



STAFF REPORT

Planning Commission

CASE # CU-105-14			
PC Date:	June 3, 2014	Case Planner:	Paul Workman
CC Date:	July 7, 2014		
Location:	8581 E. 96 th Avenue, Henderson, CO 80640		
Applicant:	Sinclair Transportation Company	Owner:	Same as Applicant
Address:	8581 E. 96 th Avenue Henderson, CO 80640	Address:	Same as Applicant

Case Summary	
Request:	Sinclair Transportation Company is requesting the approval of a Conditional Use Permit (CUP) in order to bring their existing petroleum storage operations into legal and conforming status.
Project Description:	Sinclair Transportation Company has been operating a petroleum storage facility at the subject property since 1976. In 2007, the subject property was annexed by the city as a legally non-conforming use. In an effort to bring the property into compliance with the Land Development Code (LDC), the applicant has submitted this CUP application.
Issues/Concerns:	<ul style="list-style-type: none"> • Compliance with the Comprehensive Plan. • Compliance with the Land Development Code.
Key Approval Criteria:	<ul style="list-style-type: none"> • Compliance with the Comprehensive Plan. • Compliance with the CUP approval criteria.
Staff Recommendation:	Approval with Conditions
Current Zone District:	I-3 (Heavy-Intensity Industrial Zone District)
Comp Plan Designation:	General Industrial

Attachments for Review: *Checked if applicable to case.*

- | | |
|---|--|
| <input checked="" type="checkbox"/> Applicant's Narrative Summaries | <input checked="" type="checkbox"/> Vicinity Map |
| <input checked="" type="checkbox"/> Development Plan | |

Background Information

Site Information

Site Size:	37.04 acres +/-
Current Conditions:	The site is currently developed for the storage and loading of petroleum products with office space.
Existing Right-of-Way:	E. 96 th Avenue to the south.
Neighborhood:	Phelps – Tointon
Existing Buildings:	There are several existing buildings on the subject property that facilitate the storage and distribution of petroleum products.
Site in Floodplain	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Surrounding Properties

<u>Existing Land Use</u>		<u>Occupant</u>	<u>Zoning</u>
North	Industrial	Union Pacific Railroad	I-1
South	Undeveloped/ Vacant	N/A	PUD
East	Industrial	Several Heavy Industrial Uses	I-3
West	Industrial	Unoccupied petroleum storage site	I-1

Case History

The table below provides the relevant case history for this site.

<u>Case</u>	<u>Date</u>	<u>Request</u>	<u>Action</u>
AN-220-07	12/20/07	The City of Commerce City annexed the subject property as part of the “Northern Enclave Industrial Annexation”.	Approved
Z-875-08	3/17/08	Rezone the properties that were annexed as part of AN-220-07.	Approved

AN-220-07:

On December 20, 2007 the City Council approved the annexation of the subject property as part of the “Northern Enclave Industrial Annexation”.

Z-875-08:

On March 17, 2008 the City Council approved the annexation zoning for the properties that were annexed in AN-220-07. The subject property of this request was zoned I-3 (Heavy-Intensity Industrial Zone District).

Applicant's Request

History:

The Denver Products Terminal has been operating as a finished product (an industry term for the by-products of the refining of crude oil) storage and trucking terminal under the ownership of Sinclair since 1976. However, construction of the facility began in 1963 and became operational around 1964. At that time, the company performed business under the name of Sinclair Marketing, Inc., until its merge into Sinclair Oil Corporation in 1986. In 2006, the terminal was assigned to Sinclair Transportation Company, as it currently remains today.

General Information:

In addition to the storage of finished products, the facility also provides five truck bays (in two separate buildings) for loading and unloading finished products. Minimal rail operations (about 3 trips per week) are also performed on-site, providing for the loading, off-loading, and storage of ethanol and bio-diesel to supplement the blending and optimization of finished products to a higher-grade and performance. The facility operates with seven employees Monday thru Friday, but truck operations occur on a continual 24-hour, 7 days a week basis. Currently, the facility operates with an average peak daily trip of approximately 150 to 180 trucks per day.

Request:

Sinclair Transportation is requesting the approval of a Conditional Use Permit (CUP), for the operation of an existing petroleum storage facility. The Denver Products Terminal has been in operation for 50 years and until 2007 was located in Unincorporated Adams County. In 2007, the City of Commerce City annexed the subject property as part of the "Northern Enclave Industrial Annexation" and became a legally non-conforming operation. At this time, Sinclair has identified two projects that they would like to implement in the near future. However, because the operations are legally non-conforming, they are required to obtain approval for a CUP before they can begin construction of these projects.

Project #1 – Butane Blending:

Sinclair would like to implement a new Butane blending system as soon as possible. Butane (a lighter hydrocarbon) is blended with gasoline in different proportions, according to season, in order to help regulate vapor pressure. Federal, state, and local regulations establish seasonal specifications for gasoline that ensure the proper operation of motor vehicles. One component of these regulations is volatility, or the speed at which the liquid gasoline turns to vapor (measured by vapor pressure). Regulations are set so that gasoline used in motor vehicles has a vapor pressure high enough to ensure the ease of starting an engine, but not so high as to create vapor lock of the engine. Vapor pressure specifications vary by season and region to reflect the different climate conditions. Generally, colder climates require a higher minimum vapor pressure and warmer climates require a lower vapor pressure.

Sinclair will utilize Sunoco Logistics patented automated butane blending system program which ensures a responsible, efficient, and safe method of blending Butane into gasoline. This technology tests gasoline for the required volatility properties (including vapor pressure) and the results are automatically compared to the pre-programmed specifications for that product. The system calculates the amount of butane that can be blended into the gasoline and still ensure that all regulatory requirements are met. In addition to real-time blend adjustments, the blending system

catches potential product anomalies immediately, as opposed to scheduled tank samples and lab testing that would catch any compromises in quality slower. The fast loop technology constantly monitors the gasoline stream and the system itself is monitored full-time by a Houston based control center with regional on-site response from the field.

Project #2 – New Storage Tank:

Sinclair Transportation plans to construct a new storage tank within an existing earthen dike containment area either later this year or sometime in 2015. The tank will be designed to be 135-feet in diameter, 50-feet in height, and will have the capacity to store approximately 120 thousand barrels (5,040,000 gallons). Similar to the existing storage tanks at this facility, product will be transferred for storage to this tank by means of a closed system of piping, valves, and pumps.

Operations:

The Denver Products Terminal currently maintains a total of 14 storage tanks with an approximate total storage capacity of 565,000 barrels (23,730,000 gallons). Product is transported to the site for storage in these tanks via pipeline, rail, and trucks. The Denver Products Terminal stores gasoline, diesel, ethanol, and bio-diesel. Currently, 8 tanks are used to store gasoline, 4 tanks are used to store diesel, and 2 tanks are used to store ethanol. The tanks are located in the center of the site and are contained within an earthen diked perimeter, as federally regulated by the Environmental Protection Agency (EPA). The containment has been designed, documented, and continually inspected to meet all applicable regulations for the facility-specific Spill Prevention Countermeasures and Control Plan (SPCC). Design of the containment is specific for the facility's operations and the capacity is designed to protect the environment, the community, and facility personnel.

Typical Tank Elevations with Dike:



The transfer of product to and from the storage tanks occurs by a configuration of piping, valves, and pumping operations. Piping components range in diameter from 4 to 10 inches, are X42 grade carbon steel and are fully coated using urethane paint to protect the pipe from weather and corrosion. Inspection and maintenance of pipe and components are conducted by qualified personnel. Pumps

are used for the movement of products for all of the facility's operations and are accompanied by an associated meter to monitor any potential for product loss.

Vehicular access to the site is provided along E. 96th Avenue at two existing locations. Both locations are controlled by electric sliding gates that are operated by a pre-programmed clicker, an access card, or a mounted keypad for access outside of normal business hours. The truck racks (where product is loaded and unloaded by truck) are located in the southwest portion of the site. One truck rack provides 3 bays and one truck rack provides 2 bays. Each truck bay provides a set of loading arms that are connected to the truck where a fully automated computer system, a closed piping system, and pumps are used to load or unload the truck.

Three Bay Truck Rack:



The Denver Products Terminal also conducts minor rail operations (3 days per week, also known as 3 'switches'). Access to the site for railcars occurs on an existing railroad spur along the western perimeter of the property that is fenced. Product is unloaded at the site by bottom-unloading, which is an industry practice that uses underground pipes and hoses that are manually attached to the bottom of the railcar and then distributed to the applicable storage tank. The loading of rail cars at the Terminal is conducted by top-loading, which is an industry practice that uses an elevated platform and overhead pipes and hoses that are lowered through a latch on top of the rail car and product is then pumped into the rail car.

Bottom-Unloading Equipment:



Top-Loading Equipment:



The northwest portion of the property is designated for pipeline operations and is situated in the area where the transfer of product from off-site pipelines either originates or terminates. A network of pipes and valves connect and monitor pipeline operations.

Pipeline Area:



Safety:

Environmental Safety:

Various precautions such as employee training and education, equipment safeguards, and operational practices are taken to ensure the safety and protection of the environment. This facility is required to meet the environmental standards provided by law in the Code of Federal Regulations, the Colorado Air Pollution Prevention and Control Act, the Clean Air Act, the National Environmental Policy Act and the Clean Water Act. A daily walk-through of the property allows facility personnel to be proactive in addressing any issues or concerns that may be discovered.

Personnel Safety:

Sinclair personnel are required to become Hazardous Waste Operations and Emergency Response (HAZWOPER) certified. This certification trains and educates personnel on the proper handling, labeling, placement, and safety procedures for hazardous waste and how to respond to different emergency situations associated with it. Personnel are also required to take lessons and tests on a variety of internet-based safety modules throughout the year.

The facility displays a site-specific emergency evacuation plan for personnel to follow during an emergency situation that shows the safest and quickest routes for evacuation, the location of fire extinguishers, eye-wash stations, and first aid kits. In the event of a fire, the property has been designed according to the National Fire Protection Agency's (NFPA) regulations with a complete fire and foam suppression system and fire hydrants are located throughout the property.

Customer Safety:

Before a truck driver can enter the facility, they are required to take a training course that is developed and held by the Sinclair Transportation Company. The course includes hands-on lessons at the facility, a video, and a final test before they are issued the pre-programmed access cards that allow them to enter and exit the gates on site. The purpose of the course is to educate

customers on the use and operation of Sinclair's truck loading and unloading system so that they are able to conduct operations effectively and safely which protects themselves, others on site, and the area.

In addition to the education component, the fully automated system associated with the loading and unloading of trucks and the mechanical devices on the equipment provide additional safety precautions. The computer based system monitors the capacity and rate at which product is being loaded or unloaded and can shut the system off if necessary.

Community Safety:

As a result of the implementation of the safety practices and procedures that exist at the facility to protect the facility's personnel and customers as well as the environment, the safety of the community is increased.

Security at the site also plays an important role in protecting the community. Restricted access, video surveillance, and the perimeter's barbed wire fence control trespassing and tampering of equipment.

Regulating Agencies:

The Colorado Department of Public Health and Environment (CDPHE):

- Air Pollution Control Division (APCD) – Title V Operating Permit. This facility is inspected annually and to date, this facility has no associated violations.
- Water Quality Control Division (WQCD) – Stormwater Pollution Prevention Plan (SWPP) and Stormwater Management Plan (SMP). This permit must be reviewed annually and updated if there are changes or new construction. An annual compliance report is required to be submitted to the CDPHE annually and internal inspections are required quarterly. To date, the facility has no associated violations.

The Environmental Protection Agency (EPA) – Compliance with the Spill Prevention Countermeasures and Control Plan (SPCC) as well as the Facility Response Plan (FRP). Inspections by the EPA are not mandatory or routine, but the SPCC and the FRP are required to be reviewed annually and updated accordingly. To date, this facility has no associated violations.

The Federal Department of Transportation (DOT):

- Pipeline and Hazardous Materials Safety Administration (PHMSA) – Emergency Response and Management Manual (ER & MM). The manual is updated annually and revised as necessary. To date, this facility has no associated violations.
- Federal Railroad Administration (FRA). Inspections of the rail spur's integrity are conducted annually by a certified inspector and maintained accordingly. To date, this facility has no associated violations.

Conclusion:

"As a result of the annexation to the City of Commerce City in 2007, the Denver Products Terminal has been operating as a 'legal and non-conforming use'. Sinclair believes that the information provided in this Conditional Use Permit submittal will adequately demonstrate the benefits, harmony, and compliance with the City's Comprehensive Plan, for both the current and proposed operations offered at the facility."

Development Review Team Analysis

The Development Review Team (DRT) began the review of this request by evaluating it against the city's adopted Comprehensive Plan. That analysis is provided in the table below.

Comprehensive Plan

The DRT recommendations for this case are supported by the following Comprehensive Plan Goals:

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Land Use	LU 1	Maintain a balanced mix of land uses.
<u>Analysis:</u>	The existing use is a heavy industrial use, which is consistent with the Comprehensive Plan. The Comprehensive Plan ensures a healthy mix of land uses.	

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Land Use	LU 4	Retain existing industrial areas and land use for jobs.
<u>Analysis:</u>	The request in this application is being made by an existing industrial business. The approval of this CUP will help retain an existing industrial business.	

Site Layout:

The subject property's address is 8581 E. 96th Avenue. It is triangular in shape and located north of E. 96th Avenue with the Union Pacific Railroad to the west and north. Along the site's east property line are several other heavy industrial users. The site is currently developed as a petroleum storage facility with truck terminals that allow trucks to either deliver petroleum products to the site or take petroleum products from the site to individual retailers. The site was originally developed in the early 1960's and is laid out with operational structures on the south side of the site, storage tanks in the center, and a rail spur along the west property line. There are significant portions of the site on the north and east sides of the property that are undeveloped.

Analysis of the Request:

In reviewing the requested Conditional Use Permit (CUP), it was important for staff to remember that the Denver Products Terminal has been in operation for 50 years and that 43 of those years were spent in Unincorporated Adams County. This information provides context as to the current development of the property and the nature of their operations. It also provides the background as to why the subject property is considered legally non-conforming by the Land Development Code (LDC). Specifically, the LDC requires petroleum product containment to occur in the I-3 zone district with an approved CUP. Subsequent to the property's annexation in 2007, it was zoned with the city's I-3 zoning designation, but it did not obtain a CUP. At that time, the city annexed all of the "Northern Enclave" with an "as is" policy where those properties that required special land use approval were taken as they existed with the understanding that when there was a change on their property they would need to obtain the necessary approvals. Therefore, the property has been in operation as a legally non-conforming use since 2007.

At this time, Sinclair Transportation has a desire to implement two separate projects on their property. The first project is a project to efficiently blend Butane with fuel. The new process and equipment will allow for large scale accurate blending that is monitored by a computer system and staff based in Houston, Texas. The second project is a project to construct an additional storage tank on the property. This project will give Sinclair Transportation additional storage capacity in order to serve their customers. While staff is supportive of these projects, the property is required to receive

approval for a CUP before a building permit can be issued for either project. Therefore, the applicant has submitted this CUP application in order to bring their operations into legal conforming status with the LDC so that they can implement these desired projects on their property.

In reviewing the application that was submitted, staff was able to determine that the operations on the property are compliant with the applicable federal and state standards that govern their operations. Staff also determined that the site is well kept and paved in the appropriate places. Given the status of the site and the review comments from outside agencies provided below, staff is supportive of this CUP request.

Outside Agency Review:

As with all applications that are submitted for review, staff provided Sinclair Transportation's request to a variety of outside organizations for their review and comment. The relevant comments that were provided to staff have been detailed below. Given the level of comfort from the outside agencies, staff is supportive of this request.

Tri-County Health Department (TCHD):

"TCHD staff has reviewed the application for compliance with the applicable environmental and public health regulations. After reviewing the application, TCHD has no comments."

South Adams County Fire Protection District (SACFPD):

"The Sinclair Terminal runs an extremely clean facility and uses various types of fire protection for the products in which they dispense and carry. They have been very proactive in providing the Fire Department with information on how the facility operates. They are currently up to date in fire safety inspection and had no violations noted. We have no issues with the proposed Butane operation and they are currently working with us in providing all the required information."

Summary:

Sinclair Transportation is requesting the approval of a Conditional Use Permit (CUP) in order to bring their existing petroleum containment operations into compliance with the Land Development Code (LDC). Once they are compliant with the LDC, they will be able to implement two projects on their property through the administrative building permit review process. The subject property is located in an industrial area that is identified for future heavy industrial uses by the Future Land Use Plan. Additionally, the request is being made by an applicant that has been in operation at the subject property for 38 years and has a track record for complying with regulations. Therefore, based on the information provided above and the detailed analysis related to the Conditional Use Permit criteria listed below, staff recommends that the Planning Commission forward the Conditional Use Permit request to the City Council with a favorable recommendation.

Criteria Met?	Sec. 21-3230. Conditional Use Permits	Rationale
☒	The proposed use will not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, either as they presently exist or as they are envisioned to exist in any adopted City plan, program or ordinance;	The character of this area is heavy industrial in nature and the existing use is considered a heavy industrial use. Additionally, these operations have been in place at this site for 50 years.
☒	Any adverse effect has been or will be mitigated to the maximum extent feasible, including but not limited to sufficient landscaping and screening to ensure harmony for adjoining uses;	The applicant has provided documentation that their operations are compliant with the necessary regulating agencies. Additionally, the applicant will be adding 4,900 square feet of landscaping along E. 96 th Avenue to help buffer the use from the existing right-of-way.
☒	The characteristics of the site are suitable for the proposed use;	This site has been in operation for 50 years and has adequately accommodated the use.
☒	The proposed use will be adequately served by and will not impose an undue burden on any of the existing improvements, facilities, and services of the city or its residents or the applicant has committed to provide such improvements, facilities, utilities and services in sufficient time to serve the proposed use;	The requested use is an existing use and is adequately served by the necessary utilities and infrastructure.
☒	The applicant has provided adequate assurances of continuing maintenance;	The submitted application indicates continued maintenance for the existing operation. This will be ensured by a variety of regulating agencies at several levels of government.
☒	No evidence suggests that the use violates any federal, state, or local requirements.	There is no indication that the use violates any federal, state, or local requirements.
☒	The proposed use complies with the general purposes, goals, objectives, policies, and standards of all City plans, programs, and ordinances	The request complies with the City's plans and ordinances.
☒	The use complies with the general purposes, goals, objectives, policies, and standards of the comprehensive plan and all other plans or programs adopted by the City.	The request is compliant with the purpose, goals, and objectives of the comprehensive plan as outlined above.

Development Review Team Recommendation

Based upon the analysis above, the Development Review Team believes that the request **meets** the criteria for a Conditional Use Permit set forth in the Land Development Code and recommends that the Planning Commission forward the Conditional Use Permit request to the City Council with a **favorable** recommendation, subject to the following conditions and advisory:

CONDITIONS:

- A. The applicant shall remain compliant with all standards regulating their operations.
- B. The applicant shall provide any updates to the Emergency Response and Management Manual to the City with 30 days of a change.
- C. This Conditional Use Permit approves the bulk storage of petroleum products. Any change in either of the following shall require an amendment to this Conditional Use Permit:
 - i. The storage of any other product that requires a Conditional Use Permit as identified in the Land Development Code as it may be amended.
 - ii. The bulk storage of any product at this property that is in excess of the minimum quantities allowed by right in the Land Development Code.

ADVISORY:

Any new construction, interior tenant finish work, paving, fences, walls, signs, and/or buildings on the site shall require a building permit.

The DRT's Recommended Motion

To recommend approval subject to condition(s):

I move that the Planning Commission enter a finding that, subject to certain conditions, the request contained in this Conditional Use Permit for the property located at 8581 E. 96th Avenue contained in case CU-105-14 meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the Conditional Use Permit subject to the following conditions:

- A. The applicant shall remain compliant with all standards regulating their operations.
- B. The applicant shall provide any updates to the Emergency Response and Management Manual to the City with 30 days of a change.
- C. This Conditional Use Permit approves the bulk storage of petroleum products. Any change in either of the following shall require an amendment to this Conditional Use Permit:
 - i. The storage of any other product that requires a Conditional Use Permit as identified in the Land Development Code as it may be amended.
 - ii. The bulk storage of any product at this property that is in excess of the minimum quantities allowed by right in the Land Development Code.

Alternative Motions

To recommend approval:

I move that the Planning Commission enter a finding that the request of this Conditional Use Permit for the property located at 8581 E. 96th Avenue contained in case CU-105-14 meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the Conditional Use Permit.

To recommend denial:

I move that the Planning Commission enter a finding that the request of this Conditional Use Permit for the property located at 8581 E. 96th Avenue contained in case CU-105-14 fails to meet the following criteria of the Land Development Code:

List the criteria not met

I further move that, based upon this finding, the Planning Commission recommend that the City Council deny the Conditional Use Permit.