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Coastal Zone
Management
Program

July 23, 2024

Environmental Review
Program

TO: Daniel Orodener, Executive Officer
Land Use Commission

Land Use Commission

Land Use Division

FROM: Mary Alice Evans, Director
Office of Planning and Sustainable Development

Mary Alice Evans

Special Plans Branch

SUBJECT: SP09-403 Waimanalo Gulch Sanitary Landfill (2008/SUP-2)
Department of Environmental Services,
City and County of Honolulu
TMKs: (1) 9-2-050:005 and 006
Honouliuli, Ewa, Oahu

State Transit-Oriented
Development

Statewide Geographic
Information System

Statewide
Sustainability Branch

On December 22, 2022, the Department of Environmental Services, City and County of Honolulu (“ENV”) filed an application (“Application”) with the City and County of Honolulu’s Planning Commission (“HPC”) to amend State Special Use Permit SP09-403 (2008/SUP-2) to extend the deadline to identify an alternative landfill site for the Waimanalo Gulch Sanitary Landfill (“WGSL”) to December 31, 2024. Having reviewed the record transmitted from HPC, the Office of Planning and Sustainable Development (“OPSD”) recommends that the State Land Use Commission (“LUC”) approve the Application in order to allow ENV to identify an alternative landfill site by the end of this year and provides the following in support of HPC’s decision.

I. PROCEDURAL BACKGROUND

The history of this matter is complicated and is described in detail in the LUC’s Findings of Fact, Conclusions of Law, Decision and Order for docket no. SP09-403 adopted on November 1, 2019 (“2019 LUC D&O”). For purposes of this Application, we focus solely on the background relevant to the Application before the LUC for an extension of the deadline to identify an alternative landfill site.

The 2019 LUC D&O approved with modifications HPC’s June 10, 2019 Findings of Fact, Conclusions of Law, Decision and Order (“2019 HPC D&O”) to approve a Special Use Permit for the WGSL, subject to 17 conditions. Condition 5 of the 2019 LUC D&O is similar to Condition 1 of the 2019 HPC D&O and states: “By no later than December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon closure of WGSL.

Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.”

On December 22, 2022, ENV filed the Application to extend the deadline to identify an alternative landfill site with HPC (2024 HPC D&O, p. 5, No. 20). The Ko Olina Community Association and Maile Shimabukuro (collectively, “KOCA”) and Schnitzer Steel Hawaii Corp. (“Schnitzer”) were subsequently approved as intervenors in the matter (2024 HPC D&O, p 9, No. 41-42). HPC approved ENV’s Application by Findings of Fact, Conclusions of Law, Decision and Order dated May 15, 2024 (Planning Commission Exhibit 56: “2024 HPC D&O”), which imposed the following three conditions:

1. Condition No. 1 in the 2019 Planning Commission Order is modified to read as follows and it is recommended that Condition No. 5 in the 2019 LUC Order be modified to read as follows: By no later than December 31, 2024, the Applicant shall identify an alternative landfill site that may be used upon closure of WGSL. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.
2. The Applicant shall report quarterly to the Planning Commission, in-person, the efforts it has taken and plans to take to identify an alternative landfill site by December 31, 2024; and to answer questions from the Commission and the community. Reports shall include but are not limited to the following information:
 - a) Reports should include but are not limited to timelines, milestones, schedules of tasks for the specific plan to have a site selected by December 31, 2024.
 - b) List of potential sites under consideration.
 - c) List of obstacles [to] their ability to choose a site.
 - d) Reporting on the investigation of alternative technologies for landfill (2019 LUC Decision).
3. All other conditions to the Special Use Permit No. 2008/SUP-2 as stated in the 2019 orders remain in full force and effect.

(2024 HPC D&O, pp. 22-23). The complete record was transmitted to the LUC on July 15, 2024.

II. ENV’S GOOD FAITH EFFORTS TO COMPLY

ENV has actively and in good faith attempted to identify an alternative landfill. ENV made several attempts to identify alternative landfill sites even before the 2019 LUC D&O and the imposition of Condition 5. In 2003, a Blue Ribbon Landfill Site Selection Committee was

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convened and evaluated and recommended four potential sites. In 2011, another Landfill Site Selection Committee was formed and generated a September 2012 report ranking 11 possible landfill sites. A consultant was then hired to review and analyze the sites, and a report was issued in 2017 (2024 HPC D&O, pp. 14-15, No. 75-77).

After the 2019 LUC D&O, ENV continued its efforts to comply with LUC Condition 5/HPC Condition 1. In 2020 and 2021, however, two major unforeseen events occurred that seriously impacted ENV's efforts and options in identifying an alternative landfill. Specifically, the passage of Act 73 Session Laws of Hawaii 2020 in September 2020 prohibited the establishment of a landfill within the State Land Use Conservation District or within one-half mile from residential, school, or hospital property. Also, the Red Hill fuel storage leak in November 2021 drew public attention to the vulnerability of Oahu's drinking water aquifer system and generated greater caution associated with the Honolulu Board of Water Supply ("BWS") No Pass Zone. Both of these unforeseen events eliminated several potential sites selected during ENV's nine-year process to identify alternate landfill sites.

A. Act 73 Session Laws of Hawaii 2020 Restrictions

In September 2020, Governor Ige signed into law Act 73 Session Laws of Hawaii 2020 ("Act 73") that amended State law to prohibit "waste or disposal facilities" (e.g., landfills) in the State Land Use Conservation District and the construction of "waste or disposal facilities" within one-half mile from residential, school, or hospital property lines. The new restrictions prohibited ENV from locating a landfill in a significant portion of Oahu. In response, ENV evaluated all remaining land areas on the island that were available after factoring in Act 73-imposed restrictions and identified six proposed landfill sites (2024 HPC D&O, p. 18, No. 78-80). In 2021, Mayor Blangiardi appointed a new Landfill Advisory Committee ("LAC") to assist with evaluating and scoring the six sites identified after ENV's review. The LAC held eight public meetings between October 2021 and June 2022 during which it developed processes and criteria to evaluate and score the six Act 73 compliant landfill sites (2024 HPC D&O, p. 16, No. 84).

B. Red Hill Fuel Storage Leak and Board of Water Supply's No Pass Zone

1. BWS No Pass Zone

The BWS No Pass Zone is an approximate boundary around the island of Oahu that demarcates an area to protect groundwater (2024 HPC D&O, p. 15, No. 81). Section 3-301 of BWS's rules and regulations pertaining to waste disposal facilities was amended in December 1982 to allow BWS to establish "No Pass Zones" delineated on maps to be used as guidelines in implementing that section. No Pass Zones are defined to mean "areas in which the installation of

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waste disposal facilities, such as sanitary landfills, that may contaminate groundwater resources used or expected to be used for domestic water supplies, are prohibited.”¹

The No Pass Zone was established based on a review of geologic maps and borings that define the areas of thick caprock around Oahu. Areas below (or makai of) the No Pass Zone are primarily located on thick caprock, which restricts the seaward movement of infiltrated rainwater that falls on the island and serves as a barrier to prevent surface contamination from reaching the aquifer. Areas that are above the No Pass Zone have no caprock and are located directly above groundwater used for drinking water (Planning Commission Exhibit 01: Special Use Permit Application, Exhibit C, p. 2).

2. Red Hill Fuel Storage Leak

In late November 2021, while the LAC was evaluating the proposed landfill sites, a petroleum release from the Red Hill Bulk Fuel Storage Facility contaminated the Red Hill drinking water well. The Red Hill Facility’s proximity to Oahu’s main drinking water aquifer caused widespread public health and environmental concerns about the contamination of the island’s drinking water (2024 HPC D&O, p. 19, No. 86).

At the LAC’s December 14, 2021 meeting, BWS asserted that no landfill should be sited mauka of the BWS No Pass Zone and encouraged the LAC not to recommend any of the six proposed sites since all of them are mauka of the No Pass Zone. BWS expressed its concerns about siting a new landfill above the groundwater aquifer and highlighted the dangers of landfill leachate leaking into Oahu’s drinking water aquifer system (2024 HPC D&O, pp. 16-17, No. 87-88). The LAC’s Final Report, issued June 2022, ranked all six sites and recommended that none of them be used due to each site’s location mauka of the No Pass Zone. The Report also

¹ The 1982 amendment to the BWS rules and regulations pertaining to waste disposal facilities also provided for a process for reconsideration of the BWS Manager’s decision and appeal to the BWS Board: “If the Manager disapproves a proposal, he shall inform the applicant in writing of the facts and reasons upon which his disapproval is based and afford the applicant an opportunity for an informal appeal hearing. Any applicant who is aggrieved by the Manager’s decision and desires reconsideration of such decision shall petition the Manager in writing within 30 days from the date of receiving such decision. The applicant should base his request for reconsideration on pertinent technical data, including boring logs which indicate that the proposed waste disposal facility in the ‘No Pass Zone’ would not contaminate groundwater resources used or expected to be used for domestic water supplies. If, after the hearing, the request for reconsideration is disapproved by the Manager, the applicant may appeal the decision to the Board, which shall have the power to affirm, modify or reverse the decision of the Manager so appealed from. Such appeal shall be taken within 30 days after the final decision of the Manager.” [BWS Resolution No. 502, 1982]

Proposed “waste disposal facilities” plans that require the Manager’s approval under § 301.1 of the BWS Rules and Regulations lists cesspools, septic tank systems, individual household aerobic treatment units, disposal wells, sanitary landfills, refuse disposal dumps, sewage treatment plants, stabilization ponds and any other wastewater disposal facilities.

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recommended that ENV look for sites makai of the No Pass Zone, consider evaluating military or federal sites, amending or repealing Act 73, or employing eminent domain (2024 HPC D&O, p. 20, No. 90-91).

While ENV has been aware of the No Pass Zone as a landfill siting consideration since at least 2003, there were proposed landfill sites makai of the No Pass Zone until Act 73 in September 2020 and it was not clear that the landfill sites mauka of the No Pass Zone would be prohibited until the December 14, 2021 LAC meeting. In subsequent meetings and communications with BWS to address ENV's urgent need to identify an alternative landfill site and BWS's concerns regarding the six proposed sites, BWS provided an official position that it "does not approve any of the six proposed landfill sites that are located above (or mauka) the No Pass Zone and over Oahu's drinking water aquifer system." BWS's response cited the contamination of Oahu's drinking water caused by the Red Hill fuel leak as a primary consideration for its decision (2024 HPC D&O, p. 18, No. 92-94). When the BWS No Pass Zone and Act 73 are applied as restrictions, however, none of the alternate landfill sites identified by ENV are viable. Consequently, ENV proceeded to prepare the Application for an extension of the deadline to name a site, which was filed nine days before the December 31, 2023 deadline (2024 HPC D&O, p. 19, No. 95).

III. ENV'S REQUEST IS REASONABLE

ENV's request to extend the LUC Condition 5/HPC Condition 1 deadline to December 31, 2024 is reasonable when taking into consideration various factors. In particular, the public need for continued operation of the WGSF, the lack of any objections from the parties, and the brief length of the extension.

A. WGSF is a Vital Public Resource

WGSF is an essential resource for the people of Oahu and there is no practical alternative to dispose of solid waste because it is the only State Department of Health-permitted public municipal solid waste facility on the island. WGSF is the only landfill on Oahu that can accept material that cannot be combusted, recycled, reused, or shipped off the island. For example, the residual waste product, including automobile shredder residue produced at Schnitzer's scrap metal recycling facility is one such material (2024 HPC D&O, p. 19-20, No. 100). The availability of a permitted landfill to receive residual ash is also a permitting requirement of the Honolulu Program of Waste Energy Recovery ("H-POWER") electrical generating plant, which reduces the volume of municipal solid waste on Oahu going to the landfill by 90 percent and produces electricity that is sold to Hawaiian Electric and distributed to customers (2024 HPC D&O, p. 19, No. 99). Neither Schnitzer nor H-POWER would be able to continue operations without the availability of WGSF. Thus, a permitted landfill is currently necessary for

responsible solid waste management and to protect the health and safety of Oahu residents (2024 HPC D&O, p. 20, No. 101).

B. No Objection to ENV's Extension Request

None of the various parties in this matter have any objections to the Application. All parties acknowledge that it is important for Oahu to have an operational landfill, and no party opposes granting the ENV additional time to site a new landfill (2024 HPC D&O, p. 21-22, No. 6). Public testimony was provided by one person at the June 28, 2023 hearing and no other public testimony was received at any subsequent hearing (2024 HPC D&O, p. 7, No. 32).

C. The Extension is Brief

The extension requested by ENV is to December 31, 2024, which is less than five months from today. This short timeframe is due to the length of time that has passed since ENV filed its Application. Despite the short timeframe, OPSD believes that it is possible for ENV to identify an alternative landfill site by that date, especially given the efforts made to date.

IV. OPSD'S RECOMMENDATION

Given ENV's active and good faith efforts to comply with LUC Condition 5/HPC Condition 1, despite several unforeseen events, the public need for the continued operation of a permitted landfill, the relatively short time of the extension from today, and the lack of objections from the parties, OPSD recommends the LUC approve ENV's Application.