

DOUGLAS COUNTY

DEPARTMENT OF HEARING EXAMINER

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

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
CUP-22-01)	DECISION AND
Khera Properties)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on May 18, 2023, 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 Khera Properties, LLC, P.O. Box 78, Orondo, WA 98843.
2. General Description: This is an application for a Conditional Use Permit for the installation of an above-ground 20,000-gallon fuel storage tank with eight (8) fuel stations. The proposed fueling facility will be operated by Khera Properties, LLC at the property mentioned below. Douglas County Permit #CUP-2022-01.
3. Location: The property is located at 1 Edgewater Drive, Orondo, Washington. The subject property is also located in the Rural Service Center (RSC) zoning district under Douglas County Code and is further described as being located within Section 12, Township 26N, Range 21E. The Assessor's tax parcel number is 26211230020.
4. Site Information: The subject property includes one existing convenience store.
5. Site Access: The subject property will be accessed via Edgewater Drive.
6. Zoning: The subject property is located within the Rural Service Center (RSC) zoning district, which allows fueling facilities and convenience stores through a conditional use permit (CUP).
7. Comprehensive Plan – Regulations/Policies: The Douglas County Comprehensive Plan designates this property as *Rural Service Center* and is zoned Rural Service Center (RSC) under Douglas County Code. The following goals and policies set forth in the comprehensive plan are relevant to this development:
 - 7.1 General Land Use:
 - 7.1.1 POLICY G-9: Rural developments should only occur where adequate access to transportation systems, rural levels of utilities and facilities are available.

Appropriate facilities/services may include domestic water, sewage disposal, fire and police protection, schools, and power, etc. depending on the scale and impact of the development.

7.1.2 POLICY G-11: Establish siting and design criteria to provide buffering or other mechanisms that will protect adjacent land uses from potential conflicts between incompatible uses.

7.1.3 POLICY G-15: Encourage the operation of rural commercial businesses, natural resource related industries, recreation and tourism activities, cottage industries, small scale business, and home occupations that are consistent with existing and planned land use patterns and are of an appropriate size and scale to maintain rural character.

7.2 RURAL LANDS:

7.2.1 POLICY R-3: Establish land use designations that represent rural character and that protect the integrity of rural areas.

7.2.2 POLICY R-6: Encourage development in rural areas to be served by rural levels of service.

7.3 RURAL DEVELOPMENT:

7.3.1 GOAL: Provide opportunities for continued smaller scale developments outside UGAs that will be compatible with and continue to preserve, maintain and enhance the vital agricultural uses in the County..

7.3.2 POLICY RD-4: Rural developments will not impact existing public facilities/services to the extent that the level of service for that facility is reduced below the adopted threshold and/or an acceptable operation capacity.

7.3.3 POLICY RD-5: The costs associated with implementing a rural development and providing the necessary utilities, facilities and/or services will be borne by the developer.

7.4 RURAL SERVICE CENTER:

7.4.1 POLICY RSC-1: Encourage mixed land use patterns that currently exist within the rural service centers by clearly establishing what kinds of uses will be permitted and which will be prohibited.

7.4.2 POLICY RSC-3: Small retail and/or service oriented commercial uses, tourist, agriculturally related commercial uses, recreation, cottage industry, and resource industries will be encouraged within the rural service centers to serve the surrounding residents and the traveling public.

7.5 ECONOMIC DEVELOPMENT:

8.5.1 POLICY ED-7: Develop and implement land use regulations that are flexible enough to recognize the changing nature of business and industry.

8. Applicable provisions of DCC 18.80.030 "Evaluation Criteria"

8.1 The proposed use will be harmonious and in accordance with the general and specific objectives of the comprehensive plan and all subarea plans.

- 8.2 The proposed use will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity of the area.
 - 8.3 The traffic generated by the proposed use shall be mitigated so as not to burden the traffic circulation system in the vicinity.
 - 8.4 The proposed use will be served adequately by facilities and services such as highways, roads, law enforcement, fire protection, drainage, refuse disposal, domestic water and sanitary sewers, and schools; or that persons or agencies responsible for the establishment of the proposed use will provide adequate services.
 - 8.5 The proposed use will not create excessive additional requirements at public cost for public facilities and services.
 - 8.6 The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or general welfare by reasons of excessive production of traffic, noise, smoke, fumes, vibration, glare, or odors.
 - 8.7 Proposed ingress and egress, driveway widths, parking, and road improvements shall be approved pursuant to DCC Title 20 and to the satisfaction of the county engineer.
 - 8.8 Adequate buffering devices such as fencing, landscaping, or topographic characteristics shall be in place in order to mitigate and protect adjacent properties from potential adverse impacts of the proposed use, including visual or auditory effects.
 - 8.9 Conditional use permits shall comply with the DCC and all applicable local, state, or federal regulations.
 - 8.10 The hearing examiner is the review authority and may approve, conditionally approve or deny a request for changing the minimum lot size of a conditional use. Any waiver of minimum lot size shall not be construed as an exemption from the requirements of DCC Title 17 and RCW Chapter 58.17.
9. Douglas County issued a Determination of Non-Significance on June 10, 2022, in accordance with WAC 197-11-355 (Optional DNS). No appeal was filed.
10. Applicable agencies have been given the opportunity to review this proposal. These agencies have identified mitigation or project design requirements for the project that have been included as conditions of approval where appropriate.

Agency Notified	Response Received	Agency Notified	Response Received
WSDOT	N/R	Douglas County Transportation	05/2/2023
Douglas County Fire Marshal	06/30/2022	Douglas County PUD	6/16/2022
Douglas County Planning	05/10/2023	WA State Dept. of Ecology	06/27/2022
Douglas County GIS	06/28/2022		

11. Public comments were received and included as an attachment. The comments raised concerns related to SEPA, fuel leaks or spills, fire flow and traffic.
12. Comprehensive Plan consistency: The project is located within designated Rural Service Center designation and is consistent with Section 4.2 “Rural Service Centers”, section 4.3 “Rural Development”, of the Douglas County Comprehensive Plan.
13. Consistency with DCC Chapter 18.80.030 “Conditional Uses – Evaluation Criteria”. RSC zoning authorizes this land use as a Conditional Use. The required operational conditions will sufficiently mitigate associated impact. The project will not create excessive demands on public services. Noise impacts, dust control, and adequate buffering must fall within the parameters of Douglas County Code, as well as State standards. As conditioned, the proposal appears consistent with the requirements of this section.
14. Consistency with DCC 18.32 RSC: The Rural Service Center (RSC) zoning district allows this use via a Conditional Use Permit (CUP). As conditioned, the proposal appears consistent with the requirements of the zoning district.
15. Douglas County Transportation Department has evaluated the proposal and recommended approval of the project with applicable conditions.
16. Douglas County Land Services: The application materials demonstrate compliance with adopted codes, standards, and specifications applicable to this project. As conditioned, the proposal is consistent with the provisions of Douglas County Code.
17. Initial application materials reviewed by Douglas County Transportation and Land Services and admitted into the record at the open record public hearing include:
 - 17.1 Ex. 1 Preliminary Civil Plans prepared by McCanna Engineering, dated February 15, 2023.
 - 17.2 Ex. 2 Preliminary Storm Report prepared by McCanna Engineering, dated February 2023.
 - 17.3 Ex. 3 Traffic Impact Analysis prepared by TENW, dated March 24, 2023.
 - 17.4 Ex. 4 Narrative prepared by the applicant, received May 6, 2022.
 - 17.5 Ex. 5 SEPA Checklist prepared by McCanna Engineering, dated April 20, 2022.
 - 17.6 Ex. 6 Response to Agency and Public Comment letters prepared by McCanna Engineering, dated February 27, 2023
 - 17.7 Ex. 7 Staff Report.
18. The preliminary civil plans and drainage report include a stormwater infiltration facility located in the northwest corner of the site. Access to the facility as proposed would require an access easement across the adjacent private property on parcel 66200000100. Alternate access directly from Edgewater drive further to the south appears feasible.
19. The preliminary drainage report indicates the use of a design infiltration rate of 0.5 inches per hour and the 100-year event rainfall depth of 3 inches. The preliminary design incorporates the use of retaining walls to allow the facility to fit within the property. It is recommended that field infiltration testing be completed as the infiltration rates in this area are typically well in excess of 0.5 inches per hour. This would likely result in a smaller facility and a more cost effective design.

20. The 100-year 24-Hour storm depth has been determined to be 3.25 inches for this location as identified by NOAA (found at the following web site: https://www.weather.gov/owp/hdsc_noaa_atlas2). The preliminary stormwater report uses 3.0 inches.
21. The proposed vehicular access to the site from Edgewater Drive appears feasible.
22. The Traffic Impact Analysis (TIA) dated March 24, 2023, is acceptable and takes into account the cumulative impacts from the adjacent proposed developments. The conclusion in the TIA is that no traffic mitigation is necessary as the existing access point to Edgewater Drive, the intersection of Edgewater Drive and Sun Cove Road, the intersection of Sun Cove Road and US 2 all operate at an acceptable level of service with this project at the time of build out and at a horizon year of 2030.
23. 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.
24. Public comments were received on the proposal. The comments raised concerns related to SEPA, fuel leaks or spills, fire flow and traffic.
25. Comments from reviewing agencies have been considered and addressed where appropriate.
26. 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.
27. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
28. After due legal notice an open record public hearing was held on May 18, 2023.
29. The entire Planning Staff file was admitted into the record at the public hearing.
30. Appearing and testifying on behalf of the Applicant was Bo McCanna. Mr. McCanna testified that he was the agent for the Applicant and property owner and was authorized to appear and testify on its behalf. Mr. McCanna testified that they do not need access across any property that is not owned by them, and no easements would be needed for access. Regarding proposed Condition of Approval No. 12, the Applicant argued that the Department of Ecology is a non-regulating authority and that the storage tanks will have three compartments with secondary containment layers so berms should not be necessary. Regarding proposed Condition of Approval No. 18, the Applicant indicated that they would follow all Department of Ecology regulations and while one acre of disturbed ground would trigger Department of Ecology conditions, he claimed that there is no potential for stormwater discharge to enter the Columbia River because the site is 2,400 feet away from the Columbia River.
31. No member of the public testified at this hearing.
32. 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 "Development Standards" 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. 2022-01 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:
3. Commercial Building Permit(s) for all structures being built.
4. An Address Request Application shall be submitted with the building permit application.
5. Prior to building permit issuance, the applicant shall acquire approval from the Chelan Douglas Health District. The final design shall meet all applicable CDHD standards.
6. At time of building permit submittal, the applicant shall provide details of the fuel station canopy and its relationship to the existing high voltage transmission lines (115,000 Volts) running across the property. The size and dimensions of all above ground tanks (notes 20 & 21 on page C4 (See NFPA58)) will also need to be known to ensure proper clearances. Contact Michael Gasbar for more information 509-881-2313.
7. Minimum Required Fire Flow is 1500 GPM at a minimum of 20 PSI for no less than a 2-Hour duration. A hydrant must be located no more than 250 feet from the nearest frontage

access to each lot. Maximum hydrant spacing is 500 feet and as approved or required by the Fire Marshal. The large-diameter port of all hydrants must be equipped with a 4-inch diameter Storz quarter-turn fitting with the approval of the AHJ and / or Fire Marshal.

8. Due to the lack of a public water system in this area. NFPA 1142 may be utilized to calculate Fire Flow and Fire Flow storage.
9. In the event that fire flow is not able to be met, an overhead fuel island canopy extinguishment system in accordance with IFC 904 shall be required. The extinguishment system will be equipped with both a heat detection system and manual pull station for activation.
10. Fuel Island shall be in accordance with IFC Chapters 22, 50, & 57.
11. Due to the volume of oil stored onsite, a Spill Prevention, Control, and Countermeasure (SPCC) Plan is required under 40 C.F.R. Part 112.7. Please refer to those regulations for any requirements that need to be met in order to have above-ground storage tanks.
12. The applicant shall install protective bollards between the fueling station and the propane/oil tanks to prevent vehicle collisions. At time of building permit submittal, the applicant shall display bollards on plans.
13. At the time of building permit submittal, the applicant shall provide plans detailing the two above ground tanks (diesel and gasoline). If required by an agency with jurisdiction, the applicant shall provide plans detailing secondary containment berms or areas being built in addition to the proposed double walled tank. The plans shall also detail if the tanks will sit on flat concrete.
14. Final construction plans designed by a Professional Engineer licensed in the State of Washington shall be submitted to Douglas County at the time of building permit submittal. Construction plans shall be prepared in accordance with the requirements of the Douglas County Code.
15. A final site-specific stormwater plan and report prepared by a Professional Engineer (PE) licensed in the State of Washington that conforms to Douglas County Code and the current edition of the *Stormwater Management Manual for Eastern Washington* (SWMMEW) shall be submitted Douglas County at the time of building permit submittal.
16. Prior to any on-site grading occurring or prior to building permit issuance (whichever comes first), a Stormwater Pollution Prevention Plan (SWPPP) and a Temporary Erosion and Sediment Control Plan (TESC Plan) shall be submitted to and accepted by Douglas County. The SWPPP and TESC Plan shall be kept on-site at all times and updated as necessary to address and prevent sediment and sediment laden water from leaving the project site.
17. The Engineer of Record shall monitor construction and shall provide as-built drawings and report as necessary along with certification that the improvements have been completed in accordance with the applicable codes, regulations, and accepted plans. UIC registration shall be provided as applicable.

18. Prior to occupancy, a Private Stormwater Operation and Maintenance Agreement shall be executed on standard Douglas County forms. The site plan, details, certification, and operation and maintenance recommendations are provided to the County. County staff then prepares the agreement for signature and recording by the applicant.
19. Individual/common plan development for this proposal may exceed 1-acre of disturbed ground. This would meet the threshold by the Washington State Department of Ecology (WSDOE) in administering their general permit to discharge stormwater associated with construction activity. The applicant is responsible for acquisition of all applicable permits prior to beginning groundbreaking activities, including but not limited to: Construction Stormwater General Permit, Sand & Gravel Stormwater General Permit, and/or Industrial Stormwater General Permit. Compliance with the Washington State Department of Ecology's regulations is the responsibility of the applicant. As determined by the Washington State Department of Ecology, the applicant shall comply with all Washington State Department of Ecology regulations.
20. At time of building permit submittal, the applicant shall provide an external illumination plan. All lighting shall be directed downward as to not cause any light pollution to neighboring properties.
21. At time of building permit submittal, the applicant shall submit a final landscaping plan. Proposed landscaping shall be compliant with the standards of the Rural Service Center district.

Dated this 30 day of May, 2023.

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.