-gallon emulsified asphalt tank. As required under KCC 21A.24.316.A.8, the proposed aboveground storage tanks for hazardous substances will be protected with primary and secondary containment areas. This mitigation requirement was described in the CAA. The CAA also identified that a spill prevention and response plan would be developed in accordance with the General Permit.*
- *Environmental documents developed by Farallon Consulting (Farallon) and referenced in the CAA specifically identified both soil and groundwater contamination on the site. Based on their subsurface investigation and laboratory testing Farallon (9/1/2016) specifically concluded “no further groundwater characterization is recommended at the Site”. Previous activities on the site led to the contamination. The current proposal is to conduct remediation of the site by removing the contaminated soil from the site. The CAA disclosed that Farallon described historical site uses and identified recognized environmental conditions onsite, including the discovery of an environmental release onsite and the planned independent cleanup of petroleum hydrocarbon.*
- *The CAA disclosed the high susceptibility to contamination rating of the project site, identified the site specific environmental documents developed by Farallon, and indicated the KCWD #90 wells are located within the 5-year time of travel (TOT) from the project site. The King County Water District #90 2014 Wellhead Protection Plan (WHPP) prepared by Pacific Groundwater Group (PGG) indicates the project site is located in the 10-year TOT. The CAA used the conservative assumption of a 5-year TOT. The WHPP specifically states “The supply aquifer is confined by 22 to 33 feet of overlying silt and clay, which*

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

pressurizes groundwater levels at the wellfield to approximately 12-13 feet above ground surface". The CAA conservatively assumes the wells are not protected by any intervening low- permeability units.

- The project water quality treatment train does not depend on the underlying soil to provide any water quality treatment. All water quality treatment is achieved prior to "release" into the soil horizon beneath the infiltration facility and prior to contact with the underlying shallow groundwater system. Since stormwater runoff will be infiltrated the project must comply with KC SWDM Core Requirement #8 and Special Requirement #5 to avoid contaminating groundwater. Core Requirement #8 requires water quality treatment. The project is considered "high use", therefore Enhanced Basic water quality treatment is the applicable standard. This standard is met by provision of the large sandfilter alone. The project proposes to exceed this standard through a treatment train of a grass-filter swale, pre-settling vault, and sand-filter prior to infiltration to groundwater. Special Requirement #5 requires Oil Control. The project proposes to satisfy this requirement by incorporating two coalescing plate oil/water separators upstream of the pre-settling vault.
- The project proposes to provide primary and secondary containment areas and a spill protection plan for hazardous materials and aboveground storage tanks.
- Beneficial uses of groundwater and connected surface water resources will be maintained by implementing the proposed BMPs, development of a SWPPP, and a Spill Plan.
- Lakeside has an on-site well that has been employed for industrial uses for decades. The well is subject to a King County Group B Water Use Agreement.

GMVUAC REBUTTAL:

Aquifer / Well Recharge Area

We support King County Water District 90's objection to the proposed site for a new Asphalt Facility, as it lies within a well-recharge area, in which the high potential for water contamination of the underlying aquifer and the impacts to Public health cannot be tolerated.

KC Code **21A.24.313 Critical aquifer recharge areas - categories** lists both *Category I* and *Category II* critical aquifer recharge areas. We would like to emphasize that it is stated in KC Code **21A.24.316 Critical aquifer recharge areas - development standards (in effect for shoreline jurisdiction until fourteen days after the Department of Ecology approval in accordance with Ordinance 18767, Section 21**):**

"The following development standards apply to development proposals and alterations on sites containing critical aquifer recharge areas:

- A. *Except as otherwise provided in subsection H. of this section, the following new development proposals and alterations are not allowed on a site located in a category I critical aquifer recharge area:*
 - 7. *Underground storage tanks, including tanks that are exempt from the requirements of chapter 173 WAC, with hazardous substances, as defined in chapter 70.105 RCW, that do not comply with standards of chapter 173-360 WAC and K.C.C. Title 17;*
 - 8. *Above-ground storage tanks for hazardous substances, as defined in chapter 70.105 RCW, unless protected with primary and secondary containment areas and a spill protection plan;...."*

Clearly, KC Code stipulates the new Asphalt Facility on the proposed site must be completely enclosed.

Further, we have concerns about the planned *On-Site Septic System (OSS)* potential impacts on the critical aquifer recharge area. In LIs' *Response to 11.18.19 KC Comments* on p. 4 it states the following:

4. Health Permit Approval

Please provide a health department approval for the proposed septic system.

LI RESPONSE: *An application for the on-site sewage holding tank has been prepared and will be submitted to King County Public Health upon receipt of the applied for Critical Area Designation, CADS19-0258. See King County Comment E below.*

5. Critical Area Designation (CAD)

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

CADS19-0258 has been received for review and will be completed soon so that it can be provided to King County Public Health along with application for an on-site septic system.

LI RESPONSE: Acknowledged.

As we could not find CADS-10-0258, we contacted KC DLS-P and received the following explanation:

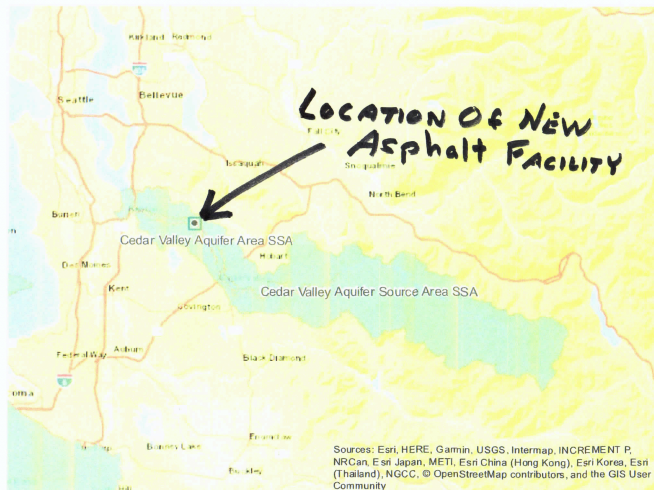
“A critical Area Designation (CAD) to verify the limits of the critical areas on a development site is required with the application of a health permit for an on-site sewage system. The proposal includes an office for which a septic system is required. A CAD was applied in 2019 and a verification letter was completed on September 28th 2020. Please see attached. This letter must be supplied with a health permit application. This information will help the King County Environmental Health that the proposed septic system will not interfere with critical areas buffer. The applicant is proposing a septic holding tanks to be pumped periodically. An approved septic system permit is required before the building permit for construction of the asphalt plant can be approved. CAD is a routine process for any development proposal requiring an on-site septic system.”

We asked for it to be posted and it subsequently was as: *Critical Areas Report (CAD) for Associated Septic Permit.*

KC Code **21A.24.316** further states in subsection H.:

“H. On a site greater than twenty acres, the department may approve a development proposal otherwise prohibited by subsections A., B. and C. of this section if the applicant demonstrates through a critical area report that the development proposal is located outside the critical aquifer recharge area and that the development proposal will not cause a significant adverse environmental impact to the critical aquifer recharge area.”

The proposed site is not **“located outside the critical aquifer recharge area,”** and, thus, the Health Department permit for an OSS cannot be approved (see Cedar Valley Aquifer Source Area map below).



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

Surface Water

The proposed site is located approximately 150 feet from the salmon-bearing Cedar River, which is a Shoreline of the State. LI 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, LI 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 LI’s subsequent response to the SEPA Checklist item 3.a.1. it simply references The Watershed Company’s Critical Areas Report (CAR) without providing specific citations in that report to answer the SEPA Checklist item.**

LI 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), 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.**

LI 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 refers 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 floodplain—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. Again, **it cannot be overemphasized that “100-yr floodplains” must now be re-assessed given the impacts from ever-accelerating human-caused climate change, this area currently is experiencing expensive and catastrophic flooding every five years or so—which will only get even worse in the future.**

Such critical surface water concerns must be addressed in an EIS.

Groundwater

Appropriate engineering controls appear to have been put in place for most normal events that could impact groundwater, primarily through diverting stormwater to an infiltration gallery through a treatment train that appears sufficient to capture minor amounts of sediment and some relatively insoluble contaminants, as well as installing secondary containment around above ground storage tanks and hazardous chemical storage areas. However, while unlikely, large spill events could happen outside the secondary containment areas on the site, in particular spills from trucks, which will be carrying various chemicals in and out of the site on a regular basis and transferring those chemicals to the tanks. If there were to be a large spill of a fairly liquid contaminant (most likely a petroleum product), it’s not clear whether the spill containment plans could prevent those chemicals from quickly entering the stormwater infiltration system. **Once such contaminants enter the groundwater system, with its high hydraulic conductivity and fairly high gradient, the site is so close to the Cedar River that it’s not clear that any response could be fast enough to prevent contaminants from entering the river.**

According to the proposed engineering plans (see: *“Engineering-Plans-18-1105.ashx.pdf”* and sheet 2 of 32 Note *“COAGULENT ENHANCED SAND FILTRATION (CESF) TO BE ADDED TO PROVIDE ADDITIONAL STORMWATER TREATMENT SHOULD SAND FILTRATION ALONE NOT RESULT IN COMPLIANT DISCHARGE”*) and the sand and rock filtration system described (sheets 9 - 13 of 32) water is eventually taken into *“perforated PVC”* and then into a *“Stormtech SC-740 Chamber System,”* where it utilizes soils, sands, gravel, and stone (contained by *“non-woven geotextile”*) to process the water and let it drain into the water table (sheet 11). **While some attempt seems to be made at collecting oily runoff (sheet 12 of 32) into a “grass-lined swale,” and into stages for coalescing oil from water (and collecting it), the dissolved or water soluble**

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

matter of concern (noted above) would expect to be passed through to the detriment of the entire system allowing water contamination to routinely occur as a matter of normal operations.

Inexplicably, this contaminated drainage water is not collected into a discharge cistern for hauling away and treatment at a secondary site. The system appears to be designed to meet minimum standard emission limits, as may be periodically monitored, with no “back-up” system for catastrophic overflows or spills, both of which will happen throughout the life of the facility. The system does not contain any natural ecosystem-engineered wetlands or organic filtration buffer zones, which may supply environmentally cognizant safety factor(s) recognizing the daily vehicle traffic and hazardous materials movement. This is no provision for bypassing filtration systems into a *parallel* fully functional network should one network become saturated and unserviceable and need repairing or upgrading to meet minimum standards. **Consequently, surface and subsurface runoff will drain into surrounding streams and wetlands, the Cedar River, and the King County (and City of Renton) sole-source aquifer.**

The proposed containment systems could be seriously damaged in the entirely foreseeable event of a large earthquake, even if the nearby fault has not been active in the past 15,000 years. We can expect serious shaking in either a subduction zone or a Seattle Fault earthquake, serious enough to potentially break up pavement and secondary containment systems, and possibly topple above ground tanks with their high center of gravity. In the aftermath of a major earthquake, spill response will be a very low, if non-existent, priority. **It seems cavalier to take the entirely avoidable risk of siting such a facility in close proximity to one of the few healthy salmon-spawning streams remaining in King County. Our knowledge of existing faults, modeling of potential earthquake events, and levels of damage have all increased over the years. Why add to those risks now when we presumably know better?**

Further, the proposed site is mapped and reported by King County as being at liquefaction risk in a steep sloped and geologically unstable area over an important aquifer; and surrounded by natural areas needed for the perpetuation of endangered, threatened, and/or species of concern in canyon region. Carcinogenic and toxic compounds in water that is sourced from asphalt runoff are of great concern and efforts to reduce their penetration into the environment must be evaluated to see if basic standards can even be met in the vicinity of such an important water body (Cedar River) and the aquifer underlying the entire area. (see: “*The Effect of Asphalt Pavement on Stormwater Contamination*,” by Nemeth et al.). **Average “Industry Standard” and “enhanced basic” normal design approaches both seem inadequate to address the potential unique health and safety risks associated with contaminated groundwater.**

Again, such critical groundwater concerns must be addressed in an EIS.

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

VI. CONCLUSIONS

We conclude based on our detailed review of documents supplied by the Applicant to King County starting in 2017, through our two sets of in-depth Comments (December 2017 & January 2019), and the extensive **Rebuttal** herein, it is clear LIs' proposed move of its Asphalt Facility from the City of Covington inside King County's Urban Growth Area to a site in King County's 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 quite substantial.

We conclude this proposal may have a probable significant adverse environmental impact under **WAC 197-11-360 Determination of significance (DS)/initiation of scoping**. The Washington State Department of Ecology (DOE) 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.”

We conclude through the SEPA process an EIS 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.

We conclude King County is obligated, through implementation of its KCCP and its policies, especially as embodied in *Chapter 5 Environment*, to ensure environmental protection:

“This chapter reflects the overarching goal of the Countywide Planning Policies to protect, restore and enhance the quality of the natural environment in King County for future generations. This chapter has been updated to integrate county strategies for protection of land, air, and water; to emphasize implementation of salmon recovery plans; to reflect increased emphasis on climate change and biodiversity; and to support monitoring and adaptive management. These policies guide King County's environmental regulations and incentives, education and stewardship programs in unincorporated King County.” (p. 5-4)

We conclude KCCP policies call for careful protection of the environment, especially when it comes to new industrial operations in the Rural Area:

R-514

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

...
b. Maximum protection of sensitive natural features, especially salmonid habitat and water quality; . . .

We conclude the following *abridged* set of issues related to this proposal must be thoroughly evaluated as they potentially could present adverse environmental impacts—many of which cannot be adequately mitigated:

- Effects on surrounding air quality especially in the Cedar River canyon
- Disruption to prime animal habitat and wildlife routes
- Hazardous steep slopes
- Continuous noise of an industrial operation magnified by the canyon location
- Presence of unstable underlying soils and past coal mining activities
- Seismic hazards
- Flooding under the ever-increasing effects of climate change
- Underlying historic coal mine tunnels
- Destruction of wetlands either directly or indirectly through contamination
- Spread and severity of odors

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

Level and control of toxic and carcinogenic emissions
Traffic and safety on a highly congested SR-169 and its major intersections
Deleterious contamination of groundwater, aquifer, and the Cedar River
Storage and transfer of hazardous products on-site and off-site

We conclude, given so many potentially adverse impacts, using the SEPA process to effect an EIS is especially important for this proposal, because it will affect the daily lives of so many citizens include nearby residents, commuters along SR-169, users of the adjacent Cedar River trail, and abundance of wildlife along the Cedar River corridor. The SEPA process will result in:

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.

We conclude the County, the Public, and LI will best be served by the EIS process.

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

VII. RECOMMENDATIONS

We recommend—in light of the potential far-reaching environmental impacts related to LIs' proposed move of its Asphalt Facility operation from the City of Covington inside King County's Urban Growth Area to a site in King County's Rural Area along the Cedar River—King County issue a Determination of Significance (DS) and require an EIS be prepared by Li under SEPA.

We recommend preparation of such an EIS to ensure a proper assessment of all the short- and long-term environmental issues to allow the County and the Public to review same.

We recommend sufficient time be provided to ensure the entire SEPA process is fully transparent and allow for all environmental issues to be fully evaluated to the level of detail required of such a toxins-producing Asphalt Facility to be located in such an environmentally sensitive area.

We recommend King County fully recognize this is a forever decision and, as such, proceed carefully through all the SEPA steps and ensure adequate time, person-power, and technical skills/experience are available.

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

REFERENCES

Environmental Reports and Comments and Other Documents (supplied by LI to KC DLS-P; see **Section III. DOCUMENT REVIEW** herein).

State Environmental Policy RCW 43.21C.030 Guidelines for state agencies, local governments—Statements—Reports—Advice—Information.

Cedar River Sites Industrial Moratorium Study (CRSIM Study) in response to King County Council Ordinance 18611.

2016 (King County) Comprehensive Plan – updated February 14, 2020 Attachment A to Ordinance 18427, as amended by Ordinance 18623, Ordinance 18810, and Ordinance 19034.

GMVUAC Public Comments: *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; December 5, 2017.

Lakeside Industries Proposed Asphalt Facility, VOICE of the Valley, December 11, 2017 edition.

GMVUAC *Written Testimony for Public Hearing on King County Council Ordinance 18611*; submitted to the King County Council; January 8, 2018.

GMVUAC *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.

GMVUAC *Public Comment* in response to the *Combined Notice of Applications & Environmental Review Process* submitted to the King County Department of Permitting & Environmental Review on File No. COMM 18-0014 & SHOR18-0032 — Lakeside Industries — Project Site – 18825 SE Renton-Maple Valley Rd; January 30, 2019.

Washington Administrative Code WAC 173-400-030 GENERAL REGULATIONS FOR AIR POLLUTION SOURCES — Definitions (75) "Portable source"....

Portable Asphalt Mixing Plant, <https://aimixgroup.com/portable-asphalt-mixing-plant/>, 2016 @ Aimix Group Co., Ltd. Construction Machinery Manufacturer.

Technical Support Document for The Asphalt Plant (Portable and Stationary) General Order, WA DOE, January 25, 2011

<https://www.kiro7.com/news/local/fire-explosions-erupt-asphalt-plant-tacoma-causing-damage/KGIPEHIXIAU3MZV7NJMY3BYS4/>

Chapter 27 — Coal Fires in the Pacific Northwest, USA, Science Direct, <https://www.sciencedirect.com/science/article/pii/B9780444595096000272>, 2015.

"Substantial compost fire burning in Maple Valley," *Seattle Times*, August 17, 2009.

Clean Water Action, <https://www.cleanwateraction.org/features/pfas-containing-firefighting-foams>, September 2020.

Landmarks Commission Certificate of Appropriateness (COA) No. 15.27 (Type III), 2016.

"*The Effects of Noise on Wildlife*", CA Department of Transportation 1998.

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

Public Health Law: Environmental Odors and Public Nuisance Law, US Center for Disease and Control (CDC), <https://www.cdc.gov/phlp/docs/anthology-environmentalodors.pdf>.

Revised Code of Washington RCW 36.70A—GROWTH MANAGEMENT—PLANNING BY SELECTED COUNTIES AND CITIES.

King County GIS Center, Zoning Map (September 20, 2016).

Standard Industrial Classification (SIC) Code # 2951 “Asphalt Paving Mixtures and Blocks.”

Kenmore Municipal Code, § 18.20.2326 ZONING—TECHNICAL TERMS AND LAND USE DEFINITIONS—Resources land uses.

King County Code (KCC) 21A.08.090(B)(8) ZONING—PERMITTED USES—Resources land uses—Development conditions.

King County Code (KCC) 21A.08.090(A) ZONING—PERMITTED USES—Resources land uses—Resources land uses.

Revised Code of Washington RCW 36.70A.011 Counties—Growth management—Planning by selected counties and cities—Findings—Rural lands.

King County Countywide Planning Policies (CPPs), Amended June 2016.

The King County 2014 Buildable Lands Report, approved by King County Growth Management Planning Council (GMPC), July 23, 2014.

Concrete Nor'West v. Western Washington Growth Management Hearings Board, 185 Wn. App. 745, 755-56, 342 P.3d 351; review denied, 183 Wn.2d 1009 (2015).

Staff Report (re: KCCP R-513) to King County Council's Mobility and Environment Committee, February 12, 2020.

Revised Code of Washington RCW 36.70A.040 Who must plan—Summary of requirements—Resolution for partial planning—Development regulations must implement comprehensive plans (3)(d).

The Washington Administrative Code WAC 365-196 Growth Management Act—Procedural criteria for adopting comprehensive plans and development regulations, further describes this (again, our emphases):

The Washington Administrative Code WAC 365-196-500(3) Internal consistency.

The Washington Administrative Code WAC 365-196-800(1) Relationship between development regulations and comprehensive plans.

The Washington Administrative Code WAC 365-196-810 Review for consistency when adopting development regulations. (1)

Design Review Committee Report to the King County Landmarks Commission, January 26, 2016.

Coleman v. City of Walla Walla, 44 Wn.2d 296, 300, 266 P.2d 1034 (1954).

Open Door Baptist Church v. Clark County, 140 Wn.2d 143, 151, 995 P.2d 33 (2000).

KC Council Legislative Analysts Staff Report (re: KCCP Policies) to King County Councilmembers, 2/23/18 e-mail.

“Cedar River Watershed Habitat Conservation Plan” by D. Gale et al., City of Seattle, April 2000.

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

“TRIAD Job No. LKSD0000-0002 Report, “MAPLE VALLEY ASPHALT FACILITY TECHNICAL INFORMATION REPORT King County, Washington,” October 2, 2018.

“Information Regarding Geologic Faults and Folds, Liquefaction, Seismic Risk, Landslides, and Coal Mines. Washington Department of Natural Resources Washington Geologic Information Portal. <https://geologyportal.dnr.wa.gov/>”

Washington State Department of Ecology, Technical Support Document for the Asphalt Plant (Portable and Stationary), dated January 25, 2011, <https://ecology.wa.gov/DOE/files/bd/bd447e53-476e-48e8-9e20-550ecbe54c6e.pdf>

Gingrasso, et al. v. Cedar Grove Composting Facility, Inc., Wa. State Sup. Ct. Case No.: 15-2-22623-1 KNT).

A.U. Itodo, M Ubimago, and R. A. Wuana, "Environmental Impact of Abandoned Asphalt Production Site on Soil, Water and Vegetables from Near Farmlands", Journal of Geoscience and Environment Protection, 2018, 6, 107-122, ISSN [Online] 2327-4344: https://file.scirp.org/pdf/GEP_2018032914400455.pdf.

Safety Data Sheet for Hot Mix Asphalt, which conforms to HazCom 2012 (see: https://www.lehighhanson.com/docs/default-source/safety-data-sheets/sds-hot-mix-asphalt.pdf?sfvrsn=7a0a4c5e_4.

"Diverse rupture modes for surface-deforming upper plate earthquakes in the southern Puget Lowland of Washington State", by Alan R. Nelson et al.; Geological Hazards Science Center, USGS, MS966, PO Box 25406, Denver, CO 80225, USA; © 2014 Geological Society of America).

“Information Regarding Geologic Faults and Folds, Liquefaction, Seismic Risk, Landslides, and Coal Mines. Washington Department of Natural Resources Washington Geologic Information Portal.

King County Code 21A.06.415 Erosion hazard area.

“Surficial geologic map of the Maple Valley Quadrangle, King County, Washington, Miscellaneous Field Studies Map 2297,” 1995, D.B. Booth.

King County Code 21A.06.1230 Steep slope hazard area.

Rath, John, Sujoy Roy, and Jon Butcher. Intensity Duration Frequency Curves and Trends for the City of Seattle. Tetra Tech Inc. Report Dec. 29, 2017.

“Pacific Coast Coal Co., Bulletin,” March 1, 1931.

PSCAA Regulation I, ARTICLE 9: EMISSION STANDARDS, SECTION 9.11 EMISSION OF AIR CONTAMINANT: DETRIMENT TO PERSON OR PROPERTY Adopted 03/13/68 (12) Revised 06/09/83 (536), 03/11/99 (882) <https://psccleanair.gov/219/PSCAA-Regulations>.

Revised Code of Washington RCW 70A.15 Washington Clean Air Act (dispositioned from RCW 70.94).

Revised Code of Washington RCW 70A.15.2210 Notice may be required of construction of proposed new contaminant source—Submission of plans—Approval, disapproval—Emission control (dispositioned from RCW 70.94.152).

Revised Code of Washington RCW 70A.15.1005 Declaration of public policies and purpose (dispositioned from RCW 70.94.11).

Revised Code of Washington RCW 70A.15.3040 Powers and rights of governmental units and persons are not limited by act or recommendations. (dispositioned from RCW 70.94.370).

LI Website: <http://lakesideindustries.com/maple-valley-plant/>.

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

KC Code 21A.24.313 Critical aquifer recharge areas - categories.

*KC Code 21A.24.316 Critical aquifer recharge areas - development standards (in effect for shoreline jurisdiction until fourteen days after the Department of Ecology approval in accordance with Ordinance 18767, Section 21**).*

Cedar Valley Aquifer Source Area SSA, US Environmental Protection Agency (EPA) Map, Esri, HERE, Garmin, USGS.

“The Effect of Asphalt Pavement on Stormwater Contamination,” by Nemeth et al.