

Bond Case Briefs

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Ellensburg Cement Products, Inc. v. Kittitas County

Supreme Court of Washington, En Banc - February 6, 2014 - P.3d - 2014 WL 465643

Cement producer sought review of county's determination of nonsignificance (DNS) under State Environmental Policy Act (SEPA) and grant of conditional use permit (CUP) to landowner to conduct rock crushing and other gravel and cement production related activities on his agricultural-zoned property. The Superior Court affirmed. Producer appealed. The Court of Appeals reversed. Landowner and county petitioned for review.

The Supreme Court of Washington held that:

- County's SEPA appeal procedure violated state law;
- No deference was due to county's interpretation of agricultural-use zoning ordinance; and
- Rock crushing was not permitted use on agricultural-zoned property.

County's SEPA appeal procedure that considered SEPA appeal in closed record hearing prior to conducting open record hearing on underlying grant of CUP to landowner violated state law. Statutory scheme governing SEPA appeals required county to provide single simultaneous open record hearing on both SEPA determination and underlying grant of CUP, followed by optional single closed record appeal.

County's failure to follow record-creating procedure mandated by state law for appeals of SEPA determinations was not harmless. During deliberations, board member stated, "I'm just trying to take in all this stuff[,] [m]akes it tough when you can't ask questions," to which another board member replied, "[w]ell, we need to move this along," and immediately thereafter, board voted to deny SEPA appeal.

No deference was due to county's interpretation of agricultural-use zoning ordinance that allowed for rock crushing on agricultural-zoned property, since county's decision was based on erroneous interpretation of law. Interpretation was by-product of litigation regarding landowner's application for CUP to conduct rock crushing on his property and there was no preexisting policy supporting county's interpretation.

Rock crushing was not permitted use on agriculturally-zoned land, since use was not listed as conditional use under agricultural zoning ordinances, as it was elsewhere in zoning code, and use category "processing of products produced on premises" appeared only in agricultural zones, which strongly suggested that "products produced" referred only to agricultural products.