

October 27, 2005

To: Wayne Rew, Chair
Pat Modugno, Vice Chair
Leslie G. Bellamy, Commissioner
Esther L. Valadez, Commissioner
Harold V. Helsley, Commissioner

From: Samuel Dea
Zoning Permits I

Subject: Conditional Use Permit 00-194-(5) - Sunshine Canyon Landfill
Agenda item 7

The above-referenced case, a request to authorize modifications to a previously approved Class III landfill, was continued at the public hearings on December 1, 2004, January 12, 2005, April 6, 2005 and August 10, 2005. At the August 10, 2005 public hearing the Commission continued the case to November 3, 2005 and instructed staff to prepare a final draft of the project conditions. As directed, those conditions were made available to the public and forwarded to the Commission on October 3, 2005. The public hearing was left open, but only for the purpose of hearing comments on the latest set of conditions.

Staff has received comments on the final draft of the conditions; both representatives for the applicant and the North Valley Coalition have prepared response packages, which are forwarded as attachments to this memorandum for your review.

BFI has agreed to most of the proposed conditions, with a few exceptions outlined in their attached package. Staff offers the following comments on BFI's submittal:

General Comments on BFI package dated October 24, 2005

A number of the BFI proposals would delay payment of applicable fees until BFI begins disposal activities in the "bridge" area. These proposals are predicated on the premise that BFI will not begin to reap the benefits of the new CUP until they begin such utilization of the "bridge" area. Staff disagrees. BFI will derive substantial benefits upon the effective date of the CUP and, therefore, the fees should apply upon such effective date. These benefits include, but are not limited to, the following:

- Immediate *availability* of the "bridge" area upon approval of the permit and satisfaction of the requirements in Condition 14 (how soon BFI begins to

dispose of waste in the area will primarily depend on how quickly they secure necessary approvals from other permitting agencies);

- The ability to have more than one working area;
- Extended hours of operation, consistent with the City approval;
- More flexibility in stockpiling (resulting in significant savings to BFI);
- Increased daily tonnage (11,000 tons per day average) in a combined City/County landfill with associated efficiency of operation; and
- Setting the stage for BFI to fulfill a key City requirement in order to develop a combined City/County Landfill.

Specific Condition Comments

The following are specific comments on each of the proposed BFI changes:

Condition 1.c

Staff concurs with the proposed changes.

Condition 1.d

Staff concurs with the proposed changes.

Condition 12.d

Staff **does not** concur with the proposed changes. The proposed changes may negate our objective to ensure that at closure there will be sufficient funds available to continue payment of insurance premiums.

Condition 28 a, b, & c

Staff concurs with the proposed changes.

Condition 29

Staff concurs with the proposed changes except for the addition of the following statement: "After landfilling commences in the Bridge Area."

Condition 30

Staff **does not** concur with the changes. Staff is suggesting the addition of a new paragraph to this condition as follows: "For the purposes of this condition, 'environmental protection and control systems' shall include surface water and groundwater quality monitoring/control systems, landfill gas monitoring/control systems, landscaping and irrigation systems, drainage and grading facilities, and other routine operation and maintenance items."

Conditions 29, 61, 62, 64, 65, & 69.

Staff **does not** concur with BFI's proposal to delay payment of the fees until such time as landfilling commences in the "bridge" area (see General Comment above). Staff also **does not** agree with BFI's proposal to terminate the existing SEA fee condition in 12 years. Staff believes that a substantial value has and will be accrued to the operator as a result of the conversion of SEA-land and the citizens of Los Angeles County should also benefit from such a loss.

Comments on the Coalitions submittal package

The North Valley Coalition, represented by the law firm of Altschuler, Berzon, Nussbaum, Rubin & Demain ("Coalition") has also submitted additional comments dated October 21, 2005. Staff offers the following comments on the submittal:

Long-term liabilities: Insurance (Condition 12)

Staff has considered the comments and recommendation offered by the Coalition to limit the financial assurance mechanism to only a trust fund. We feel Condition 12.d. provides adequate financial assurance to protect public health and safety and the environment.

Staff's proposed language allows a trust fund, but also allows the permittee and the County to come up with appropriate alternatives and safeguards without limiting the options to only a trust fund. Additionally, staff believes future insurance reforms at the State or federal level will automatically apply to the permittee.

Long-term liabilities: Monitoring, Maintenance, and Corrective Action (Condition 30)

The Coalition's recommended minimum post-closure maintenance and financial assurance period of 100 years is an arbitrary number with no technical or scientific evidence to support it. Staff's proposed language already requires post-closure maintenance in perpetuity unless there is evidence otherwise. At some time in the future there may be technical/scientific evidence that the landfill is no longer a threat to public health and safety and the environment. Staff's proposed language allows the Director of Public Works to make an evaluation of such evidence and make an appropriate determination.

Closure: The CUP should require the County-only landfill to close by January 2008 or when a Total of 17 million tons have been disposed and the combined landfill to close by January 2026 or when a total of 90 million tons have been disposed (Conditions 1, 13, 14, 32, 41 – Closure)

Under staff's proposed language, there is a current limit, which is the fill design that was approved in 1993. Staff feels this is a reasonable limit. Should the Commission decide to establish additional limiting factors, The Department of Public Works and the Department of Regional Planning staff will work with all parties involved to develop appropriate factors in accordance with the Commission's instructions.

BFI should not be permitted to expand prematurely onto the Bridge (Condition 14)

The 1993 CUP entitled the applicant, upon approval of the City landfill, to use the "bridge area as necessary to complete the City-authorized design." This language is unclear and has led itself to disputes over its interpretation in terms of timing and applicable criteria—disputes that will continue unless the language (timing and criteria for the use of the "bridge area") is clarified. Staff's proposed language sets specific criteria that must be satisfied by the applicant prior to utilizing the "bridge area" during the first five years of operation of the City landfill. Such utilization must be part of an overall plan for development of the Landfill on both sides of the City/County boundary and must be consistent with the overall purpose of the Condition.

Staff does not believe a supplemental EIR is needed since staff's proposed language is consistent with the original intent of the 1993 permit and the stated purpose of the proposed Condition 14, and it does not add any new capacity that the applicant was not entitled under the existing permit.

Failure to adopt City's protective conditions (Conditions 2, 19, 25, 27, 35, New Conditions 70, 71, 72)

Alternative Fuel Requirement: The California Air Resources Board ("CARB") has adopted a fuel neutral performance standard for reducing diesel exhaust particulate matter. As long as trucks meet the set performance standards for reducing diesel exhaust, the operator may use either diesel or alternative fuel. Staff sees no reason to over-rule the CARB performance standard.

Hours of operation (Condition 25): The Draft SEIR includes an analysis of landfilling operations that would start at 5 a.m. and concluded that there would be no significant noise impacts. BFI has requested to be able to perform site preparation, such as removing tarps and wet the operation area, starting at 5.a.m. No landfilling will be allowed. Staff, after discussion, found that having the landfill prepared and ready to receive trucks at opening was a feasible request.

The Double Composite Liner (Condition 35): This requirement is included in the proposed conditions. Staff included language that the County side of the landfill have a liner system "of equal effectiveness" to the City landfill. This language is intended to allow for engineering changes, improvements etc. to liner systems in the future. Such as, should the State regulating agencies adopt stricter regulations or require an even more effective liner system in the future, the County landfill should not be restricted to a liner that is "the same" as the City side.

Other provisions proposed by the Coalition, i.e., video monitoring of the disposal operation, a Community Protection Program, specified cover materials, noticing requirements, and safety net language will need to be discussed at the hearing due to time constraints in preparing this report.

Traffic Mitigation (Condition 56)

The traffic counts conducted for the Minagar's study (the Coalition-funded traffic study) are not reliable since they were performed during the Caltrans' I-5 High Occupancy Vehicle project between State Route 14 and State Route 118. (Also see attached memo from DPW- Traffic and Lighting Division, dated October 5, 2005). This construction started May 16, 2005, and is expected to take approximately 2 years to complete.

While the traffic counts used in the Minagar's study for the p.m. peak hour were considerably higher than the counts in the Addendum study for some locations, the traffic counts during the a.m. peak hour were either consistent or much lower. The a.m. counts are more critical because the project's impact assessment is expected to generate three times more trips during the a.m. versus p.m. count. The project's traffic impact assessment contained in the Addendum study has evaluated both peak hours and adequate mitigation measures were identified to fully mitigate the project's significant

impacts as required per the County's guidelines. The Minagar study asserts that the traffic volume projections in the Addendum study have been underestimated. However, the traffic volume projections in the Addendum are conservative since the projections were based on both the area growth rate and the list projects methods. The list projects method is based on an actual list of 34 related projects in the area. The growth rate used in the Addendum study is consistent with the growth rate in the 2002 Congestion Management Program for the County of Los Angeles. Based on the combined list projects and projection methods used in the Addendum study, the annual growth rates are approximately 7.25 percent for the a.m. peak hour and 11.58 percent per year for the p.m. peak hour. This is approximately 2.5 times more during the a.m. peak hour and 4 times more during the p.m. peak hour than the 2.77 percent Southern California Association of Governments' annual growth rate referenced in the Minagar study.

Therefore, staff wishes to reaffirm that the Supplemental Traffic Data Information prepared for the Addendum to the Final Environmental Impact Report satisfies the County's traffic impact analysis preparation guidelines. Furthermore, we believe Conditions 54-58 and 61.b. provide appropriate mitigation measures and funds necessary to mitigate any further impacts due to the project.

Penalties (Condition 11)

The Coalition recommends elimination of the 30-day correction period, as set forth in Condition 11. Staff disagrees with the Coalition's position. After much discussion among County staff, the conclusion was that it is reasonable to allow a "cure" period for the applicant to make necessary corrections prior to imposition of penalties.

Loopholes should be eliminated (Conditions 1.p, 17, and 25)

Temporary Stockpiling (Condition 1.p) – The Coalition recommends that BFI should not be permitted to stockpile dirt above final elevations. Staff disagrees with the Coalition's position.

After extensive discussions, staff now feels that it is appropriate to provide some flexibility in managing the temporary stockpiling of excess excavation material at the site for use as landfill cover. Since the applicant is restricted to stockpiling only within the landfill footprint

area, this provision is necessary to properly manage such materials. Such temporary stockpiling must be first approved by the Director of Public Works.

Note that Public Works will continue to strictly enforce the fill design limitations established under the permit.

Exemption for increase in maximum intake rate (Condition 17.c) - Staff disagrees with the Coalition's recommendation to limit the ability of the Board of Supervisors to increase the maximum intake rate in the event of an emergency.

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We believe the Board should have the authority to temporarily increase the tonnage limits at the landfill when it is in the best interest of the County to manage the overall County waste-stream to protect public health and safety or in the event of a declared emergency.

Should you have any questions regarding this case prior to the hearing date please contact Maria Masis at (213) 974-6443, or via e-mail at mmasis@planning.co.la.ca.us.

Attachments

SZD:MBM