

DOUGLAS COUNTY

DEPARTMENT OF HEARING EXAMINER

140 19th Street NW
East Wenatchee, WAS 98802-4109

BEFORE THE DOUGLAS COUNTY HEARING EXAMINER

| | | |
|-------------------------------------|---|-------------------------------|
| IN THE MATTER OF |) | FINDINGS OF FACT, |
| |) | CONCLUSIONS OF LAW, |
| CUP-2020-02 |) | DECISION AND |
| Waste Management of Washington Inc. |) | CONDITIONS OF APPROVAL |

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on August 20, 2020, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. The applicant is Waste Management of Washington, Inc., 191 S Webb, East Wenatchee, WA 98802.
2. The applicant’s agent is Morgan Ireland, 191 S Webb, East Wenatchee, WA 98802.
3. General Description: An application for a Conditional Use Permit to use Waste Management–owned property for temporary soil stockpiling, storage, and permanent stormwater facilities.
4. Location: The subject property is located just east of the intersection of Grant Rd and S Ward Ave, Assessor’s Parcel Number: 22211040003. The property is approximately 14.54 Acres in size.
5. The Comprehensive Plan designation is Rural Essential Public Facilities.
6. The Zoning District is Rural Essential Public Facilities (R-EPF).
7. The subject property lies within a designated Airport Overlay for Pangborn Memorial Airport.
8. Section 18.80.240 of the Douglas County Code establishes minimum criteria for Essential Public Facilities.

9. An enhanced SEPA Checklist was received with the application materials, signed and dated May 13, 2020. A revised version was submitted on July 22, 2020.
10. A Determination of Significance/Adoption of Existing Documents was issued on June 2, 2020 in accordance with WAC 197-11- 630(3)(a).
11. A Cultural Resource Survey Report, conducted by ICF, dated April 2020 was submitted in the application materials. The Report states: “This cultural resources investigation did not identify any cultural resources in the study area, and the potential for encountering previously undocumented archaeological resources is low. However, given that there are recorded archaeological resources in close proximity, an unanticipated discovery plan (Appendix D) provides clear and decisive protocols to follow. . .”.
12. On June 16, 2020 Colville Confederate Tribes (CCT) concurred with the findings and recommendations presented in the Cultural Resource Report.
13. Initial application materials reviewed by Douglas County Transportation and Stormwater include:
 - 13.1 Stormwater Technical Memorandum prepared by RH2, received May 13, 2020.
 - 13.2 Preliminary Civil Plans prepared by RH2, received May 13, 2020.
 - 13.3 Geologic Hazard Risk Assessment prepared by RH2, received May 13, 2020.
 - 13.4 SEPA Checklists prepared by the applicant, received May 13, 2020.
14. Storm Technical Memorandum: The memorandum adequately demonstrates that the proposed relocation and revision to Stormwater Impoundment #2 increases the capacity of the originally contemplated design while maintaining the function this facility was intended to provide.
15. Initial application material submitted for Douglas County for review include:
 - 15.1 Enhanced SEPA Checklist prepared by Waste Management of Washington, Inc., received May 13, 2020/ July 22, 2020.
 - 15.2 Project Narrative prepared by RH2 Received May 13, 2020/ July 22, 2020.
 - 15.3 Site Plan prepared by RH2, received May 13, 2020/ July 22, 2020.
 - 15.4 Stormwater Technical Memorandum prepared by RH2, received May 13, 2020.
 - 15.5 Preliminary Civil Plans prepared by RH2, received May 13, 2020.
 - 15.6 Geologic Hazard Risk Assessment prepared by RH2, received May 13, 2020.
 - 15.7 Cultural Resource Report prepared by ICF, received May 13, 2020.
 - 15.8 Wetland Memo prepared by ICF, received May 13, 2020.
 - 15.9 Bird Monitoring and Control Plan prepared by Vista Consultants, received May 13, 2020.
 - 15.10 Vegetation Management Plan prepared by RH2, received May 13, 2020.
 - 15.11 Fugitive Dust Control Plan, received May 13, 2020.
16. The Douglas County PUD has a transmission line which crosses along the northern portion of the subject property.

17. Geologically hazardous soils exist on the northern portion of the subject property. The applicant submitted a Geologic Hazard Risk Assessment, dated April 2020, addressing potential impacts caused by the project.
18. Surrounding property owners were given the opportunity to comment on the proposal, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14. The following agencies were notified:

| Agency Notified | Response Received | Agency Notified | Response Received |
|---------------------------------------|-------------------|------------------------------------|-------------------|
| East Wenatchee Water District | 6/9/2020 | Douglas County Transportation | 6/25/2019 |
| Douglas County Fire Marshal | 7/6/2019 | WA Dept. of Natural Resources | N/R |
| Chelan County PUD | N/R | WA State Dept. of Ecology | 7/8/2020 |
| Ziply/ Verizon | N/R | Pangborn Memorial Airport | 7/15/2020 |
| Greater Wenatchee Irrigation District | 7/9/2020 | WA Department of Fish and Wildlife | 6/29/2020 |
| Colville Confederate Tribes | 6/16/2020 | City of Rock Island | N/R |
| DC Port District | N/R | BPA | N/R |
| City of East Wenatchee | N/R | Douglas County PUD | 6/26/2020 |
| Chelan Douglas Health District | 7/6/2020 | Douglas County Assessor | N/R |
| Douglas County Treasurer | N/R | Douglas County GIS | 6/8/2020 |
| Douglas County Sewer District | 6/8/2020 | Douglas County Planning | 7/23/2020 |

19. Two members of the public commented on the proposal. The comments included concerns related to bird activity around the subject property and dust control.
 - 19.1 Michelle Green with GGW – 6/26/2020
 - 19.2 Shari Tastad – 6/28/2020
20. Comments from reviewing agencies have been considered and addressed where appropriate.
21. Proper legal requirements were met and surrounding property owners, affected agencies, and interested parties were given the opportunity to comment on the proposal at a public hearing.
22. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.

23. After due legal notice an open record public hearing was held on August 20, 2020.
24. The entire Planning Staff file was admitted into the record at the public hearing.
25. Appearing and testifying on behalf of the applicant were Eric Keogh and Morgan Ireland. Both Mr. Keogh and Mr. Ireland testified that they were agents authorized to appear and speak on behalf of the applicant and property owner. Mr. Keogh indicated that his name and telephone number are posted at the entrance to the Waste Management facility in Douglas County. Anyone with any complaints, related to dust or other environmental impacts, may contact Mr. Keogh on his cell phone 24 hours per day, 7 days per week and Mr. Keogh testified that he would take immediate action to review the concern and take any corrective action that is needed. He testified that water would be placed on the soil to mitigate dust impacts. Although it's not likely that birds will be attracted to the soil, the Hearing Examiner did review with Mr. Keogh the bird monitoring and control plan reinforcing the mitigation measures required of the applicant for those areas of project that attract bird populations. The evidence before the Hearing Examiner was that a neighboring orchardist is having significant losses of product due to bird activity in this orchards. He believes the birds are attracted to the area by the Waste Management facility. However, as the Hearing Examiner stated at the hearing, the project as proposed in this application is not expected to attract birds.
26. Morgan Ireland testified that she had reviewed the proposed Conditions of Approval and that the applicant had no objection to any of those. She indicated that the February 2009 Vegetation Management Plan also had dust control measures stated within that document.
26. Testifying from the public was Gene Welton. Mr. Welton is an orchardist that operates his orchard that is adjacent to the Waste Management facility. He testified as to his substantial economic losses due to bird activity in his orchards. He believes the birds are attracted to the area by the Waste Management facility. All he wants is for the dust to be maintained and for the birds to be controlled.
27. 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 decision.
2. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Douglas County Comprehensive Plan.
3. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
4. Public use and interests will be served by approval of this proposal.

5. As conditioned, the proposal is consistent with Title 18 “Zoning”, Title 19 “Environment”, and Title 20 “Developments of the Douglas County Code.
6. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, review of all applicable files, including the Planning Department staff file, and after an open record public hearing, the Hearing Examiner has determined that CUP No. 2020-02 is hereby **APPROVED** subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

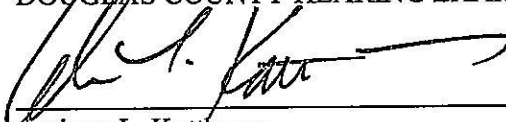
All Conditions of Approval shall apply to the applicant, and the applicant’s heirs, successors in interest and assigns.

1. The project shall proceed in substantial conformance with the plans and application materials of file except as amended by the conditions herein.
2. The applicant and site operators are responsible for compliance with all applicable local, state and federal rules and regulations and shall acquire all applicable permits including but not limited to:
 - 2.1 NPDES Construction Stormwater General Permit.
3. The proposal shall follow the guidelines, policies, and plans within adopted Greater Wenatchee Regional Landfill and Recycling Center Environmental Impact Statement (EIS) (Jones & Stokes 2006, 2007) and all supplemental reports listed in the Findings.
4. A sign shall be placed at the entrance to the Waste Management facility with information related to dust control. A contact name/ number shall be placed on the sign for citizens to contact regarding dust issues. The contact shall be updated as applicable.
5. Applicant shall adhere to development standards as outlined in 18.65 of the Airport Overlay District.
6. Future irrigation needs on the parcel for dust control, landscaping, etc. shall utilize meter E442 as the service location.
7. All activities on the site must stay clear of the existing easement for the 21 PVC irrigation main on the south side of the property.
8. Any proposed vehicular crossings of GWIDs easement and pipeline, whether temporary or permanent, that will be utilized by large wheeled equipment for construction or landfill operations must be constructed to distribute loading from the equipment so as not to damage the irrigation pipeline.

9. Crossings of the existing pipeline must be designed by a licensed engineer and approved by GWID prior to construction.
10. As applicable, apply with all mitigation measures identified by the FEIS, issued by Douglas County Land Services on January 4, 2007.
11. The applicant shall, at all times, have a contact name and number posted on any website, as well as at the entrance of the Waste Management facility. This contact person shall be available 24 hours per day, 7 days per week, to receive any calls regarding complaints of activities on the Waste Management site.

Dated this 21st day of August, 2020.

DOUGLAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Any aggrieved party or agency of record may request a reconsideration of this Hearing Examiner's decision. Motions for reconsideration must be filed with the Department within ten (10) days from the date of issuance as defined by RCW 36.70C.040(4)(a). Unless otherwise provided, the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiners decision to Superior Court. Motions for reconsideration are governed by Douglas County Code 2.13.150.

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Douglas County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as "(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available" or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) "...the date the decision is entered into the public record." Anyone considering an appeal of this decision should seek legal advice.