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May 24, 2013

**Sent Via E-Mail: lindsey.ozbolt@co.kittitas.wa.us
And Hand Delivery**

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



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

Dear Ms. Ozbolt:

As you are aware, I represent Thorp Fruit & Antique Mall LLC (hereinafter “Thorp Fruit”), which has filed the above-referenced SEPA appeal. Last week I received your letter setting a briefing schedule for a closed record SEPA appeal pursuant to KCC 15A.07.010(3).

The purpose of this letter is to formally object to the County’s use of the closed record SEPA appeal process. As you are aware, the Washington State Court of Appeals, Division III, recently decided the case of *Ellensburg Cement Products, Inc. (ECP) v. Kittitas County*, 171 Wn.App. 691, (2012). In that case, ECP contended that under state law, the County and the Board of Adjustment (now the Hearings Examiner) could not hold a closed record hearing until an open record hearing had taken place. *Id.* at 710. Over the County’s opposition, the court concluded that “[t]he county’s failure to provide an open record hearing on ECP’s SEPA appeal was erroneous as a matter of law.”

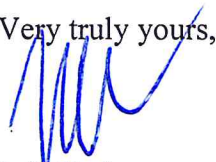
The practical effect of the court’s ruling is that Kittitas County has no process that complies with State law under which to decide Thorp Fruit’s SEPA appeal. I understand the *ECP* case has been accepted for discretionary review by the Washington State Supreme Court. However, until the Supreme Court reverses Division III, Kittitas County cannot process this SEPA appeal. To use the existing statutory closed record SEPA appeal process clearly violates State law. To impose some other form of an open record hearing on the parties is not possible because doing so would result in the County making up a process that is contrary to its existing code. The only way for the County to fix this process is for the Board of County Commissioners to adopt an interim

Lindsey Ozbolt
May 24, 2013
Page 2 of 2

process for hearing and deciding SEPA appeals and/or have the Supreme Court decide the ECP case adverse to ECP. Absent that, no matter how the County proceeds it will create procedural error, which Thorp Fruit & Antique Mall LLC objects to and will continue to object to. As a result of that objection, if the County processes this SEPA appeal at a closed record hearing or imposes some form of arbitrary open record hearing not authorized by statute on the Appellant, and in the event the County approves the conditional use permit, Thorp Fruit will file a lawsuit seeking to have that decision reversed.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



Jeff Slothower

JS/hh

cc: Thorp Fruit & Antique Mall, LLC (*via email*)
Neil Caulkins, Deputy Prosecutor (*via email and hand delivery*)
Robert "Doc" Hansen (*via email and hand delivery*)
Traci Shallbetter (*via email and First Class U.S. Mail*)

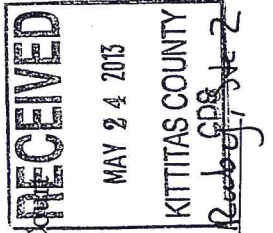
ERRAND SLIP

Attached: Letter

Take to:

- Superior Court
- Lower Kittitas County District Court
- Treasurer's Office
- Auditor's Office
- Assessor's Office
- Prosecutor's Office

Other: KCCDS - 411 N. Redmond St 2
2 copies



Task:

- File with Clerk - conform copies
- Judge/Court Commissioners Signatures
 Sparks Chmelewski
- Deliver Copy to: _____
- Other: _____

Special Instructions:

Return copies to: _____

Other: _____