

**LAW OFFICES
DOUMAR, ALLSWORTH, LAYSTROM, VOIGT,
ADAIR & DISHOWITZ, LLP**

JOHN H. ADAIR, III, P.A.
EMERSON ALLSWORTH, P.A.
E. SCOTT ALLSWORTH, P.A.
MARK E. ALLSWORTH, P.A.

**1177 SOUTHEAST THIRD AVENUE
FORT LAUDERDALE, FLORIDA 33316-1109
BROWARD (954) 762-3400
TOLL FREE (866) 242-9488
TELEFAX (954) 525-3423
WEBSITE: SFLALAW.COM**

BENJAMIN R. DISHOWITZ, P.A.
RAYMOND A. DOUMAR, P.A.*
C. WILLIAM LAYSTROM, JR., P.A.
JOHN D. VOIGT, P.A.
JEFFREY S. WACHS, P.A.+

+ALSO ADMITTED IN PENNSYLVANIA
*FORMERLY ADMITTED IN MICHIGAN

OF COUNSEL
JOHN W. PERLOFF, P.A.
JODIE SIEGEL, P.A.

September 30, 2022

Barbara Blake Boy
Executive Director
Broward County Planning Council
115 South Andrews Avenue, Room 307
Fort Lauderdale, FL 33301



Re: Comprehensive Plan Amendment Submittal –
Broward County Land Use Plan Map Amendment –
Monarch Hill Landfill

Dear Ms. Blake Boy:

On behalf of Waste Management Inc. of Florida (“Applicant” or “Waste Management”), thank you for sharing with us your September 20, 2022 letter with all of the various agency comments. Included in that package was a September 15, 2022 letter from the City of Coconut Creek and one from the City of Deerfield Beach reiterating their previous objections. We would like to respond to the comments raised by the City of Coconut Creek and the City of Deerfield Beach in much the same fashion we would to a staff report from the County. First, however, we believe it is important to provide a little of the history of the North Broward Waste to Energy Facility, and the landfill itself.

Background.

Waste Management is the owner of the former North Broward Waste to Energy facility previously identified as the Wheelabrator North Broward plant (“North Facility”). The North Facility was at one time part of the Broward Solid Waste System (“System”) and processed approximately 800,000 tons of municipal solid waste (“Household Waste”) per year from Broward and Miami

Dade counties. It is important to note that the North Facility was designed and constructed to process Household Waste and was never intended or designed to process construction and demolition material or bulk waste. In fact, the System specifically excluded additional waste streams such as bulk waste and construction and demolition debris. At the time, and to this day, Broward County and the municipalities independently choose their own disposal options for these materials.

On July 2, 2013, Broward County and the municipalities that formed the Solid Waste District elected to disband the System and allow the ILA agreement that was the basis of the System to expire. After that time many of the municipalities contracted with Wheelabrator for disposal at the South facility and many contracted with other vendors for disposal both within and outside of Broward County. It is important to note that none of the Household Waste that was at one time processed at the North Facility has been contracted to be disposed of at Monarch Hill.

After a significant volume of waste was contractually redirected away from the two Waste to Energy facilities, some to Waste Connections, and some to Sun Bergeron, there was no longer enough municipal solid waste available to operate two facilities and the North Facility ceased operations in July 2015. Since that time the former North Facility has been decommissioned, stripped of any marketable and usable equipment for use at the South facility and is scheduled for demolition in 2023.

Waste Management has submitted an application to change the land use designation on the 24.2-acre parcel from Electrical Generation to Commerce. Waste Management has been forthright in its intentions for this parcel from the very beginning, and that is to complete the build out of the Monarch Hill landfill to include this 24.2-acre parcel. At no time did Waste Management make any overt or implied commitments to cease landfill operations at Monarch Hill.

The Monarch Hill landfill is primarily utilized for the safe, efficient disposal of construction and demolition debris and bulky waste and not municipal solid waste a/k/a Household Waste. In fact, only approximately 10% of the material that is disposed of at Monarch Hill is municipal solid waste. In addition, of the construction and demolition waste that is disposed of at Monarch Hill, over 50% of this material is first processed at one of our recycling centers to recycle any metal, rock, cardboard, wood, *etc.* that can be removed from the waste stream. This serves to reuse as much material as possible, and secondly, to reduce the volume of material that is landfilled. Waste Management has been aggressively expanding our network of construction and demolition recycling centers and will open another South Florida site in late 2022 to further increase our capacity to recycle rather than landfill as much material as possible. The assertion that the proposed land use amendment is inconsistent with the County's comprehensive plan is inaccurate. Monarch Hill provides a much-needed regional resource and in fact processes a waste stream that is not suitable for a waste-to-energy project.

Monarch Hill landfill receives approximately 150,000 tons per month of material in total. Under a settlement agreement with the City of Coconut Creek in April 2015, Monarch Hill is limited to less than 175,000 tons per year of municipal solid waste, 5,000 tons of municipal waste water sludge and 20,000 tons of grit and screenings from the Broward County waste water treatment

plant. The amount of material that is disposed of at Monarch Hill that could be processed in a modern waste-to-energy facility is less than 10% of the total inbound volume. In return for providing the much-needed disposal of grit and waste water sludge, Broward County provides disposal of leachate that is collected from the landfill. If this mutual agreement did not exist Broward County would have to truck its grit and sludge a significant distance, potentially out of state, where it could be land applied thus generating additional greenhouse gas emissions and creating traffic congestion.

If Monarch Hill were to cease operation, there would be a significant increase in traffic, carbon footprint and greenhouse gas emissions. The next closest disposal location for the material currently going to Monarch Hill is 96 miles North in Okeechobee, FL. To put this into perspective, this will require 7,500 loaded tractor trailers driving North each month to make a 192-mile round trip. According to the EPA website, each gallon of diesel fuel burned for transportation creates 22.2 pounds of carbon dioxide a powerful greenhouse gas along with other trace gases. What the response from Coconut Creek fails to explain is that Waste Management does not create this waste material, it simply processes and disposes of it in the safest and most environmentally sound way available. If Monarch Hill should cease to operate the volume of material generated will not change, it will simply result in an estimated additional 3,500,000 gallons of diesel fuel burned each year generating over 39,000 tons of carbon dioxide gas released to the environment and creating 90,000 annual round trips of 196 miles in tractor trailers filled with waste material. Furthermore, the material that is disposed of at Monarch Hill that is not inert decomposes and generates methane gas. This gas is collected in a network of gas collection wells and piped to an on-site renewable energy facility where it is burned to create electricity that is then put into the local utility grid. Thus, the assertion that the continued operation of Monarch Hill will lead to more greenhouse gas emissions is inaccurate.

Waste Management has been accused of harming the environment but in fact the company's operations in Broward are saving the environment. Contrary to the misinformation that is being distributed, over 90% of this material is not suitable for a waste-to-energy project and will have to be disposed of in another landfill if not Monarch Hill. Waste Management is working diligently to reduce the volume of material landfilled and will continue to aggressively expand our recycling efforts in the future. This will not, however, eliminate the need for landfill space.

There have been a number of statements made regarding the potential impacts to soil, ground water, stormwater recharge, and other potential environmental hazards. Monarch Hill is a permitted Class 1 sanitary landfill and operated in accordance with all local, state, and federal regulations. Any future landfill development will be highly regulated and permitted according to the most stringent environmental standards. Any future construction will incorporate features to shed rain water and provide adequate retention and recharge features so as to not impact groundwater recharge rates. In fact, a component of the Monarch Hill landfill design requires that the stormwater control features be capable of retaining and managing a 3- day 100-year storm without discharging any water off site. The stormwater control system will provide adequate groundwater recharge of all stormwater collected via the perimeter ditches. Any impacts will be addressed during the future landfill design and permitting phase.

The Monarch Hill landfill has a network of 41 groundwater monitoring wells installed around the perimeter of the site. These wells are sampled semiannually by a third-party consultant and analyzed for pollutants. The groundwater monitoring results are submitted to local and state agencies as required. Contrary to the assertions made by Coconut Creek, Waste Management is not aware of any “notices of violation” or “agency identified violations” relating to groundwater contamination and there are no indications of off-site groundwater impacts caused by Monarch Hill. As highlighted by the City of Coconut Creek there has been a low concentration of benzene (< 8 ppb in the 2021 1st Semiannual WQMR) detected in two shallow groundwater monitoring wells located well within the landfill footprint. Waste Management will continue to monitor the well network and investigate any discrepancies. For information, the closest property boundary is approximately 400 feet from the wells that indicated trace levels of VOC’s.

Specifically responding to the Agency comments included within the September 20, 2022 Planning Council agency update, the Applicant acknowledges each of the Agency comments. Further, the Applicant agrees with the recommendations of those agencies and will include those recommendations in its designs and plans as part of the future rezoning, site planning and agency permitting that will follow this Land Use Plan Amendment.

Specifically responding to the City of Coconut Creek’s list of bullet points, we offer the following:

- I. The City asks for the application to be denied until the County’s Comprehensive Plan is updated.

The Applicant disagrees that the application should be denied solely while waiting for the County to update its Comprehensive Plan. Further, the City claims that the amendment is not consistent with the Comprehensive Plan by stating:

See LPA Staff Report, Section IV.B.5 at page 12 (emphasis added). The staff report went on to say that expansion of the Monarch Hill Landfill and the loss of Electrical Generation Facility use is not consistent with environmental and solid waste goals, objectives and policies of the Comprehensive Plan.

Response: The LPA Staff Report states that the “*proposed land use amendment to industrial future land use is compatible with adjacent uses and consistent with the land use policies of the Broward County Comprehensive Plan*”. The staff report does state that the “*the loss of Electrical Generation Facility is not consistent with the environmental and solid waste goals, policies and objectives*”.

The primary reason for the non-consistency with the goals, policies and objectives is the removal of the non-functioning electrical generating facility (waste-to-energy) plant, which was a private facility, and therefore is not applicable to the goals, policies and objectives as stated in the Comprehensive plan. Many of the goals, policies and objectives of the solid waste element apply to the County and not to a private business on private land.

II. The City asks for the application to be denied because it fails to comply with the Comprehensive Plan.

- A. Under Florida law, the application must be denied because it is inconsistent with the County's Comprehensive Plan.

Response: The Applicant contends that in no way is this application inconsistent with the County's Comprehensive Plan; rather, as stated in the background section above, it is entirely consistent. Landfill availability is a critical component of the County's waste management needs. Monarch Hill is the only operating Class I landfill in the County.

- B. Analysis of Public Facilities and Services (Section V of the application)

Response: As stated in the application, the Applicant's ultimate intended use of the property is to expand the landfill. The City has requested that the impacts of the expanded landfill be analyzed instead of the conservative development scenarios presented in the application. The City specifically identifies (A.) Potable Water because of the Impacts on Natural Groundwater Aquifer Recharge and (F.) Traffic Circulation Analysis as being of concern.

The site currently provides approximately 38% of the site in lake and pervious area. The minimum pervious area allowed within a typical commerce development would be 15%. If the landfill is continued to the west, in the same design as the existing landfill to the east, we would anticipate providing approximately 21% of the site in pervious area, an increase of 6% which is permitted under a typical commerce development. As stated in the staff report, even if the pervious area was decreased to 15%, *"the change in recharge capacity resulting from development under the proposed designation is expected to be minor"*.

As far as the traffic analysis is concerned, the additional landfill space would not increase the traffic currently existing on the roadways. The only effect would be the landfill-generated traffic continuing for a greater length of time, which is far less traffic than would be on the roadways if the waste-to-energy plant was operational.

- C. Analysis of Natural and Historical Resources (Section VI of the application)

Response: There are no wellfields close to the landfill. There has been no showing of any negative impact from operation of the landfill on the wellfields and the soils in the area.

- D. Land Use Compatibility (Section VIII of the application)

Applicant has, in every application and hearing, analyzed the impacts based upon the commerce designation and the future intended use as a part of the existing Monarch Hill landfill. Both the land uses (commerce designation) and the actual uses around the amendment site are heavy industrial or existing landfill uses.

E. Intergovernmental Coordination Analysis (Section XI of the application)

Applicant has used the definition required by County ordinances. However, despite that definition, Applicant has reached out to the Coconut Creek staff and made a full presentation to the Coconut Creek staff and its City Manager.

F. Consistency with Highlighted Regional Issues and Goals, Objectives and Policies of the County Land Use Plan (Section XIII of the application)

1. As addressed earlier in this response, the Applicant uses a state-of-the-art gas collection system, flare system and gas to energy plant. Further the landfill accepts only 10% or less of Household Waste a/k/a Municipal Solid Waste.
2. The North Facility is no longer operational, and there are no plans to make the plant operational again. The loss, as expressed by the City, has already taken place and has for several years. The current land use designation -- electrical generation facilities -- is a very limited land use designation and does not permit the property owner to utilize the site for anything other than an electrical generation facility. If the City desires for the development of *"a new facility that uses innovative technologies to recycle or process solid waste"*, then the City should be looking at avenues to develop such a facility.
3. We disagree with the City's statement that the policies noted in the application do not provide support for this land use change. The Applicant identified several policies that support the approval of the land use plan amendment and the expansion of the landfill. These policies ranged from making sure that essential public services and facilities are provided (Policy 2.1.1), ensuring sites for landfills are made available for future needs (Policy 3.4.2), establishing the character of developed areas as a primary concern for consideration of a land use change (Policy 2.10.1), and landfills should be planned to minimize impacts on adjacent uses (Policy 2.11.8). We believe that each of these policies supports the land use change which would result in expanding the landfill next to an existing landfill, as it would plan for the future needs as well as minimize impacts on adjacent existing or future land uses.

G. Land Use Element

1. Policy 2.11.9 does not prohibit the County from changing the land use from an electrical generation facility to something else, it only states that the County shall encourage appropriate locations.

2. Policy 3.4.2 supports the proposed land use change. The policy states that sites for landfills should be made available. If the County were to deny the proposed land use change, that action would be in direct conflict with this stated policy.
- H. Solid Waste Element (It should be noted that the Solid Waste Element of Broward County's Comprehensive Plan has not been updated since 2009 and is significantly flawed)
1. Policy 6.1.3 applies to actions by Broward County. The County entered into an ILA thirty-five years ago and that ILA has now expired. Subsection (b) applies to government owned landfills. Subsection (c) applies to County efforts to lobby state and federal legislators.
 2. Policy 6.3.3 applies to governmental entities, not a private property owner.
- I. Climate Change Element
1. We do not believe that Policy CC1.3 is applicable to this land use change. The policy states that Broward County and the municipalities are to promote and support the expansion of alternative and renewable energy by reducing regulatory encumbrances, developing incentive and supporting cooperative installations. The current waste-to-energy plant has been inoperable for several years. During that time, no support was provided by the County or the municipalities to support the waste-to-energy plant.
 2. Policy CC14 states a goal of a Broward County 20% renewable energy portfolio by 2030. The private waste-to-energy plant, even if operable, would not count towards that goal as this is a County goal for County facilities.
 3. Policy CC2.16 specifically addresses Broward County's goal to pursue the source reduction, reuse, recycling, and recovery model of waste management. The proposed land use change does not affect Broward County's ability to pursue this goal.
 4. Policy CC4.8 is not applicable as it is the creation and maintenance of a Broward County Infrastructure Map. This land use plan amendment does not affect Broward County's ability to create or maintain such map.
 5. Policy CC5.3 is also not applicable. The proposed land use change does not affect the County's goal to strengthen the local economy by promoting green economic growth.
 6. Policy CC5.4 is not applicable to this proposed land use change. Regardless of this land use change, the County can continue to develop plans and programs to reduce Green House Gas emissions and create "green" job opportunities.

III. The City claims the Applicant has misinformed, misled, and misrepresented in the past and continues to do so in this Application.

- A. In the current request, the Applicant has misinformed the public by failing to address the ultimate desired end-use.

Response: This statement is false. The Applicant has made presentations to the Deerfield Beach City Commission, the City Staff and the City Manager of the City of Coconut Creek, as well as numerous homeowners associations and interested parties. In each presentation, the Applicant has included in its presentation slides describing the landfill use and depicting both before and after views of the site.

- B. The Applicant has misled everyone year after year by stating they will not expand the landfill.

Response: Applicant rejects this statement again. In response to this allegation by Coconut Creek, the County Attorney's Office conducted a detailed factual review of this claim by the City of Coconut Creek. The County Attorney disagreed with the City's contention. What is binding between the City and the Applicant is the Settlement Agreement between the parties from April 2015. Applicant is bound by and will continue to honor the responsibilities and obligations contained in that Settlement Agreement.

- C. If the County approves the Applicant's proposed Future Land Use Amendment, the County will allow the Applicant to perpetuate the adverse impacts of the Applicant's misrepresentations to the public.

Response: This statement is false. The Applicant complies with all federal, state and local regulation regarding the construction, operation and maintenance of Monarch Hill landfill and will continue to do so.

IV. Conclusion. The City of Coconut Creek's allegations are without merit. In fact, the Land Use Plan Amendment is critical to the County's ability to meet its waste management needs.

DEERFIELD BEACH

Specifically, the Applicant responds to the City of Deerfield Beach's comments as follows:

1. Applicant made a full presentation to the Deerfield Beach City Commission two years ago, including specific discussion regarding Applicant's intended use of the property.

Applicant has responded to each inquiry and letter issued by the City. Applicant remains available to answer any questions or requests for information from the City. This should not, however, cause a delay in Applicant's hearing. The City has been well aware of the pendency of this Application for over two years.

2. Applicant has provided information detailing the additional landfill space created by this Land Use Plan Amendment, and estimated the additional life expectancy created by this Amendment as well as the existing life expectancy of Monarch Hill. In fact, that information has been included on a slide in each of Applicant's presentations.
3. The North Facility has been closed and essentially dismantled with all of the valuable equipment having been sold or moved to the Wheelabrator South location, for use as spare parts. The remaining building is obsolete and inoperable as a Waste-to-Energy plant. The change in how some cities dispose of their waste stream caused a reduction in demand for the two Wheelabrator plants. As a result, the North Facility was closed in that the South plant had sufficient capacity to handle the County's demand.

It should be noted that the remaining Waste-to-Energy South plant still has excess capacity. It is designed for 830,000 tons per year, and the current throughput of Broward waste is approximately 730,000 tons per year. In addition, the South plant could add another boiler, which would increase its capacity by an additional 275,000 tons per year. Overall, the remaining South plant could accommodate an additional 375,000 tons per year of Broward solid waste before the opening of a new Waste-to-Energy plant would even become necessary. As a result, the existing South plant can easily handle the increase in Broward County residents cited by the City.

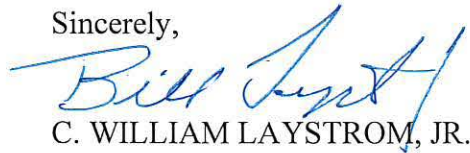
4. Although the Solid Waste Working Group has recently proposed an Interlocal Agreement for solid waste disposal and recycling materials, this should have no bearing on the Land Use Amendment Application. The North Facility has long been closed and is not a viable option to the ILA. This LUPA has already been pending for almost three years, and should not now be delayed for several more years for an obsolete, thirty-five year old plant that has been essentially dismantled.
5. A new traffic study is not necessary because the site currently operates as a landfill and there is no change in that use, and no increase in the intensity proposed.
6. The Applicant monitors impacts on surrounding areas carefully. Noise and odor are closely monitored and Waste Management continues to invest substantial funds in odor control. Water and air quality are monitored constantly in accordance with all federal and state regulations, as is groundwater quality. The Applicant is currently required to perform air and water quality studies and issue reports, and Monarch Hill landfill is in full compliance with all applicable federal and state laws, regulations and permit requirements relating to air and water quality. The Applicant has increased its

odor control measures and has made a substantial investment in same, and will continue to monitor any potential impacts on the surrounding area.

7. As indicated in response to #6 above, groundwater quality is monitored constantly in accordance with all federal and state regulations. The Applicant is required to perform water quality studies and to issue reports, and the landfill is in full compliance with all applicable federal and state laws, regulations and permit requirements relating to water quality.
8. The Applicant has stated all along that the ultimate intention was to remove the North Broward Waste-to-Energy plant and use the location for additional landfill capacity, as shown on the slides and charts that accompanied the application. The proposal is merely to fill in a gap in accordance with the other slopes, contours and height of the outside boundary of existing landfill.

Therefore, the Applicant urges the Broward County Planning Council to recommend approval of this Land Use Plan Amendment and move this amendment forward to the Broward County Commission.

Sincerely,

A handwritten signature in blue ink that reads "Bill Laystrom". The signature is stylized with a large, sweeping "L" and "S".

C. WILLIAM LAYSTROM, JR.
For the Firm

CWL/kdr

cc: