

**KITTITAS COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF

Steigleder/Christman
CU 13-2/SEPA Appeal

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DECISION ON SEPA APPEAL

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner for a closed record hearing on July 11th, 2013 on a SEPA Appeal of the mitigated determination of non significance, the hearing Examiner, having considered only that record existing at the time of the County rendering the MDNS decision, hereby renders the following Findings of Fact, Conclusions of Law and Decision.

I. FINDINGS OF FACT

1. On February 11th, 2013, Cathy and Terry Christman, applicant and authorized agent for John and Mary Steigleder, property owners, submitted a Conditional Use Permit Application for the operation of a produce stand at their residence located at 8341 S. Thorp Highway, which is located within Kittitas County, Washington.
2. On March 25th, 2013, Kittitas County issued a Notice of Application with a comment period ending April 9th, 2013.
3. The Applicant's application was a processes utilizing the optional DNS process authorized by the Kittitas County Code and WAC 197-11-355.
4. Numerous agency and public comments were received prior to the comment period ending on April 9th, 2013.
5. As part of the application materials, the applicant prepared and submitted a SEPA Environmental checklist.
6. Based upon the Agency and public comments received. Kittitas County provided the applicants with an opportunity to respond to the public comments. The applicant's attorney responded to these comments by email dated April 12th, 2013.
7. Following the submittal of these materials, Kittitas County performed its own independent analysis of the environmental concerns raised by this application.
8. On April 17th, 2013, Kittitas County issued a mitigated determination of non significance setting forth 15 mitigation measures covering impacts related to transportation, water and sewer, fire and life safety and aesthetics.

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9. On April 29th, 2013, Appellants Thorp Fruit and Antique Mall, LLC., and William Rowley (hereinafter Appellant's) filed an appeal of the MDNS issued by Kittitas County.
10. The appeal filed by Appellant's listed 11 separate areas of appeal of the MDNS.
11. Based upon the record before the planning department, the Hearing Examiner is convinced that the record demonstrates the environmental factors identified by appellant were considered in a manner sufficient to amount to compliance with the procedural requirements of the State Environmental Protection Act and that the MDNS was based on information sufficient to evaluate the proposal's potential environment impacts.
12. The Hearing Examiner has reviewed the proposed scope of the use of the property as proposed by the applicant. The scope of their use is for a road side fruit stand that will be open 8-9 months out of the year, they will not have any significant visual impacts on the near by interstate freeway, and the environmental on-site impacts will be minimal and fully capable of being mitigated by those conditions set forth in the MDNS.
13. The SEPA checklist was adequately prepared and identified potential environmental impacts of the project. It is clear from the record generated prior to the issuance of the MDNS that the County did independently evaluate the responses in the environmental checklist of the applicant and also adequately considered those comments that were submitted by agencies and the public.
14. It is significant to the Hearing Examiner that the County independently investigated this project and recognized that there were some potential environmental impacts associated with this project and therefore issued a mitigated determination of non significance as opposed to simply a determination of non significance.
15. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this recommended decision.
2. Washington Law requires that an agency's threshold determination must be afforded substantial weight.
3. The issuance of a threshold determination is reviewed under the clearly erroneous standard.
4. A SEPA determination is clearly erroneous if although there is evidence to support the determination, a Court reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed.
5. An MDNS must be upheld if the entire evidence under consideration demonstrates that environmental factors were considered in a manner sufficient to amount to prima facie

compliance with the procedural requirements of SEPA and that the decision to issue the MDNS was based on information sufficient to evaluate the proposal's environmental impact.

6. In reviewing a SEPA threshold determination, and subject to the clearly erroneous standard set forth above, reviewing body defers to the expertise of the administrative agency.
7. The SEPA determination rendered April 17th, 2013 in the above referenced matter was based on information sufficient to evaluate the proposal's environmental impact.
8. The issuance of the MDNS in the above referenced matter was not clearly erroneous.

III. RECOMMENDED DECISION

Based on the above Recommended Findings of Fact and Recommended Conclusions of Law, the Hearing Examiner hereby ***AFFIRMS*** in all respects the MDNS dated April 17th, 2013 as the issuance of this MDNS was not clearly erroneous.

Dated this 24th day of July, 2013.

KITTITAS COUNTY HEARING EXAMINER

Andrew L. Kottkamp

This decision is subject to appeal according to those procedures adopted by the Kittitas County Code.