

February 6, 2020

TRANSMITTED VIA ELECTRONIC MAIL ONLY

lindsey.ozbolt@co.kittitas.wa.us

Lindsey Ozbolt, Planning Official
Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, Washington 98296

Re: Love's SEPA (SE-19-00014) Appeal – Request for Pre-hearing Conference

Dear Ms. Ozbolt:

This firm represents Love's Travel Stops & Country Stores, Inc., the Applicant, for the project subject to the above-referenced appeal.

I have received and reviewed your letter of January 29, 2020, informing the Applicant of the filing of a timely SEPA appeal by Ms. Marge Brandsrud and that a briefing schedule would be issued together with a hearing date for the appeal. The Applicant respectfully requests that the Hearing Examiner hold a pre-hearing conference with the parties prior to issuance of a briefing schedule and setting a hearing date in order to review and determine applicable procedure.

The Applicant makes this request for a pre-hearing conference to determine applicable procedure, in light of the fact that Love's proposal requires issuance of building and grading permits but does not require any other land use permit or approval. The grading permit, which has not yet been issued, is appealable to the Board of County Commissioners, with an open record public hearing. Kittitas County Code ("KCC") 14.05.050. The building permit, which has also not yet been issued, is appealable to the Board of Appeals under the International Building Code as adopted by the County. This SEPA appeal has been set before the Hearing Examiner, apparently as an independent proceeding. KCC 15.04.210(3). However, the SEPA appeal must be "of the governmental action together with its accompanying environmental determinations," which in this case would be the building and grading permits. KCC 15.04.210(4). *See also* RCW 36.70B.110(9) (requiring integration of project permit and environmental appeals). Integration of appeals of the underlying permits together with the SEPA determination is necessary to prevent "orphan" SEPA appeals; that is, SEPA appeals undertaken before final action on an underlying project or permit. *See, e.g., Lakeside Indus. v. Thurston Cty.*, 119 Wn. App. 886, 900, 83 P.3d 433, 440 (2004), *as amended* (Feb. 24, 2004).

Lindsey Ozbolt
February 6, 2020
Page | 2

Please do not hesitate to contact me directly if you require additional information to support this request for a pre-hearing conference.

Very truly yours

*Sent without signature to
Avoid delay*

Heather L. Burgess

HLB/dlg

cc: **(via email only)**

Client

Brandon Johnson, PE, SCJ Alliance (brandon.johnson@scjalliance.com)

Neil Caulkins, Kittitas County Deputy Prosecutor III (neil.caulkins@co.kittitas.wa.us)