

December 9, 2024

VIA EMAIL AND U.S. MAIL



Kittitas County Board of County Commissioners
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RE: *State Environmental Policy Act (SEPA) Appeal*
File No. RZ-24-00001 (Gibson Rezone)
Docket Item No. 2024-13

Dear Commissioners and Planning Manager:

This firm represents Appellant Ellensburg Cement Products, Inc. (Ellensburg Cement) concerning the Notice of Appeal of Kittitas County's State Environmental Policy Act (SEPA) threshold determination and issuance of a Mitigated Determination of Nonsignificance (MDNS) under File No. RZ-24-00001 and Comprehensive Plan Docket No. 2024-13 (the "Gibson Rezone"). This letter is submitted in reply to the December 4, 2024 letter from the Prosecuting Attorney's Office (POA), received by email on December 5, 2024. Ellensburg Cement respectfully renews its objection and request that the Board and Community Development Services (CDS) re-notice and reschedule the SEPA Appeal hearing now continued to December 17, 2024, in order to comply with the process and timelines set forth by County Code and to ensure appropriate due process is provided to the parties.

Despite having now provided individualized notice to Ellensburg Cement of a continued hearing date, the County has still yet to take such other actions to address the deficiencies raised and as required by County Code, which include, without limitation:

- "establish[ing] a briefing schedule for the parties" [KCC 15A.07.010(3)];
- "transmit[tal] to the reviewing body and the parties all of the records pertaining to the decision being appealed" [KCC 15A.07.010(3)]; and

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- establishing an appeal schedule that provides for (a) submission of appellant's brief and supporting declarations "due no sooner than 15 days after having received the administrative record and no later than 30 days prior to the hearing date," and (2) submission of briefing and supporting declarations from the County and Respondents "due 10 working days prior to the hearing date." [KCC 15A.07.010(3)]

To date, no record has been created or transmitted to the parties. It is unknown whether the record has been separately transmitted to the reviewing body (the Board of County Commissioners) as proscribed by the Code. While the November 27, 2024 "Notice of Public Hearing" notes that documents may be viewed through a weblink or at CDS offices during regular business hours, this does not constitute compilation and transmittal of a record to the Board or to the parties. As just one example of the uncertainties raised by the lack of record, in reviewing the noted available documents through the noted CDS website links and click-throughs,¹ the operative October 16, 2024 MDNS being appealed *itself* is not even located within the available documents. Whether there may be other missing documents is unknown and unknowable. To the extent the MDNS under appeal notes that the decision was made after review of the SEPA Checklist and "other information on file with the lead agency," it is similarly unknown and unknowable what "other information on file" with CDS was reviewed and relied on in issuing the MDNS. The Board cannot meaningfully consider this matter without presentation of the record.

Further, to date, no briefing schedule has been established. Nor is there sufficient time prior to the now continued hearing date of December 17, in which to meet the minimum briefing schedule deadlines dictated by County Code following transmittal of the record. In order for the Board to meaningfully consider this appeal, the record must be appropriately prepared and transmitted. A briefing schedule consistent with KCC 15A.07.010(3) should then follow.

The PAO asserts this SEPA appeal is exempt from the procedural requirements of chapter 15A.07 KCC, relying on KCC 15B.01.010. However, KCC 15B.01.010, by its terms, exempts only "[n]on-project legislative actions" from the procedural requirements of Title 15A. This exemption is not applicable here. First, the County's MDNS (on appeal) is not a "legislative" action. Rather, the County's SEPA threshold determination was an administrative action, now on appeal before this Board as a quasi-judicial matter. Second, regardless of its docketing for annual review, a site-specific rezone of the type proposed here is also not a legislative action. See, e.g., *Bassani v. Bd. of Cnty. Comm'rs*, 70 Wn. App. 389, 393, 853 (1993) ("a local legislative body's decision to rezone specific tracts of land under a zoning code is an adjudicatory, quasi-judicial act"); see also *Phoenix Dev. Inc. v. City of Woodinville*, 171 Wn.2d 820, 836 (2011) ("decision to rezone is a quasi-judicial act," and "not legislative").

¹ Documents were viewed at <https://www.co.kittitas.wa.us/cds/land-use/default.aspx> (last visited Dec. 9, 2024), under "Rezoning", "View Active Applications", and then file number "RZ-24-00001 Gibson".

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Of further note, and consistent with the above, the MDNS (the decision subject to the appeal) in this matter *itself* specifically notes that appeals are governed by chapter 15A.07 KCC, providing:

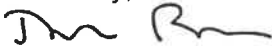
Pursuant to Chapter 15A.07 KCC, this MDNS may be appealed by submitting specific factual objections in writing with a fee of \$1670.00 to Kittitas County Community Development Services office at 411 North Ruby Street, Suite 2, Ellensburg, WA 98926. Timely appeals must be received no later than 5:00 pm, October 31, 2024.

MDNS at 3 (emphasis added).

Ellensburg Cement renews its objection and respectfully requests the County follow the appeal process set forth in the County Code. Again, in order for the Board to meaningfully consider this appeal, the record must be appropriately prepared and transmitted. A briefing schedule consistent with KCC 15A.07.010(3) should then follow.

Thank you for your attention to this matter.

Sincerely,



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cc: Stephanie Hartung, Chief Civil Deputy Prosecutor (*via email only*)
Chad Bala, Director, Community Development Services (*via email only*)
Jessica Miller, Clerk (*via email only*)
James Carmody, Meyer Fluegge & Tenney PS, Counsel for Applicant (*via email only*)
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