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FENNEMORE CRAIG, P.C.  
A Professional Corporation  
Patrick J. Black (No. 017141)  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012  
Telephone (602) 916-5000

2010 JUN 17 P 12: 56  
ARIZONA CORP COMMISSION  
DOCKET CONTROL

Attorneys for Drake Cement, LLC

**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION  
OF DRAKE CEMENT, LLC TO  
ESTABLISH A NEW RAILROAD  
CROSSING ON YAVAPAI COUNTY  
ROAD 71 NEAR THE CITY OF DRAKE,  
YAVAPAI COUNTY, ARIZONA, DOT  
CROSSING NO. AAR/DOT# 933-885T

DOCKET NO. RR-20736A-10-0140

**NOTICE OF FILING  
CERTIFICATION OF PUBLICATION**

Pursuant to the Procedural Order dated May 12, 2010, Drake Cement, LLC hereby submits this Notice of Filing Certification of Publication in the above-captioned matter.

On June 11, 2010, notice of the hearing set for July 19, 2010 was published in the *Courier*. Attached as **Exhibit 1** is the affidavit of Aileen Kemper, Classified Coordinator of Prescott Newspapers, Inc.

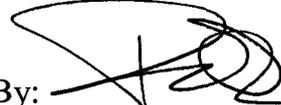
RESPECTFULLY SUBMITTED this 17th day of June, 2010.

FENNEMORE CRAIG, P.C.

Arizona Corporation Commission  
**DOCKETED**

JUN 17 2010

DOCKETED BY 

By: 

Patrick J. Black  
Attorneys for Drake Cement, LLC

1 **ORIGINAL** and 13 copies filed  
this 17th day of June, 2010 with:

2 Docket Control  
3 Arizona Corporation Commission  
1200 West Washington Street  
4 Phoenix, Arizona 85007

5 **COPY** hand-delivered  
this 17th day of June, 2010 to:

6  
7 Marc E. Stern, ALJ  
Hearing Division  
8 Arizona Corporation Commission  
1200 West Washington Street  
9 Phoenix, Arizona 85007

10 Charles Hains, Esq.  
Legal Division  
11 Arizona Corporation Commission  
1200 West Washington Street  
12 Phoenix, Arizona 85007

13 Brian Lehman, Chief  
Railroad Safety Section  
14 Arizona Corporation Commission  
1200 West Washington Street  
15 Phoenix, Arizona 85007

16 **Copy** sent via mail  
this 17th day of June, 2010 to:

17 Martin Brennan  
18 Yavapai County Attorney's Office  
2830 N. Commonwealth, Suite 106  
19 Camp Verde, Arizona 86322

20 By:   
21 2324108.1/18751.033

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# **EXHIBIT**

**1**

**AFFIDAVIT OF PUBLICATION**

STATE OF ARIZONA     )  
County of Yavapai     ) ss.

I, **Aileen Kemper**, being first duly sworn on her oath says:  
That she is the **Classified Coordinator** of **PRESCOTT NEWSPAPERS, INC.**, an Arizona corporation, which owns and publishes the **COURIER**, a Daily Newspaper published in the City of Prescott, County of Yavapai that the notice attached hereto, namely,

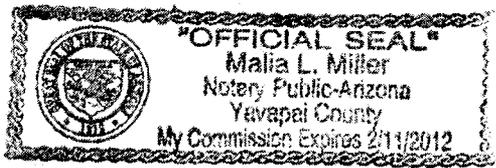
**DRAKE CEMENT LLC**  
**DOCKET NO. RR-20736A-10-0140**  
**PROCEDURAL ORDER**

has, to the personal knowledge of affidavit, been published in the news paper aforesaid, according to law, on 11 day of **JUNE, 2010** to 11 day of **JUNE, 2010** both inclusive without change, interruption or omission, amounting in all 1 insertions, made on the following dates:  
**JUNE 11, 2010**

By: \_\_\_\_\_  
Dated this 11 Day of **JUNE, 2010**

By: Malia L Miller  
Notary Public

My commission expires:



BEFORE THE ARIZONA  
CORPORATION COMMISSION

COMMISSIONERS  
KRISTEN K. MAYES-Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

IN THE MATTER OF THE APPLICATION  
OF DRAKE CEMENT, LLC TO ESTAB-  
LISH A NEW RAILROAD CROSSING ON  
YAVAPAI COUNTY ROAD 71 NEAR  
THE CITY OF DRAKE, YAVAPAI  
COUNTY, ARIZONA. AAR/DOT NO. 933-  
885T.

DOCKET NO. RR-20736A-10-0140  
PROCEDURAL ORDER

BY THE COMMISSION:

On April 9, 2010, Drake Cement, LLC  
("Company" or "Applicant") filed with the  
Arizona Corporation Commission ("Com-  
mission") an application for the establish-  
ment of a new public railroad crossing on  
Yavapai County Road 71 in the vicinity of  
Drake, Yavapai County, Arizona,  
AAR/DOT No. 933-885T.

Pursuant to A.A.C. R14-3-101, the Com-  
mission now issues this Procedural Order  
to govern the preparation and conduct of  
this proceeding.

IT IS THEREFORE ORDERED that the  
hearing on the application shall be held  
on July 19, 2010 at 10:00 a.m., or as  
soon thereafter as is practicable at the  
Commission's offices, 1200 West Wash-  
ington Street, Room 100, Phoenix, Arizo-  
na.

IT IS FURTHER ORDERED that within  
five business days of receipt of this Pro-  
cedural Order, DRAKE CEMENT, LLC  
SHALL PROVIDE ANY AFFECTED  
RAILROAD, AND ANY OTHER FEDERAL,  
STATE, COUNTY, MUNICIPALITY,  
INTERESTED AGENCY OR INTEREST-  
ED PARTY that may be affected by the  
application with a copy of the application  
and this Procedural Order by certified  
mail.

IT IS FURTHER ORDERED that Safety  
Division, Railroad Safety Section ("Staff")  
shall prepare a written Staff Report and  
associated exhibits to be presented at  
hearing and file copies of them with Docket  
Control on or before 4:00 p.m. on June  
23, 2010.

IT IS FURTHER ORDERED that any ob-  
jections to the Staff Report and associat-  
ed 2 exhibits shall be reduced to writing  
and filed with Docket Control on or before  
4:00 p.m. on July 6, 3 2010.

IT IS FURTHER ORDERED that interven-  
tion shall be in accordance with A.A.C.  
R14-3-5 105, except that all motions to in-  
tervene must be filed on or before June  
30, 2010.

IT IS FURTHER ORDERED that Drake  
Cement, LLC shall provide public notice  
of the 7 hearing in this matter, in the fol-  
lowing form and style:

PUBLIC NOTICE OF THE HEARING IN  
THE MATTER OF THE APPLICATION  
OF DRAKE CEMENT, LLC TO ESTAB-  
LISH A NEW PUBLIC AT-GRADE  
CROSSING ON YAVAPAI COUNTY  
ROAD 71 IN THE VICINITY OF DRAKE,  
YAVAPAI COUNTY, ARIZONA. AT  
AAR/DOT NO. 933-885T. (DOCKET NO.  
RR-20736A-10-0140)

On April 9, 2010, Drake Cement, LLC  
("Company" or "Applicant") filed with the  
Arizona Corporation Commission ("Com-  
mission") an application for the establish-  
ment of a new public railroad crossing on  
Yavapai County Road 71 in the vicinity of  
Drake, Yavapai County, Arizona,  
AAR/DOT No. 933-885T.

The application is available for inspection  
during regular business hours at the offic-  
es of the Commission in Phoenix, at 1200  
West Washington Street, Phoenix, Arizo-  
na, and on the internet via the Commis-  
sion website ([www.azcc.gov](http://www.azcc.gov)) using the e-  
docket function.

The Commission will hold a hearing on  
this matter commencing on July 19, 2010  
at 10:00 a.m., at the Commission's offic-  
es, 1200 West Washington Street, Room  
100, Phoenix, Arizona. Public comments

will be taken on the first day of the hearing.

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Intervention shall be permitted to any person entitled by law to intervene and having a direct and substantial interest in the matter. Persons desiring to intervene must file a written motion to intervene with the Commission, which motion should be sent to Applicant or its counsel and to all parties of record, and which, at the minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervenor and of any party upon whom service of documents is to be made if different than the intervenor.
2. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of the Company, a neighboring property owner, a crossing user, etc.).
3. A statement certifying that a copy of the motion to intervene has been mailed to the Applicant or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before June 30, 2010. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any affected individual from appearing at the hearing and making a statement on such individual's own behalf.

If you have any questions about this application, you may contact the applicant at [insert telephone number]. If you wish to file written comments on the application or want further information on intervention, you may write the Consumer Services Section of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007 or call 1-800-222-7000 or appear at the hearing and make comment.

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin Bernat, ADA Coordinator, voice phone number (602) 542-3931, E-mail SABernat@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that Drake Cement, LLC shall cause the above notice to be published at least once in a newspaper of general circulation in the vicinity of Drake, Yavapai County, Arizona where the crossing is located, with publication to be completed no later than June 11, 2010.

IT IS FURTHER ORDERED that notice shall be deemed complete upon the mailing/publication of same, notwithstanding the failure of an individual or entity to read or receive the notice.

IT IS FURTHER ORDERED that DRAKE CEMENT, LLC SHALL FILE CERTIFICATION OF NOTICE WITH THE COMMISSION'S DOCKET CONTROL AS SOON AS PRACTICABLE after the publication of notice ordered herein has been completed.

IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission pro hac vice.

IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance with A.A.C. R14-3-104(E) and Rule 1.15 of the Rules of Professional Conduct (under Rule 42 of the Rules of the Arizona Supreme Court). Representation before the Commission includes appearances at all hearings and procedural conferences, as well as all Open Meetings for which the matter is scheduled for discussion, unless counsel has previously been granted permission to withdraw by

The Administrative Law Judge or the Commission.

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized Communications) continues to apply to this proceeding and shall remain in effect until the Commission's Decision in this matter is final and non-appealable.

IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 12th day of May, 2010.

/s/ Marc E. Stern, Administrative Law Judge

TTC PUB June 11, 2010