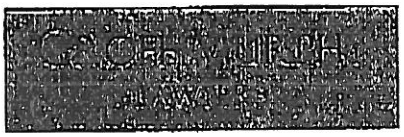

Michael J. Murphy
E-Mail: mmurphy@groffmurphy.com

November 2, 2010

Via Federal Express

Kittitas County
Board of County Commissioners
Kittitas County Courthouse
205 W. 5th, Ste. 108
Ellensburg, WA 98926

Kittitas County
Board of Adjustment
c/o Kittitas County Community Development Services
411 N. Ruby St., Ste. 2
Ellensburg, WA 98926

Re: Appeal of SEPA (State Environmental Policy Act) Threshold Determination of Non-Significance Relating to Gibson Quarry Conditional Use Permit Amendment (CU-10-00004)

To Whom It May Concern:

I represent Ellensburg Cement Products, Inc. The purpose of this letter is to appeal the threshold SEPA determination of non-significance issued by Mr. Valoff and ostensibly dated October 21, 2010 for the proposed Gibson Quarry Conditional Use Permit Amendment, No. CU-10-0004 (hereinafter the "Proposal").

The appellant is Ellensburg Cement Products, Inc., 2121 Highway 97, P.O. Box 938, Ellensburg, WA 98926. Ellensburg Cement Products, Inc. has standing to pursue this appeal because its primary place of business is in Kittitas County and as such, it is entitled to take action to ensure that the state and local environmental laws are properly and consistently enforced.

The appellant requests that this SEPA appeal be granted and that Kittitas County Community Development Services ("CDS") be directed to (a) withdraw its threshold determination, (b) require submission of a complete environmental checklist, (c) require submission of documentation to demonstrate compliance with prior permits and County Code,

and (d) require proper SEPA review of the application by County staff and all other relevant agencies before a new threshold decision is issued.

As a threshold matter, appellant notes that the notices relating to the SEPA threshold decision were inconsistent and misleading. The original Notice of Decision SEPA Action and Public Hearing issued on October 21, 2010 and received on October 25, 2010 says that the SEPA appeal must be filed by September 2, 2010. That appeal deadline is not only before the DNS was issued on October 21, 2010, but is inconsistent with the November 4, 2010 appeal deadline stated in the Determination of Non-Significance issued on the same day (October 21, 2010). This material inconsistency between the two notices regarding the appeal date, particularly the fact that one suggests that the appeal deadline has already passed, renders the SEPA notice defective. Given the fact that there are a number of concerned neighbors, this defective notice issue is not immaterial. One or more interested parties may be dissuaded by the inconsistent and confusing notices from filing an appeal and from exercising their rights. Accordingly, the process needs to be restarted to ensure proper compliance with SEPA procedures.[1]

There are a number of other fatal flaws in both the SEPA process and the threshold decision for the Proposal:

First, the prior Notice of Application states that "[t]he County expects to issue a Determination of Non-Significance (DNS) for [the] proposal." But as of June 29, 2010, when the application was deemed "complete", the applicant had not even submitted a SEPA checklist. A SEPA checklist was apparently submitted on July 13, 2010, but it is unsigned and undated and appears to be a copy of the two year old SEPA checklist given to the Department of Natural Resources in 2008 when Louie Gibson (improperly) requested a reclamation permit from DNR for a 60 acre mine, when the underlying County CUP for mining only covered 13.40 acres.

Second, the 2008 DNR SEPA checklist does not conform to the currently pending Proposal:

- The new Proposal purports to apply to 84 acres, but the 2008 DNR SEPA checklist only applies to 60 acres.
- The 2008 DNR SEPA checklist says "rock crushing . . . might possibly occur in the future." The Proposal specifically requests that the CUP be amended to include "rock crushing."

[1] It appears that the County sent out a second set of notices correcting the error. However, those notices are also defective. First, they purport to be issued on October 21, 2010, but that is clearly not the case, as the second notices were not received until October 29, 2010. The failure to reflect the actual mailing date in the notices is particularly significant and deceptive. First, while the second notice appears to be timely issued, it clearly is not. And since it was not actually received until just a couple of days before the appeal deadline, the recipients clearly did not receive adequate or timely notice of the SEPA action.

- The 2008 DNR SEPA checklist says nothing about "washing", and claims that no ground water will be withdrawn, and no water will be discharged to ground water. The Proposal, however, specifically requests that the CUP be amended to include "washing," which will presumably require both ground water withdrawal and discharge.

- The 2008 DNR SEPA checklist says nothing about concrete batch plans or asphalt production, and claims that there will be no air quality impacts other than some "minor amounts of dust" and "normal engine exhaust." The Proposal, however, specifically requests that the CUP be amended to include concrete and asphalt production.

- The 2008 DNR SEPA checklist claims that the "nearest houses are owned by proponent" and that there are only "dispersed residences" on site and on adjacent properties. This clearly outdated response fails to acknowledge that two residential short plats have been approved, one immediately to the north of the subject site (Sunny Sage Short Plat, SP 10-00006) and the other to the northwest of the subject site (Badger Bluff Short Plat, SP 09-00010).

- The 2008 DNR SEPA checklist falsely claims that the subject property is zoned Rural 3. As noted above, the subject property is zoned AG 20.

From the foregoing, it is clear that the 2008 DNR SEPA checklist is outdated, incomplete, and inaccurate.

Under controlling SEPA regulations, the use of the 2008 DNR SEPA checklist is clearly improper. Under WAC 197-11-315(4), "The lead agency *shall* prepare the checklist or require an applicant to prepare the checklist." (emphasis added). This is not optional, and it was not done. While the applicant may have submitted a checklist, none was prepared for this application, as is readily apparent from the bullet points set forth above.

Further, the law is well settled that prior environmental documents cannot be used for a new "threshold determination" if there are "(i) Substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts . . ., or (ii) New information indicating a proposal's probable significant adverse environmental impacts. (This includes *discovery of misrepresentation* or lack of material disclosure.)." WAC 197-11-600(3)(b) (emphasis added).

Both circumstances are present here. The current Proposal is a full 1/3rd larger than the one considered by DNR, is now adjacent to a residential subdivision, and now expressly includes operations such as washing, rock crushing, and concrete and asphalt production, which have much greater environmental impacts than the surface mining and possible occasional rock crushing described in the 2008 DNR SEPA checklist.

Further, it is clear that the 2008 DNR SEPA checklist misrepresented critical information relevant to then pending application: in particular the zoning of the property and the existence of a valid CUP for the mining operation on all 60 acres. As noted above, it is undisputed that the property is zoned AG 20 (which does not permit the requested activities) and the existing CUP only applies to 13.40 acres, not 60 and not 84. Accordingly, the 2008 DNR SEPA checklist cannot be used for the environmental review of this Application.

Third, it is apparent from the content of the 2008 DNR SEPA checklist, the minimal amount of time that passed between its submission and the issuance of the Notice of Application on July 29, 2010, and the complete lack of any mitigation measures that no meaningful SEPA review occurred here. How the obvious deficiencies could be missed is shocking, and reflects a complete abdication of the SEPA review process by CDS. CDS is not DNR. But it is clear that CDS has simply tried to adopt DNR's old and inapplicable determination as a shortcut without doing any review of the legal and environmental issues relevant to compliance with the County's land use and environmental regulations, which are the standards under which the Proposal must be judged.

The complete inadequacy of the environmental review process are apparent from the following facts:

- Neither the SEPA Checklist nor any studies address noise impacts of the proposed expansion of the quarry or the new quarry operations, such as rock crushing and concrete and asphalt production, and there is not a single mitigation measure to address these impacts. As noted above, there are now two residential developments near the expanded quarry.

- There is nothing in the SEPA Checklist of any substance nor any studies addressing dust control from the expanded quarry operations and potential rock crushing, and there is not a single mitigation measure to address these impacts. Again, the impacts on the two new residential developments have not been considered or addressed at all.

- There is nothing of substance in the SEPA Checklist and no independent studies addressing odor control and air quality impacts, including toxic emissions from the proposed asphalt plant. These are likely to have significant material adverse impacts on the two new residential developments, one of which is immediately adjacent to the expanded quarry operation. And, of course, there is not a single mitigation measure to address these impacts either.

- Neither the SEPA Checklist nor any studies address impacts from blasting, including vibration, on the surrounding properties, including the two new residential developments. Consistent with the lack of consideration, there is not a single mitigation measure to address these impacts.

- There is no analysis or study regarding traffic safety and the impact of increased truck traffic on Park Creek Drive. Nor are there any mitigation measures.

- There is no analysis whatsoever of the impact of the quarry operation on groundwater, or any determination whatsoever regarding the vulnerability of groundwater to the impacts of toxic substances, the wastewater from the proposed washing operation, or storm water runoff. Indeed, there is no recognition, other than in the application, that there will be a washing operation. There is absolutely no information regarding the depth or proximity of surrounding wells or the hydraulic connectivity between the pit excavation areas, discharge areas from the washing operation, and the well recharge areas. Again, consistent with the lack of consideration there is not a single mitigation measure to address these impacts.

- There is no information provided with the Application or the SEPA Checklist indicating that the applicant has a water right for gravel washing at this location. Given the sensitivity of water use issues in Kittitas County, including currently pending proceedings before the State Supreme Court, the lack of any discussion of this issue is a fatal oversight. The lack of any mitigating conditions merely confirms the complete lack of evaluation.

- There is absolutely no substantive discussion, study or documentation regarding a spill prevention control and countermeasures plan, even though there will be refueling operations and asphalt liquid tanks and/or tanker trucks on sight. Consistent with the lack of consideration, there is not a single mitigation measure to address these impacts either.

- Finally, there is no substantive discussion or evaluation of habitat impacts or mitigation of same.

It is readily apparent that CDS has completely abdicated its responsibilities to perform a proper SEPA review. As a result, the determination of non-significance is clearly erroneous and should be rejected.

This SEPA appeal is without prejudice to Ellensburg Cement Products, Inc.'s right to oppose the project on other grounds at the November 10, 2010 hearing on the proposed conditional use permit.

For example, the subject property is in the AG 20 Zone. Kittitas County's zoning code is clear that rock crushing and asphalt plants are neither an outright permitted use nor a conditional use in the AG 20 Zone. As such, the requested CUP Amendment should be summarily rejected.

It is also worth noting that the Gibson Quarry operation is violating the existing CUP (issued to John Miller on December 1997). The Gibson Quarry is currently operating on Tax

Parcel 17-20008010-0006 (42.41 acres). The CUP issued in 1997 only applies to Tax Parcel No. 17-20-08040-0011 (13.40 acres). In short, the gravel extraction operation currently operating on Tax Parcel 17-20-08010-0006 (42.41 acres) is operating without any County permits and is thus an illegal operation. It is noteworthy that nothing in the proposed CUP Amendment suggests that the applicant is seeking to expand the scope of the CUP Amendment to include Tax Parcel 17-20-08010-0006 (42.41 acres), where the quarry operations are now focused, or Parcel Numbers 17-20-08010-0003 through 0005 (an additional 9 acres), the parcels into which the applicant proposes to expand its mining operations. Hence, there is a clear inconsistency between what the Application says and what the applicant is actually asking the County to approve. For that reason the application should be rejected. Indeed, it should not have been accepted in the first place as it clearly incomplete and defective on its face.

Pursuant to the notices relating to the Proposal, a check in the amount of $300 for the appeal fee is tendered with this letter.

If you have any questions regarding the foregoing, feel free to contact the undersigned.

Very truly yours,

GROFF MURPHY, PLLC

Michael J. Murphy

MJM:smd
Enclosure
cc: Kirk Holmes, Interim Director (via facsimile, 509-962-7682)
Dan Valoff, Staff Planner (via facsimile, 509-962-7682)
Neil Caulkins (via e-mail)