

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: HILLSBOROUGH COUNTY )  
RESOURCE RECOVERY FACILITY )  
EXPANSION POWER PLANT SITING ) Case No. 05-4347EPP  
APPLICATION NO. PA 83-19A )  
\_\_\_\_\_ )

LAND USE RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its Administrative Law Judge, J. Lawrence Johnston, held a land use hearing in the above-styled case on July 12, 2006, in Hillsborough County, Florida.

APPEARANCES

For Petitioner Hillsborough County (the "County"):

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For the Florida Department of Environmental Protection ("Department" or "DEP"):

Scott A. Goorland, Esquire  
Department of Environmental Protection  
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STATEMENT OF THE ISSUE

Pursuant to Section 403.508(2), Florida Statutes, the sole issue for determination in this hearing is whether the proposed site for the expansion of the Hillsborough County Resource

Recovery Facility "is consistent and in compliance with existing land use plans and zoning ordinances."

PRELIMINARY STATEMENT

Hillsborough County owns the Hillsborough County Resource Recovery Facility ("Facility"), an existing electrical power plant that burns municipal solid waste ("MSW") to generate electricity. The Facility currently consists of three municipal waste combustor ("MWC") units. On November 21, 2005, the County filed an application with DEP for certification to authorize the construction and operation of an additional MWC unit at the Facility (the "Project").

The County's application is subject to review under the Florida Electrical Power Plant Siting Act ("PPSA"), Sections 403.501-.518, Florida Statutes.<sup>1</sup>

The Department transmitted the County's application to the Division of Administrative Hearings (DOAH) for appropriate proceedings under the PPSA. In compliance with Section 403.508(1), Florida Statutes, see pp 10 and 11 e.g., the land use hearing (the "Land Use Hearing") in this case was scheduled for July 12, 2006.

On June 30, 2006, a "Prehearing Stipulation for Land Use and Certification Hearings" ("Prehearing Stipulation") was filed by the County, DEP, the Florida Department of Community Affairs

("DCA"), the Florida Department of Transportation, the Florida Public Service Commission ("PSC"), the Florida Fish and Wildlife Conservation Commission, the Southwest Florida Water Management District, and the Tampa Bay Regional Planning Council ("TBRPC"). In the Prehearing Stipulation, all of the signatories either agreed with, did not dispute, or took no position concerning the County's assertion that the site of the proposed Project is consistent and in compliance with existing land use plans and zoning ordinances.

At the Land Use Hearing, the County called two witnesses, Jason Gorrie (accepted as an expert concerning solid waste management systems and resource recovery facilities) and Paula Harvey (accepted as an expert concerning land use planning and zoning issues). The County introduced Exhibits 1 - 8 (A, B, C and D), 9, 10 (A and B), 11-50, and 52-60 into evidence, without objection.

By order dated July 6, 2006, the Administrative Law Judge granted the County's request to take official notice of various documents. These documents were included with the County's exhibits and were introduced into evidence at the Land Use Hearing.

No one contested the evidence presented by the County at the Land Use Hearing. None of the signatories to the Prehearing

Stipulation participated at the Land Use Hearing, except the County and DEP. No one from the public attended, testified or proffered any exhibits at the Land Use Hearing.

The Transcript of the Land Use Hearing was filed with DOAH on July 18, 2006, and the parties were allowed until July 21, 2006, to submit proposed recommended orders. The County and DEP timely filed a Joint Proposed Recommended Order on July 19, 2006. No other party filed a proposed recommended order.

Based on all of the evidence of record, the following findings of fact are determined:

FINDINGS OF FACT

The Applicant

1. The Applicant, Hillsborough County, is a political subdivision of the State of Florida. The County owns the existing Facility and will own the proposed Project. The Facility was designed, built, and is operated by a private company pursuant to a long-term contract with the County. It is anticipated that a private company will design, construct, and operate the Project for the County.

The Site

2. The Facility is located next to Falkenburg Road in an unincorporated area in the County. The Facility is southeast of

the City of Tampa, west of Interstate 75 ("I-75"), and north of the Crosstown Expressway and State Road 60.

3. The Facility was built on a 50.4-acre site ("Site"), which is in the southern portion of a 353-acre tract of land owned by the County.

#### The Surrounding Area

4. The Facility is surrounded by a variety of institutional and industrial land uses. The Facility is bounded: on the south by the County's Falkenburg Road Wastewater Treatment Plant and a railroad track that is owned by the CSX railroad company; on the west by a 230 kilovolt transmission line corridor and easement owned by Tampa Electric Company; on the north by vacant improved pasture land, the Falkenburg Road Jail, the Hillsborough County Department of Animal Services, and the Hillsborough County Sheriff's Office (District 2); and on the east by Falkenburg Road and vacant land.

5. The nearest residential area is approximately one mile away from the Facility. It is located on the opposite (east) side of I-75.

#### The Existing Facility

6. The Facility currently consists of three MWC units, which have been in commercial operation since 1987. Each MWC

unit has a nominal capacity of 400 tons per day ("tpd") of municipal solid waste (440 tpd when burning a reference fuel with a higher heating value of 4500 British thermal units ("Btu") per pound). The three MWC units are located inside a fully enclosed building, which also contains the air pollution control systems for the MWC units, the "tipping floor" (i.e., refuse unloading area), the refuse storage pit, and a turbine generator. In addition, the Facility includes an ash management building, cooling tower, stack, stormwater management system, water treatment system, transformer yard, electrical transmission lines, and ancillary equipment and facilities.

7. Municipal solid waste (e.g., household and commercial garbage) is delivered to the Site in trucks, which drive inside the refuse storage building to the tipping floor, where the trucks dump the MSW into the refuse storage pit. Two overhead cranes mix the waste in the refuse storage pit and then load the waste into the charging hoppers that feed the three MWC units. The combustion of the municipal solid waste produces heat, which is used to produce steam. The steam is used in a turbine generator to produce approximately 29.5 megawatts ("MW") of electricity.

#### The Project

8. The Project involves the construction and operation of

a fourth MWC unit at the Facility. The new unit will be substantially the same as the three existing MWC units, but larger. The new unit will have the capacity to process 600 tpd (nominal) of municipal solid waste (660 tpd @ 5000 Btu/lb). A new turbine generator will be installed, which will increase the Facility's net electrical generating capacity approximately 18 MW to a total of approximately 47 MW. The cooling tower will be expanded, the refuse and ash management buildings will be expanded, two lime silos and a carbon silo will be installed, a new settling basin will be installed, and other related improvements will be made.

9. The construction and operation of the Project will occur in disturbed upland areas that are adjacent to the Facility and already used for industrial operations. Only about 0.3 acres of open space will be used for a building or similar purpose.

10. The Facility will process more solid waste and generate more electricity after the expansion Project is completed, but the basic operation of the Facility will not change.

#### Historical Land Use Designations

11. In 1984, the County revised its land use plans and zoning designations for the Site to authorize the construction

and operation of the Facility. As revised, the comprehensive plan and zoning authorized the immediate construction of three MWC units and the subsequent expansion of the Facility with a fourth MWC unit, when needed. The County's plans for the Facility were reviewed under the PPSA and in 1984 the Siting Board concluded that the Site was consistent and in compliance with the existing land use plans and zoning ordinances. At all times since 1984, the County has ensured that the zoning and comprehensive plan designations for the Site are consistent with the County's long-term plan to construct the Project.

Current Land Use Designations and Zoning Ordinances

12. The Site currently is designated Public/Quasi-Public ("P-QP") under the County's comprehensive land use plan.

Typical land uses allowed in Public/Quasi-Public areas include:

major existing and programmed government-owned facilities, and other public uses. This category also accommodates quasi-public uses such as private establishments generally available to the public for use; for example, churches, hospitals, schools, clubs, major (regional, district or community) recreation services and related uses, tourist attractions, and utility and transportation facilities.

The Project is consistent with this land use category because the Facility is a major government-owned facility and the Project is part of a long-standing plan (i.e., the Project is "programmed") to expand the Facility, when needed.



13. The Site currently is zoned Planned Development ("PD") by Hillsborough County. Under the County's zoning code, all uses are potentially allowed in a PD district; however, the specific uses must be approved by the Board of County Commissioners. In 1984, the Board of County Commissioners specifically approved the use of the Site for the construction and operation of the Facility, including the fourth MWC unit. In 2005 the Board of County Commissioners decided to install Unit No. 4, consistent with the County's longstanding plan, and specifically authorized the Project to go forward. Accordingly, the Project is consistent and in compliance with the County's PD zoning designation.

Consistency With Land Use Plans and Zoning Ordinances

14. In the Prehearing Stipulation, the Florida Department of Community Affairs, DEP, the Florida Department of Transportation, the Florida Fish and Wildlife Conservation Commission and the Southwest Florida Water Management District either agreed with or did not dispute the County's assertion that the Site is consistent and in compliance with existing land use plans and zoning ordinances. The Florida Public Service Commission and the TBRPC took no position concerning the County's assertion that the Site is consistent and in compliance with existing land use plans and zoning ordinances.

15. The expert testimony and other evidence presented in the Land Use Hearing demonstrate that the Site and Project are consistent and in compliance with Hillsborough County's Comprehensive Plan and zoning ordinances. The Project also is compatible with adjacent and surrounding land uses. There is no evidence to suggest the Project is inconsistent with any applicable local, regional, or state plan.

Public Notice of the Land Use Hearing

16. On December 19, 2005, the County published a "Notice of Filing of Application for Electrical Power Plant Site Certification" in the Tampa Tribune, which is a newspaper of general circulation published in Hillsborough County, Florida.

17. On May 25, 2006, the County published notice of the Land Use Hearing in the Tampa Tribune.

18. On December 23 and December 30, 2005, the Department electronically published "Notice of Filing of Application for Power Plant Certification."

19. On May 26, 2006, the Department electronically published notice of the Land Use Hearing.

20. The public notices for the Land Use Hearing satisfy the informational and other requirements set forth in Section 403.5115, Florida Statutes, and Florida Administrative Code Rules 62-17.280 and 62-17.281(4).

### CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding pursuant to Sections 120.569, 120.57(1) and 403.508, Florida Statutes.

22. The County and DEP published timely public notice of the Land Use Hearing, in compliance with the requirements contained in the PPSA and Florida Administrative Code Rule Chapter 62-17.

23. Pursuant to Section 403.508(2), Florida Statutes, the sole issue for determination in this proceeding is whether the proposed Site of the County's Project is consistent and in compliance with existing land use plans and zoning ordinances.

24. The competent, substantial, and un rebutted evidence presented by the County at the Land Use Hearing demonstrates that the Site and the Project are consistent and in compliance with the applicable provisions of the existing land use plans and zoning ordinances.

### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Governor and Cabinet, sitting as the Siting Board, enter a Final Land Use Order in this case finding that the Site and the proposed expansion of Hillsborough

County's resource recovery facility are consistent and in compliance with the existing land use plans and zoning ordinances.

DONE AND ENTERED this 2nd day of August, 2006, in Tallahassee, Leon County, Florida.



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J. LAWRENCE JOHNSTON  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 2nd day of August, 2006.

ENDNOTE

<sup>1/</sup> All of the citations herein refer to the 2005 Florida Statutes. The PPSA was amended during the 2006 Session of the Florida Legislature, but the 2006 amendments do not apply to the County's application. The 2006 PPSA amendments provide that any application filed under the PPSA "shall be processed under the provisions of the law applicable at the time the application was filed," subject to certain exceptions that are not relevant in this case. See Ch. 2006-230, Laws of Fla. (Fla. SB 888, § 42). Since the County's PPSA application was filed in 2005, the 2005 version of the PPSA governs this case.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.