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## **HEARING EXAMINER**

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### **OFFICE OF THE HEARING EXAMINER**

#### **THURSTON COUNTY**

#### **REPORT AND DECISION**

**PROJECT NO.:** 2022105705  
Lakeside Industries

**SEQUENCE NO.:** 2022 115152 ZM Special Use Permit  
2022 115154 XA SEPA

**TAX PARCEL NO.:** 21817140200

**LOCATION ADDRESS:** 11125 Durgin Rd. SE  
Olympia, WA 98513

**LEGAL DESCRIPTION:** Section 17 Township 18 Range 1E, Quarter SW NE NW SE  
BLA980097 TRB Document 315588

**APPLICANT/OWNER:** Lakeside Industries  
Atten: Kyler Danielson  
PO Box 7016  
Issaquah, WA 98027

**COUNTY STAFF:** Kraig Chalem, Senior Planner

**REQUEST:**

The Applicant seeks to amend their Special Use Permit (SUP) to allow for asphalt recycling at the existing Durgin Road Asphalt Plant. The SUP request also proposes to store 8,800-cubic yards of reclaimed asphalt product on site at any given time within a 15,383-square foot covered structure. The property is zoned RR 1/5 Rural Residential in Thurston County.

**PUBLIC HEARING:**

The Thurston County Pro Tem Hearing Examiner conducted a virtual open record public hearing on the request on Tuesday, November 14, 2023. The hearing was opened at 10:00 a.m. at which time the County submitted a revised Staff Report. The hearing was concluded at 12:00 p.m. at which time the record was left open for the public and the parties to have the opportunity to make comment on the revised Staff Report. A two (2) week public comment period was provided after which the Applicant and the County could respond to such comments within one (1) calendar week. The record was then closed on December 12, 2023.

**SUMMARY OF DECISION:**

The requested special use permit is **GRANTED** subject to conditions.

**TESTIMONY:**

At the open record public hearing, the following individuals presented testimony under oath:

Kraig Chalem, Thurston County Development Services Senior Planner  
Dawn Peeples, Thurston County Senior Environmental Health Specialist  
Arthur Saint, PE, Thurston County Public Works  
Kyler Danielson, Lakeside Industries, Land Use Project Manager

**EXHIBITS:**

At the open record public hearing, the exhibits submitted and made a part of the record included Exhibit 1 and Exhibit 2, Subsequent to the closure of the hearing during the time the record remained open, Exhibits 3, 4 and 5 were submitted and made a part of the record.

Exhibit 1	Community Planning & Economic Development Report, November 14, 2023
Attachment A	Notice of Public Hearing, November 3, 2023
Attachment B	Master Application, November 14, 2022
Attachment C	Special Use-Application, November 14, 2022

Attachment D	Site Plan 2022105705, November 14, 2022
Attachment E	Notice of Application, January 27, 2023
Attachment F	Current As-Built Plans, January 15, 2008
Attachment G	SEPA Determination Nonsignificance (DNS), September 29, 2023
Attachment H	Hearing Examiner Decision project no. 2019102295, July 1, 2021
Attachment I	Pocket Gopher Report, July 13, 2022
Attachment J	Email from County Accepting Trip Generation Report, September 13, 2022
Attachment K	SEPA Environmental Checklist, November 14, 2022
Attachment L	Superior Court Final Order, July 8, 2002
Attachment M	Noise Monitoring Plan, September 21, 2022
Attachment N	Traffic Trip Generation Memo, September 21, 2022
Attachment O	Drainage Report, November 14, 2022
Attachment P	Durgin Rd. RAP Cover Letter, November 14, 2022
Attachment Q	Groundwater Monitoring-Sampling Results, October 14, 2022
Attachment R	Interim Cover Letter Update, June 26, 2023
Attachment S	Lakeside Court of Appeals Mandate, November 9, 2004
Attachment T	Final Agreed Condition Language, June .2, 2021
Attachment U	Squaxin Island Tribe Comments, February 2, 2023
Attachment V	ORCAA comments, February 6, 2023
Attachment W	Ecology Comments, February 16, 2023
Attachment X	Ecology Comments, October 12, 2023
Attachment Y	Kevin Hansen Hydrogeologist Comment, August 1, 2023
Attachment Z	Public Works Recommendation of Approval, July 31, 2023
Attachment AA	Public Comments
Attachment BB	Environmental Health Recommendation of Approval, November 06, 2023
Exhibit 2	Errata Memorandum Correcting Errors in the Staff Report, November 13, 2023
Exhibit 3	Revised Staff Report
Exhibit 4	Public Comment, Mr. Glastetter, Revised Staff Report, November 28, 2023
Exhibit 5	Applicant response to public comment, December 11, 2023

### **FINDINGS OF FACT:**

1. On November 14, 2022, Lakeside Industries (Applicant) filed a Master Application (Application) for a Special Use Permit (SUP) seeking approval to store and recycle reclaimed asphalt product (RAP) at its Durgin Road Asphalt Plant located at 11125 Durgin Rd. SE, Olympia, WA 98513, parcel no. 21817140200, Section 17 Township 18 Range 1E, Quarter SW NE NW SEBLA980097 TRB Document 315588. Specifically, the request is to process RAP and store approximately 8,800-cubic yards on site at any given time. Most imported material will be internally sourced from Lakeside projects. The Applicant would also accept material from outside entities as well; however, RAP from industrial or commercial hazardous

material storage sites or sites undergoing cleanup would not be accepted. (Exhibits 1B, 1C and 1P)

2. On November 14, 2022, the Applicant also filed the SEPA Environmental Checklist with the County. (Exhibit 1K) After the Thurston County Community Planning and Economic Development Department reviewed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA), Kraig Chalem, Senior Planner, as the County SEPA Responsible Official, issued a Determination of Nonsignificance (DNS) on September 29, 2023. The SEPA comment deadline was October 13, 2023, and the SEPA appeal deadline was October 20, 2023. No appeals were filed and the DNS became final. (Exhibit 1G)
3. On January 27, 2023, the Notice of Application was issued to the appropriate local and state agencies, sub-area project list subscribers and property owners within 2600-feet of the project site with the comment period expiring on February 16, 2023. (Exhibit 1E)
4. The Notice of the Public Hearing was published in The Olympian on November 3, 2023, at least ten (10) days prior to the hearing and posted at the subject site. Written notice of the public hearing was sent to all property owners within 2,600-feet of the site and to others who had requested notice. (Exhibit 1A)
5. The subject property is 24.98-acre in size. The north and eastern edges are bordered by steep slopes greater than 40 percent which are covered with Scotch broom, Himalayan blackberry, and grasses. An office building, shop and the asphalt plant are constructed on cement in the center of the parcel. The facility is served by City of Lacey public water and an on-site sewage system which is permitted and approved to serve a maximum of fifteen employees. The system has a current Operational Certificate (OPC) that is required to be renewed every three years. A gravel driveway extends out to Durgin Road SE and is accessed by heavy and light duty commercial trucks and personal vehicles. The site is mapped as a category 1 critical aquifer recharge area, which is a critical area regulated by the County Critical Area Ordinance, Thurston County Code (TCC) 24.10. No other critical areas were identified on the property. (Exhibits 1, Exhibit 1I and 1BB)
6. The subject property is located in the Nisqually Subarea Plan which had been adopted as a part of the 1992 Thurston County Comprehensive Plan (Plan). The Subarea Plan generally covers a 14 square-mile area lying east of the northern county Urban Growth Boundary and north of Fort Lewis and referred to as the Nisqually Planning Area. (Plan, Appendix C, 14-(C)-3) Although asphalt recycling has been a permitted use in Thurston County on a case-by-case basis, subject to the current regulations of the Thurston County Code, the Nisqually Subarea had been the only area within the County that had a broad policy-level prohibition against asphalt recycling. Pursuant to Ordinance No. 15974 adopted by the Thurston County

Commissioners on December 15, 2020, asphalt recycling is an allowable use in the Nisqually Subarea with a requirement of Best management Practice for covered storage and for compliance with the specific standards articulated in TCC 20.54, Special Uses for asphalt production.

7. The subject property is located within the Rural Residential-One Dwelling Unit Per Five Acres (RR 1/5) zoning classification within rural Thurston County. TCC 20.09.020 provides the primary uses in the zone are agriculture and single-family and two-family residential. TCC 20.09.025 authorizes special uses in the RR 1/5 zone pursuant to compliance with TCC 20.54.
8. The Applicant's asphalt plant was originally approved by the Thurston County Hearing Examiner on April 20, 2001, as a Special Use Permit under SUP no. 990457. (Exhibit 1H) In the July 5, 2002, Final Order of the Superior Court of State of Washington for Mason County upholding the Hearing Examiner's decision and reversing the Thurston County Board of Commissioners' decision to reverse the Examiner's approval, the Court confirmed that the Nisqually Subarea Plan specifically prohibited the Applicant from including asphalt reprocessing on the subject property. (Exhibit 1L) Division II of the State Court of Appeals affirmed the Superior Court decision. (Exhibit 1S)
9. Subsequent to the approval of the Applicant's asphalt plant and consistent with the Superior and Appellant Court orders, asphalt recycling was not included in the asphalt plant operations. The Five-Year Review of the plant was approved by the Hearing Examiner on July 1, 2021. (Exhibit 1H). Pursuant to the 2020 amendment of the Nisqually Subarea Plan to allow asphalt recycling and reclaimed asphalt product stockpiles subject to conditions, the Applicant has filed the request herein to amend their existing Special Use Permit (SUP) for the asphalt plant to allow for recycling asphalt material and the storage of the RAP under a cover structure at the plant. (Exhibit 1, 1B and 1C)
10. The Applicant proposes to store approximately 8,800-cubic yards of RAP on site under a 15,383-square foot storage structure, which is proposed to be approximately 37-feet in height. RAP will be imported from paving projects throughout the region; however, RAP from industrial or commercial hazardous material storage sites or sites undergoing cleanup would not be accepted. The new cover structure and RAP would be situated in the east area of the site on paved surface with no significant vegetation near the existing asphalt plant, which is accessory to an existing mining operation operated by Holroyd Company. No new impervious surfaces are proposed. The RAP would be added to asphalt mixes during asphalt mix manufacturing. Access to the asphalt plant will be by way of an existing driveway from Old Highway 99 SE. Employees will use existing facilities located within the existing office building. (Exhibits 1, 1D and 1F)

11. The Applicant filed a “2022 Mazama Pocket Gopher Study’ by West Fork Environmental that reviewed the determination by the Thurston County Critical Areas Ordinance (CAO), TCC 24.25, that the subject parcel contains soil types associated with native prairie habitat and certain protected species, including the Mazama pocket gopher which is listed as threatened under the federal Endangered Species Act. The study noted that no Mazama Pocket Gopher (MPG) mounds were observed and that the proposed recycling building will be located entirely on concrete and asphalt and no clearing of vegetation or disturbance of the ground is proposed. The study also noted only one of the CAO prairie plant species was observed on the parcel; therefore, the criteria necessary to designate the prairie as a critical area was not met. In addition, no mima mounds and no oak trees were observed as the existing Holroyd gravel extraction and mine had previously removed all the topsoil, thereby removing potential habitat. (Exhibit 1I)
12. The Applicant submitted a “Drainage and Erosion Control Report” prepared by Sitts & Hill Engineers that observed that the existing project area is comprised of asphalt pavement and is gently sloped at about 2 percent to drain to the existing stormwater management facilities that are located on the south and west portions of the site. Due to the project area and areas adjacent being fully stabilized by pavement, there is a low potential for erosion. The vegetated sloped area southeast of the project area will not be disturbed nor impacted by this project and there are no existing erosion concerns or flooding concerns located on or near the project site. On review of the available County GIS maps, the study concluded that there do not appear to be any mapped or observed critical areas within the project vicinity as the closest wetland area mapped on County GIS is south of the parcel and about 750-feet away from the subject property and a second wetland area is north of the parcel and about 845-feet away from the site. The site is not within a FEMA- defined flood hazard area. (Exhibit 1O)
13. The Applicant submitted a “Technical Memorandum” regarding ground water sampling prepared by Parametrix which concluded that the data did not show any characteristics that can be attributed to the Durgin Road Plant: (Exhibit 1Q)
  - TPH has not been detected in any of the wells;
  - No cPAHs were detected in monitoring wells in the vicinity of the asphalt plant cleanout stockpile;
  - The pH measurements were atypically low across the site for the second consecutive event; however, TDS remained within historical concentrations. The pH measurements will be reassessed during subsequent monitoring events.
  - Groundwater elevations were consistent with historical data indicating flow toward the northwest.
14. The Applicant submitted a “Trip Generation and Distribution Memo” prepared by Transportation Engineering NorthWest (TENW) that estimated trip generation of the proposed recycling plant based on the amount of RAP imported to the facility per year to meet the

recycling demand assuming maximum recycling and production capability. As the plant is currently permitted to produce 300,000 tons of asphalt mix per year with a maximum of 40 percent of the mix to be RAP, the result would be 120,000 tons of RAP permitted per year. Therefore, based on an average truckload of 30 tons, the recycling of RAP operation is expected to result in a maximum of 4,000 additional trucks per year. Assuming the plant operates 150 days per year, this equates to 27 additional trucks entering and exiting the site per day associated with the proposed RAP recycling operation. Given the Thurston County Traffic Analysis Requirements noted in Section 5 of the County's Road Standards that requires a Traffic Impact Analysis (TIA) if a project is estimated to generate 100 or more p.m. peak hour trips per day, the proposed RAP recycling operation's anticipated 27 additional trucks entering and exiting the site per day does not require an additional traffic analysis. (Exhibit 1N)

15. The Applicant submitted a "Noise Monitoring Plan" prepared by Landau Associates which developed a quarterly noise monitoring plan that would be consistent with TCC 17.20.110, entitled "Mineral Extraction and Asphalt Production" and the Washington Administrative Code (WAC) Chapter 173- 60. The noise plan provides the maximum permissible environmental noise levels based on the environmental designation for noise abatement of the source and receiving properties which are located north of the facility on the north side of Durgin Road SE and east of the plant on the east side of the berm of the railroad tracks. In addition, in the event of a noise complaint, the Applicant would be required to initiate an investigation to identify the source within seventy-two hours and to identify the action necessary to correct the noise issue and to develop an implementation plan for corrective action within sixty days. (Exhibit 1M)
16. The Squaxin Island Tribe's Archaeologist, Shaun Dinubilo, commented that the Tribe has no specific cultural resource concerns for this project: however, the Tribe would concur with the recommendations of the Washington State Department of Archaeology and Historic and request that if any archaeological or cultural resources are uncovered during implementation, work would halt in the area of discovery and the DAHP and Squaxin Island Tribe be contacted. (Exhibit 1U)
17. The Olympic Region Clean Air Agency (ORCAA) reviewed the environmental checklist for the proposed asphalt recycling as well as bringing a portable temporary crusher onsite and commented that approval is required by ORCAA for RAP and, if there is no permit for the rock crusher, for the rock crusher as well. The ORCAA also delineated the procedure required to submit the permit application. (Exhibit 1V)
18. The Washington State Department of Ecology (DOE) reviewed the proposal and provided certain comments addressing the following: hazardous waste and toxics reduction; spill prevention; preparedness and response; solid waste management; toxic cleanup; water quality/watershed resources; and water quality/industrial operations (Exhibits 1W and 1X)
19. Dawn Peebles, Thurston County Environmental Health Division, testified that the Division had

reviewed the request and recommended approval subject to certain listed conditions. (Exhibit 1 BB)

20. Arthur Saint, PE, Thurston County Public Works, testified that the Development Review Section had reviewed the request and recommended approval subject to certain listed conditions. (Exhibit 1Z)
21. Kevin Hansen, Thurston County Hydrogeologist, commented that the primary issue regarding the site hydrology is the covering to the recycled asphalt “waste batch” which the Applicant is addressing. Mr. Hansen noted that the Applicant’s current site hydrologic monitoring program is acceptable and should be continued. (Exhibit 1Y)
22. Several public comments by Howard Gastetter provide information regarding the history of the Lakeside asphalt plant and the Nisqually Valley Sub-Area Plan. After noting that the proposed asphalt recycling plant would be required to follow the rules in Goal E.5 of the 1992 Nisqually Valley Sub-Area Plan, Mr. Gastetter stated that “I am now agreeing with the proposal to allow RAP in Holroyd’s pit provided it is covered and protected from weather.” (Exhibit 1AA)
23. A public comment by Howard Gastetter noted that the project “looks good” and that the Applicant “has been a good neighbor and their modern plant is now positioned to be even more state of-the-art.” However, he did note the even though the Applicant’s current asphalt storage pile meets storage standards because it is currently covered by tarps, the Best Management Practices state that there should be an air space between the cover and the material which allows the recycled asphalt to dry if it contains moisture and allows the plant to produce asphalt at a lower temperature by not having to drive the moisture out of the RAP. (Exhibit 1AA)
24. The Applicant’s response to Mr. Gastetter’s comments in Exhibit 4 noted that the Nisqually Subarea Plan’s requirement to cover recycled asphalt pavement (RAP) in the subarea is currently met by the tarping that Lakeside has installed on site. However, the Applicant’s proposal would address Mr. Glastetter’s concern because the proposed 15,383-square foot cover structure would create an air space between the cover and the RAP to address moisture accumulation. (Exhibit 5)

#### **CONCLUSIONS OF LAW:**

1. Pursuant to Thurston County Code (TCC) 2.06.010(A) and TCC 20.54.015(2), the Hearing Examiner has the jurisdiction to review and approve the request herein for a special use permit.
2. The Hearing Examiner may approve an application for a special use permit only if the following general standards set forth in TCC 20.54.040 are satisfied:



- A. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan, and all applicable federal, state, regional, and Thurston County laws or plans.

The proposed asphalt recycling is consistent with the Thurston County Plan, and specifically with the Nisqually Subarea Plan, which provide that asphalt recycling is an allowable use in the Nisqually Subarea with a requirement of Best management Practice for covered storage and for compliance with the specific standards articulated in TCC 20.54, Special Uses for asphalt production. (Finding 6)

- B. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.

The proposed asphalt recycling plant is consistent with the design standards provided in TCC 20.09.040 which are established as the minimum necessary to ensure that the purpose of the RR1/5 district is achieved and maintained as new lots are created and new buildings are constructed. The minimum lot size is not applicable as the project is not residential. The nonresidential use is on an approximately 25-acres project site which is greater than five acres. The thirty-five foot maximum building height is not applicable as the proposed shed structure is a required appurtenance to the existing, ongoing operation, and, pursuant to TCC20.07.080 is excluded from maximum height regulations. The proposal meets the minimum yard requirements for front, side and rear setbacks of 35-feet, 10-feet and 10-feet respectively, from property lines for a commercial/industrial structure. The maximum hard surface coverage for new development in the RR 1/5 zone addresses lots smaller than the subject property.

- C. Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:

1. Impact.

The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though said adverse effects may occur.

The Thurston County Environmental Official issued a Determination of Nonsignificance (DNS) in regard to the proposed asphalt recycling plant based on the finding that the plant will not have a probable significant adverse impact upon the environment. No appeals were filed and the DNS became final. (Finding 2).

Specifically, the Applicant filed numerous studies which concluded the proposed use will not result in substantial or undue adverse effects: “2022 Mazama Pocket Gopher Study” (Finding 11); “Drainage and Erosion Control Report” (Finding 12); “Technical Memorandum” regarding ground water (Finding 13); “Trip Generation and Distribution Memo” addressing traffic (Finding 14); “Noise Monitoring Plan” (Finding 15); Squaxin Indian Tribe comments of no concerns (Finding 16); the ORCAA review comments (Finding 17); the DOE comments (Finding 18); and the comments from the County Environmental Health department (Finding 19), Public Works (Finding 20) and hydrogeologist (Finding 21).

## 2. Services.

The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

The proposed asphalt recycling plant will utilize the services, facilities and utilities currently serving the Applicant’s asphalt plant. (Finding 5)

3. In addition to the review of the general standards, TCC 20.54.070 requires the Hearing Examiner to review and apply the standards for certain specific special uses which include asphalt production and asphalt recycling.

TCC 20.54.070(3.1) entitled “Asphalt Production” requires that asphalt plants (hot mix or batch plants) are subject to the following provisions. (Note: The existing asphalt plant has recently been reviewed and found compliant with the applicable requirements below. The addition of the proposed asphalt onsite recycling operation triggers additional requirements below.)

- a. Setbacks. The emissions point source at an asphalt plant shall be separated by a distance of at least five hundred feet from public parks and public preserves, which include parks, regional trails, national wildlife refuges, state conservation areas, wild life areas, and other government owned preserves, or three hundred feet from the boundary of any residential zoning district with an existing or zoned density of greater than one dwelling unit per five acres, urban growth areas, and any residential lot less than one acre in size.

There are no government owned within 500-feet nor any residential parcels within 300-feet.

- b. Asphalt plants are allowed in the rural resource industrial (RRI), light industrial (LI), and rural residential resource one dwelling unit per five acres (RRR1/5) zoning

designations or within a permitted gravel mine located within selected zoning designations as reflected in Table 1. Existing asphalt plants located within a permitted mineral extraction use area may apply for a new special use permit when the extraction activity ceases.

The property is situated within designated mineral lands having commercial significance and includes a legally established mining operation and asphalt plant.

- c. The location of asphalt plants shall be consistent with the Thurston County Comprehensive Plan, which includes, but is not limited to, sub-area plans.

The existing asphalt production operation and proposed asphalt recycling operation are consistent with both the Comprehensive Plan, and Nisqually sub-area plan.

- d. Prior to commencing operation, the asphalt plant operator shall provide evidence to the county that the facility has received coverage under the state's National Pollution Discharge Elimination Systems (NPDES) general permit applicable to asphalt plants, unless it provides written confirmation of an exemption from the agency with jurisdiction over such permit.

The asphalt plant is not new to the site and is an existing commercial activity. The Applicant recently received their 5-year review and approval.

- e. Asphalt plants shall provide necessary space to accommodate delivery trucks on the site.

The Applicant has stated that RAP material will be imported from paving projects throughout the region and has provided a Traffic Trip Generation Memo to meet this requirement.

- f. Asphalt plants shall have County approved haul routes.

No changes to existing routes are proposed.

- g. The source of recycled asphalt pavement (RAP) shall only be from highways, roadways, runways, parking lots and shall not be from a contaminated site such as a superfund site or Model Toxic Control Act (MTCA) site. The asphalt plant operator shall provide semiannual reports to the county documenting the source of all recycled asphalt pavement brought to the production site.

The RAP proposed to supply the recycling plant operation will be imported from paving projects throughout the region. The Applicant stated in the SUP Application Project Description that it has a policy prohibiting acceptance and import of RAP from industrial or commercial hazardous material storage sites or sites undergoing cleanup action. In addition to this prohibition as a condition of approval, the site is currently subject to a review every 5-years to maintain the required operational permits.

- h. Asphalt plants shall comply with the requirements and best management practices of the Thurston County Drainage Design and Erosion Control Manual, as amended

This requirement will also be made a project condition.

- i. Asphalt plants shall be fueled by natural gas, propane, or an alternative fuel with the same or less hazardous emissions or waste as natural gas or propane.

The current application does not propose to add mechanical equipment necessitating fuels.

- j. The operation shall obtain and maintain a solid waste permit from Thurston County environmental health for operations that recycle asphalt.

This requirement will be made a project condition.

- k. Asphalt plants shall meet all applicable requirements of Chapter 17.20 TCC, Mineral Extraction and Asphalt Production.

The Applicant's current asphalt plant operation is subject to 5 year periodic review at the site level. This current request for storage, cover, import, and processing of RAP material on site will be a part of the regular review process.

- l. For operations that process and store recycled asphalt pavement (RAP) within the Nisqually subarea, operators shall employ best management practices to mitigate leachate by providing covered storage of processed/recycled asphalt stockpiles. Specific practices will be determined through the site-level permit review process, but may include tarping, storage sheds, or other methods.

As noted above, the current RAP material on site is covered by tarps. The Applicant's request to recycle asphalt on site includes the construction of a 15,383-square foot storage shed for the RAP which will create air space between the cover and the RAP to minimize moisture accumulation.

**DECISION:** Based upon the preceding Findings and Conclusions, the Applicant has demonstrated that the proposal will be consistent with all applicable codes. Therefore, the request for a Special Use Permit to allow for asphalt recycling at the existing Durgin Road Asphalt Plant including the storage of 8,800-cubic yards of reclaimed asphalt product on site at any given time within a 15,383-square foot covered structure is **GRANTED** subject to the following conditions

1. Prior to or in conjunction with the issuance of any building permit, all applicable regulations and requirements of the Thurston County Public Health and Social Services Department, Public Works Department, Washington State Department of Ecology, Olympic Region Clean Air Agency, Fire Marshal and Thurston County Community Planning and Economic Development Department shall be met.

2. The Applicant is responsible to submit a Notice of Construction (NOC) to the Olympic Region Clean Air Agency (ORCAA) for approval of the proposed Road Asphalt Plant (RAP) and, if there is no permit for the rock crusher, for the rock crusher as well. The NOC requires the following information:)

- (1) Ink-on-Paper, signed hard copy of Form 1;
- (2) Project Description: Provide a brief narrative description of the proposal;
- (3) Process Flow Diagram;
- (4) Form 10 - Hot Mix Asphalt Plants;
- (5) Form 24B - Rock Crusher;
- (6) SEPA checklist or a copy of a SEPA determination that has already been issued;
- (7) Filing fee of \$12,957.00; Note, fee will be different if rock crusher has a permit.

For assistance contact ORCAA at (360) 539-7610.

3. The Applicant is required to comply with the Washington State Department of Ecology (DOE) recommendations which include, but are not limited to, the following:

- (1) Describe how the Lakeside Industries Durgin Road Plant - Asphalt Recycling will be resized as described in 911 in the SEPA Checklist.
- (2) It does not appear that the site has a Spill Prevention, Control, and Countermeasure (SPCC) Plan. Provide a written memo or similar documentation that an oil release from either the recycled asphalt or the oils stored onsite would not discharge to Waters of the United States (WOTUS). Section 2.6 "Reasonable Expectation of Discharge to Navigable Waters in Quantities That May Be Harmful," which can be found in the document "SPCC Guidance for Regional Inspectors" (2013), may be helpful in writing this type of documentation.
- (3) Provide drawings of the current secondary containment for oil storage at the site and calculations for the volume of the secondary containment. In addition, list the tanks, their volumes, and their contents that are located in the secondary containment. While the site may not be subject to 40 C.F.R. 112, it is in the Critical Aquifer Recharge Area Category I and protection of critical aquifer recharge areas is required under the Growth Management Act.
- (4) Storage and recycling of asphalt must be in compliance with Chapter 173-350 WAC, Solid Waste Handling Standards. Contact the local jurisdictional health department or the Department of Ecology for proper management of these materials.

- (5) Sample the soil and analyze for arsenic and lead following the 2012 Tacoma Smelter Plume Guidance. The soil sampling results shall be sent to Ecology for review. If the project includes open space areas, contact the Technical Assistance Coordinator, Eva Barber, for assistance in soil sampling methodology within the open space area.
- (6) If lead or arsenic are found at concentrations above the Model Toxics Control Act (MTCA) cleanup levels (Chapter 173-340 WAC); the owners, potential buyers, construction workers, and others shall be notified of their occurrence. The MTCA cleanup level for arsenic is 20 parts per million (ppm) and lead is 250 ppm.
- (7) If lead, arsenic and/or other contaminants are found at concentrations above MTCA cleanup levels, the Applicant shall:
- Develop soil remediation plan and enter into the Voluntary Cleanup Program with Ecology. For more information on the Voluntary Cleanup Program, visit Ecology's website at: <http://www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm>.
  - Obtain an opinion letter from Ecology stating that the proposed soil remediation plan will likely result in no further action under MTCA. The applicant shall provide to the local land use permitting agency the opinion letter from Ecology.
  - Prior to finalizing site development permits, provide to the local land use permitting agency "No Further Action" determination from Ecology indicating that the remediation plans were successfully implemented under MTCA. If soils are found to be contaminated with arsenic, lead, or other contaminants, extra precautions shall be taken to avoid escaping dust, soil erosion, and water pollution during grading and site construction. Site design shall include protective measures to isolate or remove contaminated soils from public spaces, yards, and children's play areas. Contaminated soils generated during site construction shall be managed and disposed of in accordance with state and local regulations, including the Solid Waste Handling Standards regulation (Chapter 173-350 WAC). For information about soil disposal contact the local health department in the jurisdiction where soils will be placed.

For assistance contact Eva Barber with the Toxics Cleanup Program at (360) 407-7094 or [Eva.Barber@ecy.wa.gov](mailto:Eva.Barber@ecy.wa.gov).

- (8) If contamination is suspected, discovered, or occurs during the proposed SEPA action, testing of the potentially contaminated media must be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator for the Southwest Regional Office (SWRO) at (360) 407-6300. For assistance and information about subsequent cleanup and to identify the type of

testing that will be required, contact Thomas Middleton with the SWRO, Toxics Cleanup Program at the phone number provided above.

- (9) A Construction Stormwater Permit from the Washington State Department of Ecology may be required. It is the applicant's responsibility to obtain this permit if required. Information about the permit and the application can be found at:  
<http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>.

- 4. The Applicant is required to comply with the Thurston County Public Works Department recommendations which include, but are not limited to, the following:

#### Roads

- (1) A construction permit shall be acquired from the Thurston County Public Works – Development Review Section prior to any construction.

#### Traffic Control Devices

- (2) All traffic control devices shall be designed, located, manufactured, and installed in accordance with the Road Standards, Manual of Uniform Traffic Control Devices and applicable WSDOT Standards & Specifications. A sign and striping plan shall be incorporated into the construction drawings for the project. Please contact Thurston County Public Works - Development Review Section Staff to obtain the most current Thurston County guidelines.
- (3) County forces may remove any traffic control device constructed within the County right-of way not approved by this division and any liability incurred by the County due to non-conformance by the applicant shall be transferred to the Applicant.

#### Drainage

- 4) The storm water management system shall conform to the Drainage Design & Erosion Control Manual.
- (5) All drainage facilities outside of the County right-of-way shall remain private and be maintained by the developer, owner and/or the property owners association
- (6) Storm water runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges and shall not alter nor impact any existing drainage or other properties.

#### Utilities

- (7) The proposed water and sewer system shall be designed in accordance with the standards and specification of the respective utility purveyor. All water and sewer plans are subject to review and acceptance by the respective utility purveyor.

- (8) Proposed utility work within the Thurston County Right of Way shall conform to the Road Standards and Chapter 13.56 Thurston County Code. These standards do not address specific utility design requirements but rather only items such as restoration of the County right of way and traffic control.
  - a. Placement of utilities within the County right of way will require a Franchise Agreement with Thurston County pursuant to Title 13.56 TCC. This agreement shall be executed with Thurston County prior to final approval.
  - b. Please note all utilities placed parallel to and within the pavement structure are required to rebuild a minimum of half the road, to include grinding and replacement of a minimum of 0.20' of asphalt concrete pavement.

#### Traffic

- (9) Per Thurston County Resolution 14820, traffic impact fees shall be paid prior to issuing any building permits associated with this project.

#### General Conditions

- (10) No work shall take place until a construction permit has been issued by Thurston County Public Works – Development Review Section.
- (11) The proposed grading or site work shall conform to Appendix J of the International Building Code, Title 14.37 of the Thurston County Code and Drainage Design & Erosion Control Manual.
- (12) When all construction/improvements have been completed, contact the Thurston County Public Works – Development Review Section at 360-867-2051 for a final inspection.
- (13) This approval does not relieve the Applicant from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicant. One permit that may be required is a Construction Stormwater Permit from the Washington State Department of Ecology. Information on when a permit is required and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. Any additional permits and/or approvals shall be the responsibility of the Applicant.

#### Project Specific Conditions

- (14) Once the planning department has issued the official approval, submit two complete full size sets of construction drawings, the final drainage and erosion control report and all applicable checklists along with an electronic copy to Thurston County Public Works – Development Review Section for review and acceptance.
- (15) PRIOR to construction, the Applicant shall:
  - a. Pay outstanding construction review and inspection fees.\*
  - b. Receive erosion and sediment control permit.



- c. Have the erosion and sediment control inspected and accepted.
  - d. Receive a construction permit.
  - e. Schedule a pre-construction conference with county staff.
- \* The current fee schedule can be found online at:  
<http://www.co.thurston.wa.us/permitting/fees/fees-home.html> or contact Ruthie Padilla with the Thurston County Public Works – Development Review Section by phone at 360-867-2050, or by e-mail at [ruthie.moyer@co.thurston.wa.us](mailto:ruthie.moyer@co.thurston.wa.us).

### General Information

#### Final Review

- (16) Prior to receiving final approval from this department, the following items shall be required:
- a. Completion of all roads and drainage facilities.
  - b. Final inspection and completion of all punch list items.
  - c. Record drawings submitted for review and acceptance. The record drawings shall include street names and block numbers approved by Addressing Official.
  - d. Payment of any required permitting fees.
  - e. Payment of any required mitigation fees.

Please note that this recommendation is not an approval. Contact your Thurston County Planner for status of the review process. If you have any questions or comments, please call Arthur Saint, PE, Thurston County Public Works Development Review Section at (360) 867-2043.

5. The Applicant is required to comply with the Thurston County Environmental Health recommended conditions:
- (1) The facility shall obtain and maintain a Solid Waste Handling Permit from Thurston County Public Health and Social Services, Environmental Health Division prior to commencing recycling activities. Environmental Health Division – Onsite, Drinking Water & Land Use 3000 Pacific Ave SE Olympia, Washington 98501-8809 (360) 867-2673 FAX (360) 867-2660 TTY/WA Relay 711 or 1-800-833-6388 [www.thurstoncountywa.gov/departments/public-health-and-social-services](http://www.thurstoncountywa.gov/departments/public-health-and-social-services) P a g e | 2 November 6, 2023 Project 2022105705
  - (2) The reclaimed asphalt product (RAP) shall be covered at all times.
  - (3) The operator shall ensure noise levels comply with WAC 173-60 and are monitored by a qualified technician at the property boundaries at least quarterly after the initiation of

recycling activities. The department may reduce the quarterly requirement for noise monitoring after two years of compliant noise monitoring with no violations.

If you have any questions regarding Environmental Health's review, contact [dawn.peebles@co.thurston.wa.us](mailto:dawn.peebles@co.thurston.wa.us) or (360) 867-2650.

6. The Applicant is responsible for compliance with other jurisdictional permitting requirements.
7. The Applicant shall remove all debris related to construction of the RAP cover to an approved site (landfill or recycling center) outside of subject property.
8. Construction fencing and erosion control shall be inspected prior to building permit issuance. Best management practices (BMPs) such as maintaining proper working order of equipment, as well as temporary erosion and sediment control (TESC) methods including silt fencing and/or coir logs shall be implemented and remain in place during the entire course of construction.
9. Approval of this and other County permits may be superseded by federal law. If any protected species are found during construction, the applicant should contact the U.S. Fish and Wildlife Services.
10. The Applicant must comply with all requirements of state and/or federal law to avoid disturbance and alteration of artifacts, remains, or other cultural resources on site during development. In the event of inadvertent disturbance or alteration, the Applicant must immediately stop work and contact the Tribe and the State Department of Archaeology and Historic Preservation.
11. All development on the site shall be in substantial compliance with the approved Special Use Permit application as conditioned. Any alteration to the proposal will require approval of a new or amended SUP. The Community Planning and Economic Development Department will

determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

**ORDERED** this 31<sup>st</sup> day of December, 2023.



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**STEPHEN R. SHELTON**  
Pro Tem Hearing Examiner

**TRANSMITTED** this 2nd day of January, 2024, to the following:

**OWNER/APPLICANT:** LAKESIDE INDUSTRIES  
Atten: Kyler Danielson  
PO Box #7016  
Issaquah, WA 98027  
kyler.danielson@lakesideindustries.com

**THURSTON COUNTY:** Kraig Chalem, Senior Planner

**OTHERS:** Parties of Record



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

<b>NOTE:</b> 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).
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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 **\$861.00** for a Request for Reconsideration or **\$1,174.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center at 3000 Pacific Ave SE, Suite 100 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.



Project No. \_\_\_\_\_  
Appeal Sequence No.: \_\_\_\_\_

☐ 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 ☐ \$861.00 for Reconsideration or \$1,174.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.