MEMORANDUM

DATE: August 19, 2013

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Baylands Dirt Stockpiling and Soil Recycling Operations- Status Report

The subject of the soil stockpiling and recycling operations on the Baylands has been a recurring issue before the City Council in recent months, with specific concerns pertaining to stockpile heights and dust. This memorandum provides a status report on site operations, including historical background information.

Regulatory History

A Use Permit (UP-4-77) was approved for the landfill portion of the site in June 1977 to allow for "reclamation and surcharge" of the closed landfill The stated intent of the activities was to "accelerate expected settlement and introduce new surface materials under engineering control and supervision to develop soil conditions capable of supporting light commercial and industrial projects." The conditions of approval required 'adequate dust control measures...as requested by the City Engineer." There were no conditions of approval related to the amount or height of material on site, nor was there any reference to stockpiles. This permit was approved on an interim basis and extended annually for several years.

UP-4-83 was subsequently approved in 1983 superseding permit UP-4-77. The activity was characterized as "continued reclamation of landfill property" and clearly specified "stockpiling incidental to reclamation" as a permitted activity. The use permit further included Site Earthwork Specifications prepared by the applicant to serve as the operational standards for the site activities. These specifications included a 25- foot stockpile limit for "loose material cleared from the site...for use as compacted structural fill." These specifications did not include a stockpile height limit for imported fill. Subsequently proceedings to revoke UP-4-83 were initiated by the City. The grounds for revocation were identified as dust generation, lack of compliance with operational conditions, and visual concerns, among others. Specifically, excessive stockpile height was alleged as a cause of dust generation, as excessive pile height precluded the application of water sufficient to prevent dust. While UP-4-83 was ultimately not revoked, an additional condition of approval was added specifying that "unprocessed

material may be stockpiled no higher than 25-feet above ground level. Processed material may be stockpiled no higher than 25-feet above ground level."

UP-8-97 was approved for the site in 1997 and was the first use permit to identify "the stockpiling of soil and sand for resale" as a permitted use while still recognizing the function of preparing the site for "long-range development." The condition pertaining to stockpile height states that "Materials may be stockpiled no higher than 25 feet above ground level." There was no evidence in the record that stockpile height was a major consideration in the evaluation of this permit. Rather the height limit was characterized as reflective of ongoing operations and based on dust control requirements.

UP-8-03 was approved in 2004. This permit retained the stockpile height language approved under UP-8-97. This use permit also added conditions related to the total quantities of stockpiled material and limitations on the amount of material imported/exported on a monthly basis. These conditions were added to validate the conclusion that ongoing facility operations would not create new environmental impacts, particularly related to truck trips. UP-8-03 had limited discussion of the site reclamation/surcharge aspect on ongoing site operations. The permit made reference to a grading permit application that had been filed with the City that would address site grading. No such grading permit application was ever processed.

Before UP-8-03 expired in 2007, the applicant made a timely application to extend the use another 5 years. In evaluating this extension application, City staff expressed concerns about the ongoing operations of the facility. Instead of processing the application on a "business as usual" basis the City requested extensive information from the applicant regarding the business operations and site management, proposed site changes, grading, and stockpiling anticipated to occur over the life of the permit. Extended discussions with the operator and property owner failed to produce the information needed to process the application. Ultimately the property owner terminated the agreement with the operator, and entered into an agreement with a new operator.

In support of the application, the new operator submitted a draft site operations plan in response to staff's informational request. This draft operations plan as submitted raised a number of additional questions including but not limited to soil testing and quality control procedures, stormwater management, and the regulatory authority over the site by other agencies including the RWQCB and County Health Department. Some of these issues are still being resolved, but staff anticipates that a revised operations plan will be submitted shortly, allowing for the application to be scheduled for Planning Commission review later this fall.

While the application extension has been in process, the applicant has been allowed to continue operations on an interim basis consistent with the terms of UP-8-03. Additionally the applicant has voluntarily taken a number of site management measures not required under the conditions of approval for UP-8-03. These included paying for the City to have a Compliance Audit performed by an independent environmental consultant to evaluate the facility's soils testing and intake procedures to ensure that the material brought on to the site for processing constitutes clean fill. As a result of the City's audit,

quality control procedures for soil acceptance, testing and on site management have been improved. Specifically, all material entering the site is pre-tested, (as opposed to historic practices where material was self certified by the generators and visually inspected before entering the site) and testing documentation is retained for review and inspection. Additionally at the direction of the Public Works Department two water trucks are stationed at the facility for dust control purposes. A number of stormwater management Best Management Practices (BMPs) have been implemented including but not limited to sediment basin improvements, hydroseeding of portions of the site for stabilization purposes, and siltation fences and check dams to reduce the amount of sediment leaving the site. The results of the City's audit, including recommendations for screening/testing protocols, ongoing monitoring, auditing and recordkeeping will be incorporated into the upcoming use permit extension conditions of approval.

Physical Site Changes Over Time

As requested by the City Council, staff has evaluated changes to site topography over time in order to verify either compliance or noncompliance with the 25-foot stockpile height limit.

Maps dated July 1977 showed spot elevations on the site ranging from 20-29 feet north of the channel and 14-18 south of the channel. By 1986 the base elevations north of the channel generally ranged from 22-30 but with some points reaching up to elevation 50 in spots. South of the channel elevations were predominantly in the 16-20 range, with piles up to elevation 35-40.

By 1992 the base elevation both south and north of the channel approximated 25 feet, reaching up to 50' north of the channel. By 2005 base elevations north and south of the channel were generally in the 30-40' range, with elevations exceeding 60. Maps from 2010 a show similar conditions north of the channel, but with larger level areas in the 55-60 range. Data from 2013 shows similar changes, where higher, flat areas are being created with stockpiles on top, exceeding elevation 70 in spots.

This information clearly demonstrates the extensive site alteration and increase in height that has occurred over time. City permit records indicate that more than 5 million cubic yards of material (net import) have been introduced to the site since 2002. Operations since 2011 have generated truck haul fees to the City exceeding $660,000. (In 2004 the City increased the Truck Haul fees by 300% as we knew at that time activity was going to increase significantly).

Discussion

While the information above could stimulate extensive discussions regarding the City's past decisions and practices in regulating this operation over the past nearly 40 years, that is not the purpose of the memo. Rather the purpose is to determine if operations violate the existing 25-foot stockpile height limit and provide guidance as to what issues the City Council wants to see addressed in regulating this site through pending and future permits.

It is clear that site grades over much of the site have been raised more than 25 feet since 1977. Notwithstanding this fact, staff cannot conclude that the 25-foot stockpile height limit has been violated. First of all, site elevations have been increasing over the entire time this site has been in operation. However, none of previous use permits establish maximum site elevations from initial grades, nor do these previous permits identify increased site elevation over time as a regulatory issue. Rather, the previous conditions focus on stockpile height. The approved historical condition specified a 25-foot height limit from *surrounding* grade. It does not reference 'existing' grade or provide a reference that can be tied to a fixed elevation benchmark. While it has been implied that that the stockpile height limit was intended to serve aesthetic purposes, as noted above the regulatory record reflects that the stockpile height limit was introduced as a specific condition to allow for sufficient dust control. This requires that stockpile height be measured from the adjacent ground surface in order for a water truck to reach the stockpile. Measuring stockpile height from an abstract or historical benchmark elevation would not accomplish this. The topographic maps of the site dated February 2013 indicate that the actual stockpiles of dirt comply with the 25-foot height limit from surrounding grade.

Since the existing 25-foot stockpile height limit is not a meaningful tool to address the current and future aesthetic implications of the facility's ongoing operations, staff concludes that **the upcoming permit extension provides the opportunity to better control site operations on an ongoing basis to limit aesthetic impacts.** Before developing definitive, measurable and enforceable standards, it would be appropriate to determine which aesthetic aspects of the operations are of greatest concern to the City. The visibility of the working stockpiles? The elevation of the benches or pads that have been created to date? Possible future changes to elevations? The extent of the site that is disturbed on an ongoing basis or might be active in the future? While all of these issues may generate aesthetic concerns, they require different conditions of approval and management solutions. While these aesthetic issues will be extensively addressed under the upcoming application, it would be appropriate for the City Council to offer any preliminary thoughts or concerns it has regarding this matter. Another ongoing issue of concern is dust control. While this represents a challenge due to the nature of the activity and number of variables which influence dust generation, staff is exploring a range of operational, management and regulatory strategies to be incorporated into the upcoming permit to provide for better dust control. As noted above the upcoming permit will also contain detailed protocols and procedures for ensuring the safety and quality of soils brought onto the site for processing.

The concern has also been raised that the grades that have been established through interim activities over the years on the former landfill create an elevation "baseline" for future development. This is not the case, as the City maintains approval authority over the final grading plan for the project. The material placed on the site to date is not engineered fill, and would need to tested, recompacted and regraded in any case to support final land uses and/or future construction. As a matter of information the applicant's proposed grading plan for the landfill portion of the site establishes base elevations in the 20-25-foot range north of the channel. Base elevations south of the

channel are generally in the 30-foot range, with high points up to 40. In both cases the final proposed grade is substantially lower than the existing conditions.

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