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February 2, 2022

Mary Ellen Winborn, Director
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Re: Permit Application CUP No. 2021-00005; SEPA Project No. ECL2021-09918

Ms. Winborn:

The City of Port Angeles supports the County's recommendation to deny Olympic Systems Properties' conditional use permit application for a transfer station, CUP No. 2021-00005 ("Application") and is submitting the attached comments to the Hearing Examiner. The City is providing these same comments to you as the SEPA Responsible Official.

The City believes there are significant adverse environmental impacts associated with the proposed transfer station, including but not limited to odor and aesthetic impacts, impacts to the surrounding land uses including the Olympic Discovery Trail, traffic impacts, and impacts to the regulated solid waste stream for Clallam County.

Sincerely,

FOSTER GARVEY PC

P. Stephen DiJulio
Special Assistant City Attorneys

Enclosure

CC: Donella Clark, Principal Planner
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February 2, 2022

Clallam County Hearing Examiner
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Re: Permit Application CUP No. 2021-00005

Hearing Examiner Reeves:

The City of Port Angeles supports the County’s recommendation to deny Olympic Systems Properties’ conditional use permit application for a transfer station, CUP No. 2021-00005 (“Application”). As explained below, the transfer station proposed in the Application is inconsistent with the legal framework regulating solid waste in Clallam County, and fails to meet the criteria identified in the County’s code for a conditional use permit.

A. Introduction

The permitting of solid waste handling facilities in the State of Washington is heavily regulated at the state level, and not controlled exclusively by local land use codes. The permitting system includes comprehensive solid waste planning and facility identification necessary for permitting of a facility. Such planning in Clallam County includes the County and the cities within the County. That planning and the solid waste management regulatory system must be considered in evaluating the Application.

The Clallam County Solid Waste Management Plan and the Interlocal Agreement Regarding Solid Waste Export and Transfer System Cooperation and Implementation (“ILA”) (Exhibits 18 & 19) together provide that the existing regional solid waste export and transfer system will be the only designated export and transfer system in the county east of Lake Crescent, and would prohibit the operation of the transfer station. Accordingly, the Application should be denied.

B. Legal Considerations and Background

This is not a matter relating solely to a private land use permit application. Over a century ago, the United States Supreme Court ruled in 1905 that solid waste collection and disposal are core responsibilities of local governments. The Washington Supreme Court has similarly held:

The handling and disposal of solid waste is a governmental function. RCW 70.95.020 provides that while private entities may contract with local government for solid waste handling, the primary responsibility is that of the local government.

Weyerhaeuser v. Pierce County, 124 Wn. 2d 26, 40 (1994). Consistent with this longstanding precedent, the legislature grants all Washington counties authority to establish a system or systems of solid waste handling for their unincorporated areas and for those cities participating in the County's solid waste management planning. RCW 36.58.040 (counties); RCW 35.21.130 (cities). Each county manages its solid waste handling system, in part, through a comprehensive solid waste management plan. *Id.*; chapter 70A.205 RCW. Clallam County has followed the Legislature's directives and committed to a County-wide solid waste management program, both in its contracts and its recently enacted solid waste management plan.

In 2021, the City of Port Angeles and the County reaffirmed their commitment to collaborative, regional solid waste planning through a new interlocal agreement and commitment of the parties to the 2021 County Solid Waste Management Plan Update ("SWMP"), <http://www.clallam.net/publicworks/docs/SWMPFinalDraft202105.pdf>; Exhibit 19.

C. The Proposed Transfer Station Is Also Prohibited by the Solid Waste Management Plan

The Application is inconsistent with the SWMP. The SWMP does not recognize any new solid waste transfer station in the County. *See* Exhibit 19 (SWMP) at C-2 (no new public facilities are proposed by SWMP); Exhibit 19 (SWMP) Section 2.4 & Figure 2-4 (identifying existing solid waste facilities in eastern Clallam County as the Port Angeles Regional Transfer Station and Blue Mountain Transfer Station). A new public or private transfer or disposal facility would require a revision to the SWMP. *See* Exhibit 19 (SWMP) Section 1.7.

The SWMP specifically provides that the waste transfer system in Clallam County is "working well" and the Plan "recommends continuing that system." Exhibit 19 (SWMP) at ES-2. With respect to waste disposal, the SWMP notes "perhaps the most important recommendation is to begin the process in 2023 for a new waste export and disposal contract for the Regional Transfer Station." Exhibit 19 (SWMP) at ES-2. The City will continue to operate the Regional Transfer Station and has already converted to a new waste export and disposal contract.

Because the proposed transfer station is inconsistent with the SWMP, the County Health Department is without authority to authorize a solid waste handling permit for such a facility. RCW

70A.205.130 (“Every permit issued by a jurisdictional health department under RCW 20A.205.125 shall be reviewed by the department [of Ecology] to ensure that the proposed site or facility conforms with . . . (2) The approved comprehensive solid waste management plan.”) As discussed herein, the SWMP does not permit permitting of a new transfer station for waste that is directed by law to the regional system.

D. The Application is Inconsistent With the Interlocal Between The Cities of Port Angeles and Sequim and the County

The SWMP incorporates the 2007 ILA between the City of Port Angeles, City of Sequim and the County. *See* Exhibit 19 (SWMP) at 1-3, Section 1.5 (noting SWMP operates in a framework including the ILA); SWMP at 4-1 (noting “primary local rules and regulations addressing the transfer facilities are included in Chapter 41.10 of Clallam County’s code and in an interlocal agreement. An interlocal agreement (ILA) has been executed between Clallam County, the City of Port Angeles, and the City of Sequim for cooperation and implementation of the regional solid waste transfer and export system”); Exhibit 19 (SWMP) at 10-10 (“This ILA defines the roles and responsibilities of the signatories to provide for Regional Solid Waste Export and Transfer System facilities and services; promote the health, safety and welfare of the County’s residents; and protect the natural environment in the County”); Exhibit 19 (SWMP) Appendix A; Exhibit 19 (SWMP) at 10-5, 10-7, 10-8 (referencing ILA).

This long-term interlocal agreement addressed the need to plan for solid waste management on a regional level and addressed closure of the City’s regional landfill. *See* ILA (Exhibit 18). Of particular note is the ILA’s commitment that the Regional Solid Waste Export and Transfer System facilities will be located at the current site of the Port Angeles Landfill and will be utilized by the City of Port Angeles, City of Sequim, and the County and private solid waste collection companies that serve the City and unincorporated area of the County from Lake Crescent eastward.

That Agreement provides for a 20-year term, at least through 2027. Under the ILA, the County has specific obligations at Section 2 including that:

A. . . . The Regional Solid Waste Export and Transfer System will be the only designated Export and transfer System in the County East of Lake Crescent for the term of this Agreement.

B. Process consideration of amendments to the County’ s zoning code, solid waste facility permitting process ordinance and other applicable ordinances to prohibit solid waste transfer and export facilities that are not consistent with the Plan and to designate the Regional Solid Waste Export and Transfer System as the County’ s solid waste system consistent with the Plan and RCW 36.58. 040, to the extent permitted by law

E. [The County] Shall not construct or have constructed any municipal solid waste and transfer station in the eastern part of Clallam County without approval of the Joint Solid Waste Advisory Board.

The Application proposes a transfer station that would violate the ILA. The ILA requires that the Regional Solid Waste Export and Transfer system be “the only designated Export and transfer System in the County East of Lake Crescent” for the term of the ILA and prohibits the County from constructing or having constructed any municipal solid waste and transfer station in the eastern part of Clallam County without approval of the Joint Solid Waste Advisory Board. *See* ILA at Section 2. The transfer station identified in the Application has not been approved by the JSWAB and would violate the ILA.

Further, these contracts provide for a directed waste stream (or, flow control). In addition to helping governments assure they are meeting recycling and hazardous waste disposal requirements, flow control provides a steady stream of revenue to public solid waste system owners in the form of tipping fees. This revenue funds numerous mandatory programs, including the costs associated with closed landfills (both actively managed public facilities and abandoned private sites). The SWMP specifically identifies these issues, including capital costs for the environmental controls at the old City Landfill.

Solid waste collection is an essential function of government, and solid waste planning must be driven by the best interests of the community and efficient provision of services. *See Weyerhaeuser*, 124 Wn.2d at 40. The efficient and economical handling of solid waste is a vital interest of government with a fundamental relationship to the health, safety, and wellbeing of the entire community. *Id.* The number and location of solid waste facilities cannot be left to the whims of entrepreneurs. Here, the governments of the County, City of Port Angeles and City of Sequim have recognized that the current solid waste facilities adequately serve Eastern Clallam County.

E. The Application Does Not Meet the Criteria in Clallam County Code 33.27.040 for a Conditional Use Permit

In order to issue a conditional use permit, the hearing examiner must find that the proposed use is consistent with the comprehensive plan, the county’s zoning code, land uses in the same zoning district and in the vicinity, and that the proposal will result in “no unreasonable adverse impact on the surrounding land uses which can not be mitigated through the application of reasonable conditions.” CCC 33.27.040(1). The Hearing Examiner should deny the Application because it does not meet these criteria.

The City supports the County’s recommendation of denial with findings that the proposed use is inconsistent with the Comprehensive Plan and Solid Waste Management Plan. The City agrees that the proposed use is inconsistent with the Carlsborg Industrial zone and that environmental impacts such as odor, noise, traffic, and aesthetics are not adequately addressed in the environmental checklist or the Application.

a. The Application is Inconsistent with the Comprehensive Plan

Clallam County Code 33.27.040(1)(a) requires that conditional use permits be consistent with the Clallam County Comprehensive Plan. The City agrees with the County that the proposed transfer station is inconsistent with the County’s Comprehensive Plan and will not repeat those arguments here. *See* Staff Report to the Hearings Examiner – Conditional Use Permit – CUP2021-00005 (“Staff Report”) (Exhibit 1).

b. The Application is Inconsistent with the County’s Zoning Code

Clallam County Code 33.27.040(1)(b) provides that proposed conditional uses must be consistent with Title 33 of the County’s Code. Since 1995, the County’s zoning has allowed a “transfer facility” as an industrial use. CCC 33.03.010. But a “transfer facility” does not include a solid waste transfer station. *See* CCC 33.03.010(47) (defining industrial use as “any premises devoted primarily to the manufacturing of finished or semi-finished products, and the processing of materials. This definition includes accessory facilities such as but not limited to storage facilities, transfer facilities, warehousing, heavy vehicular storage and repair, log storage milling and sorting.”). A municipal waste transfer station is not a “premises devoted primarily to the manufacturing of finished or semi-finished products and the processing of materials.” CCC 33.03.010(47). Further, at the time this use was added to the County’s zoning in 1995, the Port Angeles landfill was in operation and there was no prospect of it being discontinued. Therefore, it is highly unlikely that the “transfer facility” language was intended to encompass a municipal solid waste transfer station, as it would have been unnecessary. This language clearly does not contemplate a municipal solid waste transfer station.

c. The Application is Inconsistent with Land Uses Within the Zoning District Where It Is Located and in the Vicinity of the Property

Clallam County Code 33.27.040(1)(c) requires that proposed conditional uses must be consistent “with land uses within the zoning district in which it is located and in the vicinity of the subject property.”

The proposed transfer station is inconsistent with land uses in the immediate vicinity. The transfer station would directly impact the Olympic Discovery Trail, a recreational asset enjoyed by community members throughout Clallam County. The mitigation proposed is insufficient to address these concerns – locating a solid waste facility and its attendant odor and traffic issues immediately adjacent to an outdoor recreation area clearly poses an issue. These uses are plainly inconsistent.

d. The Application’s Proposed Transfer Station Will Unreasonably and Adversely Impact Surrounding Land Uses

In order to issue a conditional use permit, Clallam County Code 33.27.040(1)(d) requires the hearing examiner to find that there is “no unreasonable adverse impact on the surrounding land uses which can not be mitigated through the application of reasonable conditions.”

In addition to the negative impacts identified above to the Olympic Discovery Trail, the transfer station is deleterious to citizens and businesses in eastern Clallam County. It will significantly increase the costs of solid waste transport and disposal on the peninsula. The transfer station would also adversely affect a nearby aquifer. The traffic, odor, and environmental impacts of the proposed transfer station support denial of the permit.

e. The SEPA Checklist Is Insufficient

The Application fails to provide information relating to mitigation measures that would reduce impacts to a level of non-significance. Specifically, the duration, severity, and cumulative odors from the project in addition to existing uses in the area should be adequately described and mitigated. The project proponents submitted an EPA publication (Waste Transfer Stations: A Manual for Decision-Making), which lists mechanical systems such as water misting and deodorization systems as an odor mitigation tool. There are additional ventilation filtration systems that exist for similar purposes. But not enough information is provided by the County or the Applicant to demonstrate how an enclosed structure can adequately control odor impacts. An enclosed structure may not go far enough as a mitigating condition. An analysis of any mechanical means to reduce odors should be provided for analysis.

The SEPA checklist is also inadequate with respect to public services and utilities. The proposed transfer station would cause a diversion of waste from the Regional Solid Waste Export and Transfer System, and the impact of the proposed transfer station on the County-wide solid waste management plan has not been addressed.

F. Conclusion

In summary, the transfer station proposed in the Application is inconsistent with the SWMP and the ILA, critical elements of the region-wide planning process regulating solid waste. Further, the Application fails to meet the criteria for a conditional use permit. The Application should be denied.

Sincerely,

FOSTER GARVEY PC



P. Stephen DiJulio
Special Assistant City Attorneys