

Hearing Examiner's Office

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DECISION of the
SNOHOMISH COUNTY HEARING EXAMINER

I. SUMMARY

DATE OF DECISION: July 3, 2018

PROJECT NAME: Lenz Enterprises Mineral Extraction

APPLICANT/OWNER: Lenz Enterprises, Inc.
P.O. Box 868
Stanwood, Washington 98292

LOCATION: 5210 State Route 532
Stanwood, Washington

FILE NO.: 16-112922 CUP

TYPE OF REQUEST: Conditional use permit to allow expanded mineral extraction.

DECISION SUMMARY: Application for conditional use permit APPROVED

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III. BASIC INFORMATION

LOCATION:	5210 State Route 532 Stanwood, Washington 98292
TAX PARCEL:	320428-001-005-00, 320428-001-008-00, 320428-002-002-00, 320428-001-007-00
ACREAGE:	108 acres
GMACP DESIGNATION:	Mineral Conservation and Rural 5 Acre (R-5)
ZONING:	Rural Residential – 5 (1 dwelling unit/5 acres) with Mineral Resource Overlay
UTILITIES:	
Water:	None
Sewer:	None
Electricity:	Snohomish County Public Utility District No. 1
SCHOOL DISTRICT:	Stanwood-Camano School District No. 401
FIRE DISTRICT:	North County Fire/EMS
PDS STAFF RECOMMENDATION:	Approve with conditions

3 Based on a preponderance of the evidence of record, the Hearing Examiner finds the following facts and
4 makes the following conclusions of law and decision.

IV. REGULATORY REVIEW AND VESTING

5 Lenz Enterprises, Inc. submitted a conditional use permit application for expansion of its quarry operation
6 to the Department of Planning and Development Services (PDS) on July 22, 2016. The application was
7 complete when submitted for regulatory purposes, but insufficient for further review. Lenz submitted
8 additional information on June 6, 2017, which was sufficient for further review by PDS.

V. OPEN RECORD HEARING

1 An open record hearing was held on June 6, 2018. Edward Wheeler of Lenz and Jay Chennault of Associated
2 Earth Sciences testified on behalf of Lenz. Tom Barnett and Ken Crossman, P.E., testified on behalf of PDS.

VI. THE RECORD

3 The Hearing Examiner considered Exhibits A.1 through M.4 and the testimony of the witnesses. An
4 electronic recording of the hearing is available in the Office of Hearings Administration.

VII. PUBLIC NOTICE

5 The Hearing Examiner finds that PDS gave proper public notice of the open record hearing, SEPA threshold
6 determination,¹ and concurrency and traffic impact fee determinations as required by the County Code.²

VIII. BACKGROUND INFORMATION

7 A. APPLICANT'S PROPOSAL

8 Lenz proposes to expand its existing quarry to align with the Mineral Resource Overlay designation on the
9 county's Future Land Use Map. The existing conditional use permit³ covers 54 acres and Lenz proposes to
10 double that to 108 acres. In addition, Lenz asks that the maximum mining depth be changed from 145 feet
11 above mean sea level to the lower of (a) 100 feet above mean sea level or 10 feet above seasonal high
12 groundwater. Lenz has no present plans to expand the intensity of its use, i.e., it plans to have the same
13 number of employees and same amount of equipment.

14 B. SITE DESCRIPTION AND SURROUNDING USES

15 The site is on State Route 532 approximately 1/3 of a mile east of 64th Ave. NW. It slopes from an elevation
16 of approximately 280 feet above mean sea level to an elevation of approximately 140 above mean sea level
17 in the southwest corner. It is bounded to the south and southwest by a 100 to 200 foot high bluff,
18 separating the site from the Stillaguamish River valley.

19 Surrounding properties are zoned R-5 and have rural residential uses. The city of Stanwood's urban growth
20 area lies $\frac{3}{4}$ of a mile to the west. The Stillaguamish River valley to the south is largely Agriculture 10 acre.

¹ Ex. E.1.

² Exhibits F.1, F.2, and F.3.

³ Planning file no. 06-133420 (Nov. 8, 2007) (Ex. G.4), approving minor modification to file no. ZA 8702073 (May 15, 1991) (Ex. G.3).

1 **C. HISTORY**

2 Snohomish County rezoned 21 acres to Mineral Conversation in 1976.⁴ The Zoning Adjustor granted a
3 conditional use permit in 1976.⁵ The Zoning adjustor authorized an asphalt batch plant in 1979.⁶ The
4 Hearing Examiner modified R 27-76 and CU 41-76 in 1982 by consolidating the two prior decisions,
5 restating conditions, and reducing the minimum elevation of the pit floor to 145 above mean sea level.⁷
6 The Hearing Examiner rezoned 33 acres from Rural Use to Mineral Conservation in 1990 and approved a
7 conditional use permit to excavate sand and gravel from the 54 acre area zoned Mineral Conservation.⁸
8 Condition E of the conditional use permit was revised in 1991 and additional time granted to establish 52nd
9 Ave. NW, a new public road.⁹ PDS approved a minor modification in 2007 to allow an upgrade of the
10 existing woodwaste recycling facility by including a 10,000 sq. ft. building to produce topsoil.¹⁰

11 **D. ISSUES OF CONCERN**

12 PDS received only one comment from a nearby property owner, who did object.

IX. CONDITIONAL USE PERMIT REQUIREMENTS (CHAPTER 30.42C SCC)

13 **F. CONDITIONAL USE PERMIT (CHAPTER 30.42C SCC)**

14 An application for a conditional use permit must meet all of the following criteria:¹¹

- 15 a. The proposal must be consistent with the county's comprehensive plan;
- 16 b. The proposal must comply with the applicable requirements of title 30 SCC;
- 17 c. The proposal will not be materially detrimental to the uses or property in the immediate vicinity;
18 and
- 19 d. The proposal is compatible with, and incorporates specific features, conditions, or revisions that
20 ensures it responds to, the existing or intended character, appearance, quality of development, and
21 physical characteristics of the site and surrounding property.

⁴ R 27-76.

⁵ Permit CU 41-76. Zoning Adjustor Written Order no. 65.

⁶ Addendum to Written Order no. 65.

⁷ Ex. G.1 (Planning file nos. R 27-76/CU 41-76 (September 24, 1982)).

⁸ Ex. G.2 (Planning file no. ZA 8702073 (September 7, 1990)).

⁹ Ex. G.3 (Planning file no. ZA 8702073 (May 15, 1991)).

¹⁰ Ex. G.4 (Planning file no. 06-133420 (November 8, 2007)).

¹¹ SCC 30.42C.100(1) (2012).

1 1. CONSISTENCY WITH COMPREHENSIVE PLAN (SCC 30.42C.100(1)(A))

2 The proposal is consistent with the land use elements of the comprehensive plan.
3 The comprehensive plan designates the area as Mineral Resource Overlay.

4 Designation of mineral resources in predominantly undeveloped rural areas allows rural
5 land owners the opportunity to extract minerals from their property, provides policy
6 direction for development patterns which can be compatible with mineral resource uses
7 and reduces transportation costs by designating some resource supply closer to urban
8 market areas.

9 General Policy Plan, Land Use, LU-59. "Designation as mineral resource land indicates eligibility for
10 permitting . . . as a mineral excavation site ad that, at the comprehensive plan level, such land is potentially
11 appropriate for mineral excavation." *Id.*, Land Use Policy 9.A.7, LU-61. In other words, the comprehensive
12 plan contemplates mineral extraction in this area. The proposal is therefore consistent with the
13 comprehensive plan.

14 2. COMPLIANCE WITH TITLE 30 SCC (SCC 30.42C.100(1)(B))

15 a. General Standards (Chapters 30.22 through 30.31D SCC)

16 Mineral excavation is a conditionally permitted use on parcels such as this, which are within the Mineral
17 Resource Overlay zone. The proposal must comply with the requirements of chap. 30.31D SCC.¹²

18 The proposal complies with the minimum setbacks prescribed by county code.¹³ Approval will be
19 conditioned upon compliance with the general performance standards.¹⁴

20 Approval will be conditioned on complying with noise,¹⁵ air quality,¹⁶ grading, reclamation, and topsoil
21 retention¹⁷ requirements.

22 b. Environmental Review (SEPA) (Chapter 30.61 SCC)

23 PDS determined a determination of non-significance on April 11, 2018,¹⁸ which was not appealed.

¹² *Id.* at (28)

¹³ SCC 30.31D.120 (2006); SCC 30.23.110(27) (as amended through Amended Ord. 15-103).

¹⁴ SCC 30.31D.100 (2006).

¹⁵ SCC 30.31D.135 (2006).

¹⁶ SCC 30.31D.145 (2006).

¹⁷ SCC 30.31D.160 (2010).

¹⁸ Ex. E.1.

c. Critical Areas Regulations (Chap.30.62A SCC) and Drainage (Chap. 30.63A SCC)

Two wetlands, a category III and a category IV, exist on the site. They are correctly delineated and rated. Southeast of current mining operations, a stream flows north to south. It is type Np in the upper reaches and type F in the lower reaches. Only existing uses and development that are legally established within the buffers may continue; no new or expanded use or development will be allowed. Approval will be conditioned on marking the boundary of the critical areas on site with appropriate signs and recording of an executed critical areas site plan. No mining activities may occur within the boundaries of the wetlands or their buffers.

Lenz has two wells on the site. Well MW-1 is completed within the regional aquifer beneath the site and is down gradient of mining activities. It supplies production water. Well DW-1 monitors groundwater quantity and quality. The two wells will provide data regarding seasonal groundwater fluctuation within the perched zone and regional aquifer. Approval will be conditioned on Lenz providing annual reports regarding groundwater and water quality.

The proposal satisfies the minimum requirements of the drainage code.

Lenz asks that the minimum depth of excavation be changed to allow it to excavate to the lower of 100 feet above mean sea level or 10 feet above the seasonal high groundwater level. The Hearing Examiner finds this proposal reasonable in light of additional information gleaned over the years regarding subsurface geology and water and in light of data from wells that will establish the seasonal high groundwater level. A ten foot separation between the bottom of excavation activities and the seasonal high groundwater is currently considered an appropriate practice to protect the water resource.

d. Traffic (Chapter 30.66B SCC)

Traffic mitigation fees will not be required. The proposal would likely not generate any new trips.

e. School Impact Mitigation (Chapter 30.66C SCC)

The proposal is not subject to chapter 30.66C SCC, which requires payment of mitigation fees.

3. NOT MATERIALLY DETERIMENTAL TO IMMEDIATE USES OR PROPERTY (SCC 30.42C.100(1)(c))

Mineral excavation on property is not obviously materially detrimental to immediate uses or property. In this case, mineral extraction has occurred for decades without complaints and is sufficiently set back from adjoining properties and uses.

As conditioned, the project will not be materially detrimental to immediate uses or property.

4. COMPATIBILITY (SCC 30.42C.100(1)(D))

As conditioned, the proposed development is compatible with the existing character, appearance, quality of development, and physical characteristics of the property and the surrounding area.

1 5. CONDITIONS OF APPROVAL

2 The Hearing Examiner may impose requirements as a condition of approval.¹⁹ PDS proposed conditions to
3 which Lenz mostly accedes and which the Hearing Examiner agrees should and will be required.

X. CONCLUSIONS

- 4 1. The Hearing Examiner has authority to approve conditional use permits. SCC 30.42C.020 (2003).
- 5 2. The Hearing Examiner has authority to impose conditions. SCC 30.31D.220 (2006).
- 6 3. The Hearing Examiner concludes that applicant Lenz Enterprises, Inc. met its burden of proving that
7 the established criteria have been met by a preponderance of evidence. The proposal is consistent
8 with the comprehensive plan and complies with the applicable requirements of title 30 SCC. As
9 conditioned, the proposal will not be materially detrimental to uses or property in the immediate
10 vicinity. The proposal is compatible with and incorporates specific features, conditions, or revisions
11 that ensure it responds appropriately to the existing or intended character, appearance, quality of
12 development, and physical characteristics of the site and surrounding property.
- 13 4. None of the disqualifying situations described by SCC 30.31D.210 (2010) exist.
- 14 5. Any finding of fact in this decision which should be deemed a conclusion of law is hereby adopted as a
15 conclusion of law.
- 16 6. Any conclusion of law in this decision which should be deemed a finding of fact is hereby adopted as a
17 finding of fact.

XI. DECISION

18 Upon satisfaction of the pre-conditions, the requested conditional use permit is approved, subject to the
19 conditions listed below:

PRE-CONDITIONS

- 21 A. Lenz Enterprises shall execute a land use permit binder, record it with the County Auditor's Office, and
22 a copy shall be submitted to PDS for the case file.
- 23 B. Lenz Enterprises will comply with SCC 30.25.027. Lenz Enterprises shall install a 50-foot wide view
24 obscuring buffer no later than the commencement of excavation operations and shall maintain it
25 thereafter. In those areas where Lenz Enterprises owns adjoining parcels, the view obscuring buffers
26 will be installed on the outside of the Mineral Resource Overlay as depicted on Ex. B.6 (Site Plan).

¹⁹ SCC 30.42C.100(2) (2012).

1 C. Lenz Enterprises shall record a Critical Area Site Plan (CASP) with the Snohomish County Auditor that
2 depicts critical areas and their buffers in a CAPA and includes the following restrictive text:

3 All CRITICAL AREA PROTECTION AREAS shall be left permanently undisturbed in a substantially
4 natural state. No clearing, grading, filling, building construction or placement, or road construction
5 of any kind shall occur, except removal of hazardous trees.

6 D. Lenz Enterprises shall permanently mark CAPA boundaries with both CAPA signs and adjacent markers
7 which can be magnetically located (e.g., rebar, pipe, or 20 penny nails). Lenz Enterprises may use other
8 permanent methods and materials provided they are first approved by the county. Where a CAPA
9 boundary crosses another boundary (e.g., lot, tract, plat, or road), a rebar marker with surveyors' cap
10 and license number must be placed at the line crossing.
11 E. Lenz Enterprises shall place CAPA signs no more than 100 feet apart around the perimeter of the CAPA.
12 Minimum placement shall include one Type 1 sign per wetland. Lenz Enterprises shall submit a design
13 and proposed locations for the CAPA signs to PDS Permitting for review and approval prior to
14 installation.

15 **CONDITIONS**

16 A. This conditional use permit replaces and supersedes the conditional use permit(s) granted under
17 county files numbers CUP 41-76, ZA8702073, and 06-133420 LU.
18 B. Lenz Enterprises may excavate sand and gravel and operate the following accessory uses: a scale and
19 scale house, office, a portable crusher, an asphalt batch plant and shop buildings, a topsoil/recycling
20 facility together with necessary loaders, trucks, dozers and conveyors for said operations.
21 C. Exhibits B.2, B.3 and B.6 shall be the official site plans; any discrepancy between the content of the
22 official site plans and the performance standards of Title 30 SCC shall be resolved in favor of the
23 standards contained within Title 30 SCC
24 D. The floor of the mining area shall not be excavated less than 10 feet above the seasonal water table or
25 the 100 foot contour level above mean sea level, whichever is encountered first.
26 E. Finished side slopes shall not exceed 2H:IV.
27 F. The maximum height of any operating face shall be no more than allowed by applicable federal, state,
28 or local law or regulation. As of the issue date of this permit, CFR Title 30, Part 56, Subpart B, (including,
29 but not limited to, 30 CFR 56.3130 and 56.3131) establishes the maximum height of vertical operating
30 faces and CFR Title 30, Part 56, Subpart B – Ground Control regulates all other operating faces.
31 G. Perimeter buffers shall be provided and maintained as indicated on Exhibits B-2, B-3, and B.6 plus a 25-
32 foot buffer area shall be provided at finish grade adjacent to both sides of the public right-of-way
33 which is to be established through the subject property.
34 H. All finished side slopes and excavation floor areas shall be reclaimed by seeding as appropriate.

1 I. All mining operations at the site shall comply with the recommendations found in the Geotechnical
2 Report (Exhibit C.3).

3 J. Any proposed revisions to the approved plans shall be regulated pursuant to SCC 30.42C.110.

4 K. All equipment and operations utilized on the subject property shall meet the noise and pollution
5 standards of the Puget Sound Air Pollution Control Agency and the Environmental Protection Agency.

6 L. Lenz Enterprises shall follow measurable best management practices (BMP) for dust control.

7 M. Lenz Enterprises shall comply with all performance standards of SCC 30.31D.135 not expressly
8 described herein.

9 N. Lenz Enterprises shall maintain a current surface mining permit from the State Department of Natural
10 Resources.

11 O. One copy of approved excavation and reclamation plans and specifications for reclamation of
12 excavations not regulated by the state pursuant to chapter 78.44 RCW shall be kept on the site at all
13 times during the progress of the excavation operation.

14 P. Lenz Enterprises shall submit a yearly groundwater monitoring and water quality report consistent
15 with the "March 2017 Groundwater Monitoring Plan" to PDS.

16 Q. A forest practice permit may be required for tree removal in Mining Area 3.

17 R. All development activity authorized under this permit shall fully avoid critical areas and associated
18 buffers located west (including all forested areas) of active mining operations as shown in Figure 6,
19 Wetland/Stream Delineation Map, from the 2016 Cantrell & Associates critical areas report entitled
20 Wetland Delineation and Wildlife Assessment Lenz Sand and Gravel Mine (Exhibit C-4).

21 S. Subject property shall be posted with signs in accordance with SCC 30.31D.100(5). The area shall be
22 posted with signs having letters at least three inches high and two inches wide, giving clear warning of
23 the dangerous conditions resulting from the excavation. The signs shall be not more than 50 feet apart
24 around the periphery of the subject property and shall be maintained in good repair until excavation
25 and reclamation operations are completed.

26 T. The hours of operation shall be limited to 7 a.m. to 5:30 p.m., Monday thru Saturday, according to
27 locally applied time, excluding Sundays and legal federal holidays, except during natural disasters and
28 emergency situations.

29 U. This conditional use permit shall expire:

30 1. Within 5 years of approval if the expanded use has not yet been initiated, pursuant to SCC Table
31 30.70.140(1).

32 2. If Lenz Enterprises lacks any required state or federal permit required for the uses authorized by this
33 conditional use permit.

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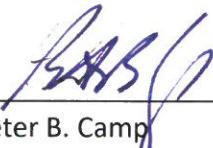
1 3. If Lenz Enterprises does not have a current surface mining permit from the Washington State
2 Department of Natural Resources.

3 4. If mining operations are discontinued for more than 12 consecutive months.

4 5. If a material violation of this permit or any law or regulation is not promptly remedied.

5 V. Nothing in this recommended approval excuses Lenz Enterprises, an owner, lessee, agent, successor or
6 assigns from compliance with any other federal, state or local statutes, ordinances or regulations
7 applicable to this project.

8 Decision issued this 3rd day of July, 2018.



Peter B. Camp

Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

9 The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council.
10 However, reconsideration by the Examiner may also be sought by one or more parties of record. The
11 following paragraphs summarize the reconsideration and appeal processes. For more information about
12 reconsideration and appeal procedures, please see chapter 30.72 SCC and the respective Examiner and
13 Council Rules of Procedure.

RECONSIDERATION

15 Any party of record may request reconsideration by the Examiner by filing a petition for reconsideration no
16 later than July 13, 2018. A petition for reconsideration must be filed in writing with the Office of the
17 Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington,
18 (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201). There is no fee for filing a
19 petition for reconsideration. The petitioner for reconsideration shall mail or otherwise provide a copy of
20 the petition for reconsideration to all parties of record on the date of filing. SCC 30.72.065.

21 A petition for reconsideration does not have to be in a special form but must contain the name, mailing
22 address and daytime telephone number of the petitioner, the signature of the petitioner or of the
23 petitioner's attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which
24 reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature
25 of any newly discovered evidence and/or changes proposed by the Applicant.

26 The grounds for seeking reconsideration are limited to the following:

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1 (a) The Hearing Examiner exceeded his jurisdiction;

2 (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;

3 (c) The Hearing Examiner committed an error of law;

4 (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;

5 (e) New evidence is discovered which could not reasonably have been produced at the hearing and
6 which is material to the decision; or

7 (f) The Applicant proposed changes to the application in response to deficiencies identified in the
8 decision.

9 Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the
10 provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this
11 case.

12 **APPEAL**

13 Any aggrieved party of record may appeal to the County Council by filing a notice of appeal no later than
14 July 17, 2018. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be
15 filed until the reconsideration petition has been decided by the hearing examiner. An aggrieved party need
16 not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for
17 reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be
18 limited to those issues raised in the petition for reconsideration.

19 Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the
20 Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000
21 Rockefeller Avenue, Everett, Washington (Mailing address: M/S No. 604, 3000 Rockefeller Avenue, Everett,
22 WA 98201), and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for
23 each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee
24 shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC
25 30.72.075.

26 An appeal must contain the following items in order to be complete: a detailed statement of the grounds
27 for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific
28 Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the
29 appeal; the name, mailing address and daytime telephone number of each appellant, together with the
30 signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing
31 address, daytime telephone number and signature of the appellant's agent or representative, if any; and
32 the required filing fee.

33 The grounds for filing an appeal shall be limited to the following:

34 (a) The decision exceeded the Hearing Examiner's jurisdiction;

35 (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;

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1 (c) The Hearing Examiner committed an error of law; or

2 (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial

3 evidence in the record. SCC 30.72.080

4 Appeals will be processed and considered by the County Council pursuant to the provisions of chapter

5 30.72 SCC. Please include the County file number in any correspondence regarding the case.

6 Staff Distribution:

7 Department of Planning and Development Services: Tom Barnett

8 RCW 36.70B.130 Statement: Affected property owners may request a change in valuation for property tax

9 purposes notwithstanding any program of revaluation. A copy of this Decision is being provided to the

10 Snohomish County Assessor as required by RCW 36.70B.130.

PARTY OF RECORD REGISTER
16-112922-CUP
Lenz Enterprises Mineral Extraction
Hearing: June 6, 2018 at 9:00 a.m.,

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