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SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

ELLENSBURG CEMENT PRODUCTS, INC.,

Petitioner/Plaintiff,

v.

KITTITAS COUNTY,

Respondent/Defendant,

and

HOMER L. (LOUIE) GIBSON,

Respondents.

No. 11-2-00215-5

NOTICE OF APPEAL TO THE COURT OF APPEALS, DIVISION III

Comes now ELLENSBURG CEMENT PRODUCTS, INC., Petitioner/Plaintiff, and seeks review by the designated appellate court of the following:

1. The Order on Land Use Petition entered on November 4, 2011.

A copy of this decision is attached to this notice.


//

//

1 Dated this 7<sup>th</sup> day of November, 2011.

2 Respectfully submitted,

3 GROFF MURPHY, PLLC

4   
5 Michael J. Murphy, WSBA #11132  
6 William J. Crittenden, WSBA #22033  
7 *Attorneys for Ellensburg Cement Products, Inc.*

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served on November 7, 2011 a true and correct copy of the foregoing document to the parties listed below, via the method indicated:

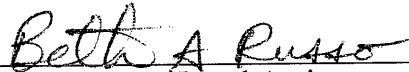
Neil A. Caulkins  
Deputy Prosecuting Attorney  
Kittitas County  
205 W. Fifth, Room 213  
Ellensburg, WA 98926  
*Counsel for Kittitas County*

- Hand Delivery Via Messenger Service
- First Class Mail
- Federal Express
- Facsimile
- E-mail (per agreement)

James C. Carmody  
Velikanje Halverson PC  
405 E. Lincoln Ave.  
P.O. Box 22550  
Yakima, WA 98907  
*Counsel for Homer L. Gibson*

- Hand Delivery Via Messenger Service
- First Class Mail
- Federal Express
- Facsimile
- E-mail (per agreement)

DATED this 7<sup>th</sup> day of November, 2011.

  
Beth A. Russo, Legal Assistant  
Groff Murphy, PLLC

RECEIVED  
NOV 07 2011  
GROFF & MURPHY

FILED

NOV 04 2011

JOYCE L. JULSRUD, CLERK  
KITTTITAS COUNTY, WASHINGTON

SUPERIOR COURT OF WASHINGTON FOR KITTTITAS COUNTY

<p>ELLENSBURG CEMENT PRODUCTS, INC.,  Petitioner/Plaintiff,  v.  KITTTITAS COUNTY,  Respondent/Defendant,  and  HOMER L. (LOUIE) GIBSON,  Respondent.</p>	<p>No. 11-2-00215-5  ORDER ON LAND USE PETITION (RCW 36.70C.140)</p>
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THIS MATTER came before the Court pursuant to the Land Use Petition Act (RCW Chapter 36.70C and the Stipulation and Order Establishing Case Schedule dated July 13, 2011. This Court considered the pleadings on file and the certified record submitted by Kittitas County as well as the following:

1. *Brief of Petitioner;*
2. *Brief of Kittitas County;*
3. *Memorandum of Respondent Gibson; and*
4. *Reply Brief of Petitioner.*

The Court also received supplemental filings and declarations including the following:

**Velikanje Halverson P.C.**  
405 East Lincoln Ave.  
P.O. Box 22550  
Yakima, WA 98907  
(509) 248-6030

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- 1. Declaration of Michael J. Murphy;
- 2. Declaration of J. Jeff Hutchinson;
- 3. Motion to Strike Declarations of J. Jeff Hutchinson and Michael J. Murphy;
- 4. Memorandum in Support of Motion to Strike Declarations of J. Jeff Hutchinson and Michael J. Murphy; and
- 5. Response to Gibson's Motion to Strike Declarations.

The Court heard arguments of counsel at a Hearing on the Merits on October 24, 2011, such arguments including both the LUPA appeal and Motion to Strike Declarations.

Having considered the above, this Court hereby ORDERS THAT

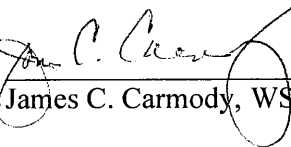
- 1. Declarations of Michael J. Murphy and J. Jeff Hutchinson are stricken;
- 2. Kittitas County Board of Adjustments Decision approving a Conditional Use Permit (CUP) for Homer L. (Louie) Gibson is affirmed and Petitioner's Land Use Petition is denied and dismissed.
- 3. Petitioner's appeal of Kittitas County's Threshold SEPA Mitigated Determination of Nonsignificance (MDNS) dated October 21, 2010 is denied and dismissed. The SEPA Threshold Determination was not clearly erroneous, and there were no procedural errors with respect to the issuance or processing of the MDNS and administrative appeal.
- 4. Kittitas County's SEPA appeal procedures (KCC 15.04.210 and Ch. 15A.07 KCC) are not contrary to law.

DATED THIS 7 <sup>November</sup> day of ~~October~~, 2011.

  
 HONORABLE SCOTT R. SPARKS


Presented by:

**VELIKANJE HALVERSON, P.C.**  
 Attorney for Respondent Gibson

  
 James C. Carmody, WSBA #5205

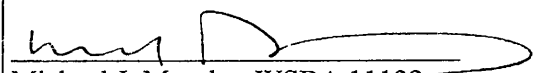
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Neil Caulkins, WSBA 31759  
Deputy Prosecuting Attorney  
Attorney for Respondent Kittitas County

Approved as to form,  
Notice of presentation waived:



Michael J. Murphy, WSBA 11132  
Groff & Murphy, PLLC  
Attorney for Ellensburg Cement Products, Inc.