

**OFFICE OF THE HEARING EXAMINER**

**THURSTON COUNTY**

**REPORT AND DECISION**

**PROJECT NO.:** 2019102295 – DURGIN ROAD ASPHALT PLANT

**TAX PARCEL NOS.:** 21817140200

**LOCATION ADDRESS:** 11125 Durgin Road S.E., Olympia, WA 98513

**OWNER:** Nielsen Pacific Ltd.  
7216 Lakewood Drive West  
Tacoma, WA 98467

**APPLICANT:** Lakeside Industries Inc.  
Attn: Karen Deal  
P.O. Box 7016  
Issaquah, WA 98027

**POINT OF CONTACT:** Lakeside Industries  
Attn: Kyler Danielson  
P.O. Box 7016  
Issaquah, WA 98027

**PLANNER:** Scott McCormick MES, Associate Planner, CPED

**SUMMARY OF REQUEST:**

This request is for the required Five-Year Review of the Durgin Road Asphalt plant which was approved in Special Use Permit (SUP) number 990457 on April 20, 2001, by the Hearing Examiner and became final on July 29, 2002, by the Board of County Commissioners on appeal. Condition 1 of SUP requires the asphalt plant to undergo review by the Hearing Examiner every five years. This review requirement is also found in Thurston County Code TCC) 20.54.070(21)(e). The SUP was amended on December 19, 2006, to modify the number of approved asphalt storage silos and that amendment was clarified in two subsequent Hearing Examiner decisions in 2007.

The first five-year review was submitted in 2009; however, the review was not completed for a number of reasons. The application for this review was submitted on May 16, 2019, and was determined to be complete on June 14, 2019.

The purpose of the Five-Year Review is to determine if the Applicant is in compliance with the conditions of the approved SUPT, and to determine whether additional conditions should be imposed upon the operation of the asphalt plant to meet the standards of the county code

**SUMMARY OF DECISION:** Request is granted subject to conditions.

**DATE OF DECISION:** July 1, 2021

**PUBLIC HEARING:**

After reviewing the Community Planning and Economic Development Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on May 18, 2021, at 2:30 p.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT 1 - Community Planning and Economic Development Department Staff Report including the following attachments:**
- Attachment a - Legal Notice**
- Attachment b - Zoning / Vicinity Map**
- Attachment c - Application, received May 16, 2019**
- Attachment d - Notice of Application dated July 8, 2020 with attached adjacent property owners list dated June 29, 2020**
- Attachment e - Comment letter from the Nisqually Tribe dated July 9, 2020**
- Attachment f - Response to comment email from Howard Glastetter by Lakeside Industries dated March 8, 2021 with email comment from Howard Glastetter dated July 11, 2020**
- Attachment g - Comment email from the Squaxin Tribe dated July 13, 2020**
- Attachment h - Comment Memorandum from Dawn Peebles, Environmental Health, dated November 12, 2019**
- Attachment h1 - Email chain from Dawn Peebles to Al Quiococho dated September 5, 2019 - October 17, 2019 with attached Nighttime Noise Measurement Report by ENVIRON dated December 15, 2009**
- Attachment i - Comment Memorandum from Arthur Saint, P.E, Public Works,**

- dated June 4, 2020
- Attachment j - Comment Letter from Department of Ecology, July 31, 2019
- Attachment k - Comments from Kevin Hansen, CPED Hydrogeologist dated January 15, 2021
- Attachment l - Email from Howard Glastetter dated May 5, 2021 with attached letter to Maya Teeple, Senior Planner dated November 13, 2020
- EXHIBIT 2a - Email from Phyllis Farrell dated May 12, 2021
- EXHIBIT 2b - Email from Howard Glastetter dated May 12, 2021 with Email from Howard Glastetter dated May 24, 2021
- EXHIBIT 3 - Letter from Kyler M. Danielson dated June 2, 2021 regarding
- EXHIBIT 4 - Agreement between Applicant and County for conditions of Approval

**The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.**

SCOTT McCORMICK, MES, Associate Planner, Community Planning and Economic Development Department (CPED), appeared and presented the County Staff Report. He testified that this request is for the required Five-Year Review of the Durgin Road Asphalt plant which was approved in Special Use Permit (SUP) Number 990457 on April 20, 2001, by the Hearing Examiner and became final on July 29, 2002, by the Board of County Commissioners on appeal. The request is for the first five year review of the Durgin Road asphalt plant which had been submitted in 2009; however, the review was not completed for a number of reasons, including staffing and caseloads. Condition 1 of SUP requires the asphalt plant to undergo review by the Hearing Examiner every five years. The application for this review was submitted on May 16, 2019, and was determined to be complete on June 14, 2019. The subject property is zoned Rural Residential-One Dwelling Unit Per Five Acres (RR 1/5). Asphalt production in association with a gravel mine is permitted in the RR 1/5 zoning district after Hearing Examiner approval of a Special Use Permit (TCC 20.54.070). The 25-acre asphalt plant site is also located within an area designated as Mineral Lands of Long-Term Commercial Significance. The review is to determine if the project is in compliance with the various applicable conditions of approval.

On review of the notice of the application, the Nisqually Indian Tribe and the Squaxin Island Tribe had no specific cultural concerns nor additional recommendations but did request to be informed if there were any Inadvertent Discoveries of Archaeological Resources/Human Burials. Howard Glastetter commented that the Applicants' loaded trucks cause a safety concern by using entrance 114 to access I-5 instead of entrance 116. The Applicant responded that its drivers are instructed to be aware of driving conditions and be cautious when driving on the local roads. The County noted that no conditions of the SUP relate to these traffic concerns and did not recommend any new

or modified conditions.

After analysis of each condition, the three County reviewing departments including Public Works, Public Health and Social Services and the Community Planning and Economic Development Department (CPED) were in general agreement regarding the Applicant's compliance with the project conditions. The departments also agreed that certain new recommendations were appropriate in regard to groundwater sampling. Specifically, he noted Kevin Hansen, Thurston County's Hydrogeologist, was recommending conditions related to the asphalt cleanout stockpile on site .and was providing several options for the Applicant to consider.

DAWN PEEBLES, Environmental Health Department, appeared and testified that the department had reviewed the MDNS conditions and found the Applicant in compliance and, referencing her memoranda in Exhibit H, recommended approval of the 5-year review and did not recommend any additional conditions.

ARTHUR SAINT, PE, Public Works Department, appeared and testified that the department had reviewed the conditions and had no additional comments nor recommendations.

KEVIN HANSEN, County Hydrogeologist, appeared and testified as to concerns that the waste batch of old asphalt may be leaching into the groundwater and that the monitoring of it needed to be changed. Mr. Hansen had addressed this issue in a Memorandum dated January 15, 2021, to Mr. McCormick and was emphatic that the threat of groundwater contamination was immediate and had to be addressed as soon as possible.

KYLER DANIELSON, Land Use Project Manager, Lakeside Industries, appeared and testified on behalf of the Applicant as to the history of the SUP conditions, that Mr. Hansen and Mr. McCormick had made site visits, that the Applicant agreed with the County Staff Report that they were in compliance with the SUP and MDNS and with the Staff recommendation on pages 15 and 16 that a new condition be added.

KAREN DEAL, Land Use Director, Lakeside Industries, appeared and testified consistent with Mr. Danielson's testimony and differentiated short term and long term groundwater testing and monitoring.

HOWARD GLASTTETER, a citizen, appeared and testified consistent with his emails (Exhibits 2 and 2b) and documentation that he was concerned that the stockpiled asphalt could be leaching into the groundwater and that the asphalt must be stockpiled properly to avoid contamination.

After a lengthy discussion regarding the concern for possible groundwater contamination, the Applicant and the County agreed to work together to draft a recommended condition to replace the County recommended condition on pages 15-16

of the Staff Report.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The Examiner ordered the record be open until May 26, 2021, for the County and the Applicant to discuss and present recommendations for conditions of approval.

The hearing was concluded at 3:30 p.m.

Subsequent to the hearing, on motion of the County and the Applicant, the Examiner maintained the record open until June 2, 2021, to file agreed recommended conditions or to set a hearing before the Examiner for argument.

**NOTE:** A complete record of this hearing is available in the office of the Thurston County Resource Stewardship Department.

### **FINDINGS, CONCLUSIONS, AND DECISION:**

#### **FINDINGS:**

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony and taken this matter under advisement.
2. The Applicant's application for asphalt production at the Durgin Road Plant (Plant) was reviewed through an Environmental Impact Statement with significant public involvement which resulted in the issuance of a Mitigated Determination of Nonsignificance (MDNS) on September 8, 2000. A SEPA review is not required for the subject Five-Year Review herein as it does not qualify as an action under WAC 197-11-704. Also, inspections and reviews of prior decisions are exempt from SEPA review under WAC 197-11-800 (12) & (13).
3. Written notice of the public hearing on the Five-Year Review of the Plant was sent to all property owners within 2,600 feet of the site and other interested parties on May 7, 2021. Notice was published in The Olympian on May 7, 2021, at least ten (10) days prior to the hearing. A twenty (20) day Notice of Application (Attachment d) was also issued on July 8, 2020 and sent to property owners within 2,600 feet, agencies and tribes.
4. The 25-acre plant site is bounded to the north by Durgin Road, to the east by the Burlington Northern Railroad right-of-way, to the west by Old Pacific Highway and to the south by Reservation Road S.E. The plant is in the northeastern portion of the Holroyd gravel mine. The plant is buffered by the mine to the south and west, by the railroad immediately to the east, and by residential parcels to the north side of Durgin Road S.E. The plant is not visible from any public roads due to the walls and berms that surround it nor from the residential parcels.

5. The Plant is located 11125 Durgin Road S.E., Olympia, WA 98513 within the Mineral Resources of Long-Term Commercial Significance land designation in accordance with the Thurston County Comprehensive Plan and in the Zoning designation of Rural Residential 1/5 with asphalt production allowed by a previous SUP. The site is predominantly flat and mostly impervious and devoid of most vegetation with exception of the berms on the east and north portions of the site. There is an office onsite in addition to the asphalt making equipment. A conveyor belt takes gravel from the adjacent Nielson-Holroyd gravel mine and delivers it directly to the asphalt making equipment.
6. The plant was approved by Special Use Permit (SUP) 990457 for asphalt production on April 20, 2001, by the Thurston County Hearing Examiner. The decision was appealed and then remanded back to the Thurston County Board of Commissions which affirmed the Hearing Examiner's decision and amended the SUP on July 29, 2002. The SUP was again amended on December 19, 2006, to modify the number of asphalt storage silos and clarified by two subsequent Hearing Examiner decisions in 2007.
7. The Five-Year Review is required by Condition No. 1 of SUP 990457:

Pursuant to TCC 20.54.070(21)(3), the Special Use Permit shall be reviewed by the Hearing Examiner within five years from the date of this approval.
8. Condition 4 of SUP 990457 provided:

The conditions as set forth in the MCNS are hereby incorporated as conditions to the Special Use Permit.
9. The Applicant applied for the first Five-Year Review in 2009; however, the review was not completed for a number of reasons, including County staffing and caseloads. The Applicant regularly communicated with the County regarding the review and on May 16, 2019, submitted the Master Application herein for the "Lakeside Industries Durgin Road Plant-5 Year Review" which the County determined to be complete on June 14, 2019.(Attachment c1 and c2)
10. During the review process, Agency comments were received from Thurston County Environmental Health (Attachment h) recommending approval without further conditions, from Thurston County Public Works (Attachment i) finding the project in compliance and from Kevin Hansen (CPED) who was very concerned with groundwater contamination from the asphalt stockpiles. The County also received comments from the Nisqually (Attachment e) and Squaxin (Attachment g) Indian Tribes, neither of which had any issues with the project. Additionally, comments were received from the Washington State Department of Ecology (Attachment j) recommending soil testing as the site is

within the old ASARCO smelter plume to which the County determined was not necessary as the active portion of the site is entirely paved. Citizen comments were made by Howard Glastetter (Attachments I, 2b and Ex 3) and Phyllis Farrell (Attachment 2a) who were concerned about groundwater contamination.

11. The County conducted the Five-Year Review by analyzing and determining the Applicant's plant operations and procedures in comparison with applicable conditions of approval, the MDNS set forth in Sup 990457, the subsequent Hearing Examiner Decisions and clarifications and by site visits during 2020. (See Applicant's Attachments c1,c2, c2a, c2b, c2i, c2j, c2k). The three reviewing departments of the County, including Public Works, Public Health and Social Services, and the Community Planning and Economic Development Department (CPED), are in general agreement regarding Applicant's compliance with the project conditions and the necessity of new recommendations with regards to groundwater sampling.

12. The County analysis and findings regarding the September 18, 2000, SEPA MDNS Conditions:

(1) **Traffic**

The applicant must fully implement the Transportation Impact Analysis, dated December 1998 by SCA Engineering. The analysis requires that the applicant implement the following improvements prior to operation of asphalt production.

Findings: The five year review by Thurston County Public Works.

a. Realign roadway at intersection of Durgin Road and Old Pacific Highway.

Findings: The five year review was reviewed by Thurston County Public Works who found the project to be in compliance.

b. Construct conveyor belt between Holroyd pit and Lakeside Industries plant

Findings: Completed.

(2) **Noise**

Fully implement construction and operational mitigating measures identified in Noise Analysis, dated April 14, 1999 by McCulley, Frick & Gilman.

a. Select enclosed burner system before plant operations begin.

b. Maintain 40-foot berm along western side of plant before plant operations begin.

Findings: Staff believes the project to be in compliance with the above condition based upon site visits. Per answer 2.a. on page 4 of Tab 3 the enclosed burner system condition was met.

- (3) Measure noise levels at property boundaries prior to and during nighttime operations to establish compliance with WAC 173-60.  
Findings: The applicant indicates that this was done per item no. 3 of Tab3, pg. 4 and references Tab 6 which is an environmental noise analysis and results. Based on staffs understanding of the report, they appear to be in compliance.
- (4) After six months or within 12 months of initiating asphalt production, any party of record may request a public hearing to review impact of nighttime noise.  
Findings: Evidently, no hearing was requested based upon records.
- (5) If nighttime standards cannot be met, further mitigation measure will be required.  
Findings: There is no indication that nighttime standards have not been met.
- (6) **Lighting**  
Lighting on-site must be shielded and directed away from adjoining properties.  
Findings: In compliance per applicant (no. 6 of Tab 3, pg. 5). Additionally, the 40-foot berms would help with regards to lighting impacts.
- (7) **Odor**  
Coalescing filter control must be installed on asphalt cement tank vents.  
Findings: Installed per applicant (no. 7 of Tab 3, pg. 5). There is no way for staff to verify.
- (8) **Spill Prevention**  
Spill prevention plans must be maintained, reviewed and updated annually.  
Findings: In compliance per the project Spill Control Plan. Tab 11 of application
- (9) **Drainage and Stormwater**  
Comply with best management practices (BMPs) for treatment of stormwater.  
Findings: In compliance per Tab 11 of application which details BMPs and treatment systems.
- (10) Control erosion throughout the construction period.  
Findings: Construction was completed and project was in compliance to staffs knowledge. This would have been reviewed by TC Public Works during construction.

(11) **Aquifer Protection**

Fully implement the Hydrogeological Report dated April 29, 1999 from HWA Geosciences, Inc. Implement the following measures in 11a.-11f.

- a. Above ground fuel and petroleum/asphalt product tanks on impermeable pads with secondary containment.  
Findings: See Tab 11 of application for project Stormwater Pollution Prevention Plan (SWPPP). Staff also viewed these items during a site visit.
- b. Traffic control within site to minimize accidents and spills  
Findings: Traffic direction and speed limit signs posted on site.
- c. Grass-lined bioswales to filter stormwater runoff  
Findings: This would have been review by TC Public Works during construction. See Public Works approval of 5 year review (Attachment i). In compliance per applicant and storm ponds were observed to be functioning during site visit.
- d. Berms or lined ditches around infiltration pond  
Findings: This would have been reviewed by TC Public Works during construction. See Public Works approval of 5 year review (Attachment i).
- e. Impermeable pads for equipment maintenance and washing  
Findings: In compliance per applicant. See 11 e. on page 6 of Tab 3. Also see Tab 11 for project SWPPP.
- f. Use of source control and operational BMPs for fueling stations, vehicle washing stations, liquid material loading/unloading systems, and liquid material storage.  
Findings: Completed and in compliance per applicant (no. 11 f. of Tab 3, pg. 5, which refers to Tab 11 [SWPPP]). Additionally, see Environmental Health approval of five year review (Attachment h).

(12) Fully implement Ground Water Monitoring Plan dated July 23, 1999 by HWA Geosciences, Inc.

Findings: In compliance per applicant (Tabs 9 and 10) of application. These are hydrogeologic evaluations, the project groundwater monitoring plan and reports. The applicant provided more detailed answers in a revised condition matrix provided in March 2021 based upon staff's request. Please refer to page 6. of Tab 3 (no. 12). Kevin Hansen, TC Hydrogeologist reviewed these materials and provides some recommendations (Attachment k) which are addressed as proposed conditions moving forward.

(13) Sample and test groundwater for TPH, diesel to heavy oil range, pH, TDS, Iron and Manganese.

Findings: In compliance per applicant, no. 13 of Tab 3, pg. 6 which reference Tabs 9 and 10 of application. These are water quality monitoring plans and results of monitoring. The applicant provided more

detailed answers in a revised condition matrix provided in March 2021 based upon staff's request. Please refer to page 6. of Tab 3 (no. 13).

Sample locations must include three new monitoring wells and four existing monitoring well at the Holroyd gravel mine. Monitoring well locations are shown at Figure 1 of Attachment B of Tab 10.

Findings: In compliance per applicant (Tabs 9 and 10) of application. Also see additional comments on Tab 3, page 6 of application. A fourth well (MW-13) was installed down gradient (northwest) of the fuel tanks and the shop to provide additional monitoring. Monitoring well locations are shown at Figure 1 of Attachment B of Tab 10.

- (14) Complete one round of water quality and level monitoring prior to start of site operations to evaluate background conditions.

Findings: In compliance and completed per applicant (no. 14 of Tab 3, pg. 6). This references Tabs 9 and 10 which relate to water quality monitoring.

After start of operations, complete water quality and water level monitoring quarterly for the first two years.

Findings: In compliance and completed per applicant (Tab 3 no, pg. 6).

After the first two years, monitoring will become semi-annual, two times per year approximately September and March.

Findings: In compliance and completed per applicant (no. 14 of Tab 3, pg.7)

If there is evidence of groundwater impacts, a new monitoring schedule will be developed in cooperation with Thurston County Health Department.

Findings: Not applicable per applicant, indicating that there was no evidence of groundwater impacts (Tab 3, pg. 7).

However, based upon site findings by Kevin Hansen, CPED Hydrogeologist (Attachment k), there are some additional groundwater monitoring recommendations. There is a large volume of asphalt plant cleanout material which is stored in the southeastern portion of the site. Based upon a drone flyover in 2019 there is approximately 67,000 cubic yards of cleanout material (asphalt) located in this area. Mr. Hansen had concerns about potential groundwater impacts from this pile of cleanout material. Per Mr. Hansen's comments, staff recommends conditions as laid out by Mr. Hansen in order to address groundwater issues with regards to the stockpiled asphalt.

(15) **Air Quality**

Implement air quality analysis dated December 19, 1997 by McCulley, Frick and Gilman, Inc. which includes mitigating measures 15a.-15d.

a. Identify a location that allows for use of adjacent raw material.

Findings: Per Tab 3 of the application (pg. 8, no. 15) the air quality analysis is included in Tab 7(a). The analysis and its mitigating measures have been implemented.

The Durgin Road Plant is located adjacent to the Nielson - Holroyd mine.

b. Use water spray to minimize dust; all driveways, roadways, and driving surfaces washed down as needed.

Findings: The project is in compliance per the application, which states that operations are in accordance with ORCAA Order of Approval and the Ecology issued Sand and Gravel General Permit.

c. Burn propane or natural gas instead of oil as dryer fuel, using diesel only as a backup if the gas supply is disrupted.

Findings: The project is in compliance according to the application per Tab 7. of the application. Per the application, operations are in accordance with the MDNS (Tab 2, item 2(a) of application) and the ORCAA Order of Approval.

d. Install drop box and baghouse to collect particulate matter from the flue gas.

Findings: The project is in compliance per the application, Tab 7. According to the applicant, equipment was installed per ORCAA Order of Approval.

(16) All operations on site must meet the standards and requirements of EPA, Ecology and ORCAA.

Findings: Per the application the operation is in compliance with these permitting requirements per Tab 3, pg.8. It would be difficult for the County to know whether the project is in full compliance with other agencies.

(17) Install "state-of-the-art" plant.

Findings: Completed per the application which refers to Tab 7. At the time the plant was installed ORCAA required enforceable commitments to apply the best available control technology (BACT) to control emissions. The mechanical design and technology used to operate the plant is state-of-the-art and remains a standard design for all newly constructed asphalt plants per pg. 8 of Tab 3 (no. 17). Also see the remainder of their response to this condition on page 9 of Tab 3.

- (18) Petroleum products are permitted on-site if they are stored in tanks or enclosures approved by the Thurston County Fire Marshall.  
Findings: In compliance per the application (Tab 3, pg. 9).
  - (19) Utilities must be extended to the site by service providers.  
Findings: In compliance per the application (Tab 3, pg. 10).
  - (20) Prior to plant installation, Lakeside must certify to the Director of Development Services that the plant meets or exceeds all noise, odor, and air quality standards in effect at the time of installation. In addition, the applicant must certify to the Director that all required permits have been acquired. These are all listed under Tab 2a. of the application which is the project MDNS.  
Findings: In compliance and completed per the application, Tab 12 (Letter of Certification of Compliance with Regulations as required by MDNS General Condition 20).
13. The County analysis and findings regarding the April 20, 2001 SUP Conditions of Approval:
- (1) Pursuant to TCC 20.54.070 (21)(e) the Special Use Permit shall be reviewed by the Hearing Examiner within five years for the dated of this approval. The Director of Development Services may authorize a reasonable fee for the review.  
Findings: Although there have been no completed five year reviews to date, this review will make the project compliant with this condition. A five year review application was submitted in 2009 which was not completed due to staffing and caseloads. The next application would have been due in 2014 which was not submitted. However, this was likely due to the fact that the previous review had not yet been completed. In any event, the current five year review application submitted in 2019 will bring the project into compliance.
  - (2) Recycling of asphalt or concrete is permitted as an accessory use only in conjunction with a permitted crusher and in accordance with County and State Health Department regulations and requirements.  
Findings: In compliance. There is no concrete or asphalt recycling taking place to staff's knowledge. However, there is a large stockpile of leftover asphalt in the southeast portion of the site as can be seen in the aerial photo below. Per Lakeside staff, none of this material has been reused.
  - (3) Temporary asphalt production is permitted only to fulfill a contract for on specific public project and for a period not to exceed twelve months or the length of the contract, whichever is shorter.

Findings: Staff believes this condition was only meant to be required prior to full operations being approved for the site after all conditions were met.

- (4) “The conditions as set forth in the MDNS as hereby incorporated as conditions to the Special Use Permit. A copy of the MDNS is attached as part of this decision (Attachment D).”

Findings: The MDNS is attached to the application at Tab 2(a). Its conditions are listed above as conditions 1 – 20

- (5) The applicant shall require that all of its truck drivers be instructed on the driving conditions of all roads in the area of the gravel mine, and in particular Kuhlman Road, Durgin Road and Old Pacific Highway. Specific attention shall be given in this instruction to controlling the speed of the truck traffic in a manner consistent with the posted speed limit courtesy to other drivers and pedestrians.

Findings: It would be difficult for County staff to verify compliance with this condition. It seems to be generally unenforceable unless the County receives complaints.

- (6) The applicant (Lakeside) shall cooperate with the County in posting the speed limits on Kuhlman Road, Old Pacific Highway and Durgin Road. No asphalt operation shall be allowed until these roads are posted with the speed limits.

Findings: To staff’s knowledge this was done. This would be an aspect of the Public Works review whose staff indicated the project to be in compliance.

- (7) Should the cumulative number of speeding tickets for Lakeside trucks being driven by Lakeside employees or contractors exceed three in any 6 month period the Special Use Permit shall be reviewed in a public hearing.

Findings: According to the applicant, Lakeside is in compliance with this condition.

14. The County analysis and findings regarding the December 19, 2006, SUP Conditions of Approval.

- (1) EXCEPT for Condition No. 2 of the April 20, 2001 decision of the Hearing Examiner (File SUPT/APPL 990457, all other conditions shall remain in effect. Note: Condition No. 2 allowed for the recycling of asphalt product (RAP) as an accessory use in conjunction with a permitted crusher and in accordance with County and State health Department regulations and requirements. This condition was deleted by the Superior Court.

Findings: To staff’s knowledge, the site is in compliance. No asphalt recycling is taking place.

- (2) As referenced in the April 20, 2001 decision of the Hearing Examiner....,all conditions as set forth in the September 18, 2000 ... (MDNS) remains in effect and are applicable to the amended SUPT.  
Findings: Noted.
- (3) The September 18, 2000 MDNS... are based on the project proposal as described in the Environmental Checklist, submitted May 27, 1999, by Lakeside Industries.  
Findings: Noted.
- (4) The maximum plant product rate shall be 300 tons of asphalt per hour and 300,000 tons per year. Plant production shall not be increased based on the number of silos on the site.  
Findings: Noted. In compliance to staff's knowledge based on communications with the applicant.
- (5) The building permit for the plant, including the third silo, shall not be issued prior to completion of the natural gas pipeline currently under construction to serve the plant. Asphalt production operations shall not be initiated until all applicable "pre-operational" conditions of the original asphalt special use permit are satisfied.  
Findings: Satisfied to staff's knowledge.
- (6) A maximum of three asphalt storage silos shall be located on the subject property. The storage silos shall (sic) a maximum height above grade of 66 feet and a maximum combined storage capacity of 16,316 cubic feet.  
Findings: Satisfied to staff's knowledge. Three silos were observed by staff. There is no way to verify the height or storage capacity.
- (7) The storage silos shall be placed in a linear configuration. Loading capacity of the silos shall be limited to on truck at a time.  
Findings: Satisfied to staff's knowledge based on site visit.

Note: Per the application (Tab 2(j) the January 4, 2007 Order on Clarification (clarifying storage silo height) was not available.

15. The County analysis and findings regarding the March 20, 2007 SUP Conditions of Approval

- (6) A maximum of three asphalt storage silos shall be located on the subject property. The storage silos shall be a maximum height above grade of 66 feet and a maximum combined storage capacity of 16,316 cubic feet. The maximum height of the silos does not included (sic) ancillary equipment,

such as conveyor and control equipment, placed on top of the silos. Total height of the silos and any ancillary equipment shall not exceed 80 feet. Findings: Satisfied to staff's knowledge based on site visit, though impossible to verify actual height.

16. A public comment letter was received from Mr. Howard Glastetter dated July 11, 2020 (Attachment f) which primarily involved traffic issues on Kuhlman Road and how Lakeside trucks access I-5 which the Count determined was not included in the SUP traffic conditions. However, the Hearing Examiner in approving the SUP in 2001 did include Condition number 7 which should be considered in the future if warranted:

Should the cumulative number of speeding tickets for Lakeside trucks being driven by lakeside employees or contractors exceed three in any 6 month period the Special Use Permit shall be reviewed in a public hearing.

### **CONCLUSIONS:**

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
2. The Applicant has demonstrated in this Five-Year Review of the Durgin Road Plant that the Special Use Permit 990457 criteria of approval are satisfied.
3. The following additional conditions agreed to by the Applicant and the County are necessary to ensure the Applicant's Durgin Road Plant remains in compliance with applicable development standards and regulations. (Ex. 4)
4. Within two years, Lakeside shall cover the Asphalt Plant Cleanout Material stockpile to prevent precipitation from filtering through the stockpile, using a cover as defined in Policy E.S. of the Nisqually Subarea Plan (updated 12/15/2020). Alternatively, Lakeside may remove the Asphalt Plant cleanout Material stockpile.
5. Lakeside shall submit an addendum to the Final Groundwater Monitoring Plan, prepared by HWA Geosciences, Inc. dated July 1999 to add the following requirements:
  - a. Add quarterly sampling for analysis of carcinogenic Polycyclic Aromatic Hydrocarbons (cPAHs) as defined by WAC 173-340-900 (Table 708-2) which defines cPAHs under Washington State's Model Toxics Control Act.
  - b. The selection of wells for this additional groundwater sampling and analysis shall be based on the location of the stockpiled Asphalt Plant

Cleanout Material and ill include one upgradient and two downgradient wells. If no current wells are suitably positioned, new wells will be installed to accommodate the actual stockpile location. Well locations for sampling shall be subject to approval by the County Hydrogeologist.

- c. Sampling and analysis methodology shall meet WAC 173-340 requirements.
- d. The following actions shall be taken based on cPAH sample results:
  - i. If cPAH compounds are detected below WAC 173-350 criteria as specified in Table 720-1 (Method A Cleanup Levels for Groundwater) for ANY of eight (8) consecutive quarterly sampling periods, cPAH sampling frequency shall be reduced to semi-annually.
    - 1. including after the pile is acceptably covered.
    - 2. Or, alternatively, Lakeside may choose to discontinue CPAH sampling after eight consecutive quarterly sampling periods if:
      - a. the Asphalt Plant Cleanout pile is acceptably covered using cover as defined in Policy E.S. of the Nisqually Subarea Plan (updated 12/15/2020); or
      - b. the Asphalt Plant Cleanout pile is removed.
  - ii. If cPAH compounds are detected above WAC 173-340 criteria as specified in Table 720-1 (Method A Cleanup Levels for Groundwater), lakeside shall submit for approval to Thurston County, and then implement, an acceptable workplan stating their response actions. Quarterly sampling for CPAH shall continue or resume until improvement occurs. The WAC 173-340 statistical tests for "detection above criteria" shall apply.
  - iii. Notification to Thurston County Environmental Health, Current Planning and County Hydrogeologist of findings within 30 days of lab results' receipt.
  - iv. Sampling requirements as defined in the final Groundwater Monitoring Plan, prepared by HWA Geosciences, Inc. dated July 1999, remain in effect and unchanged.

**DECISION:**

The Five-Year Review of the Applicant's Durgin Road Plant Special Use Permit 990457 criteria for approval are satisfied subject to compliance with the conditions set forth above.

ORDERED this 1st day of July, 2021.



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**STEPHEN R. SHELTON**  
Deputy Hearing Examiner

TRANSMITTED this      day of July, 2021, to the following:

**OWNER:**                      Nielsen Pacific Ltd.  
7216 Lakewood Drive West  
Tacoma, WA 98467

**APPLICANT:**                Lakeside Industries Inc.  
Attn: Karen Deal  
P.O. Box 7016  
Issaquah, WA 98027  
[Karen.Deal@lakesideindustries.com](mailto:Karen.Deal@lakesideindustries.com)

**POINT OF CONTACT:**      Lakeside Industries  
Attn: Kyler Danielson  
P.O. Box 7016  
Issaquah, WA 98027  
[Kyler.Danielson@lakesideindustries.com](mailto:Kyler.Danielson@lakesideindustries.com)

**OTHERS:**

THURSTON COUNTY



**THURSTON COUNTY**  
**PROCEDURE FOR RECONSIDERATION AND APPEAL**  
**OF HEARING EXAMINER DECISION TO THE BOARD**

**NOTE:** THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.\* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

**The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).**

**A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)**

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

**B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)**

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Community Planning & Economic Development Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

**C. STANDING** All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

**D. FILING FEES AND DEADLINE** If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$777.00** for a Request for Reconsideration or **\$1,054.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

\* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



<b>Project No.</b> _____ <b>Appeal Sequence No.:</b> _____
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**Check here for:**                    **RECONSIDERATION OF HEARING EXAMINER DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

**Check here for:**                    **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW \_\_\_\_\_  
 on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ relating to \_\_\_\_\_

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1.     Zoning Ordinance \_\_\_\_\_
2.     Platting and Subdivision Ordinance \_\_\_\_\_
3.     Comprehensive Plan \_\_\_\_\_
4.     Critical Areas Ordinance \_\_\_\_\_
5.     Shoreline Master Program \_\_\_\_\_
6.     Other: \_\_\_\_\_

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

**STANDING**

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

\_\_\_\_\_  
APPELLANT NAME PRINTED

\_\_\_\_\_  
SIGNATURE OF APPELLANT

Address \_\_\_\_\_

\_\_\_\_\_  
Phone \_\_\_\_\_

**Please do not write below - for Staff Use Only:**

Fee of  \$777.00 for Reconsideration or \$1,054.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.