

Thurston County Board Briefing

<u>Briefing Date/Time:</u>	Thursday, October 29, 2020 9-10 am
<u>Office/Department & Staff Contact:</u>	Community Planning & Economic Development Department Maya Teeple, Senior Planner, 360-545-2593 Jennifer Davis, Community Planning Manager, x5475 Joshua Cummings, CPED Director, x4995
<u>Topic:</u>	CP-11, Recycled Asphalt Policy Amendment
<u>Purpose:</u> (check all that apply)	<input checked="" type="checkbox"/> Information only <input type="checkbox"/> Decision needed <input type="checkbox"/> Follow up from previous briefing <div style="text-align: right;">Optimal Time Frame for Decision is: (10/29/2020)</div>
<u>Synopsis/Request/Recommendation:</u>	
<ol style="list-style-type: none"> Staff will review the Planning Commission recommendation on the Recycled Asphalt Policy, Docket Item CP-11 on the 2020/2021 Comprehensive Plan Amendment Docket. Staff will provide a high-level background and overview of the options related to the policy amendment. Staff request direction from the Board on any additional information needed regarding the policy amendment prior to setting a public hearing. 	
<u>Background</u>	
<p>Lakeside Industries, Inc. submitted a Comprehensive Plan Amendment application (Attachment D) in November 2016 proposing amendments to Policy E.5 of the Nisqually Subarea Plan. The application requests that the County consider a Comprehensive Plan Amendment to policy language within the Nisqually Subarea Plan. Specifically, the request is to consider a text amendment to policy E.5 of the Nisqually Subarea Plan, which currently precludes the reprocessing of asphalt (reclaimed asphalt pavement, hereby RAP) in the subarea due to water quality concerns. The proposed amendment would allow the recycling of asphalt pavement to occur as an accessory use within the mined-out portion of gravel pits within the Nisqually Subarea.</p> <p>This docket item is #CP-11 on the 2020-2021 Comprehensive Plan Amendment Docket. The docket was prioritized by the Board of County Commissioner's in May 2020, and this item tied for 3rd (out of a total of 6 citizen-initiated amendments). This docket item was also previously docketed on the 2017-2018 and 2018-2019 Official Docket of Comprehensive Plan Amendments. Review of this comprehensive plan amendment has been broken down into two phases:</p> <ul style="list-style-type: none"> Phase 1 – Consultant Review of Contaminant Leaching from Recycled Asphalt Pavement <ul style="list-style-type: none"> Part A – Develop Inventory List of Literature and Data Part B – Issue Paper that Analyzes Potential Environmental and Public Health Implications of Asphalt Recycling based on Existing Scientific Literature Phase 2 – County review of current regulations and permit process, related court rulings, conditions within the Nisqually Subarea, and Best Management Practices 	
BACKGROUND:	
<u>What is the Nisqually Subarea Plan (NSAP)?</u>	
<p>The Nisqually Subarea is approximately 9,000 acres of rural lands in northeastern Thurston County. The subarea includes the Nisqually Wildlife Refuge and portions of: The Nisqually Indian Reservation, JBLM, and the McAllister Geologically Sensitive Area.</p> <p>The Nisqually Subarea Plan was adopted in 1992, after two years of intensive community and stakeholder involvement. The purpose of the plan was to establish zoning, goals and policies to shape development and land-use</p>	

in the subarea. The 1992 plan included Policy E.5. The subarea plan was readopted in 1996, when the County amended the Comprehensive Plan to comply with Washington State's Growth Management Act.

In 2017, the Board provided direction to include the Recycled Asphalt Policy amendment and the Nisqually Subarea Plan amendment as two separate docket items. These have been maintained as two separate docket items since 2017. The wholesale review of the Nisqually Subarea Plan is included on the 2020-2021 Official Docket, and was ranked by the BoCC as lowest priority among legislative amendments on the Comprehensive Plan docket. The Lakeside application ranked as a higher priority, and is being processed separately from the subarea plan update project.

What is asphalt pavement recycling/reprocessing?

Asphalt pavement recycling is the crushing, sorting, and/or reprocessing of asphalt pavement to breakdown, separate, and re-use the asphalt binding material and the gravel/sand substrate that forms the asphalt pavement. Asphalt binding material is re-used by adding it into new asphalt production processes. The gravel/sand substrate is re-used as a base material for new roads and driveways and for various other uses.

What does the current Policy E.5 of the NSAP state?

"Allow accessory activities to be considered inside the mined out portion of the gravel pit through the site plan review process. Examples of allowable accessory uses would include concrete pipe and/or septic tank construction and the recycling of used concrete. The reprocessing of imported mineral materials shall not be the primary accessory use **and the reprocessing of asphalt shall not be allowed due to water quality concerns.** These activities shall be discontinued once reclamation of the pit is completed in accordance with DNR standards."

What is an accessory use?

"Accessory use" means not the main activity happening on a site, rather a smaller yet still related activity, in the context of Policy E.5. According to Thurston County Code 20.03.040, "An 'accessory use' means a use or building which is clearly subordinate to and customarily found in association with a principal use."

DEPARTMENT ANALYSIS:

Water Quality Concerns

Materials related to the 1992 adoption of the Nisqually Subarea Plan and Policy E.5 cite concerns that toxins or harmful chemical substances would leach from stockpiled asphalt and negatively impact the environment, and that asphalt substrate fines could escape into waterways and negatively impact groundwater. Documentation of scientific sources referenced during the NSAP drafting and adoption process is not present within the available archival materials.

After receiving the Lakeside application to amend the adopted policy, Thurston County hired a third-party consultant to conduct a review and analysis of contaminant leaching from recycled asphalt pavement (Attachment E, Herrera Environmental Consultants, "Contaminant Leaching from Recycled Asphalt Pavement", May 14, 2019). Due to the wide range in testing materials and protocols, only broad summaries can be made from the research. Key takeaways from the consultant report are that:

- As a source of contaminants, RAP is highly variable. Factors contributing to variability in leachate from RAP appear to include how the asphalt was originally manufactured (e.g., the sources of crude oil and aggregate or whether coal tar or bitumen was used), how the RAP was used, the duration and degree to which it has weathered and been exposed to traffic or other pollution generating sources, and how long it is stored.
- Laboratory testing indicated that there were typically some contaminants leached from RAP at concentrations that exceeded state groundwater quality standards. There were some Polycyclic Aromatic Hydrocarbons (PAHs) that leached above Washington state groundwater quality standards with some frequency. Some metals were also leached, primarily in low pH environments.
- Testing indicated that there is a distinct initial flush of contaminants from RAP that can result in concentrations exceeding Washington State groundwater quality standards, but that these peak concentrations decrease quickly to below detection limits.
- Although this literature review specifically did not include an assessment of potential environmental impact from fate and transport of these contaminants, a number of the researchers suggested that the impact to the environment would be negligible if dilution and assimilation were considered.
- Batch and column laboratory tests, while informative, are not necessarily representative of what can be expected under field conditions.

This literature review did not evaluate how other factors may impact leachate from recycled asphalt pavement. Other factors that could impact leachate and pollution concerns include best management practices, fate and transport, natural attenuation in soils, geography, topography, hydrogeology, extent of impervious surfaces, type of ground cover, operation size, or duration and intensity of precipitation events.

County & State Regulations

Asphalt recycling is currently allowed as an accessory use in some of the County's zoning designations. There is no broad prohibition on asphalt recycling within the rest of unincorporated Thurston County (outside the Nisqually Subarea). The determination of whether asphalt recycling is allowed as an accessory use is made on a case-by-case basis through the evaluation of a land-use permit application for a specific parcel. The parcel's zoning, environmental features, current use, hydrogeology and other features are determining factors in whether asphalt recycling is allowed as an accessory use on an individual property and are determined through the site-specific permit review process.

Currently, Policy E.5 of the Nisqually Subarea Plan prohibits asphalt recycling as an accessory use in the subarea. If the policy were amended, asphalt recycling would then be allowed in the Nisqually subarea as an accessory use, within mined out portions of gravel pits. In addition to zoning code requirements and critical areas requirements, additional requirements exist under Thurston County's Mineral Extraction Code (17.20 TCC), which applies to special use permits for accessory uses to mineral extraction and asphalt plants. This chapter includes requirements for spill prevention, fuel and hazardous materials, drainage and stormwater control, wash and other process water, domestic water supplies, roads, noise, and more.

A new special use permit or an amendment to a special use permit to recycle asphalt is subject to current county regulations and may trigger any or all of the following: SEPA review, clean air agency permit, stormwater management plan, pollutant prevention and control plan, emergency clean-up plan, a site plan depicting where and how recycled asphalt will be processed and stored on the property, and a noise attenuation plan to demonstrate there is no public nuisance related to regulated noise decibels.

The Thurston County Environmental Health Code, Article V on 'Solid Waste Handling' includes information on recycling of solid waste. A solid waste handling permit is required for recycling of asphalt and concrete. Recycling of asphalt cannot be maintained, established, substantially altered or expanded without a solid waste handling permit, according to section 13 of Article V of the Thurston County Environmental Health Code.

The Washington State Department of Ecology issues a stormwater general permit to limit the amount of pollution that drains into lakes, rivers, and marine waters. These permits are guided by both the federal water pollution permit program and state laws.

PUBLIC OUTREACH/PARTICIPATION:

Thurston County has held two public meetings and given a presentation on the proposed amendment. A kick-off meeting was held on July 27, 2017 to provide general information to the public. An additional public meeting was held on June 20, 2019 where the consultant provided a presentation on the consultant literature report and then a question and answer session was held. Community Planning staff also gave a presentation to the Nisqually River Council on July 19, 2019 to provide a high-level summary of the consultant literature report and next steps. In addition to these 3 public outreach events, a poster on the project was included in the March 3, 2018 open house for the Nisqually Subarea Plan.

PLANNING COMMISSION REVIEW:

The Planning Commission has held three work sessions and a public hearing to discuss Comprehensive Plan Amendment Item 11 – Recycled Asphalt Policy:

- **July 15, 2020** – Recycled Asphalt Policy Review Work Session
- **August 5, 2020** – Recycled Asphalt Policy Review Work Session
- **September 2, 2020** – Recycled Asphalt Policy – special guests
- **October 7, 2020** – Planning Commission public hearing and recommendation

PLANNING COMMISSION RECOMMENDATION:

On October 7, 2020, the Planning Commission voted unanimously (9-0) in favor of the attached recommendation on the Comprehensive Plan Amendment 2020/2021 Docket Item #11, Recycled Asphalt Policy Review:

The Planning Commission recommends approval of Comprehensive Plan Docket Item CP-11, Recycled

Asphalt Policy Review, which amends Policy E.5 in the Nisqually Subarea as denoted in Option 3.

Documents Attached:

- Attachment A: Planning Commission Recommendation dated October 7, 2020
- Attachment B: Proposed Policy E.5 Options in Bill Format
- Attachment C: Proposed Thurston County Code Changes in Bill Format
- Attachment D: Lakeside Industries Application for a Comprehensive Plan Amendment
- Attachment E: Herrera Environmental Consultants, “Contaminant Leaching from Recycled Asphalt Pavement”, May 14, 2019
- Attachment F: All public comments received were not included as a direct attachment to this document due to size, but are available online at: https://www.thurstoncountywa.gov/planning/planningdocuments/CP-11_Matrix%20Summary.pdf

Summary & Financial Impact:

This item is included on the Comprehensive Plan Docket, and is funded by the applicant, Lakeside Industries, Inc.

Affected Parties:

Thurston County residents, business, and visitors, as well as most county departments.

Options with Pros & Cons:

Staff request direction from the Board about what additional topics they would like more information on prior to setting a public hearing.

1. **Timeframe for action in 2020** - Direct Staff to Move Forward & Set a Public Hearing
 - a. Staff would bring forward an agenda item to request a public hearing on 11/3/20, to set a public hearing for 12/1/20.
 - b. This keeps this amendment on track for final action in 2020. The Comprehensive Plan can be amended once a year.
2. **Extended timeframe (action in 2021)** - Request Additional Briefings Before Setting a Public Hearing
 - a. Briefings to cover additional information may also be requested at the direction of the Board and would be held in late 2020/early 2021.
 - b. This option delays final action on the proposed amendment until 2021.

Board Direction:

Staff is requesting direction from the Board on additional information they would like prior to directing staff to schedule a public hearing.

Next Steps/Timeframe:

Dependent on the request of the Board, the timeline for final action on the Recycled Asphalt Policy would be the end of 2020, or the end of 2021. The Comprehensive Plan may only be amended once a year by resolution.

Option 1: Timeframe for action in 2020

- November 3, 2020: Staff Request Board set a public hearing for 12/1/20
- December 1, 2020: Board Public Hearing
- December 15, 2020: Final action on Recycled Asphalt Policy (along with all other Comprehensive Plan changes, including the Rochester Subarea Plan and 2020 Comprehensive Plan Update, if ready)

Option 2: Extended timeframe (action in 2021)

- Board may request briefings to cover additional information on the proposed amendment. Briefings would be held in late 2020/early 2021.
- This would delay final action until 2021.