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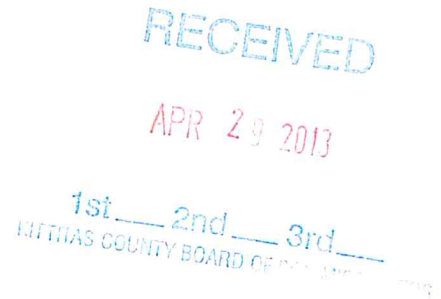
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April 29, 2013

Sent Via E-mail: [bocc@co.kittitas.wa.us](mailto:bocc@co.kittitas.wa.us)  
And Hand Delivered

Kittitas County Board of Commissioners  
205 W 5th Ave, Ste 108  
Ellensburg WA 98926-2887



**Re: Steigleder Conditional Use Permit (CU-13-00002) – SEPA Appeal**

Dear Commissioners:

Thorp Fruit & Antique Mall LLC hereby appeals the Mitigated Determination of Non-Significance dated April 17, 2013 issued by SEPA responsible officials, a copy of which is attached hereto and incorporated herein as Exhibit A. This SEPA appeal is filed prior to May 1, 2013, which is the deadline set forth in the Notice of Decision SEPA Action and Public Hearing attached hereto as Exhibit B.

This appeal is based upon, but is not limited to, the following appeal issues:

1. The SEPA Environmental Checklist and information submitted was incomplete and inadequate for meaningful analysis and/or threshold determination (see Appellants' comment letter dated April 2, 2013), a copy of which is attached hereto as Exhibit C.
2. The conditions identified for mitigation of transportation impacts of the proposed project are inadequate because they are based upon flawed, inaccurate and incorrect information provided in the SEPA Checklist as to estimated number of vehicle trips per day. Because the Applicants have underestimated the number of vehicle trips per day, the parking specified for vehicles will not be adequate. In addition, there should be additional road improvements constructed to allow for safe ingress and egress from the County road to the site.
3. The MDNS provides two conditions that create a human health hazard as a result of the proposed use. First the MDNS allows an ADA accessible sani-can to be provided on the site and provides that the existing domestic well on the property may not be used in the business. Those two conditions together create a risk of exposure to and the proliferation

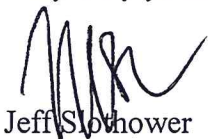
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of food-borne diseases that often occur when there are inadequate sanitation facilities. Individuals who will be handling food as an employee or as a member of the public will be forced to use a sani-can with no access to facilities for hand washing.

4. The MDNS provides that the existing well on the property for the residence shall not be used for business purposes, yet does not provide for an alternative source of water for use in the operation of the business nor are there adequate measures to ensure the Applicants comply with this requirement.
5. Paragraphs 6-13 of the MDNS set forth vague, unclear and incomplete mitigation conditions.
6. The MDNS improperly defers evaluation and assessment of impacts related to transportation and fire and life safety.
7. The environmental review and information fails to contain sufficient substantial evidence upon which to make informed determinations regarding probable significant adverse impact.
8. The MDNS requires a "tenant improvement application" but does not specify the purpose of the tenant improvement application.
9. There is no hard surfacing on the property other than a gravel drive and any parking areas should be fully asphalted to prevent oil, gasoline and antifreeze from leaking into the ground and thereby entering the groundwater.
10. The SEPA Checklist fails to identify a pond on the property and the MDNS contains no safeguards to prevent surface water contamination as a result of runoff from the site or the associated parking access.
11. The SEPA Checklist fail to identify harm to agricultural operations on adjoining lands from fire hazards, refuse and garbage entering into growing crops and motor vehicle contaminants and the mitigation measures fail to protect against that harm.

Included with this notice of appeal is the required \$500.00 filing fee.

Very truly yours,



Jeff Slothower

JS/hh

Enclosures

cc: Thorp Fruit & Antique Mall, LLC (*via email, w/encls.*)  
Neil Caulkins, Deputy Prosecutor (*via hand delivery, w/encls.*)  
Robert "Doc" Hansen (*via hand delivery, w/encls.*)

# **EXHIBIT A**





## KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

CDS@CO.KITTITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

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### State Environmental Policy Act MITIGATED DETERMINATION OF NONSIGNIFICANCE

**Description:** Steigleder Conditional Use Permit (CU-13-00002) is a request for a Conditional Use Permit for a produce stand in the Commercial Agriculture zone.

**Proponent:** Kathy and Terry Christman, applicant.

**Location:** The project is located approximately 1 mile southeast of Thorp at 8341 S. Thorp Hwy, in a portion of Section 13, T18N, R17E, W.M. in Kittitas County. Assessor's map number: 18-17-13020-0014.

**Lead Agency:** Kittitas County Community Development Services

The lead agency for this proposal has determined that the proposal will not have a probable significant adverse impact on the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030 (2) (c) and WAC 197-11. This decision was made after review of a SEPA environmental checklist and other information on file with the lead agency, after considering voluntary mitigation measures which the lead agency or the applicant will implement as part of the proposal, and after considering mitigation measures required by existing laws and regulations that will be implemented by the applicant as part of the Kittitas County permit process. The responsible official finds this information reasonably sufficient to evaluate the environmental impact of this proposal. This information is available to the public on request.

The lead agency has determined that certain mitigation measures are necessary in order to issue a Mitigated Determination of Non-Significance (MDNS) for this proposal. Failure to comply with the mitigation measures identified hereafter will result in the issuance of a Determination of Significance (DS) for this project. The mitigation measures include the following:

#### Transportation

1. An access permit must be obtained and filed with Kittitas County Public Works Department for access to the site prior to operation of the produce stand.
2. The approach must be constructed to commercial standards and the apron must be paved prior to operation of the produce stand.
3. The parking area shall provide for at least six (6) vehicles at any given time. Parking along South Thorp Hwy will not be allowed.

#### Water & Sewer

4. An ADA accessible sani-can shall be provided on-site. A copy of the signed contract with the sani-can provider shall be submitted to Kittitas County Public Health prior to operation of the

produce stand. Public Health shall be provided with a new copy of the signed contract as it is renewed and/or revised.

5. The existing well on the property for the residence shall not be utilized for business purposes.

### **Fire & Life Safety**

6. A turn-around shall be provided for fire department access.
7. Any man-doors shall have lever type handles or panic hardware installed.
8. Fire extinguishers shall be located appropriately; coordination with the Kittitas County Fire Marshal shall occur prior to operation of the produce stand.
9. A Tenant Improvement application shall be submitted and approved prior to operation of the produce stand.
10. A fire and life safety inspection shall be conducted prior to beginning operation, and an annual fire and life safety inspection will be required as well.
11. All development, design and construction shall comply with Kittitas County Code and the most current version of the International Fire & Building Codes.
12. One (1) ADA accessible parking space shall be required with proper signage. This space must be hard-surfaced and provide for hard-surface access to the produce stand and ADA accessible sani-can. This must be completed prior to operation of the produce stand.
13. Full-time year-round operation for three (3) consecutive years will require additional requirements such as a permanent restroom facility etc. It is the responsibility of the business owner to contact Kittitas County Community Development Services and Building Department for further review/requirements if extended full-time year-round operation beyond two (2) years is desired.

### **Aesthetics**

14. A sign permit will be required from Kittitas County Community Development Services and Building Department pursuant to KCC 17.72 if the produce stand's continuous operation exceeds six (6) months in any one calendar year. Specific requirements for signage of a produce stand are cited in KCC 17.72.170. Signs are not allowed within the rights-of-way of any County roads pursuant to KCC 12.50.
15. All outdoor lighting shall be shielded and directed downward to minimize the effect to nearby residential properties.

The above stated mitigation conditions listed above will be provided within conditions of the decision of the conditional use permit approval.

**Responsible  
Official:**

  
Robert "Doc" Hansen

**Title:**

Planning Official

**Address:**

Kittitas County Community Development Services  
411 N. Ruby Street, Suite 2  
Ellensburg, WA. 98926

Phone: (509) 962-7506 Fax: (509) 962-7682

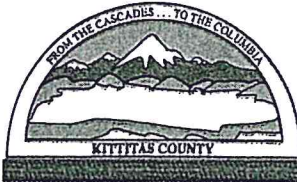
**Date:** April 17, 2013

This Mitigated DNS is issued under WAC 197-11-355 and WAC 197-11-390; the lead agency will not act on this proposal for 10 working days. Any action to set aside, enjoin, review, or otherwise challenge this administrative SEPA action's procedural compliance with the provisions of Chapter 197-11 WAC shall be commenced on or before 5:00 pm, May 1, 2013.

**Pursuant to Chapter 15A.04.020 KCC, this MDNS may be appealed by submitting specific factual objections in writing with a fee of \$500.00 to the Kittitas County Board of Commissioners, Kittitas County Courthouse Room 110, Ellensburg, WA 98926. Timely appeals must be received within 10 working days, or no later than 5:00 PM, May 1, 2013. Aggrieved parties are encouraged to contact the Board at (509) 962-7508 for more information on appeal process.**

# **EXHIBIT B**





## KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

CDS@CO.KITTITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

"Building Partnerships – Building Communities"

### NOTICE OF DECISION SEPA ACTION AND PUBLIC HEARING

**To:** Interested County Departments & Agencies with jurisdiction  
Adjacent Property Owners  
Applicant

**From:** Robert "Doc" Hansen, Planning Official

**Date:** April 17, 2013

**Subject:** Steigleder Conditional Use Permit (CU-13-00002)

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Please find the attached Mitigated Determination of Nonsignificance (MDNS) for the above referenced project. A Notice of Application for the submitted application was mailed on March 25, 2013.

NOTICE IS HERBY given that pursuant to 43.21C RCW, Kittitas County Community Development Services did on April 17, 2013 make a Mitigated Determination of Non-Significance (MDNS) for the Steigleder Conditional Use Permit (CU-13-00002). The proposal is for a conditional use permit to operate a produce stand on approximately 2.95 acres. This use falls under KCC 17.31.030(3) "commercial activity associated with agriculture." It is located approximately one (1) mile southeast of Thorp at 8341 S. Thorp Hwy, in a portion of Section 13, T18N, R17E, W.M. in Kittitas County. Assessor's map number: 18-17-13020-0014. The complete application file may be viewed at Kittitas County Community Development Services, 411 N. Ruby St. Suite 2, Ellensburg, WA 98926. Staff Planner: Lindsey Ozbolt.

Any action to set aside, enjoin, review, or otherwise challenge such administrative SEPA action on the grounds of noncompliance with the provisions of 43.21C RCW shall be commenced on or before May 1<sup>st</sup>, 2013 at 5:00 p.m. to the Kittitas County Board of Commissioners, Rm. 108, County Courthouse, Ellensburg, WA 98926. Appeals of SEPA threshold determinations shall be consolidated with appeals of final permit approval, according to KCC 15A.04.020, 43.21C RCW and KCC 15.04 (such as a decision to require particular mitigation measures or to deny a proposal). A single simultaneous hearing before one hearing body will consider the agency decision on a proposal and any environmental determinations made, with the exception of the appeal, if any, of a threshold determination of significance.

NOTICE IS HEREBY given that a hearing on said application before the Kittitas County Hearing Examiner has been scheduled for **May 2, 2013** at 6:00 p.m. in the Kittitas County Courthouse Auditorium, Ellensburg, WA. 98926. Anyone with an interest in this matter is urged to attend said hearing where testimony will be taken. Written comments will be received and documents may be viewed at the above address prior to the hearing. Interested persons are encouraged to verify prior to attending.



# EXHIBIT C



## Thorp Fruit & Antique Mall

410 Gladmar Road • Thorp, WA 98946  
Mail: P.O. Box 40 • Thorp, WA 98946  
(509) 964-2474

April 2, 2013

Sent Via E-Mail: [lindsey.ozbolt@co.kittitas.wa.us](mailto:lindsey.ozbolt@co.kittitas.wa.us)  
And First Class U.S. Mail

Lindsey Ozbolt  
Planning Official  
Kittitas County Community Development Services  
411 North Ruby, Suite 2  
Ellensburg WA 98926

**Re: Comment Letter – 2013 Steigleder Conditional Use Permit Application**

Dear Ms. Ozbolt:

My name is Bill Rowley. I am a member of Thorp Fruit & Antique Mall, LLC, which has operated a produce retail sales facility and antique mall at the Thorp exit from Interstate 90 (I-90) since 1968. The facility was started by my parents. The Thorp Fruit facility is operated on Kittitas County Tax Parcel No. 953185, which is zoned Highway Commercial.

In 2008, Thorp Fuel, LLC constructed an ARCO gas station on adjoining Kittitas County Tax Parcel No. 953186. My family continues to operate the two businesses. As a result, we are very familiar with the amount of customer visits and traffic at that the Thorp I-90 Interchange throughout the year. When we constructed the ARCO facility, the Department of Public Works and the Fire Marshall required us to make road and fire protection improvements to our property to address public health and safety issues. Those improvements cost in excess of \$1 million.

The purpose of this letter is to provide comment on the Steigleder Conditional Use Permit Application. In order to analyze the application, it is necessary to provide some background information. Therefore, the comment is broken into sections below: Background, SEPA Checklist and Criteria for Issuance of Conditional Use Permits.

### **Background**

The business “Gibson Produce” that Terry and Kathy Christman have applied to operate on the Steigleder property was first operated immediately adjacent to the Thorp Fruit & Antique Mall facility on the northwest side of Gladmar Road. The business operated in that location for approximately 10 years. The owner of that property ultimately sold the property in 2010 and in 2011 the Christmans operated the fruit sale business on the former Blue Grouse property located at the Highway 97 exit (Exit No. 106) from I-90. In 2012 the Christmas began operating Gibson Produce on the Steigleder’s property.

The Steigleder’s property is a single-family residence on 2.95 acres, which is located in the Commercial Ag zone. The improvements there consist of a house, a garage and a shop-type building. In 2012, the Christmans erected temporary road signs that were on the County right-of-way and visible from I-90.

The Christmans operated the business without obtaining a Conditional Use Permit. Thorp Fruit & Antique Mall objected and was forced to appeal the Kittitas County Planning Official's administrative decision that use did not require a Conditional Use Permit to the Board of County Commissioners (BOCC). The BOCC overruled the administrative decision and ordered the Christmans to cease and desist. After being ordered to cease and desist, the Christmans continued to operate the business in disregard of the law.

Now in 2013 the Christmans seek a Conditional Use Permit to operate the business as a conditional use. They assert it is either (a) a commercial activity associated with agriculture (KCC 17.31.030(3)), or (b) a home occupation involving outdoor work or activities (KCC 17.31.10). The Christmans submitted a SEPA checklist and an application.

### SEPA Checklist

1. The SEPA checklist is incomplete because the applicants fail to designate what the current comprehensive plan designation of the site is.
2. Item A.7. The SEPA analysis is inadequate because the applicants do not indicate the entire season they will operate. They say they want to operate "approximately nine months per year...[b]ut would like to have flexibility, however to engage in year around operations as appropriate." In order to properly determine the environmental impact of the applicant's activities, a definite period of operations, with beginning and ending dates, should be specifically identified.
3. Item B.1. The applicants provide conflicting information. They indicate there is no filling or grading proposed and erosion could not occur because there would be no clearing, construction and thus "no ground work." Yet in response to B.1.g., they indicate they intend to install an asphalt driveway and presumably an asphalt turning apron onto the road. The current driveway, based upon pictures attached to the application, is essentially a dirt road. Thus, the responses in this section are inaccurate and conflicting. The applicant should be required to fully asphalt the turning apron, driveway and parking area to ensure there is not excess dust from motor vehicle traffic.
4. Item B.2. The applicants indicate there will be no emissions of air from the project. That is not accurate because there will be dust and automobile exhaust and construction exhaust created from the project, regardless of how the applicants construct the entrance.
5. Item B.3.a.
  - 1) The applicants indicate there is no "surface water body on or in the immediate vicinity of the site." Yet, the air photos attached to the application and a casual inspection of the site show there is a pond on the property immediately adjacent to the area where the proposed activities will occur.
  - 2) The applicants indicate the project will not require any work over, in or adjacent to (within 200 feet) of the described waters. Yet the applicants indicate above they intend to construct either a gravel or asphalt driveway that will be within 200 feet of the pond.
  - 4) The applicants indicate the proposal will not require withdrawals of groundwater. That is inaccurate. Water will be withdrawn from the well on the property<sup>1</sup> to provide human sanitation water and presumably will be used to wash fruit and for other incidental uses.

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<sup>1</sup> There is no public water system in the area.



6. Item B.3.b. The applicants indicate waste materials will not be discharged into the ground from septic tanks or other sources. Regardless of whether the applicants are using a public restroom attached to a single-family septic system or portable restroom facilities, there is the possibility that human sewage and wastewater from fruit washing and incidental business use will be deposited into the ground and potentially run into the existing pond on the property. The use of portable restroom facilities in this type of business should not be allowed. Portable restroom facilities often do not contain appropriate sanitary facilities for hand washing. The sales of fruit will result in employees and members of the public touching the fruit, potentially without proper sanitation, and that can result in illness.

7. Item 7.b. The applicants indicate no noise will be created by or associated with the project on a short-term basis. That is not accurate. There will be traffic coming from I-90 to the business, which will create short-term noise.

8. Item 10. The applicants indicate there will be no impact on the aesthetics of the area. That is not accurate. The area is predominately used for agricultural activities. When the applicants operated at the site illegally in 2012 they constructed and placed on the property large, brightly colored signs that advertised the business. The signs were aesthetically inconsistent with the agrarian style of the area.

9. Item 11. The applicants indicate there will be no light or glare created as a result of the proposal. Again, that is not accurate. There will be vehicular traffic coming to and from the property. The vehicular traffic will create its own light or glare as a result.

10. Item 14.c. The applicants indicate there will be 6 parking spaces on the property and that the proposal will not require any improvements of existing roads or streets, yet the applicants indicate there will be an increase in vehicular trips per day by 40 at a peak between 1 to 6 pm. The applicants further indicate there are no proposed measures to reduce or control transportation impacts. This section of the SEPA Checklist is inaccurate, misleading and designed to avoid paying for the obvious impacts that will occur as a result of the proposed activity.

Thorp Fruit has operated for many years across I-90. This activity will use the same exit from I-90. The transactions that Thorp Fruit and ARCO have recorded for 2012, just as an example, are as follows:

	Actual Transactions <u>Per Month</u>	Daily <u>Average</u>
April 2012	25140	1,676
May 2012	32163	2,076
June 2012	38019	2,534
July 2012	47759	3,082
August 2012	53146	3,428
September 2012	44265	2,952
October 2012	33219	2,144

The applicants estimate 40 vehicle trips per day. If the applicants have only 10% of the vehicle trips per day, the applicants' estimate is too low. Further, if the applicants end up with a greater share of the 2012 vehicle trips, then the number would be even higher.

The experience that Thorp Fruit has is that on particularly busy days throughout the summer and on holidays, the Thorp Fruit and ARCO parking lots fill to overflowing and they are designed to handle the parking of 129 vehicles. Thus, six parking spaces is inadequate. Given that this business will be operated on a rural road with virtually no shoulders, the only available place for overflow parking will be on adjacent property or on the narrow shoulder of Thorp Highway.



When the ARCO facility was constructed, Thorp Fuel was required to widen the Thorp Highway, create an extra-large turning apron onto Gladmar Road, improve Gladmar Road and widen Gladmar Road.

The traffic impacts of this proposal are completely underestimated and inaccurate and the applicants should be required to conduct a traffic study to amend the SEPA checklist to ensure the data provided is accurate. Without accurate data, the County cannot properly determine the impact on the County roads.

11. Item 15. The applicants indicate the project will not result in an increased need for public services. That is not accurate. There will be individuals coming to the property, which creates an increased risk of fire. Particularly in an agricultural area with a small rural volunteer fire department, the applicants should be required to install onsite fire protection facilities to ensure that the business can mitigate for its own increase risk of fire, just as Thorp Fruit was required to do. The application is silent on what fire control measures will be taken. In the immediate vicinity and adjacent to where members of the public will be parking, there are agricultural fields with growing crops and depending upon the time of year, harvested but not yet processed crops. It would only take an individual carelessly using a cigarette in the vicinity of these growing crops to start a fire that could cause significant property damage and create a risk of personal injury. Again, the applicant completely ignores these types of risk and asserts there is no risk, when in fact there is a risk.

12. SEPA Conclusion. The SEPA checklist provides inaccurate, missing and conflicting data. In addition, the traffic impacts of this use are greatly understated and have the potential of causing significant harm to the health and welfare of the County and the residents in the immediate vicinity of the business activity. The SEPA process is ineffective if the applicants provide false or misleading information on the SEPA checklist.

#### **Criteria for Issuance of Conditional Use Permits**

This application does not satisfy the Conditional Use Permit criteria. The applicants' property is in effect asking to conduct highway commercial activities in a Commercial Ag zone.

The purpose of the Commercial Ag zone is to have an area where farming and ranching are the priority. The intent and purpose of the Commercial Ag zone is to "preserve fertile farmland from encroachment by non-agricultural land uses and protect the rights and traditions of those engaged in agriculture"(KCC 17.31.010). The proposed use, a fruit stand, is not identified within the permitted uses under KCC 17.31.020. There are several conditional uses that are allowed in the Commercial Ag zone, neither of which support the proposed use. The applicants assert that their use is a "commercial activity associated with agriculture and thus a conditional use permit under KCC 17.31.030(3)." The sale of fruit is not a commercial activity associated with agriculture that meets the intent. First, none of the fruit that was sold when the business operated illegally in 2012, and that will presumably be sold by the facility if it is approved, will actually be fruit that is grown and raised in the immediate agricultural area. Most if not all of the fruit that was sold in 2012 was raised in other counties in the State of Washington and/or is imported from other states and, depending upon the time of year, other countries. This activity has no association with the agricultural activities that are found in the area. Virtually all of the crops raised and grown within the area are forage based crops used for agricultural production or are grain crops that are raised for processing out of the county. The proposed fruit stand business is a commercial activity that is designed to provide services to motorists traveling on I-90 and creates a risk of encroachment on the farm and ranching uses this zone seeks to protect.

Second, the applicants assert this is a "home occupation which will involve outdoor work or activities or which produce noise." (KCC 17.31.030(10).) As the application indicates, the property is owned by Mr. Steigleder, who apparently does not reside on the property. The applicants have not indicated what their



relationship is with the property other than to use it to operate a fruit stand. Additionally, even if this is the applicants' home, the fruit stand business is not a home occupation as that term is defined in Kittitas County Code. KCC 17.08.290 defines a home occupation as "any lawful profession, craft or service commonly carried on in a dwelling or accessory building provided such activity is secondary to the use of said dwelling for residential purposes and provided that there is no outdoor display of merchandise." This proposed activity is specifically excluded from being a home occupation because there is an outdoor display of merchandise, i.e., there is fruit that will be displayed for sale to the general public. Further, this is not a profession, craft or service. This is a retail sales facility, which is excluded from the definition of a home occupation.

Finally, a cursory review of the requirements for the issuance of a Conditional Use Permit demonstrates that this application does not meet those criteria. First, the proposed use must be "essential or desirable to the public convenience." There is no demonstration that this is an essential or desirable use. In fact, there are a number of other facilities that sell fruit and related products adjacent to the Interstate. Specifically, Red Sky Orchards at Exit 93, Thorp Fruit & Antique Mall at Exit 101, Big Apple Country Store at Exit 109, the Kittitas Fruit Stand at Exit 115 and Carlson's Fruit Market, which is located in Ellensburg at the intersection of Washington Avenue and Water Street. In addition, there are several farmers' markets and related produce sales events that occur on a regular basis in Kittitas County throughout the summer. Thus, the proposed use is not essential or desirable because it has already being provided by other facilities that do not need a Conditional Use Permit to operate.

In addition to being essential or desirable to the public convenience, the use cannot be detrimental or injurious to the public health, peace or safety or to the character of the surrounding neighborhood. On the south side of I-90, the surrounding neighborhood is predominately agricultural and this proposed use with its signs and outdoor display of merchandise and traffic is inconsistent with the character of the surrounding neighborhood.

The County must make a finding that the use will be adequately serviced by existing facilities or that the applicants will provide those facilities, or that the proposed use would be of sufficient economic benefit to offset additional public cost. None of those three criteria can be demonstrated. First, as indicated above, this facility and site is not adequately serviced by existing roads and does not have adequate fire protection. There are no public restroom facilities on the premises. Based upon the application, the applicants do not plan to provide those facilities and there is no evidence to suggest there is a sufficient economic benefit to offset any additional public costs or economic detriment.

For these reasons, the proposed use should not be allowed, or if it is going to be allowed, it should be heavily mitigated to ensure there are no adverse traffic impacts and that human sanitation and fire protection are adequately covered.

I request to be added to the mailing list and given notice of all future activity associated with this application.

Very truly yours,

  
Bill Rowley