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June 25, 2020

Via Email to CourtneyS@pscleanair.gov

Ms. Courtney Shernan
Engineer II
Puget Sound Clean Air Agency
1904 3rd Avenue, Suite 105
Seattle, WA 98101

Re: Lenz Enterprises – NOC Application No. 11753

Dear Ms. Shernan:

Our client, Lenz Enterprises, has asked us to respond to your email request dated June 12, 2020 for information on the status of Snohomish County land use approvals for its composting operation identified in NOC Application No. 11753. This letter identifies the zoning and land use classifications for the Lenz Enterprises site, the applicable land use regulations, and decisions and determinations by Snohomish County pertinent to the composting operation. Key documents are attached to this letter.

Land Use/Zoning Classifications of the Site

Snohomish County's Comprehensive Plan designation for the 108-acre Lenz Enterprises site is Mineral Conservation (MC) and Rural 5 Acre (R-5). The County's zoning classification for the site is Rural Residential-5 with a Mineral Resource Overlay. (See Attachment 1 at 3.)

Applicable Snohomish County Land Use Regulations

Excavation and processing of minerals is a conditionally permitted use on parcels located within the Mineral Resource Overlay zone. Snohomish County Code (SCC) 30.22.110(28). The use, described in SCC 30.31D.010(2), must comply with the requirements of SCC chapter 30.31D. (See Attachment 1 at 6.)

Under SCC 30.91E.235, “Excavation and processing of minerals” is defined as follows:

“Excavation and processing of minerals” means facilities where the primary uses are mining, mine site development, and preparing metallic minerals and non-metallic minerals such as sand, gravel, and coal for bulk transportation. **Uses referred to in SCC 30.31D.010(2) are also included in this definition.** The term "mining" is used in the broad sense to include ore extraction, quarrying, and preparing (crushing, screening, washing, sizing, concentrating, and flotation) customarily done at the mine site. (Emphasis added.)

SCC 30.31D.010(2) describes the uses allowed under “excavation and processing of minerals” as follows:

- (a) This use shall allow only the primary reduction, treatment, and processing of minerals and materials, together with any necessary accessory buildings.
- (b) At least one of the major mineral or material constituents being exploited shall be from the property on which the mineral operations are proposing to locate.
- (c) **Allowed uses shall include, but not be limited to,** extraction, excavation, washing, crushing, stock piling, blasting, transporting, **recycling**, concrete batching, asphalt mixing, and the manufacturing of terra cotta, tile, brick, and concrete products.
- (d) The use shall not be detrimental to the existing, developing, or projected land use. (Emphasis added.)

Under SCC 30.91R.065, a "recycling facility" is defined as “any facility which transforms or remanufactures waste materials into usable or marketable materials for use other than disposal or incineration.”

Snohomish County regulates composting activities – i.e., the process of transforming organic waste materials into topsoil – as “recycling” under SCC 30.91R.065 and SCC 30.31D.010(2)(c). The Snohomish County Code does not have a separate definition or category for “composting” as a use separate from recycling. (See SCC ch. 30.91C.) Instead, the County’s comprehensive definition of “recycling” includes composting.

Snohomish County does not regulate composting activity based on processing rates. (See generally SCC ch. 30.31D.) Accordingly, the County’s land use approvals for the Lenz Enterprises composting operations – discussed below – are not predicated upon or limited to

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the specific processing rates associated with PSCAA NOC Order of Approval 10494 (2014) or the current NOC Application No. 11753.

Pertinent Snohomish County Decisions and Determinations

Recent Authorizations

On July 3, 2018, the Snohomish County Hearing Examiner approved a Conditional Use Permit (CUP) in File No. 16-112922 for Lenz Enterprises. The Hearing Examiner's decision authorized expansion of Lenz Enterprises' existing quarry from 54 acres to 108 acres to align with the County's Mineral Resource Overlay designation. (*See Attachment 1.*) CUP #16-112922 consolidated and reissued the County's prior conditional use authorizations for the Lenz Enterprises site dating back to the 1970's. (*See Attachment 1 at 9, Condition A.*) The 2018 CUP was not appealed.

The 2018 CUP explicitly authorizes the following accessory uses: a scale and scale house, office, a portable crusher, an asphalt batch plant and shop buildings, and a "topsoil/recycling" facility, together with necessary loaders, trucks, dozers and conveyors for these operations. (*See Attachment 1 at 9, Condition B.*)

Snohomish County conducted SEPA review in connection with the 2018 CUP, involving disclosure and evaluation of compliance with County land use regulations for all aspects of the Lenz Enterprises operation, including the identified accessory composting use. Snohomish County issued a Determination of Nonsignificance (DNS) on April 11, 2018, which was not appealed.¹ (*See Attachment 1 at 6.*)

In 2019, in reliance upon the April 11, 2018 DNS², Snohomish County issued Commercial Building Permit No. 19-102865-CBP for the Aerated Static Pile (ASP) system within the commercial composting facility at the site. (*See Attachment 2.*) That building permit was also not appealed.

Prior Authorizations

Snohomish County has authorized mineral excavation on this site since the 1970s, and has explicitly authorized composting activity since the 1990's. Some of the County land

¹ We understand you already have a copy of the April 11, 2018 DNS. If that is not correct, please let us know.

² WAC 197-11-600 generally requires an agency acting on the same proposal to use an environmental document unchanged except in specific circumstances and allows an agency to use environmental documents previously prepared for different proposals. To the extent PSCAA's SEPA review of NOC Application No. 11753 encompasses compliance with Snohomish County land use regulations, PSCAA should use Snohomish County's April 11, 2018 DNS consistent with WAC 197-11-600.

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use approval history for this site is set out in the Hearing Examiner's decision on the 2018 CUP. (See Attachment 1 at 5.)

Snohomish County decisions and determinations pertaining specifically to the Lenz Enterprises composting operation prior to 2018 include the following:

In 1995, Snohomish County Planning & Development Services issued an Administrative Determination that Lenz' composting ("recycling") operation was permitted as an incidental use in conjunction with the existing Conditional Use Permit for sand and gravel excavation (CU 41-76 and ZA 8702073). The Administrative Determination described the components of the "recycling" operation as including import of "sand, fill materials, clay, dirt, stumps, wood chips, brush" and other materials which "are periodically crushed and mixed with excavated materials to produce topsoil materials." PDS Administrative Determination AD 3-95 (June 23, 1995). (See Attachment 3.)

In 2007, PDS approved an administrative minor modification of the existing Conditional Use Permit (ZA 8702073) to allow an upgrade of the existing composting facility. The modification approved a 10,000 sq. ft. building for the delivery of yard waste, an asphalt and concrete slab, piping, and drainage system. PDS File No. 06-133420-000-00-LU (November 8, 2007). (See Attachment 4.)

Conclusion

In summary, Snohomish County land use regulations allow composting as part of the mineral extraction operations at this site. Snohomish County Planning & Development Services has explicitly determined on multiple occasions that the Lenz Enterprises composting operation is authorized under and compliant with applicable land use regulations.

We trust that this letter provides the information you requested about land use approvals. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,
TUPPER MACK WELLS PLLC
JAMES A. TUPPER, JR.

Attachments:

1. Decision of the Snohomish County Hearing Examiner, File 16-112922 CUP (July 3, 2018)

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2. Snohomish County Commercial Building Permit No. 19-102865-CBP (June 7, 2019)
3. Snohomish County Administrative Determination AD 3-95 (June 23, 1995)
4. Snohomish County PDS Project Details, File No. 06-133420-000-00-LU (November 8, 2007)

cc: Jason Lenz
Edward Wheeler

4818-1033-3633 v.1
4818-1033-3633, v. 2