

Item # 79(2)

**ADDITIONAL MATERIAL
Regular Meeting
December 7, 2021**

SUBMITTED AT THE REQUEST OF

**OFFICE of the COUNTY
ATTORNEY**

Andrew J. Meyers
County Attorney



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MEMORANDUM

TO: Board of County Commissioners

FROM: Maite Azcoitia, Deputy County Attorney

DATE: October 11, 2021

RE: **Motion to Approve Transmittal to the Planning Council of Proposed County Land Use Plan Amendment 20-M1, Waste Management, Inc.; County Commission Meeting of August 24, 2021 (Item No. 95) CAO File: 99260-0001**

At its August 24, 2021, meeting, the Board of County Commissioners ("Board") considered a request from Waste Management, Inc. ("WMI"), to transmit to the Planning Council WMI's application to amend the land use designation of property within the Broward Municipal Services District from Electrical Generation Facility to Industrial. Speakers addressing Item No. 95 ("Item") alleged that the amendment would expand the footprint of the landfill on the property, contrary to assertions WMI had previously made, and would be inconsistent with previous WMI commitments regarding the processable waste that would be placed in the landfill. WMI denied making commitments inconsistent with the proposed amendment, and WMI and the City of Coconut Creek ("City") were asked to submit their positions and relevant documentation to our Office for analysis. The Item was deferred for 90 days to allow for this to occur.

This memorandum is based on information received from WMI and videos regarding the issue that are available on Commissioner Bogen's website. The City has advised that its position will be submitted to our Office prior to the Board's consideration of this Item in December 2021. This memorandum will be updated, if necessary, after receipt and review of the City's information.

Several speakers at the August 24, 2021, meeting, indicated that WMI had agreed not to seek an expansion of the landfill during City meetings in 2010 and 2011 and at a County Local Planning Agency ("LPA") public hearing in 2011. Based on the audiotapes of City Commission meetings in September 2010 and on December 14, 2011, and a County LPA public hearing of December 21, 2011, no representations were made regarding the expansion of the landfill. At a City Commission meeting in September 2010, where the City was considering a Settlement Agreement ("Initial Settlement Agreement") with WMI, a WMI representative stated that processable waste would not be placed in the landfill

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above 225 feet National Geodetic Vertical Datum ("NGVD") and that programs would be put in place to divert processable waste from the landfill. On December 14, 2011, when the City was considering a First Amendment to the Initial Settlement Agreement ("First Amendment"), and on December 21, 2011, at a County LPA public hearing related to WMI's applications for a rezoning and a height variance, the representative stated that "in a shortened timeframe," processable waste would cease to be placed in the landfill.

The expansion of the landfill was addressed in the Initial Settlement Agreement and First Amendment (collectively, "Settlement Agreements"). Specifically, WMI agreed not to expand the footprint of the landfill beyond Wiles Road to the north, Sample Road to the south, Powerline Road to the east, and Florida's Turnpike to the west. WMI also agreed to limit the vertical height of the landfill to 225 feet NGVD, with a 3 to 1 slope from the roadways indicated above, and to "commence a program to seek to divert all processable waste (waste that may be accepted and processed at the Wheelabrator North Plant and the Wheelabrator South Plant) that practicably can be removed from the existing landfill waste disposal process (or such other process as WMI may determine in its sole discretion), including those from outside Broward County, from the existing landfill to the Wheelabrator Plants." Section V.2. of the Initial Settlement Agreement incorporates all prior negotiations, correspondence, conversations, agreements, and understandings related to the boundaries of the landfill, and the parties agreed that no deviation from the terms of the Initial Settlement Agreement would be predicated upon any prior representations or agreements, whether oral or written.

A dispute thereafter arose between the City and WMI regarding the processable waste that was being disposed of at the landfill. On November 18, 2014, the City provided WMI with a presuit notice of violation of the Settlement Agreements, alleging that WMI had failed to divert all processable waste from the landfill from July 2, 2013, up until that date. The Board held a workshop on February 3, 2015, wherein the issue of the processable waste being deposited at the landfill was discussed. Expansion of the footprint of the landfill was not discussed in the portion of the video available on Commissioner Bogen's website and we have been unable to locate the video of the complete workshop online or through County agencies.

Following presuit mediation, on April 6, 2015, the City and WMI entered into a second Settlement Agreement ("Second Settlement Agreement"), wherein the parties agreed as to the types of waste that would be deposited in the landfill. This included a maximum of 175,000 tons per year of household waste and commercial solid waste commencing on January 1, 2017, and continuing for each subsequent calendar year thereafter during the operational life of the landfill. The Second Settlement Agreement does not address expansion of the footprint of the landfill or amend the terms of the Initial Settlement Agreement or the First Amendment related to expansion of the footprint of the landfill.

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Based on the foregoing, it is our opinion that the proposed Land Use Plan amendment would not result in expansion of the footprint of the landfill in a manner that would be inconsistent with either assertions previously made by WMI or the terms of the various Settlement Agreements. Additionally, the amount of processable waste being deposited in the landfill was addressed in the Second Settlement Agreement and no information has been presented as to WMI having exceeded the limitations contained therein.

Please contact the County Attorney or me with any questions or concerns or if we may be of further service on this matter.

MA/gmb

c: Bertha Henry, County Administrator
Bob Melton, County Auditor
Leonard L. Vialpando, Jr., Director, Environmental Protection and Growth
Management Department
Andrew J. Meyers, County Attorney