

**RESOLUTION #38-13
TOWN BOARD OF THE TOWN OF SENECA
DATED JUNE 18, 2013**

**SEQRA FINDINGS STATEMENT
PROPOSED EXPANSION OF THE ONTARIO COUNTY LANDFILL**

Ontario County (“County”) is proposing the expansion (“Expansion”) of the Ontario County Landfill (“Landfill”) in several respects (“Project”). Pursuant to the State Environmental Quality Review Act (“SEQRA”), set forth at Article 8 of the Environmental Conservation Law, and the SEQRA regulations set forth at 6 N.Y.C.R.R. Part 617, the Town of Seneca (“Town”), as an Involved Agency, makes the following findings regarding the Project:

Project Location

The Project is located on Routes 5 & 20, Town of Seneca, Ontario County, New York.

Project Description

The Project proposes to expand the currently permitted footprint of the Landfill, which is referred to as “Phase III.” Stage VIII of the Project proposes to expand the footprint of Phase III to the west and north by adding approximately 16 acres of additional landfill area. Stage IX of the Project consists of approximately 27.5 acres to the east of the existing Phase III Landfill by converting the current area that is mined for soil cover, known as the soil borrow area, into additional landfill space. The Project proposes to increase the height of Phase III by approximately 28 feet. Therefore, the height of proposed Stages VIII and IX would be higher than the Landfill as currently permitted. Further, the Project would include the acquisition of about 40 acres of land adjacent to the Landfill to the southeast and convert a portion of that property (~25 acres) into a new soil borrow area (“Borrow Area”) for use as soil cover in the new, expanded Landfill areas. The Borrow Area is located in an Agricultural District and is zoned AG pursuant to the Town of Seneca Zoning Law. To accomplish the Project, various operational changes would need to be made to the Landfill, including, among other things, infrastructure changes, the relocation of leachate storage, and the removal of existing capping on portions of Phase III to allow the proposed Stages to be tied in.

Lead Agency: Ontario County Board of Supervisors

SEQRA Classification: Type I Action

FINDINGS

As both Lead Agency and the Sponsor of the Project, Ontario County authorized the preparation of a Draft Environmental Impact Statement (“DEIS”) by Barton & Loguidice, P.C., dated December 2011, as required by SEQRA. Following receipt of public comments, a Final Environmental Impact Statement (“FEIS”) was issued in August 2012. The County issued a Responsiveness Summary, and then a positive Statement of Findings (“County Findings”) in May 2013. The Town has thoroughly reviewed and analyzed the information presented in the DEIS, FEIS and County Findings, and makes the following findings and conclusions regarding the Project:

I. Project Purpose and Need

The Landfill is operated by Casella Waste Services of Ontario LLC (“Casella”) under contract with the County. The Landfill exists on approximately 389 acres, which consists of two closed landfill areas (Phases I and II), one active area (Phase III), and support facilities.

The County Findings state the purpose of the Project is to ensure County residents have access to “long-term, environmentally sound disposal capacity within Ontario County.” Additionally, the Town’s Host Community Agreement results in cost saving benefits and a primary revenue stream to offset municipal expenditures.

The Project proposes the acquisition of 40 acres adjacent to Phase III of the Landfill to the southeast for use as the Borrow Area. The soil mined from this area would be used as cover for the Expansion. Recently, the Town, County and Casella (collectively “Parties”) concluded discussions regarding the Borrow Area. As a result of those discussions, the Parties have agreed the Borrow Area will be purchased by Casella. Casella will place a deed restriction or restrictive covenant preventing future waste disposal in the Borrow Area. Casella will then transfer ownership of the Borrow Area to the Town and join with the Town in an operations agreement for Casella to maintain operational control of the Borrow Area until the termination of the County/Casella, Operations, Management and Lease Agreement. Casella will also place conservation easements (“Conservation Easements”) in favor of the Town on twelve parcels of property (“Parcels”). As discussed below, based on these mitigation measures, the Town is exempting the borrowing operations from the Town Zoning Law. The Town may also amend the Town Zoning Law to clarify or modify provisions related to the borrowing operations. Ownership of the Borrow Area and other mitigating measures address the Town’s concerns regarding impacts of the borrowing operation. This plan also addresses the Town’s concern regarding the expansion of the Landfill onto additional parcels.

Previously, the Town had concerns regarding the cost justification for the Borrow Area, and had suggested that importing cover materials would be a less expensive option. However, these concerns were based upon a calculation error. Upon further review, it was determined that importation of cover materials from either an existing mine or a new

site was much more costly. In addition, these options would result in additional impacts due to transportation of these materials.

Casella has committed to executing the Conservation Easements for the benefit of the Town for twelve Parcels it owns in the vicinity of the Landfill in the Town. These Parcels would be restricted to agricultural and residential uses, and/or similar purposes consistent with agricultural and/or residential uses and commercial and industrial uses will be prohibited. The tax identification numbers of these parcels are as follows:

1. 102.00-1-52.00
2. 117.00-1-5.00
3. 102.00-1-53.100
4. 117.00-1-28.000
5. 102.00-1-59.110
6. 102.00-1-27.000
7. 102.00-1-42.121
8. 102.00-1-51.100
9. 102.00-1-53.320
10. 117.00-1-32.110
11. 114.00-1-35.000
12. 101.20-1-4.000

The Conservation Easements will ensure that the Parcels retain their current rural character and are preserved from future development.

II. Solid Waste Management

Environmental Conservation Law (“ECL”) §27-0106 sets the priorities for solid waste management (the “Solid Waste Hierarchy”), with landfilling being the lowest priority. This was confirmed by the latest revision of the State Solid Waste Plan prepared by the New York State Department of Environmental Conservation (“NYSDEC”), *Beyond Waste: A Sustainable Materials Management Strategy for New York State* (2010) (“State Solid Waste Plan”), which states that “landfilling should be the management method of last resort, given the state policy goals expressed in the solid waste management hierarchy.” *Id.* at 171.

As the County moves toward fulfilling the requirements of the Solid Waste Hierarchy, it must protect the health and safety of its residents by providing for proper waste disposal. The Expansion will ensure that the County has adequate landfill capacity well into the future. The Town supports County efforts to reduce reliance on landfilling, including education on reduction, recycling and reuse, and by expanding opportunities for recycling. As discussed below, alternatives to the Project were fully considered by the County, including waste-to-energy technologies, and they were not determined to be feasible or desirable.

III. Zoning

The Project proposes the acquisition of 40 acres of property adjacent to the Landfill to the south. Approximately 25 acres of this additional property will be mined for soil cover for the expanded Landfill area. The proposed use of the Borrow Area is not permitted by the Town Zoning Law. The County has suggested that the Project would be exempt from Town zoning requirements. Findings, p.10; FEIS, p. III-124. The Town retains authority to determine whether projects are exempt from its zoning requirements.

As discussed above, Town is expecting to be granted ownership of the Borrow Area subject to a deed restriction that will prevent it from being used for additional landfill space in the future. Additionally, a mined land use plan including a reclamation plan will be prepared and submitted to NYSDEC with the required permit applications. DEIS, p.23; FEIS, p. III-193. The Town will work with the County and Casella to ensure that the mined land will be restored to an appropriate use.

Further, the Parcels will become subject to Conservation Easements. This action will preserve the rural character of the area and the visual benefits of open space, both important aspects of Comprehensive Plan, as discussed in more detail below.

Under *Matter of County of Monroe v. City of Rochester*, 72 N.Y.2d 338, 533 N.Y.S.2d 702 (1988), the Town has considered the following factors to determine that the revised formulation of the proposed Expansion, with these mitigating measures:

1. The nature and scope of the instrumentality seeking immunity.

The Town is seeking immunity due to its status as the local government with zoning jurisdiction, and which enacted and oversees enforcement of the Town Zoning Law.

2. The kind of function or land use involved.

The proposed land use for the Borrow Area will be a mine for soil to be used as daily cover for the new Expansion area of the Landfill. The soil cover is essential for continued operation of the Landfill by the County, which is an existing public facility. The Town has hosted the Landfill for many years.

3. The extent of the public interest to be served thereby.

Disposal of solid waste in an environmentally responsible manner is an important service by the County government. Operation of the Borrow Area will be a necessary appurtenant function.

Furthermore, the revenue that would be derived by both the Town and the County from the Landfill is critical to meet budgetary requirements and minimize taxes. Exemption of the Borrow Area from zoning is aligned with the cooperative

partnership described in the Host Community Agreement between the Town and Casella.

The Town believes it is in the public interest to remain engaged in Landfill operations. By owning the Borrow Area, and maintaining authority to determine the applicability of its Zoning Law, the Town retains a measure of control to participate in future Landfill endeavors.

4. The effect local land use regulation would have upon the enterprise concerned.

Town Zoning Law §§13.0(E) and 70.0 allow the Town Zoning Board of Appeals to issue special permits for “Excavation Operations.” An “Excavation Site” is defined as an operation to “extracting stone, sand, gravel or topsoil for sale as an industrial or commercial operation.” Town Zoning Law §5.0. Because the excavated material would not be sold as an industrial or commercial operation, a special permit is not available, and an exemption or variance from the Town Zoning Law is necessary.

5. The impact upon legitimate local interests.

The Borrow Area is located in the Town of Seneca’s AG District. The Town Zoning Law indicates that the AG District is intended to “preserve existing agricultural lands,” and “protect the rural character of the area that reinforces the special quality of life enjoyed by residents in Seneca.”

By providing Conservation Easements in favor of the Town for the twelve Parcels, the Town will ensure that these Parcels would be restricted to agricultural and residential use. Commercial and industrial uses will be prohibited. This mitigating measure will further the goal of protecting the rural character of the area.

A deed restriction or restrictive covenant will be placed upon the title to the Borrow Area, prohibiting future waste disposal in the Borrow Area. Casella will also transfer ownership of the Borrow Area to the Town. This will preserve the rural nature of the Borrow Area after the Landfill is closed, and serve the local interest of limiting the Landfill operations to County-owned property.

The landowner has granted a waiver from the notice of intent procedures under Agriculture and Markets Law §305, so his interests have been protected.

Therefore, the proposed Borrow Area will be consistent with local interests.

6. The applicant's legislative grant of authority.

New York is a Home Rule state. Land use authority resides at the town level of

government. The Town is exercising its proper authority to determine the applicability of land use regulations to Town-owned land within its own boundaries.

7. Alternative locations for the facility in less restrictive zoning areas.

It is not feasible to relocate the Landfill or site a new landfill in the Town. It would be much more expensive to develop a new site than to develop an adjacent Borrow Area. Furthermore, an off-site option would result in additional impacts due to transportation of these materials. Similar zoning restrictions on Excavation Operations exist across the Town, so an alternative site would raise the same issues.

8. Alternative methods of providing the needed improvement.

Importation of cover materials from an existing mine is much more costly than developing the adjacent Borrow Area, and would result in additional environmental impacts due to transportation of these materials.

9. Intergovernmental participation in the project development process and an opportunity to be heard.

The Town has been intimately involved, as an involved agency, in the SEQRA review of the Project. It has offered many comments on the Project, and the Supervisor has had many discussions with County officials and Casella regarding the Project. Furthermore, the public has had and used opportunities to give comments (both written and at a public hearing) to the County on the Project, and has also utilized the opportunity to give input to the Town.

Given these factors, particularly due to the addition of mitigation measures to serve the public interest, including the restriction on future use of the Borrow Area, the reclamation plan, and deeding the Borrow Area and the Conservation Easements to the Town, the Town Board determines that the Project will be exempt from the Town Zoning Law.

IV. Comprehensive Plan

The Town of Seneca Comprehensive Plan states that “[a]griculture is an important component to the region as it contributes \$252 million to the Ontario County economy. Any loss of agricultural land for farming purposes can negatively affect the economic health of the County as a whole.” Toward that end, it is the goal of the Town to encourage the preservation of farmland in the Town. Policy 1.3, p. 6; Goal 9, p. 11; Action 9.1.3, p. 12. Thus, the loss of agricultural land for the Borrow Area is a significant environmental impact.

The Comprehensive Plan requires that the Town ensure that new development is compatible with the character of the Town. Policy 13.1, p. 15. To mitigate the environmental impacts associated with the loss of the Borrow Area, the Conservation Easements will protect and enhance agricultural and environmental assets and ensure that the present, rural character of the Town is preserved. Goals 9, p. 11 and Goal 13, p. 15. Further, the ownership of the Borrow Area and the retention of one authority to determine the applicability of the Town Zoning Law allows the Town to determine its own future and preserve the character of the Town. Goal 9, p. 11.

V. Neighborhood Character

As described above, the Landfill is adjacent to an Agricultural District. Further, the proposed Borrow Area is located in an Agricultural District, and zoned AG. The area surrounding the Project Site is rural in nature. The Town is committed to the preservation of the rural quality of the Town.

The Town does not desire that the Landfill expand beyond its current boundaries. The expansion of the Landfill into adjacent Agricultural Districts, including into the Borrow Area, would significantly alter the character of the surrounding area. To address this issue, the Town is expecting to take title to the Borrow Area subject to a deed restriction which will prevent its future use as landfill. Further, the Conservation Easements will help preserve the rural character and environmental integrity of the area surrounding the Landfill by preserving agricultural lands and farmsteads.

VI. Visual and Aesthetic Impacts

The Project proposes a 28-foot increase in the height of the existing area of Phase III, as well as the height of the additional proposed stages. Views in the area will be changed, as evidenced in Appendix F to the DEIS. *See also*, FEIS, p. III-88-89.

Visual and aesthetic impacts associated with the Landfill will be mitigated with earthen berms, fences and vegetative screens. A vegetative screen will be installed along the eastern edge of the Borrow Area. FEIS III-137; Responsiveness Summary, p. 13. The County has agreed to provide current and future vegetation as requested, and to maintain it. Responsiveness Summary, p. 19. Dead and dying screen berm components will be replaced along the north property line.

Also, blowing litter presents significant visual and aesthetic impacts. FEIS, p. III-117; III-63-65. Mitigation efforts to address this issue will include the use of management techniques for prevention, as well as permanent and portable fencing where necessary. DEIS, p. 42.

VII. Air Quality and Odors

The Expanded Landfill necessarily means that more waste will present the possibility of increased odor. The Landfill's operational history has demonstrated issues with effective management of odors.

In its response to comments on the increase in odors in the FEIS, the County states that excessive odors experienced during 2011 were caused by higher than average rainfall and unseasonably warm winter conditions. FEIS p. III-1. The County states that "under normal atmospheric and landfill operating conditions," these odors would be mitigated and the odors experienced in 2011 would not recur. The Town recognizes that operational changes were made after 2011 to address odors, and recently significant improvements have been observed. The FEIS and Responsiveness Summary commit to implementing an odor control plan which the Town anticipates will reduce odors experienced by nearby residents. Responsiveness Summary p. 14. Casella has demonstrated a willingness to work with residents near the Landfill and respond quickly to odor complaints.

The Expansion will have the potential to emit quantities of volatile organic compounds and hazardous air pollutants. FEIS, Table J-3. Further, according to the FEIS (Table G-1), the Expansion will be releasing greenhouses gasses. The impacts associated with these emissions will mitigated to the maximum extent practicable, but they cannot be avoided altogether.

VIII. Irreversible and irretrievable commitment of resources

The Project will result in the irreversible and irretrievable commitments of resources. The primary resource that will be committed is land. A total of 43.5 acres of land will be used for additional landfill space. Once developed, this land will not be returned to its current state. The Borrow Area, which consists of about 40 acres, is currently agricultural land. 27 acres will not be returned to its current state and will never again be capable of agriculture production. To mitigate this impact, the Town will obtain title to the entire 40-acre Borrow Area, subject to a deed restriction which will prevent the use of the Borrow Area as a landfill in the future. In addition, a mined land reclamation plan will be submitted to the NYSDEC in connection with the necessary permit applications. The Parties will work to ensure that the Borrow Area is returned to an appropriate use when mining is complete. As additional mitigation, Conservation Easements will be granted in favor of the Town on the Parcels.

Other irreversible and irretrievable commitments of resources include the fossil fuel used for construction and operation of the Expansion and the trucks used for transportation of the waste, building materials used for infrastructure, and human effort and capital used to construct and maintain the Project.

IX. Alternatives

Using the current operating techniques, the Landfill will reach capacity in about 2015. The DEIS and FEIS identify and discuss alternatives to the Project, including no action,

exporting residents' waste, other disposal technologies, alternatives to the Borrow Area and alternate uses for the Landfill, among other things. The alternatives discussed are not economically viable for the residents, the County or the Town at this time. The Town finds that the County has evaluated a reasonable range of alternatives.

Alternative landfill sites were considered. However, it would not be economically feasible or desirable to create a second landfill site in the County in a timely manner, and this would subject another community to the negative environmental impacts from a landfill. Taking no action, or a slower schedule, would result in the Landfill closing in about 2015, or drastically reducing the currently permitted waste intake. These would both significantly affect the regional disposal capability and reduce the benefits from hosting the Landfill. Furthermore, the Town's more "combative" alternatives are not aligned with being a cooperative partner hosting the Landfill. As explained in the County Findings, alternative expansion scenarios or expansions were determined not to be as cost-effective, and the planned phased approach still leaves some flexibility.

Alternative waste disposal technologies were evaluated, including: gasification, combustion waste-to-energy, mixed municipal solid waste composting, plasma arc gasification, mechanical/biological treatment, anaerobic digestion, and ethanol production. These technologies were concluded to be relatively unproven and/or not economically viable alternatives at this time. The byproducts or end products of the majority of these alternative technologies would still require a landfill for disposal.

Alternatives to the Borrow Area are discussed above. While construction of a sewer interceptor to transport leachate from the Landfill to the Canandaigua Waste Water Treatment Plant had been suggested, this would be very expensive, would result in additional impacts, and met with significant public opposition.

X. Mitigation Measures

The County has proposed measures to mitigate impacts associated with the Expansion, including the Borrow Area. As discussed above, these include the replacement and improvement of screening measures to mitigate visual impacts, and the implementation of an odor control plan. With respect to the Borrow Area, the Town will take ownership subject to a deed restriction to ensure that this land is never used for waste disposal. Further, Conservation Easements will be recorded to compensate for the loss of agricultural land due to the Borrow Area.

CONCLUSION

The Town has considered the relevant environmental impacts, facts and conclusions disclosed in the FEIS and Responsiveness Summary, and weighed and balance relevant environmental impacts with social, economic and other considerations. Accordingly, the Town makes the following determinations:

- (1) The Town certifies that the requirements of the State Environmental Quality Review Act and its implementing regulations have been met.
- (2) The Town certifies that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable, including the mitigative measures described in the FEIS, the Ontario County Statement of Findings, Ontario County Board of Supervisor's Resolution 204-2013 and described above.