

## Planning and Development Services

Robert J. Drewel  
County Executive

June 23, 1995

M/S #604  
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Everett, Wa 98201-4046  
(206)388-3311  
FAX(206)388-3872Thomas Lenz  
Lenz Enterprises, Inc.  
P.O. Box 868  
Stanwood, WA 98292

Subject: Administrative determination (AD 3-95); recycling operation in conjunction with sand & gravel excavation , CU 41-76 and ZA 8702073.

Dear Mr. Lenz:

This determination is in response to your March 13, 1995, and April 7, 1995, correspondence in which you asked whether a recycling operation now being conducted at the excavation site regulated by CU 41-76 and ZA 8702073 is an allowable use.

The subject excavation is authorized by the conditional use permits noted above. The terms and conditions of the excavation operation are specified in the permit issued on September 7, 1990. Review of the permit finds that the recycling operation was not specifically identified as one of the uses to be conducted on the site. The subject property is zoned Mineral Conservation (MC).

Even though you have stated certain aspects of the recycling operation were disclosed at the public hearing on the subject conditional use permit, the permit itself does not specifically identify the recycling operation as a use authorized within the context of the permit.

Since the conditional use permit does not specifically authorize the recycling operation, the only other option available for the allowance of the recycling use on the subject property is through its potential establishment as a use incidental to the primary excavation use. County Code (Title 18) allows incidental uses in conjunction with conditional uses (SCC 18.90.866).

An incidental use is defined in SCC 18.90.866 and means:

"... a use which occurs as a result of, or in connection with, a permitted or conditional use. The incidental use must be secondary or minor in nature, but associated with, the permitted or conditional use."

In my March 20, 1995, correspondence I requested information regarding the relationship of the recycling operation to the excavation occurring on the subject property. On April 7, 1995, you submitted additional information pertaining to the character of the recycling operation. I have reviewed the information from the

perspective that the recycling operation could be allowed on the site if it can be demonstrated that it is an incidental use to the primary excavation activities occurring on the site.

You have described the recycling operation as containing the following components:

Import of sand, fill materials, clay, dirt, stumps, wood chips, brush, concrete and asphalt to the site for temporary storage and processing.

Materials are periodically crushed and mixed with excavated materials to produce topsoil materials.

Two full time employees work at the excavation site and devote approximately 15% of their time to the recycle operation.

The recycle materials account for approximately 15% of the total truck trips to and from the site.

The recycling operation comprises approximately 4 acres of the 30 acre excavation area.

The quantity of recycle materials has been specifically compared to the quantity of materials brought to the site for recycling purposes in your statistical report for 1993 and 1994. Recycle materials comprise approximately 15% of the total of all materials handled on the site.

An incidental use must be found to be occurring in connection with or as a result of the primary use of the property. The recycling operation is occurring in connection with the excavation operation in that the character of the excavation site lends itself to an ancillary recycling operation. Trucks that haul out excavation materials also haul in materials to be recycled. Materials from the excavation site are mixed and processed with materials brought to the site.

An incidental use must be secondary or minor in nature to the primary use of property. The information provided clearly shows the recycling operation to be secondary to the excavation operation in terms of overall man-hours, and equipment devoted to the two operations, and in terms of the quantities of materials handled on and removed from the site.

An incidental use must be associated with the primary use of the property. The recycling operation is clearly associated with the excavation use in that materials from the excavation (materials mined at the site) are used (mixed) in the recycling operation.

As noted above, the proposed recycling operation does meet the definitional criteria contained in SCC 18.90.866 for a use incidental to the primary excavation use of the subject property. In order for this incidental use to continue to occur on the subject site, it must remain consistent with the above criteria, and also must not inhibit or prevent compliance of the excavation operation with the conditions of approval as stated in the subject conditional use permit.

In summary, the proposed recycling operation as described herein, is allowed as an incidental use to the excavation activities conducted on the site, provided that the operation remains secondary to the excavation activity, and continues to be associated with the excavation use through the use of excavated materials (from the site) in the recycling process.

This determination may be appealed under the provisions of section 18.72.100 SCC. The appeal should be addressed to the county hearing examiner, and filed in writing, in duplicate, and accompanied by a filing fee of \$100.00 with the Department of Planning and Development Services within 15 days of the date of this determination.

An appeal must contain the following items as set forth in SCC 2.02.125:

- (a) specific identification of the order, permit, decision, determination or other action being appealed (including the county's file number whenever such exists). A complete copy of the document being appealed must be filed with the appeal;
- (b) specific identification of the county code provision which authorizes the appeal;
- (c) the specific grounds upon which the appellant relies, including a concise statement of the factual reasons for the appeal and, if known, identification of the policies, statutes, codes, or regulations that the appellant claims are violated;
- (d) the name, mailing address and daytime telephone number of each appellant together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any;
- (e) the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and
- (f) the required filing fee.

Please feel free to contact me at 388-3311, Ext. 2187, if you have any questions on this matter.

Sincerely,



Gary Reiersgard  
Principal Planner

cc: Frank Wyckoff  
Dave McAllister