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Ref. No. P-15613

May 22, 2017

MEMORANDUM

To: Daniel Orodener, Executive Officer
Land Use Commission

From: Leo R. Asuncion, Director 

Subject: Special Permit Application No. SP09-403
Department of Environmental Services, City and County of Honolulu
TMK: (1) 9-2-03:72 and 73
Waimanalo Gulch, Ewa, Oahu

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LAND USE COMMISSION
STATE OF HAWAII

The Office of Planning (OP) recommends approval of the Special Permit Application, SP09-403, Department of Environmental Services, City and County of Honolulu (File No. 2008/SUP-2), with additional and amended conditions as described herein to ensure that a replacement landfill site is operational before the Waimanalo Gulch Sanitary Landfill reaches capacity.

A. Factual and Procedural Background

In 2009, the Land Use Commission (“LUC”) issued its Findings of Fact, Conclusions of Law, and Decision and Order (the “2009 Decision and Order”) granting a Special Permit for the Waimanalo Gulch Sanitary Landfill, with a termination date of July 31, 2012. The applicant was Department of Environmental Services, City and County of Honolulu (“ENV”). Senator Hanabusa and Representative Shimabukuro were Intervenors. The 2009 Decision and Order was appealed to the Circuit Court, and then to the Hawaii Supreme Court. On May 4, 2012, the Hawaii Supreme Court reversed the 2009 Decision and Order, finding that the LUC did not have sufficient facts in the record to justify a termination date of July 31, 2012. The Hawaii Supreme Court remanded the case back to the LUC for appropriate proceedings which could include an enlargement of the record. In fact, the Hawaii Supreme Court encouraged the LUC to consider new testimony before the Planning Commission in the proceeding described below.

On June 28, 2011, during the pendency of the judicial appeals, ENV filed a motion with the Planning Commission to delete the termination date of July 31, 2012 from the Special Permit. After the Hawaii Supreme Court remanded the Special Permit to the LUC, ENV then asked the Planning Commission to withdraw its motion to delete the termination date. The Planning Commission decided to stay those proceedings rather than dismiss it.

On October 8, 2012, the LUC remanded the matter to the Planning Commission to consolidate the two proceedings, update the record, decide on the Special Permit, and then send its decision and the updated record back to the LUC.

On May 1, 2017, the City and County of Honolulu Planning Commission (“City PC”) transmitted its Findings of Fact, Conclusions of Law, and Decision and Order (“City PC Decision and Order”) to the LUC, having completed its review and decision-making and consolidation of the hearing records of two Special Permit Applications for the Waimanalo Gulch Sanitary Landfill (“WGSL”).

Pursuant to HRS § 205-6(d), Special Permits on land areas greater than 15 acres are also subject to approval by the LUC. The LUC may impose additional restrictions as may be necessary or appropriate in granting the approval.

B. Issues of Concern

Special Permit Guidelines. The WGSL is a non-permitted use within the State Agricultural District. Pursuant to HRS § 205-6, county planning commissions may permit certain “unusual and reasonable uses” within the Agricultural and Rural Districts other than those for which the district is classified. The criteria for determining “unusual and reasonable” uses are the guidelines established in HAR § 15-15-95, which are reflected in § 2-45 of the City PC Rules regarding Special Use Permits.

Relative to these guidelines, OP concurs with the City PC’s conclusions that (a) the use is not contrary to the objectives sought to be accomplished by HRS Chapters 205 and 205A and the LUC rules, (b) would not adversely affect surrounding property as long as operated in accordance with governmental approvals and requirements, and mitigation measures are implemented in accordance with the Applicant’s representations in the 2008 Final Environmental Impact Statement, and (c) that the land on which the WGSL is located is unsuited for agricultural purposes. OP notes that the site has underlying soils of poor quality, is designated as a landfill on the City’s Development Plan Public Facilities Map, and the site serves a vital public health need.

Importance of the WGSL. The City PC Decision and Order, in Findings of Fact (“FoF”) 93 cites that the WGSL is the only public Municipal Solid Waste (“MSW”) facility on Oahu and the only repository for the ash produced by the HPOWER refuse burning and power generating facility. HPOWER supplies approximately 7% of Oahu’s electricity (FoF 58), and the Department of Health (“DOH”), as a condition of the HPOWER permit, requires a disposal alternative – a landfill – as a contingency for routine maintenance, natural disasters, and emergencies (FoF 61).

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Need for an Alternative Landfill Site. In FoF 92, the DOH cites that Oahu needs a landfill, that WGS� is the only landfill for MSW and ash, and that shutting down the landfill before other options are available will endanger public health. FoF 38 to 51 document the City's efforts to identify an alternative landfill site, including commissioning a site selection study and formation of a site selection committee. To-date, however, an alternative landfill site to the WGS� has not been identified. FoF 52 and 53 note that even after the City selects a new landfill site, it will take ENV more than seven years to complete the tasks necessary to start operations at a new site, including the preparation of an EIS, acquisition of the landfill site, obtaining funding, and undertaking engineering and construction and land use approvals.

The City has made significant and commendable efforts to divert and reduce MSW disposal at the landfill, including material and green waste recycling programs, the addition of a third boiler to the HPOWER facility which allows burning bulky items, sewage sludge, and improved metals recovery. However, the City acknowledges that there are no new technologies with proven reliability that would completely eliminate the need for a landfill (See FoF 57).

C. Recommendation

As the only available landfill for the disposal of MSW and ash, the importance and need for the WGS� is unquestionable. The City PC record is unclear, however, as to the estimated date when the landfill will reach its capacity. Given the seven plus year timeframe required to identify, procure and prepare a suitable replacement landfill site, it is important to monitor the timing of when the landfill's capacity will be reached, to assure that the replacement landfill site will be ready and available. The WGS� has been in operation since 1989, has subsequently required expansion inland, such that maximum capacity of the site could be attained at some point in the near future.

OP supports the City PC Decision and Order relative to the deletion of Condition 14 and the additional conditions imposed on the Applicant, including the firm date established for selection of an alternative landfill site. We believe, however, that further modifications are required to ensure that a replacement landfill site will be operationally ready before the WGS� reaches capacity. OP acknowledges the difficulty in determining a closure date given the ongoing efforts to further divert MSW and ash from the landfill. We recommend, therefore, that while the City secures the replacement landfill site, it is mindful of the projected date at which the WGS� will reach capacity.

Upon selection of the replacement landfill site, the Applicant should commence with acquiring the site or otherwise obtaining site control as necessary, preparing the EIS through to final acceptance, and procuring the required land use approvals. Although the extent of commencement is not described, what is most important is that the City initiates the work for a

replacement landfill site rather than placing the replacement site identification on a shelf until some unspecified and indeterminate date. When it is determined that the estimated remaining capacity for either the MSW or ash cells is seven (7) years, the Applicant should proceed with engineering and site work to assure the availability of the site when WGS� reaches capacity. This may initially be limited to site grading and ancillary structures (e.g., scale house, infrastructure). DOH recommends that the landfill liner system not be constructed too soon and be left exposed or unattended for an extended period of time. This amendment will give the City a cushion of one to three years at most, and possibly less, to ensure that a replacement landfill site is ready before WGS� reaches capacity. Compare FoF 52 (it will take more than seven years to complete the tasks necessary to start operations at the new site) with FoF 53 (it will take one to three years to complete documents and obtain approvals). Given the possible delays on any construction project and the evidentiary record in this case, the requirement to initiate site work seven years before WGS� reaches capacity is reasonable.

Accordingly and in consultation with the DOH, the following amendments are proposed to the City PC's additional conditions of approval (new or revised text underlined).

"1. The Applicant shall provide semi-annual reports to the Planning Commission and the LUC regarding (a) the status of the efforts to identify and develop a new landfill site on O'ahu, (b) the WGS�'s operations, including gas monitoring, (c) the ENV's compliance with the conditions imposed herein, (d) the landfill's compliance with its Solid Waste Management Permit and all applicable federal and state statutes, rules and regulations, including any notice of violation and enforcement actions regarding the landfill, (e) the City's efforts to use alternative technologies, (f) the extent to which waste is being diverted from the landfill, including the estimated number of tons of ash and number of tons of Municipal Solid Waste (MSW) being disposed at WGS� in the reporting period, and estimated number of tons of MSW diverted from WGS� in the reporting period, (g) estimated years remaining in landfill capacity (MSW and ash) based on current disposal and diversion rate and site design, and (h) any plans or funding arrangements that are being considered by the Honolulu City Council or the City Administration for activities that would further divert waste from the landfill.

2. Public health and safety conditions: If the landfill releases waste or leachate, the ENV must immediately (a) notify the surrounding community, including the Makakilo/Kapolei/Honokai Hale, Waianae Coast and Nanakuli-Maili Neighborhood Boards, Intervenor Schnitzer Steel Hawaii Corp., Ko Olina Community Association, Maile Shimabukuro and Colleen Hanabusa and (b) take remedial actions to clean up the waste and to keep the waste from spreading. Such remedial actions shall include, but shall not be limited to, placing debris barriers and booms at the landfill's shoreline outfall to prevent waste from spreading into the ocean.

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3. The Applicant shall identify an alternative site by December 31, 2022, that will be used upon Waimanalo Gulch Sanitary Landfill reaching its capacity. Immediately upon selection of the alternative site, the Applicant shall pursue site acquisition, the preparation of an Environmental Impact Statement, and land use permitting as may be required to assure use of the site as a replacement landfill when the WGS� reaches its capacity.

4. When the estimated WGS� capacity for either MSW or ash reaches 7 years, the Applicant shall initiate site work on the replacement landfill in preparation for the transfer of landfill operations when WGS� reaches capacity.”

Thank you for the opportunity to provide these comments. If you should have any questions, please contact Rodney Funakoshi of our Land Use Division at (808) 587-2885.

c: City & County of Honolulu Department of Environmental Services
City & County of Honolulu Department of Planning and Permitting
Department of Health, Solid and Hazardous Waste Branch