

**BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of	)	NO. SUPT/APPL 990457
	)	
Lakeside Industries	)	
	)	
for Approval of a Special Use Permit and	)	FINDINGS, CONCLUSIONS
the Appeal of the Friends of the Nisqually	)	AND DECISION
and the Nisqually Indian Tribe of the	)	
Threshold Determination Pursuant to	)	
SEPA	)	
_____	)	

**SUMMARY OF DECISION**

**The Special Use Permit to allow an asphalt production facility of Lakeside to be located and operated at the Holroyd Gravel Mine is granted with conditions as set forth herein. The appeals of the MDNS are denied and the MDNS is upheld.**

**INTRODUCTION**

Lakeside Industries (Lakeside), which operates a gravel and rock business in Thurston County, has requested approval from Thurston County for a Special Use Permit for the location of its primary Thurston County asphalt production facility. The proposed location of the asphalt operation is in the gravel pit of its principal rock supplier, Holroyd. The Holroyd Gravel Mine is a 300-acre site at the intersection of Durgin Road and Old Pacific Highway. Lakeside's current asphalt facility is located near the County landfill site on I-5 and Marvin Road.

Pursuant to the State Environmental Policy Act (SEPA) the request was reviewed by Thurston County for the identification of environmental impacts projected to result from the operation of the proposed site. On September 18, 2000 the County issued a Mitigated Determination of NonSignificance (MDNS). Appeals of this threshold determination were filed by the Friends of Nisqually (Friends) and the Nisqually Indian Tribe (Tribe).

Pre-hearing conferences were held with the attorneys for the County, Lakeside, Friends, and the Tribe, conferring with the Hearing Examiner for establishment of schedules and the submittal of witness lists and exhibits.

The Hearing on the SEPA appeal and the permits was commenced on October 30, 2000, and was continued for additional testimony on November 6, 2000, November 9, 2000, November 14, 2000, December 4, 2000 and December 19, 2000.

### **Witnesses**

At the hearing for the *appeal* the following presented testimony and evidence:

All witnesses are listed on Attachment A.

At the hearing for the *permit* the following submitted testimony and evidence:

All witnesses are listed on Attachment A.

### **Exhibits<sup>1</sup>**

At the *appeal* hearing the following exhibits were submitted and admitted into the official record of this proceeding:

All exhibits are listed on Attachment B.

At the *permit* portion of the hearing the following exhibits were submitted and admitted into the official record of this proceeding:

All exhibits are listed on Attachment C.

Upon consideration of the testimony and exhibits submitted at the open record hearing, the following Findings and Conclusions are entered by the Hearing Examiner.

## **FINDINGS FOR SEPA APEAL**

1. Lakeside is an asphalt production company that converts raw materials into asphalt. Lakeside requested approval of a Special Use Permit for the relocation of its asphalt production facilities from an existing gravel mine on I-5 and Marvin Road (the County landfill site) to the gravel mine of Lakeside's principal rock supplier, Holroyd. The Holroyd site is a 300-acre parcel located at the intersection of Durgin Road and Old Pacific Highway in the northern part of Thurston County. The site of the proposed asphalt facility is the existing Holroyd Gravel Mine with a mine floor of over 100 acres. The mine is north of Reservation Road but access is off Durgin Road. There is another

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<sup>1</sup> Throughout the record some exhibits are duplicated. This is the result of different parties submitting them to support their contentions.

permitted gravel mine in the general area. *Exhibit 5.* Facilities on-site for the asphalt operation will include a 2,900 square foot office, a three-bay maintenance shop, a diesel fueling station with two or more tanks containing a total of 25,000 gallons of fuel, two or three liquid asphalt cement tanks of 30,000 gallons each, two hot-mix storage silos up to 90 feet tall, a 45-foot tall baghouse, a drum dryer, a weigh scale, storage areas for aggregate and recycled asphalt pavement, parking areas for trucks and employees, and equipment storage areas. *Exhibit 1, Staff Report, Whitcher Testimony; Application.*

2. The Holroyd site is zoned Rural Residential -- One Dwelling Unit per Five Acres (RR 1/5). While the primary permitted uses in the RR 1/5 zone are agricultural, forest practices, single-family and two-family residential uses (*TCC 20.09.020(1-3)*), TCC Chapter 20.54 allows special uses to be developed in the zone. Included within these uses are mineral extraction and accessory uses.
3. The site of the proposed project is subject to the following Thurston County and regional planning areas and regulations that bear on its specific environmental sensitivities: the Nisqually Sub-Area Plan, the Nisqually River Comprehensive Plan, and the Nisqually Basin Aquifer Protection Area. *Exhibit 1, Staff Report.*
4. The proposed project is approximately two miles up wind and upriver from the Nisqually National Wildlife Refuge, the home to a broad diversity of more than 275 birds and wildlife, including several threatened and endangered species. The Nisqually National Wildlife Refuge has been designated as a National Natural Landmark by the Secretary of the Interior. The Nisqually Delta is the only undeveloped river estuary of the Puget Sound. *Exhibit S-12, Takekawa Testimony.*
5. The Thurston County Comprehensive Plan (CP) and Nisqually Sub-Area Plan (NSAP) identify the application site within the Holroyd mine (at the intersection of Old Pacific Highway and Durgin Road) as a Designated Mineral Resource Land (CP Map, M-43) and as a Mineral Resource Overlay (NSAP Figure 13). The mine, which is in the Mineral Resource Overlay, is adjacent to the Nisqually Agriculture Zone, which is protected in the Comprehensive Plan as a special zone, a Nisqually Hillside overlay. *Kain Testimony.*
6. Pursuant to the State Environmental Policy Act (SEPA), Thurston County was designated as the lead agency for the review of environmental impacts resulting from the proposed use. Based on materials submitted by Lakeside, including the environmental checklist (*Exhibit 1, Attachment g*) and other environmental documents, the County issued the MDNS on September 18, 2000. *Exhibit 1, Attachment d.* Appeals of the MDNS were filed by Friends on October 6, 2000 (*Exhibit 1, Attachment c*) and the Tribe on October 9, 2000 (*Exhibit 1, Attachment b*).
7. Two Indian Trust Land properties, homes to members of the Nisqually Indian Tribe, are located directly adjacent to the subject property, across Durgin Road Southeast. *Cushman Testimony.* The Tribe submitted a timely appeal of the County's SEPA

threshold determination and specifically raised issues relating to: (1) traffic; (2) air quality; (3) noise; (4) light; and (5) groundwater. *Exhibit 1, Attachment b.*

8. Friends, in their timely appeal, raised the following issues: (1) groundwater/drainage/flooding/fish destruction; (2) air quality and weather; (3) air quality and transport; (4) traffic; (5) organic farms; and (6) the general health of the community. *Appeal Statement of Tribe, Exhibit 1, Attachment b; and Appeal Statement of Friends, Exhibit 1, Attachment c.*

#### **Notice**

9. Notice was consistent with the ordinances of Thurston County. Written notice of the public hearing was sent to neighboring property owners and persons who submitted comments. Notice was also published in *The Olympian* and posted on the site. *Staff Report of November 9, 2000, page 2.* At the hearing a claim was made that no notice was provided to the Secretary of the Interior, Bureau of Indian Affairs, which holds title to the Indian Trust Land properties on Durgin Road. *Whitcher Testimony; Cushman Testimony.* However, the County submitted that it notified the United States Department of Interior who was listed by the Thurston County Assessor as the owner of the property. None of the mail submitted to the Department of Interior was returned to the County. *Whitcher Testimony.*

#### **Traffic**

10. The current route from the Holroyd gravel pit to the existing County landfill site is approximately five miles in a westerly-southwesterly direction. The route is generally: exit from the Holroyd site onto the Old Pacific Highway; left onto Kuhlman to Nisqually Cut-off Road; right onto the Nisqually Cut-off Road to the light on Martin Way; cross Martin Way and enter the freeway westbound, climbing a significant grade to the Marvin Road I-5 overpass where the rock trucks exit to the Lakeside facility. *Shea Testimony; Exhibit 56, Lakeside Monthly Production Chart.*
11. Lakeside prepared a traffic study for the proposed project. Based on the traffic report, prepared by SCA Engineering (SCA), there would be a reduction of approximately 90 vehicular trips per day with the elimination of the transfer of removed rock from Holroyd to the existing County landfill asphalt plant. However, the increased production of asphalt would generate an additional 100 vehicular trips from the site. The net increase would be 10 vehicular truck trips from the proposed site. *Shea Testimony; Exhibit 1, Attachment s, Staff Report.*
12. More specific data of the traffic report indicates not only that the rock removal trips from Holroyd would be eliminated and replaced by asphalt trucks hauling asphalt from the site, but that the traffic routes of the trucks would be altered from the existing circulation patterns. The majority of the deliveries to the Lacey and Tumwater areas would be accessed by trucks turning left onto Old Pacific Highway. With this route a significant amount of truck traffic that used the Nisqually Cut-off and Marvin Road would be eliminated. As a result of the new traffic circulation the trip routes on days of maximum

production would be 60 trips west on Old Pacific Highway, 30 trips north on Kuhlman Road, and 10 trips east across the bridge to Mounts Road. *Traffic Report, figures 1-4; Shea Testimony.*

13. The County reviewed the traffic data from SCA and Lakeside. In its review it assumed that approximately 60 percent of the traffic generated from the site would travel south on Pacific Road rather than the current traffic route, which is north onto Kuhlman Road. This assumption was based on the business activity representations of Lakeside. *Davis Testimony; Exhibit 6.* The County submitted that in reviewing peak use of Durgin Road and Pacific Road it did not consider peak hour traffic, but peak day traffic. The County also considered the peak use of the roads for a 150-day construction period. According to the County the busy use traffic would include late spring, summer, and early fall. *Davis Testimony.*
14. The traffic study determined that all roads in the area operate within the identified County standards of level of service. (*Exhibit 1, Attachment s at page 6 [amended, see Exhibit 55] and Shea Testimony*). SCA also determined, based on asphalt plant projections, that traffic will remain within the acceptable levels of service. *Shea Testimony; Exhibit 1, Attachment s (12/98 Traffic Analysis); Exhibits 54 and 55 (11/00 Traffic Analysis Update).* The County accepted the accuracy of the study.
15. Friends contended that the traffic study was inaccurate and incomplete. The group contended that the proposed change in traffic patterns is based on previous job sites but is not the correct indicator of traffic from this site. Friends submitted that the reduction of traffic on Kuhlman Road was not thoroughly examined, issues of the speed of the trucks were not reviewed, and the conditions of the roads were not properly addressed. Friends argued that the County's response to the traffic study as being "reasonable" was insufficient to support acceptance of the traffic from the site. *Glastetter Testimony.*
16. Durgin Road is a narrow County road, designated as a collector serving the lower Nisqually Valley area along the river south of the railroad grade; it is the only road in and out of the area. *Shea Testimony.* The area serves a number of farms and several Indian families who farm the Valley and fish the Nisqually River. *Walter Testimony; Tribal Planner Testimony.* Direct access to the site will be off Durgin Road at the existing easterly Durgin Road entrance to the Holroyd mine. The original design called for two access points off Durgin Road but that plan was amended at the hearing to use only the existing access point. At peak production the Durgin Road entrance would have 100 round trips (ingress and egress) for the Lakeside project. The County identified impacts resulting from this use and has imposed mitigation in the MDNS. *Exhibit 1, Attachment d.* Lakeside will be required to upgrade Durgin Road at the entrance and at the intersection with Old Pacific Highway to meet current County road standards for access to County roads and collector arterial intersections. Durgin Road will be improved to County collector lane road standards and will have two 12-foot lanes and two 6-foot shoulders. This size road will be able to accommodate the additional truck traffic. *Davis*

*Testimony.* According to the County, with the mitigation required, the roads meet County standards with project traffic. *Shea Testimony; Davis Testimony.*

17. The asphalt and gravel operations on-site will jointly use the Holroyd access west of the tribal properties on Durgin Road to reduce the impact of traffic to members of the tribe. *Exhibit 45, Site Arterial Photo; Shea Testimony; Lane Testimony.*

### ***Air Quality***

18. The MDNS issued by the County recognized the Olympia Air Pollution Control Authority's (OAPCA) authority and jurisdiction over the air quality of the proposed site. A representative of the OAPCA submitted that asphalt plants are minor sources of pollution and are not subject to OAPCA permits. *Goodin Testimony.* The OAPCA further submitted that it indirectly controls air quality of the hauling of materials such as asphalt. Because the materials in trucks do not emit enough pollutants to trigger regulations they are usually not controlled. However, through the use of best available standards, all possible odors and pollutants are considered, including those being transported. The representative of OAPCA submitted that it will apply the regulations of air quality. The specific regulation is listed in the document admitted as Exhibit 7. *Exhibit 1, Attachment t; Goodin Testimony; Exhibit 7; Bruder Testimony; Exhibit 27.*
19. For all projects, air quality may have a reasonable probability for a moderate or significant impact on the environment. To address the impact, data is required on air circulation and quality. Because air circulation in the Nisqually Valley would provide information on the time and degree of particulates in the atmospheric area, Friends contended that the County did not require detailed information in its review of the impact to air quality as a result of the proposed asphalt operations. According to Friends' expert witness, Dr. Halstead Harrison, even though the local wind and meteorological data are important to determine air quality effects, the only data presented in the application was air quality reports from the Town of Yelm, upland, approximately nine miles from the plant site. He claimed that on-site meteorological data is needed for the different types of modeling used. He contended that emissions must be considered in light of changing wind conditions in the Valley and the inversions that prevent dissipation of particulates. *Harrison Testimony; Exhibit 47.*
20. Air quality modeling relies on a series of screens as a framework for measuring air quality. Based on this data a determination is made whether additional studies are necessary. *Winges Testimony.* The modeling used for the study of the proposed asphalt operation, the Screen 3 Model, and the subsequent Box Model data, concluded that the information considered by the environmental review officer was adequate and appropriate and no additional site specific screens were required. Of particular significance was that the air quality was below any threshold of health-related issues. *Green Testimony.*
21. Lakeside provided a report from McCulley, Frick & Gilman, Inc. (MFG) (*Exhibit 1, Attachment J*) and Memorandum Report (*Exhibit 48*) which identified the airflow in the Nisqually Valley. The Memorandum Report was based on the "Box Model" which

provided a framework for air analysis in the Nisqually Valley where there is often trapped stagnant air. *Winges Testimony (12/4/00)*. While not specific to the site, the Box Model data supported similar data derived by the EPA from a Screen 3 Model. Both scientific sources concluded that the airflow in the Valley did not require a project specific air quality study at the site. *Exhibit 1, Attachment j; Wings Testimony*. According to testimony of air quality consultants of Lakeside, when interpreted for the air quality of the site and with the use of the modeling used for the testing, the Harrison report shows substantially the same information as the MFG report. *Winges Testimony; Exhibit 48*.

### ***Toxicology***

22. Friends submitted concerns about the toxicological or health impacts to those living near the asphalt facility and to those residents living on a route on which asphalt is to be transported by trucks. *Bruder Testimony; Bond Testimony*. While the testimony provide concerns about impacts to health from toxins and fumes, Friends did not provide expert witnesses to support the concerns.
23. The Tribe also raised issues of toxicology and health impacts. The Kautz Family trust land, near the site, was placed in trust in the late 1980's. The family asked the Planning Department of the Tribe to have the property placed in trust in order to provide homeland protection for the property and the family. This was needed because the head of the family, Neugen Kautz, had suffered respiratory injury in a welding accident and was unable to work at regular employment. Although the United States Department of Interior policy disfavored such actions, the land was placed in trust due to the hardship and compelling circumstances of the Kautz family. *Cushman Testimony*.
24. The asphalt plant will be inside the existing gravel mine. It will be surrounded on all sides with berms that will rise 30-100 feet above the mine floor where the plant is to be located. The berms will prevent and limit airborne particles from floating off-site to the abutting tribal properties. *Hansen Testimony; Wings Testimony*.
25. Lakeside submitted testimony of a Toxicologist, Dr. Laura Green (Ph.D.-Toxicology), an EPA consultant on toxicological effects of asphalt. In her testimony, Dr. Green distinguished between asphalt and roofing tar and other forms of Polycyclic Aromatic Hydrocarbons (PAH's). She identified studies done for EPA on the toxic effects of asphalt on asphalt workers and presented detailed data on the potential toxicological consequences of an asphalt plant. She described the standards by which impacts are measured and identified. *Green Testimony; Exhibit 52*.
26. Witness Green identified sources of concern for asphalt and the appropriate guideline for reviewing potential for toxicological harm for the proposed asphalt operation. Using scientific guidelines and field data she determined all measured items relating to toxicological harm were below the identified guidelines for impact. Dr. Green concluded that the health risks to the neighborhood from the location of the site in the Holroyd pit are very low. *Green Testimony; Exhibit 52, particularly pages 11-14*.

27. Friends provided no specific evidence that the emissions reached toxicological thresholds and thereby created impacts. In interpreting the provided toxicological information the County correctly determined the emissions were below the threshold level for the toxicological impacts of the site. *Green Testimony*.
28. Friends testified that the plant site was subject to temperature inversions that would trap toxic air pollutants. *Bruder Testimony; Bond Testimony; Hansen Testimony; Exhibit 1, Attachment t (Air Quality Analysis); Wings Testimony; Exhibits 49 and 50; Green Testimony; Exhibit 52*. None of the witnesses was qualified as a scientific witness. However, a Lakeside witness with a scientific background testified that the EPA progression using the Screen 3 Model and the Box Model results was the appropriate model to measure for the Valley condition. The evidence showed little impact and no health hazard from the plant site. All health hazards resulting from measured materials were well below recommended guidelines. *Green Testimony*.

#### ***Odor***

29. Friends of the Nisqually members testified to interviews and presented written testimony from neighbors of an Issaquah, Washington plant and Port Townsend, Washington plant that there are significant odor problems in those areas. *Glastetter Testimony*. The odors were determined to emanate from the plants and trucks carrying the product. *Glastetter Testimony*.
30. A representative of OAPCA testified that his agency would not have any regulatory authority or standards over sources of odor, both on and off-site. *Goodin Testimony*. No scientific study of an off-site asphalt odor from truck traffic has been submitted for this record.
31. Odors are not pollutants or toxins, but are impacts that are subjective in nature. *Green Testimony; Wings Testimony*. No odor study was presented by either Appellants, but testimony was received that it would impact neighbors in the area. *Kautz Testimony; Cushman Testimony*.
32. Lakeside caused an odor study to be done. *Exhibit 1, Attachment y*. The air quality studies showed that odor from the asphalt plant was below the “level of detection” 200 feet or more from the plant, and below detection limits for all but the most sensitive nose. *Wings Testimony; Exhibit 1, Attachment g; Exhibit 1, Attachment t; Exhibit 1, Attachment y*.
33. The Appellants contended that odors from loaded trucks would cause significant impact because of odors from the asphalt being carried on them.
34. According to a witness for Lakeside, a qualified air quality expert with special training in odor issues, no discernible odor were detected from loaded trucks at Issaquah and Monroe asphalt plants. He testified that because asphalt tends to crust rapidly providing a barrier to odors. As a result, odors are reduced. This would be the case at the proposed



site, and, as an extra measure to reduce odors, the Lakeside asphalt loads are proposed to be covered. While some odors are released during the loading phase, the duration is short and not likely to affect properties outside the mine. *Winges Testimony*.

### ***Hydrology***

35. Information provided by the County indicates that the movement of the shallow groundwater on-site is to the west, while deeper groundwater moves to the north. While the County does not know at what point the flow regimen changes, it determined there is a high degree of continuity, and no significant impacts to the groundwater should occur with the asphalt plant. *Whitcher Testimony; HWA Hydrogeology Report (Exhibit 1, Attachment p, at page 4; Mead Testimony*.
36. The Tribe contended that three water wells, which serve the Indian Trust Land properties, are vulnerable to contamination from the site. *Kautz Testimony; Walter Testimony; Mead Testimony*, and Friends submitted that the groundwater at the site is extremely shallow (between four and fifteen feet below the surface) and subject to being impacted. *Talley Testimony*. The parties further contended that the surface layers of ground are largely composed of extremely porous gravel at the proposed site such that transport between the surface and the ground water would be rapid and only minimally filtered. *Exhibit 1, Attachment p, at page 4*. These conditions, they submitted, create a significant risk of pollution of groundwater if an uncaptured accident or spill at any industrial site occurred. *Exhibit 1, Attachment p, at pages 4, 5-6; Takekawa Testimony*.
37. The effectiveness of a spill prevention plan is dependent on employee training, site engineering, and Best Management Practice (BMP) protocols. *HWA Hydrogeology Report - Exhibit 1, Attachment p, at pages 4, 5-6; Staff Report at pages 3-4*. However, Friends claim that BMP protocols set forth in this Application were written for the Hogum Bay site at the County landfill and inserted in the Application as a means of addressing groundwater at Holroyd. The basis of the Friends' argument is that the County landfill site's BMP plan, upon which Lakeside relies as environmental disclosure, has the advantage of being at a County facility with the use of County treatment facilities. Such groundwater protection and security would not be at Holroyd. *Kalikow arguments*.
38. The Hydrogeological Report done by H W A Geosciences Inc. indicates that the project site is over an aquifer, which flows from the plant site westerly/northwesterly across the site. While the Tribal properties are at similar groundwater elevations, the aquifer flows away from the Tribal wells. *Hydrogeological Report, Exhibit 1, Attachment p; Bailey Testimony*. The report did not identify any risks or impacts to the Tribe aquifers.
39. Lakeside contended that ground water contamination will not be a probable impact because of the physical nature of asphalt which prevents it from flowing to groundwater. The asphalt oil is a very heavy oil product, which cakes, rather than flows, when spilled. Within minutes after a spill of the asphaltic oil, the product cools below 300 degrees and begins to solidify. While a spill may penetrate a few inches into a gravel soil, its viscosity and tendency to cool and solidify rapidly when exposed to air limits the

likelihood of a spill getting off the asphalt surface, or moving beyond a very localized area. Also, if the spill is exposed to water, evidence showed little if any oil sheen or release of oil product into the environment. *Lane Testimony and Demonstrations; Exhibits S-9, S-11.*

### ***Stormwater***

40. The impact of stormwater was raised as an environmental concern by the Tribe. The Tribe contended that under normal flow circumstances, the water flow in the Durgin Road/Holroyd area runs into Medicine Creek and thence into McAllister Creek, and to the delta. Under normal flow circumstances, water of the Nisqually River does not flow into the site area. Minor flooding occurs at 10,000 cubic feet per second (“cfs”) (four times the normal flow). Water from the Nisqually River comes through the Burlington-Northern tunnel and inundates the Durgin Road properties at about 25,000 cfs. *Walter Testimony.*
41. Flood events in excess of 25,000 cfs causing water flow to come through the Durgin Road tunnel have occurred three times in the past twenty years. During such events, rainfall averages four inches in 24 hours and six to eight inches in 48 hours. According to the Tribe, this level of rainfall would inundate the entire proposed asphalt plant site with rainwater. If this happened, according to the Tribe, stormwater from the site would breach the holding pond and discharge and mingle with the floodwater. Based on this scenario, stormwater runoff and floodwater would be commingled with contaminants from the plant stormwater, and the mixture might flow onto the Durgin Road Indian Trust Land properties, which lie downhill from the proposed site. The Tribe submitted that an extensive study of floodwater contamination has not been completed. *Walter Testimony; Holtz Testimony.*
42. According to flood records, the floodwater elevation in 1996 near the Tribe’s lands rose to approximately Elevation 21 at Old Pacific Highway. At the Durgin Road entrance to the site the floodwater rose to Elevation 23. The elevation of the asphalt plant to be developed at the Holroyd mine site is between Elevations 30-40, which would be about 10 feet above flood levels. *Holtz Testimony; Vaughn Testimony; Exhibit 60.*
43. The Holroyd mine site has a stormwater capture facility, which is a contaminant spill trap in the event of a spill. It also will have a storm flow system from the site should the storm drain overflow. Neither the capture facility nor the storm flow system is proposed to be near the entrances to the mine site on either Durgin Road or Pacific Highway. With the elevated location of the asphalt plant and the stormwater design of the site, the Tribes properties will not be impacted by flooding runoff from the Holroyd site. *Holtz Testimony.*

### ***Fishing Impacts***

44. Treaty fishing as a commercial activity is a main source of livelihood for the Tribe residents of the Durgin Road properties. The residents fish on the Nisqually River and in other marine areas. The fishing gear includes skiffs and a variety of nets, which are

stored in the yards of the families. Fish are sold fresh to buyers and the public during fishing season from the Durgin Road properties. Salmon fishing targets Chinook, Coho, Chum, and Steelhead. The season runs from July through February. Fishing takes place during the day or night, depending on the tides. The treaty fishers access their fishing sites from their homes by using Durgin Road. Fishing sites may be accessed as often as two times per day during the season. The truck traffic on Durgin Road could impact the use of the road to provide fishing access for the Tribe. *Kautz Testimony; Cushman Testimony; Exhibit 40.*

45. The Nisqually Indian Tribe recently acquired the 430-acre Braget property and the 20-acre Blink property, which are estuarine and riverfront respectively. These properties were acquired for the purpose of protecting and enhancing the long-term rural character and fisheries productivity of the Nisqually River Basin and in keeping with the purpose and spirit of the Nisqually River Management Plan. According to the Tribe, siting of the asphalt plant would be incompatible with the spirit of the Nisqually River Management Plan because it would place a non-established industrial use in an area. *Walter Testimony.*
46. Chinook salmon in all of Puget Sound, including the Nisqually River, have been declared “threatened” under the Endangered Species Act. The Nisqually Indian Tribe has prepared and funded a Chinook salmon recovery plan for the Nisqually River basin. Short term and long term sources of pollution to the Nisqually River delta, including pollutants from the Holroyd site, is a major concern in providing salmon protection and recovery. According to the Tribe, more thorough studies are needed to assess the risk of damage from pollution to the Nisqually River fisheries resource. *Walter Testimony.*
47. Lakeside submitted that testimony concerning flooding impacts on Tribal fishing identifies a general Tribal concern, but fails to relate these perceived impacts to the development of the site as an asphalt operation. The impacts of the flooding of the Lakeside site and the flooding of the Tribal properties are speculative and cannot be caused by the asphalt operation. The record does not support injury to the Tribal properties, members of the Tribe, or fishing interests by reason of the project as proposed and mitigated.

## **CONCLUSIONS FOR SEPA APPEAL**

### **Jurisdiction**

The Hearing Examiner has authority to decide this appeal under the Thurston County Code and Chapters 35.63A, 36.70B and 43.21C of the Revised Code of Washington.

### **Criteria for Review: The State Environmental Policy Act**

The State Environmental Policy Act (Chapter 43.21C RCW or “SEPA”) sets forth the environmental review procedures the County must apply when considering proposals that may have an impact on the environment. A purpose of the act is to “insure that presently unquantified

environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.” A proposal that may impact the environment (unless exempt from the act) is subject to an environmental review. *RCW 43.21C.030 (b)*.

### **Standard of Review**

1. The State Environmental Policy Act (SEPA) is essentially a procedural statute to ensure that environmental impacts and alternatives are properly considered by the decision makers. It was not designed to usurp local decision-making or to dictate a particular substantive result. It is not a regulatory tool, but a directive piece of legislation. *Bellevue Farm Owner’s Association vs. State of Washington*, 100 Wash. App. 341, 354.
2. Clear error is the standard of review applicable to substantive decisions based on SEPA. *Cougar Mt. Assocs. v. King County*, 111 Wn.2d 742, 749, 765 P.2d 264 (1988). Under this standard of review, a reviewing body does not substitute its judgment for that of the administrator and may find the decision ‘clearly erroneous’ only when it is ‘left with the definite and firm conviction that a mistake has been committed.’ *Id.* at 747 (quoting *Polygon Corp. v. Seattle*, 90 Wn.2d 59, 69, 578 P.2d 1309 (1978)). Consequently, “the mere fact there exists credible evidence contrary to the tribunal’s findings is not sufficient by itself to label those findings clearly erroneous.” *Keppeler v. Board of Trustees of Community College District No. 15*, 38 Wash.App. 729, 732, 688 P.2d 512, 515 (1984). The Hearing Examiner must accord “substantial weight” to the County’s decision to issue an MDNS. RCW 43.21C.090. The Appellants have raised many issues in their appeals but they have failed to show that the County’s issuance of the MDNS was clearly in error.
3. The Washington Administrative Code (WAC) sets forth procedural guidelines for SEPA. “Environmental review consists of a range of proposed activities, alternatives, and impacts to be analyzed in an environmental document.” *WAC 197-11-060 (1)*. As part of a review an Applicant (Lakeside) must complete an environmental checklist to identify the potential impacts of a proposal. Based on its review, the County must make a threshold determination as to whether an Environmental Impact Statement (EIS) is required. If the checklist reveals that the proposal is a major action that would have a probable significant adverse environmental impact, and it cannot be changed to mitigate those impacts, the County must issue a Determination of Significance (DS) and an EIS must be prepared. *See generally*, *RCW 43.21C.031*; *WAC 197-11-300 - 390*; *WAC 197-11-408*. However, if the proposal would have no significant adverse impacts on the environment, the County may issue a Determination of NonSignificance (DNS) and no EIS is required.
4. As part of the SEPA review another option available to the lead agency is to issue a threshold determination of Mitigated Determination of NonSignificance (MDNS). While such a determination identifies impacts, it also establishes mitigation measures without an EIS being prepared. With an MDNS, promulgation of an EIS is rendered unnecessary

because the mitigated project will no longer cause significant adverse environmental impacts. *Anderson v. Pierce County*, 86 Wash. App. 290, 303.

5. The impacts must be “likely” and not merely conjectural. WAC 197-11-060. General fears or complaints about the impacts of a proposed project on a neighborhood are not sufficient to overturn an agency decision. Community displeasure alone cannot be the basis for a permit denial. *Kenart & Associates v. Skagit County*, 37 Wash.App. 295 (1984).
6. In the instant case Thurston County, the lead agency, issued an MDNS. *Finding of Fact No. 6*. A decision to issue an MDNS is reviewed under the clearly erroneous standard. *Wenatchee Sportsman’s Association v. Chelan County*, 141 Wash. 2d. 169, 176; *Cougar Mountain v. King County*, 111 Wash.2d. 742, 749. The Appellants in this appeal had the burden to prove that Thurston County, the responsible authority, was in error in issuing the MDNS. The action of the Thurston County in issuing the MDNS was not in error because with mitigation measures the significant adverse environmental impacts are addressed.
7. In order to meet its burden the Appellants must prove that the identified impacts that have been identified are probable, WAC 197-11-330.1(B), and must be addressed in an EIS. The Appellants failed to meet this burden. When the Appellants demonstrated that the impacts are probable, Lakeside was able to present testimony and evidence that proved that the impacts could be mitigated.
8. In their appeals and presentations at the hearing, Neighbors and the Tribe raised numerous issues of appeal. While the issues are legitimate items of concern, each was addressed by Lakeside in materials provided to Thurston County as part of the SEPA review. *Findings of Fact Nos. 7 & 8*.
9. While the traffic to be generated from the asphalt plant at the site will be greater than the existing 90 truck trips per day (a net gain of 10 more vehicular trips per day), it will not be as intense on the neighboring properties as the traffic from the existing gravel plant on site. The number of trucks on the existing route (Kuhlman Road) will be decreased because the truck traffic will be dispersed in other directions besides the existing route. The impact of more traffic will be mitigated with the change of traffic patterns. *Findings of Fact Nos. 10-17*.
10. Groundwater in the area will not be impacted. While the Tribe raised groundwater as an issue there was no substantive expert testimony or evidence submitted to prove that the asphalt plant will cause an impact to the groundwater in the area. The concerns of the Tribe were based on personal feelings and not engineering or scientific data. The County acted properly in relying on Lakeside’s groundwater data and evidence that indicated that the groundwater flows away from the Tribal lands and will not impact the Tribe’s wells. The County did not err by not requiring additional environmental review of the impacts to groundwater. *Findings of Fact Nos. 35-39*.

11. Initially in its appeal, the Tribe submitted that there would be a probable impact on Tribe properties because of the location of the access points to the site. This impact was probable but was mitigated when at the hearing Lakeside amended its design to limit itself to the existing access off Durgin Road. *Finding of Fact No. 16.*
12. Neighbors submitted that insufficient review had been done on earthquake impacts. However, in submitting testimony and argument no specific probable impact was identified. The impact was speculative and cannot be used to require additional SEPA review.<sup>2</sup> The County did not err by not requiring additional information on seismic activity and its impact to the site.
13. Neighbors argued that spillage of asphalt materials on-site would create problems that could impact water sources in the area and also create toxic problems. Although Neighbors did not provide scientific data to support the claim, Lakeside provided testimony and evidence that the spilled asphalt materials would not flow into groundwater or other water sources. Lakeside presented credible evidence that the spilled materials would cool and solidify before introduction into any water system. The Appellants did not prove the County was in error by not requiring additional SEPA studies of this issue. *Findings of Fact Nos. 35-39.*
14. The Appellants failed to prove that the proposed project would result in impacts to air quality or control of toxic materials. The information provided by Dr. Harrison identified air quality issues but did not provide enough scientific data to support further SEPA review. Lakeside was able to show that the air quality will not be impacted by the operation of the asphalt plant, nor will any toxic materials be released to cause probable impacts to the properties in the area. The Appellants have not proven that the County erred by not requiring additional environmental review of impacts related to air quality or toxicology. The County did not err in relying on the air quality and toxic materials data provided by Lakeside. *Findings of Fact Nos. 18-34.*
15. While the Tribe raised concerns about storm drainage impacts, they were based on an assumption of flooding impacts to the asphalt plant within the interior of the gravel mine. Lakeside addressed this impact as not being probable because the elevation of the asphalt plant is projected to be above all historical flood elevations. If constructed at such an elevation the historical data does not support the probability of the impact. The County did not err by relying on this information as part of its SEPA review. *Findings of Fact Nos. 40-43.*
16. The Tribe also raised issues of fishing. However, no specific data was presented that proved the asphalt plant would have a probable impact on fishing. *Findings of Fact Nos. 44-47.*

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<sup>2</sup> It is noted that subsequent to the hearing but prior to the issuance of this decision a 6.8 Earthquake (the Ash Wednesday Quake) occurred. Based on news reports the epicenter of the earthquake was near the subject property.

## **FINDINGS FOR SPECIAL USE PERMIT**

1. The following findings of facts for the SEPA appeal are hereby incorporated as Findings of Fact for the Special Use Permit: Findings of Fact Nos.1-6; 9-14; 16-18; 21-26; 30-34; 35-36; 40-43; and 44-47.

### ***Jurisdiction***

2. On November 16, 1992 the Thurston County Board of Commissioners passed Ordinance 10199, which created the Nisqually Sub-Area Plan. The goals of the plan were to preserve the character of the area. Subsequent Board action included the approval and funding of the purchase of development rights for agricultural land within the Nisqually Valley. According to the County Department of Development Services, these actions recognize that it was in the public interest to treat the Nisqually Valley differently than other portions of Thurston County. *Exhibit 1, Permit Staff Report; Kain Testimony.* The Sub-Area Plan designated the site as a Mineral Resource Overlay. *Nisqually Sub-Area Plan, Figure 13.*
3. The subject property is zoned Rural Residential – One Unit per Five Acres (RR 1/5). *Exhibit 1, Permit Staff Report.* According to the Thurston County zoning map, RR 1/5 property in Thurston County is limited to the Nisqually Sub-Area and the Yelm Urban Growth Area. *Kain Testimony.*
4. Subsequent to the passage of the Nisqually Sub-Area Plan, in 1993 the Board passed the Thurston County Comprehensive Plan. In the Comprehensive Plan the Board designated the Holroyd mine as a designated mineral resource land (see Comprehensive Plan Map M-43). The Mineral Resource Overlay land is zoned RR 1/5 on the Thurston County Zoning Map. *Kain Testimony.*
5. In addition to the passage of the Comprehensive Plan, in 1993 the Board also enacted the Mineral Extraction Code (TCC Chapter 17.20) and amended the special use section of the Thurston County Code for surface mines. Both of these actions occurred in 1993. The amendment legislation allowed asphalt batch plants to be “accessory uses” within permitted and existing mine sites. Such uses require a Special Use Permit. *TCC 20.54.070(a).*
6. The County “stipulated” that the Holroyd mine is a legal operation pursuant to the Thurston County Zoning Code, the Thurston County Mineral Extraction Code, the Nisqually Sub-Area Plan and Nisqually River Management Plan. The mine has been designated in the Comprehensive Plan as a mineral resource of long-term commercial significance. *Exhibit 1, Permit Staff Report; Kain Testimony.*
7. While the County acknowledged that the Holroyd mine was an allowed use with a Special Use Permit, it contended that the proposed asphalt plant was not consistent with the purpose of the RR 1/5 zone. According to the County, a purpose of the zone is to

“protect the Nisqually Sub-Area” and the grant of a Special Use Permit for the asphalt plant would be inconsistent with that purpose. *Kain Testimony*.

8. The County recommended denial of the Special Use Permit based on its review of location, impact, and service. In recommending denial the County reviewed the criteria of TCC 20.54.040 and specifically the impacts to adjacent property and neighborhood character, the traffic conditions to be generated by the asphalt plant, and whether the project conflicts with the public welfare. *Exhibit 1, Permit Staff Report; Kain Testimony*.
9. Various witnesses submitted that other asphalt plants in the area (Monroe and Issaquah) have caused conflicts with neighboring properties and the impacts of these plants cannot be mitigated. The opinions regarding the other asphalt plants were based on observations during visits. The witnesses had no scientific data to support contentions that the proposed plant would create impacts similar to those allegedly emanating from the other plants. *Howard and Colleen Glastetter Testimony; Smith Testimony*.

### ***Groundwater***

10. As part of the application Lakeside submitted a geotechnical analysis of the site and the impact that an asphalt plant would have on groundwater. *Exhibit 1, Attachment u; Exhibit 59; Bailey Testimony*. Based on the findings of the consultant HWA Geosciences, it was determined that the groundwater flow on a regional scale is to the north and northwest, and the flow within the mine site is to the north. However, the regional flows are deeper and will not be contaminated by the groundwater flows from the site. *Bailey Testimony*. This conclusion was reached based on data from four existing monitoring wells. These will remain and there will be an additional three monitoring wells constructed on-site. *Bailey Testimony*.
11. As part of the groundwater study the consultant considered groundwater on properties near the site. There were no signs of contamination at these sites. Based on this data, the consultant concluded that there would be no impact to the wells of the Tribe. *Bailey Testimony; Exhibit 59*.
12. The groundwater study included discussions of potential risks to the groundwater including diesel spills. According to witness Bailey the petroleum product used in the asphalt process (LNAPL) is lighter than water and will not sink. It has a low mobility in soil and eventually binds to soil. As a result of these physical properties and characteristics, the product will not impact groundwater. *Bailey Testimony*.
13. The consultant submitted that seismic activity would not impact the groundwater because of the unconsolidated nature of the soils in the area. The soils were described as a “sponge full of water.” *Bailey Testimony*.
14. Testimony was submitted from a private citizen that a hydrological study must be done to determine the impact on wetlands, wildlife, and the aquifers in the area. He contended that he has observed high water tables in the area during diggings for various reasons.



With porous soils the impacts of the asphalt or other chemicals during a spill could impact the groundwater. *Talley Testimony*.

### ***Drainage***

15. As part of the application, Lakeside caused a drainage and stormwater control plan to be done for the site. *Exhibit 1, Attachment o; Exhibit 58 & 59*. The study was done by SCA Engineering led by Tom Holtz, who has a masters in civil engineering and 30 years experience. *Holtz Testimony*.
16. With the completion of all grading of the mine floor and the installation of the asphalt plant within the mine, all stormwater will drain in a north-northwest direction with approximately half of the stormwater flowing in each direction. *Holtz Testimony*. The asphalt pad will be paved and will drain to a wet pond in the northeast portion of the site (wet pond F). The wet ponds on-site will be treated to ensure water quality. *Holtz Testimony; Exhibit 1, Attachment o*.
17. The drainage system will be lined to prevent infiltration. There will be a passive spill track and an active spill trap that will handle up to 200,000 gallons. Within the spill designed system there is also a manhole where a valve can be used to cutoff flow. None of the runoff would flow off the site. Once treated it would infiltrate into the soils. *Holtz Testimony; Exhibit 1, Attachment o*.
18. In preparing the report, SCA considered the elevation of the 1996 flood. At the scales within the mine the floodwaters were 23.76 feet. The highest elevation of the flood was 24 feet. Using the highest flood elevation the asphalt operation has been designed to have a 24-foot contour to protect the site from floodwaters. *Holtz Testimony; Exhibit 1, Attachment o*.
19. SCA determined that there would be no internal flooding from groundwater. In reaching this determination SCA assumed a three-foot separation of surface and groundwater and an emergency spill that allows extreme overflow of surface water to flow to a pond within the pit at 24.5 feet. *Holtz Testimony; Exhibit 1, Attachment o*.

### ***Traffic***

20. Numerous witnesses commented on the current impact of truck traffic coming from the existing mine. Concerns were raised on the speed of the trucks and the manner in which the trucks are driven on the area roads, *Baker Testimony; Debes Testimony; Schilter Testimony; Bond Testimony; Myers Testimony; Causey Testimony*; the dangerous conditions the trucks create for pedestrians and bicyclists, and the ability of the area roads and infrastructure to carry the type of truck traffic exiting the mine. *Eberling Testimony; Debes Testimony*.
21. Lakeside prepared a traffic analysis as part of the application. The analysis was done by the SEA Consulting Group led by Mr. Perry Shea. In making its analysis, SEA assumed the highest projected activity of an annual truck movement capacity of 300,000 tons with

movement of 300 tons per hour or 30 tons per truck. In addition, an assumption of ten trucks per hour was made. *Shea Testimony*. Based on the current conditions at the mine and the area roads, the level of service (LOS) on the roads in the area, including Durgin Road, Old Pacific Highway, and Kuhlman Road, is LOS B. *Exhibit 55, Table I; Exhibit 57; Shea Testimony*.

22. SEA contended that it did not address the designs of the roads in the area but did consider signage, impacts from the project, and the reduction of truck trips over certain roads. Specifically, it submitted that the curves on Old Pacific Highway are the “deficiency of the County and not Lakeside.” However, the SEA is of the opinion that the Highway is able to carry the traffic from the asphalt operation. *Shea Testimony*.
23. There will be a net increase of 10 trucks per day exiting the mine site onto Durgin Road. However, not all of the trucks will continue the traffic pattern of the trucks on Kuhlman Road from the mine. The disbursement of traffic onto Old Pacific Highway in a north-south direction and the reduced traffic on Kuhlman will result in the retention of the LOS B designation. *Shea Testimony*. According to witness Shea, there will be no difference in traffic impact with the asphalt plant being in operation on-site. *Shea Testimony*.
24. According to the manager of the Hogan Bay asphalt plant, a fuel truck comes to the site approximately twice a month. *Dean Smith Testimony*. SEA did not consider the fuel trucks visiting the Holroyd site, but did submit in testimony that had they been considered it would not have changed the LOS figures for area roads after the asphalt plant is in operation. *Shea Testimony*.

### ***Flooding***

25. The land use planner for the Tribe (George Walters) testified about his familiarity with the river flow patterns of the Nisqually River and the flooding conditions of the river. According to Mr. Walters, during floods the flow of water is measured at 25,000 cfs. This size flow causes the river water to flood onto Durgin Road and onto the Tribe properties. It also floods the entrance of the Holroyd mine. *Walters Testimony*. He further submitted that in extremely heavy rains the entire site would be flooded by rainwater. However, the witness on cross-examination agreed that the flooding season would not be the same time as the majority of the asphalt activity. *Walters Testimony*.
26. According to Mr. Walters, while the asphalt plant may meet the requirements of the various regulating laws it is incompatible with the spirit of the laws which is to keep new industrial uses out of the Valley. *Walters Testimony*.
27. Lakeside provided maps and photographs depicting the elevation of the entrance of the mine off Durgin Road. The entry to the site is lower than the projected elevation of the asphalt plant and therefore would not flood the asphalt operation. Further, a supervisor at the mine testified that there has not been any flooding from excessive rain on-site. *Smith Testimony*.

### *Air Quality*

28. A private citizen witness submitted testimony, addressing concerns of potential impacts to air quality in the Valley. The witness, Wendy O'Donnell Matthews, who is employed in the industrial hygiene industry, submitted that asphalt has a long chain of hydrocarbons that do not break down easily. She also expressed concern about the use of recycled asphalt and the control of the petroleum products contained therein. The mobility of the recycled products could impact water tables and create health problems for workers. *Wendy O'Donnell Matthews Testimony*. Witnesses testified the truck traffic would create dust and impacts to the air in the Valley. *Paulsen Testimony, Sison Testimony, Shea Testimony, Eberling Testimony, Smith Testimony, Causey Testimony*.
29. The asphalt will be a state of the art facility. *Lane Testimony*. It will be designed to have drying and batching systems that have emissions that are either non-toxic or whose toxins are minimal and significantly below any government standards. *Lane Testimony and Green Testimony*. Much of the fuel and emissions from the plant will be recycled within the operating systems. *Lane Testimony*.
30. As part of the application, Lakeside had an odor study done. The main consultant on odors was Mr. Kirk Winges who testified to having 23 years of experience in the study of odors. He submitted that the study of odors is difficult because smell is a subjective sense. However, the preferred method of measuring odors is to measure the "dilution to threshold" with the threshold being when an individual can smell the odor. *Winges Testimony*.
31. Historically, asphalt plants were not designed in a manner that controlled vapors and odors. *Lane Testimony; Winges Testimony*. Vapors and odors were released when the asphalt and petroleum products made contact with the hot dried rocks. *Winges Testimony*. With the proposed design of controlled chambers for all the processing and batching activities, odors are "virtually non-existent." *Winges Testimony*. With the processing odors eliminated, the main occurrences of odors are during the loading and transporting of asphalt on trucks. *Winges Testimony*.
32. According to the witness Winges, the fumes from the loading of the trucks would not cause significant odor impacts because they would be interrupted by the berms and the distance to surrounding properties. Because they flow in a manner that is similar to a liquid flow the odors may seek escape through the entry. However, they would be significantly diluted at that point. *Winges Testimony*. There would be some fugitive odors from the trucks transporting the asphalt. The consultant recommended that the loads on the trucks be covered to reduce these odors. *Winges Testimony*.
33. Odors are not toxins and are not sources of air pollution. *Green Testimony*.
34. No signs are proposed for the facility. *Lane Testimony*.

35. The proposed special use of the site as an asphalt plant is appropriate in the location. It is appropriate because it 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. *See Findings of Fact set forth above.* 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.

## **CONCLUSIONS FOR PERMIT**

### **CONCLUSIONS**

1. Lakeside operates a gravel and rock business in Thurston County. The company requested approval of a Special Use Permit to locate its primary Thurston County asphalt production facility at the gravel mine of its principal rock supplier, Holroyd. The Holroyd Gravel Mine is a 300-acre site at the intersection of Durgin Road and Old Pacific Highway. *Permit Finding of Fact No. 1; SEPA Finding of Fact No. 1.*
2. The Holroyd site is zoned Rural Residential -- One Dwelling Unit per Five Acres (RR 1/5). *Permit Finding of Fact No. 3.* While the primary permitted uses in the RR 1/5 zone are agricultural, forest practices, single-family and two-family residential uses (*TCC 20.09.020(1-3)*), *TCC Chapter 20.54* allows special uses in the zone. Included within these uses are mineral extraction and accessory uses. *Permit Finding of Fact No. 5; SEPA Finding of Fact No. 2.* Lakeside proposed activity qualifies as an accessory use. *TCC 20.54.070 (21)(a)(i).* Lakeside must secure a Special Use Permit.
3. *TCC 20.54.040* sets forth the general standards for special uses. The ordinance reads:

In addition to the specific standards set forth hereinafter with regard to particular special uses, all uses authorized as special uses shall meet the following standards:

1. 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.
2. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and sub-area 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.

3. 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:
  - a. 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 the adverse effects may occur.
  - b. 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.
4. Time Limits.
  - a. Expiration of Approval. If a building permit has not been issued, or if construction activity or operation has not commenced within three years from the date of final approval, the special use permit shall expire. The special use permit shall also expire when discontinued for a period of one year.
  - b. Upon the application of the owner or representative, the approval authority may grant a one year extension. In no case shall the approval authority grant an extension for more than one year at a time. If an extension of time is approved, the special use permit will be subject to all new and amended regulations, requirements, policies or standards, which are adopted after the original date of approval.
  - c. Knowledge of the expiration date and initiation of a request for extension approval time is the responsibility of Lakeside. The county is not responsible for providing notification prior to expiration. All requests for an extension of time must be submitted to the department prior to expiration of the special use permit.
  - d. Time Limit and Re-Review. Where the approval authority is the hearing examiner, there may be a condition to provide time limits for the use. If it is determined after review that the special use no

longer meets the conditions set by the hearing examiner at the time of the initial approval, the use may be terminated, or such standards added as will achieve compliance with the original hearing examiner conditions.

5. Signs. In addition to the requirements of Chapter 20.40, the following provisions apply to uses approved by this chapter:
  - a. *(paragraph not applicable to instant application)*
  - b. *(paragraph not applicable to instant application)*
  - c. For other uses consisting of a single business or use on a site in a residential zoning district, there shall be no more than one two-faced sign not to exceed thirty-two square feet per side; or alternatively, two signs attached to the building below the roof line, or placed close to the building, with a combined square footage not to exceed thirty-two square feet.
  - d. Multi-business sites shall be governed by Chapter 20.40. (Ord. 11804 § 101, 1998; Ord. 11398 § 3 (part), 1997; Ord. 8216 § 108 (part), 1985).

The request for the Special Use Permit satisfies these criteria. *Findings of Fact Nos. 1-35.*

4. The proposed use at the specified location will comply with the Thurston County Comprehensive Plan and all applicable federal, state, regional, and Thurston County laws or plans. The Thurston County Comprehensive Plan identifies the Holroyd mine as a Designated Mineral Resource Land (Map M-43). This designation and other language in the Comprehensive Plan, including an identification of mineral extraction as a primary use of RR1/5 zoned properties, indicates that the proposed asphalt operation, as an accessory to the mineral extraction, is consistent with the Thurston County Comprehensive Plan. *Permit Findings of Fact Nos. 2-5.*
5. The Comprehensive Plan at pages 3-17 provides that with consideration of certain standards mining operations will protect the public health and safety and the environment. These standards address groundwater protection, hazards posed by truck travel, density, and conservation measures. All of these measures have been addressed by Lakeside in its proposal before the County. *Permit Finding of Fact No. 1; SEPA Findings Nos. 10-24.*
6. The Mineral Extraction Code (TCC Chapter 17.20) and amendment of the special uses section of the TCC for surface mines were approved in 1993 and clearly allowed mineral extraction and accessory uses (asphalt) to occur in the Holroyd mine. These ordinances

were enacted subsequent to the approval of the Nisqually Sub-Area Plan. However, the Nisqually Sub-Area Plan recognizes the existing Holroyd facility. *NASP page 55 and Figure 13; Permit Findings of Fact Nos. 2, 5, & 6.*

7. The proposed asphalt plant complies with the general purposes and intent of the RR 1/5 regulations and sub-area plans. Applicable setback and bulk requirements will not be reduced. Even with the asphalt operation the Nisqually Sub-Area will be protected. The traffic will not be significantly increased; the air quality will not be impacted by pollutants or toxic materials; the groundwater will not be impacted or altered; and, storm drainage will be controlled and will not impact other properties. *Permit Findings of Fact Nos. 10-32.*
8. The proposed special use of the site as an asphalt plant is appropriate in the location. It is appropriate because it will not result in substantial or undue adverse effects on adjacent properties (*Permit Findings of Fact Nos. 11-13, 17-19, 25-27, 29-33*), neighborhood character (*Permit Findings of Fact Nos. 23, 31, 32, and 34*), natural environment (*Permit Findings of Facts for SEPA appeal and Permit Findings 10-19, 25-33*), traffic conditions (*Findings of Fact Nos. 20-24*), parking, public property or facilities, or other matters affecting the public health, safety, and welfare (*see the Findings cited above*). 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.
9. There will be no signage on-site. *Permit Finding of Fact No. 34.*

### **DECISION**

**The Special Use Permit to allow an asphalt production facility of Lakeside to be located and operated at the Holroyd Gravel Mine is granted with conditions as set forth herein. The Holroyd Gravel Mine is a 300-acre site at the intersection of Durgin Road and Old Pacific Highway. Lakeside's current asphalt facility is located near the County landfill site on I-5 and Marvin Road. The appeals of the MDNS are denied and the MDNS is upheld.**

In making these decisions the entire record was examined. All of the exhibits were reviewed and the testimony of the witness was considered. Based on this information, the above Findings of Fact were entered to support the issuance of the Special Use Permit.

The approval of the SUP and the denial of the SEPA appeals were not easy decisions to make. Many factors had to be considered, including the location of the site in a unique, pristine river valley, the strong sentiment of many neighbors against the project, and the historical use of the property as a mining operation. While all of these factors were important to the final decisions, the controlling factor was the law of the State of Washington and Thurston County and how to apply it to the facts of the case.

The review of the SEPA appeals was based on established state law as set forth in RCW 43.21C and WAC 197-11 and the interpretations of these statutes and regulations by the Washington Appellate Courts. This review is set forth in the SEPA appeal portion of this document.

The Special Use Permit decision was a two step process. First, a determination of whether asphalt production was an accessory use to a mining operation had to be made. Based on the County's interpretation there was little doubt that *TCC 20.54.070 (21) (a)* allows asphalt production as an accessory use.

Having determined that asphalt production is an accessory use to a mining operation the General Standards for a Special Use Permit as set forth in *TCC 20.54.040* were reviewed to determine if the proposed asphalt operation satisfied the listed criteria. As noted in the Conclusions these criteria have been satisfied.

While the Special Use Permit is granted there remains conditions that must be imposed to ensure that the identified impacts are, and remain, mitigated. Listed below are conditions that will be part of the permit.

### **CONDITIONS**

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 date of this approval. The Director of Development Services may authorize a reasonable fee for the review.
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.
3. Temporary asphalt production is permitted only to fulfill a contract for one specific public project and for a period not to exceed twelve months or the length of the contract, whichever is shorter.
4. The conditions as set forth in the MDNS are hereby incorporated as conditions to the Special Use Permit. A copy of the MDNS is attached as part of this decision (Attachment D).
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 and courtesy to other drivers and pedestrians.



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.
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.

Decided this 20th day of April 2001.

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James M. Driscoll  
Hearing Examiner for Thurston County

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## **TESTIMONY**

Linda Whitcher, Development Services  
Mike Kain, Development Services  
Jeff Fancher, Representative of Thurston County  
Barnett Kalikow, Friends of Nisqually Representative  
Bill Tobin, Nisqually Indian Tribe Representative  
Alexander Mackie, Lakeside Industries Representative  
Scott Davis, Thurston County Roads and Transportation Services  
Mark Goodin, Olympic Air Pollution Control Authority  
Bob Mead, Thurston County Environmental Health  
Dr. Halstead Harrison  
Stephen Bond  
Darrell Cochran, Environmental Health  
Howard Glastetter  
Colleen Glastetter  
Elizabeth Meyers  
Teresa Bruder  
Maryann Sparkman  
Jan Pigman  
Gary Talley  
Joe Cushman  
Georgiana Kautz  
George Walter  
Eric Hansen  
Kirk Winges  
Laura C. Green  
Chris Vaughan  
Perry Shay  
Dean Smith  
Tom Holtz  
Jim Baily  
Forest Lane  
Jim Meyers  
Steve Morrison  
Tom Cook  
Constance Bond  
Marshall Macey  
Michael Brogin  
John Woolet  
Danial Zane  
Kathy Talley  
Sarah Richardson  
Chuck Seldomridge  
Steve Herbig

Testimony Continued

Doug Pitman  
Jean Takekawa, Nisqually Wildlife Refuge  
Joanna Debes  
Tilde Smith  
Marion Gatzka  
Dean Pigman  
Barbara Cook  
Marshall Eberling  
Keith Baker  
Gloria Hart  
Wendy O'Donnell Mathews  
Lynda Sheak  
Robert Sison  
Austin Paulson  
Ron Schultz  
Tom Skjervold  
Fred Schilter  
Liz Meyers  
Carrie Cirrito  
Lawrence Causey  
Blaine Firch

## **LIST OF EXHIBITS**

### EXHIBIT 1 Development Services Report

Attachment a	Notice of Hearing
Attachment b	Nisqually Indian Tribe Appeal and Mitigated Determination of NonSignificance Comment Letter dated September 29, 2000
Attachment c	Friends of Nisqually Appeal and Mitigated Determination of NonSignificance Comment Letter dated September 29, 2000
Attachment d	Mitigated Determination of NonSignificance Issued September 18, 2000
Attachment e	Pre-Hearing Order dated October 6, 2000
Attachment f	Comment Letters on the Mitigated Determination of NonSignificance
Attachment g	Environmental Checklist
Attachment h	July 28, 1999 Letter from Eric Hansen, McCulley, Frick & Gilman to Darrell Cochran
Attachment i	July 24, 2000 Letter from Lakeside Industries to Tammy Trager
Attachment j	June 23, 2000 Letter from Lakeside Industries to Tammy Trager
Attachment k	May 1999 Detailed Description of Request
Attachment l	Full Legal Description of Subject Property
Attachment m	April 14, 1999 Noise Analysis
Attachment n	March 18, 1998 Hazardous Materials and Petroleum Products Spill Prevention, Detection, and Cleanup Plan
Attachment o	May 1999 Drainage and Stormwater Control Plan
Attachment p	April 20, 1999 Hydrogeological Report
Attachment q	October 15, 1997 On-Site Septic System Design
Attachment r	April 29, 1998 Letter from Off-Site Utility Providers

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Attachment aa	Hillsboro Conditional Use Application
Attachment bb	City of Monroe Conditional Use Application
Attachment cc	June 6, 2000 Reclamation Plan Coordination
Attachment dd	May 30, 2000 Tree Report
Attachment ee	HMA Equipment Report

EXHIBIT 2 Vicinity Map of Area submitted by Barnett Kalikow

EXHIBIT 3 August 3, 1999 Letter from Jean E. Takekawa, United States Department of Interior, Fish and Wildlife Services

EXHIBIT 4 Respondent Lakeside Industries Pre-Hearing Brief dated October 25, 2000

EXHIBIT 5 Large Aerial Photograph of Site - Produced October 20, 2000

EXHIBIT 6 Map of Lakeside Industries County-Wide Asphalt Projects from 1993-1997

EXHIBIT 7 October 30, 2000 Letter from Mark V. Goodin, Olympic Air Pollution Control Authority

EXHIBIT 8 December 15, 1992 Letter from John Libby, Public Health and Social Services Department

- EXHIBIT 9 Large Colored Air Photograph of Holroyd Pit
- EXHIBIT 10 Dr. Halstead Harrison's Model Run dated October 29, 2000
- EXHIBIT 11 December 14, 1999 Letter and Record of Recorded Accidents for 1999 to Connie Bond from Gary Miner, Roads and Transportation Services
- EXHIBIT 12 April 29, 1998 Letter from Randy Lewis, Puget Sound Energy
- EXHIBIT 13 November 23, 1999 Letter from Forest Lane to Stephen Bond
- EXHIBIT 14 Large Laminated Vicinity Map Submitted by Stephen Bond
- EXHIBIT 15 October 30, 2000 Comment on Lakeside Traffic Analysis/Traffic Study and Top Five Contributors to Statewide Ballot Initiative Committees from Stephen Bond
- EXHIBIT 16 Exercise of "Screen 3" EPA Screening Model by Dr. Halstead Harrison
- EXHIBIT 17 October 30, 2000 Spotlight of the Truth with Six Attachments
- EXHIBIT 18 Survey Form with Four Maps submitted by Colleen Glastetter (not admitted)
- EXHIBIT 19 Large Aerial Photograph of Nisqually Valley 18 Hours after 1996 Flood
- EXHIBIT 20 October 15, 1998 Flood Information Bulletin
- EXHIBIT 21 Medicine Creek Farm Well Log
- EXHIBIT 22 1996 Aerial Photograph of Holroyd Pit
- EXHIBIT 23 1996 Flood Photograph of Durgin Road
- EXHIBIT 24 1996 Aerial of Nisqually Valley 12 Hours after Flood
- EXHIBIT 25 1996 Photograph of Durgin Road Tunnel
- EXHIBIT 26 1996 Photograph of Entrance to Holroyd Gravel Pit on Old Pacific Highway
- EXHIBIT 27 OSHA Document
- EXHIBIT 28 Hazardous Substance Fact Sheet
- EXHIBIT 29 Poisindex System
- EXHIBIT 30 Pigman Submittal with Four Documents

- EXHIBIT 31 October 18, 2000 Statement by Kenneth W. Martin
- EXHIBIT 32 Major Fault Zones in the Puget Sound
- EXHIBIT 33 Selected Earthquakes Since 1872
- EXHIBIT 34 No Exhibit - Withdrawn
- EXHIBIT 35 Where do Earthquakes Occur?
- EXHIBIT 36 No Exhibit
- EXHIBIT 37 When and Where will the Next Big Earthquake Occur?
- EXHIBIT 38 New Method to Assess Potential Losses from Liquefaction During Earthquakes
- EXHIBIT 39 WA Earthquake Hazards - What Causes Damage?
- EXHIBIT 40 Photograph of the Intersection of Pacific Highway and Durgin Road
- EXHIBIT 41 Photograph of Joe Cushman by Mailbox of Neugen Property (blue sign identifies entrance to asphalt plant)
- EXHIBIT 42 Closer Photograph of Joe Cushman by Mailbox of Neugen Property
- EXHIBIT 43 Photograph of Neugen Property (blue sign identifies entrance to asphalt plant)
- EXHIBIT 44 Vicinity Map of Kautz Trust and Wells Trust off Durgin Road
- EXHIBIT 45 1996 Aerial Photograph of Section 17, Township 18 North, Range 1 East (printed October 23, 2000 by Thurston GeoData Center)
- EXHIBIT 46 Curriculum Vitae of Mr. Eric Hansen
- EXHIBIT 47 Environmental Protection Agency Regulations pages 397 - 399
- EXHIBIT 48 October 17, 2000 Memorandum from Kirk Wings regarding Box Model Evaluation for Holyrod
- EXHIBIT 49 December 2, 2000 Memorandum from Kirk Wings regarding Analysis of the Testimony offered by Dr. Halstead Harrison
- EXHIBIT 50 May 1998 Granite Falls Aggregate Mining Operation - Volume II, Final Supplemental Environmental Impact Statement

- EXHIBIT 51 Curriculum Vitae of Kirk D. Winges
- EXHIBIT 52 Evaluation of the Hot Mix Asphalt Plant dated December 2, 2000 by Laura C. Green and Curriculum Vitae of Laura C. Green
- EXHIBIT 53 1996 Nisqually Flood Photo 22\_133
- EXHIBIT 54 Lakeside Industries Asphalt Plant Relocation – Traffic Impact Analysis Figures 2, 4, 5 and 6 and Two Charts Identifying Lakeside Industries Hogum Bay Road Site Average Hauls per Day
- EXHIBIT 55 Revised Table 1 – Level of Service Summary for PM Peak Hour
- EXHIBIT 56 Lakeside Industries Hot-Mix Asphalt Monthly Production Log (1996 - 1999)
- EXHIBIT 57 Lakeside Industries County-Wide Asphalt Projects (1993 – 1997)
- EXHIBIT 58 Lakeside Industries Cover Sheet dated December 19, 2000
- EXHIBIT 59 Lakeside Industries Cover Sheet dated December 19, 2000
- EXHIBIT 60 Lakeside Industries Site Plan dated May 13, 1999 Identifying Off-site Elevations
- EXHIBIT 61 Groundwater Issues (Figures 1 – 6)
- EXHIBIT 62 Seven Photographs Demonstrating Character of Site
- EXHIBIT 63 Large Map of the Official Designated mineral Resource Lands dated July 1993
- EXHIBIT 64 November 15, 1999 Letter from Alexander W. Mackie with Appendices 1 – 6
- EXHIBIT 65 Excerpts from Tape Recording of Thurston County Hearing for SUPT 970044, SSDP 970044, City of Olympia’s McAllister Springs dated January 20, 1998
- EXHIBIT 66 A November 21, 2000 Letter from Mark V. Goodin, Olympic Air Pollution Control Authority
- EXHIBIT 66 B December 18, 2000 Letter from Eric Hansen, MFG Consulting Scientist and Engineers



## **LIST OF EXHIBITS**

### EXHIBIT S-1 Development Services Report

Attachment a	Notice of Hearing
Attachment b	Nisqually Indian Tribe Appeal and Mitigated Determination of NonSignificance Comment Letter dated September 29, 2000
Attachment c	Friends of Nisqually Appeal and Mitigated Determination of NonSignificance Comment Letter dated September 29, 2000
Attachment d	Mitigated Determination of NonSignificance Issued September 18, 2000
Attachment e	Pre-Hearing Order dated October 6, 2000
Attachment f	Comment Letters on the Mitigated Determination of NonSignificance
Attachment g	Environmental Checklist
Attachment h	July 28, 1999 Letter from Eric Hansen, McCulley, Frick & Gilman to Darrell Cochran
Attachment i	July 24, 2000 Letter from Lakeside Industries to Tammy Trager
Attachment j	June 23, 2000 Letter from Lakeside Industries to Tammy Trager
Attachment k	May 1999 Detailed Description of Request
Attachment l	Full Legal Description of Subject Property
Attachment m	April 14, 1999 Noise Analysis
Attachment n	March 18, 1998 Hazardous Materials and Petroleum Products Spill Prevention, Detection, and Cleanup Plan
Attachment o	May 1999 Drainage and Stormwater Control Plan
Attachment p	April 20, 1999 Hydrogeological Report
Attachment q	October 15, 1997 On-Site Septic System Design

Attachment r	April 29, 1998 Letter from Off-Site Utility Providers
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Attachment dd	May 30, 2000 Tree Report
Attachment ee	HMA Equipment Report
Attachment ff	Detailed Description of Request dated May 1999
Attachment gg	Nisqually River Management Plan dated June 1987
Attachment hh	Sections of the Nisqually Sub-Area Plan (pages 17 – 28)
Attachment ii	Blacks Law Dictionary Definition of Public Welfare
Attachment jj	Memorandum from Steven Morrison, Thurston Regional Planning Council to Don Krupp dated January 3, 2000
Attachment kk	Vicinity Map
Attachment ll	Aerial Photograph

Attachment mm	Photographs of Lakeside Issaquah Plant
Attachment nn	Comment Letters
EXHIBIT S-2	Large Aerial Photo dated 1998 Summer Identifying the Lakeside Site and the Holroyd Site
EXHIBIT S-3	Lakeside Industries Monthly Production Figures
EXHIBIT S-4	Large Map of Olympia
EXHIBIT S-5	Large Map of Thurston County Washington Identifying County and Private Site Locations
EXHIBIT S-6	Map of Mine Site off Durgin Road
EXHIBIT S-7	Large Site Plan of Lakeside Facility
EXHIBIT S-8	Photographs of Hot Mix Asphalt Plant, Monroe Washington
EXHIBIT S-9	Compact Disk of Asphalt Presentation by Forest Lane
EXHIBIT S-10	Pamphlet on Environmental Applications of Hot Mix Asphalt
EXHIBIT S-11	Asphalt Pancake (prop)
EXHIBIT S-12	October 27, 2000 and Two November 8, 2000 Letters from Jean Takekawa, United States Department of the Interior - Fish and Wildlife Services
EXHIBIT S-13	Photograph of Holroyd Pit in Nisqually Valley
EXHIBIT S-14	Written Testimony of James H. Meyers
EXHIBIT S-15	Written Testimony of Tom Cook
EXHIBIT S-16	Photograph taken from Tom Cooks Deck looking into the Holroyd Pit
EXHIBIT S-17	Calculated Pollutant Concentrations from the Hot-mix Plant dated December 19, 1997
EXHIBIT S-18	Nisqually National Wildlife Refuge Context Statement dated September 25, 1998 by Shanna Stevenson
EXHIBIT S-19	Written Testimony of Constance Bond dated November 9, 2000

EXHIBIT S-20	Written Testimony of Doug Pittmon dated November 8, 2000
EXHIBIT S-21	Comment Letter from Carol Beaman
EXHIBIT S-22	November 5, 2000 Comment Letter from Leo and Bonnie Gilman
EXHIBIT S-23	Boost for Nisqually Delta Article from the Nisqually News Tribune dated October 31, 2000
EXHIBIT S-24	Written Testimony of Dean Pigman
EXHIBIT S-25	Written Testimony of Marshall Eberling
EXHIBIT S-26	Various Articles/Documents
EXHIBIT S-27	Map of Nisqually River Management Plan