

STATE ENVIRONMENTAL QUALITY REVIEW ACT  
STATEMENT OF FINDINGS  
April 2013

Pursuant to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act – SEQRA), 6 NYCRR Part 617, the County of Ontario (the County) as lead agency makes the following findings:

**Name of Action**

Ontario County Landfill Expansion

**Description of Action**

The County of Ontario is proposing to expand its current landfill facility. The project includes an expansion of the existing operational Phase III landfill and associated support facilities, including the possible acquisition of abutting land in support of the borrow area operations. The proposed lined landfill footprint of the expansion project which will accommodate waste placement will be located within the 389 acres currently owned by Ontario County while the proposed soil borrow activities may use an additional land parcel situated south of the existing landfill property. An expansion of the existing Phase III landfill is proposed in accordance with the Operations Management Lease (OML) Agreement between Ontario County and site operator, Casella Waste Services of Ontario LLC (Casella). The Stage VIII (Wrap-around) expansion will include the construction of new cells totaling approximately 16.0 acres around the northern and western boundaries of the Phase III landfill. The Stage IX (Eastern) expansion will be located as named, adjacent to the eastern boundary of the Phase III landfill, covering approximately 27.5 acres including the area currently approved as a borrow area for soils. Additional site modifications include the relocation or modification of two stormwater ponds, construction of leachate storage lagoons, relocation of the Ontario County Landfill’s maintenance facility, relocation of utilities, and construction of new site access roads.

**Project Location**

Town of Seneca, Ontario County, New York

**Agency Jurisdiction**

Name and Address of Lead Agency: Ontario County Board of Supervisors  
20 Ontario Street  
Canandaigua, New York 14424

Other agencies: Various permits and approvals agencies will be required before construction of the proposed landfill expansion may begin, as listed below:

- New York State Department of Environmental Conservation permits include:
  - Permit to Construct and Permit to Operate a Solid Waste Management Facility (6 NYCRR Part 360),
  - An update to the State Pollution Discharge Elimination System (SPDES) Permit for Stormwater Discharges from Industrial Activities (GP-0-06-002) (for landfill facilities, GP-0-06-002 also includes procedures for the management of stormwater discharges from Construction Activities),
  - Article 24 Freshwater Wetlands Permit (for work within the 100-foot area adjacent to a NYSDEC jurisdictional wetland)
  - Section 401 Water Quality Certification, and a
  - Title V air permit for landfill gas emissions (6 NYCRR Parts 201/202, and 211; Subpart WWW of 40 CFR 60).
  
- Town of Seneca approvals may include:
  - Zoning approval/permits for the borrowing area operation and nearby located, storm water retention pond, and/or
  - Zoning acknowledgements for Project, including the Stages VIII and IX expansions and associated operational requirements.

**Contact Person**

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 20 Ontario Street  
 Canandaigua, New York 14424  
 585-396-4455

**SEQRA Status**

Type I Action

**SEQRA Public Scoping**

Public scoping was not completed for this project.

**Draft Environmental Impact Statement (DEIS) Acceptance Date**

December 22, 2011

**DEIS Public Hearing and Comment Period**

The public hearing for the DEIS was held on Thursday, January 26, 2012 at Ontario County Court House, 3rd Floor, Sessions Room, Canandaigua, New York. Written comments on the DEIS were accepted until February 21, 2012.

**Final Environmental Impact Statement (FEIS) Acceptance Date**

August 23, 2012

## **Facts and Conclusions in the Environmental Impact Statement Relied Upon to Support the Decision**

The Final FEIS (which incorporates the DEIS by reference) describes the proposed project, the environmental setting, relevant environmental impacts (short and long term), and alternatives to the proposed landfill expansion. Findings from the FEIS, summarized below, support the County's decision that the action is one that avoids and/or minimizes adverse impacts and effectively balances these considerations with other essential social and economic considerations.

### **I. Project Purpose and Need**

The purpose of the proposed landfill expansion is to continue to ensure local residents and businesses are provided a long-term, environmentally sound disposal capacity within Ontario County, and to guard against uncontrollable costs and liabilities normally associated with a long-term reliance on waste transportation and disposal. Continued revenue from hosting the landfill will serve to offset the operational and maintenance costs of the landfill that would otherwise be incurred by local residents through higher tipping fees. This revenue will also continue to reduce the required annual tax levy by nearly 10% per year and will assist in funding the local environmental programs offered by the County.

### **II. Public Information Provided and Opportunities for Public Input**

The DEIS for the proposed Ontario County landfill expansion was issued for public review and comment on December 22, 2011. Full sets of the DEIS were made available for public review at the Ontario County Planning office and at the Ontario County public libraries. The full electronic version of the DEIS, including all attachments, was also available for download online. (<http://www.bartonandloguidice.com/ontariocountydeis/OntarioCountyDEIS/tabid/1006/Default.aspx>) In addition, the main volume of the DEIS was forwarded to a number of potentially involved and/or interested agencies including the NYSDEC, the Towns of Geneva, Seneca, and Phelps, and the Cities of Geneva and Canandaigua for their review and comment. A Notice of Availability, detailing the issuance and accessibility of the DEIS, and the public hearing was published in the Environmental Notice Bulletin, the Daily Messenger and the Finger Lakes Times.

The DEIS Public Hearing was held at 6:30 P.M. on Thursday, January 26, 2012, at the Ontario County Court House, 3rd Floor, Sessions Room, Canandaigua, New York. This hearing location is approximately eleven (11) miles west of the Ontario County landfill site. Twenty-eight (28) persons presented oral comments on the DEIS at the Public Hearing. A stenographic transcript of the hearing is available for public review at the Ontario County Planning Office (20 Ontario Street, Canandaigua, New York) and was also included in the FEIS.

Additional written comments on the DEIS were accepted by the Ontario County Planning Office until the end of the day on February 21, 2012. In addition to comments from the general public, comments were also received from the NYSDEC, the Towns of Seneca and Geneva, the Cities of Geneva and Canandaigua, and one citizen group, the Finger Lakes Zero Waste Coalition. These submittals are available for public review at the Ontario County Planning office and are also presented in the FEIS as Appendix CC (separately bound). All substantive comments were responded to in the response to comments included in the FEIS. Where necessary, changes or additions to the DEIS were made in response to the comments received and were included by addendum in the FEIS.

The FEIS was approved on August 23, 2012. A notice of the acceptance and availability of the FEIS was published in the Environmental Notice Bulletin. This notice and copies of both volumes of the FEIS were placed online for public review. (<http://www.bartonandloguidice.com/ontariocountydeis/OntarioCountyFEIS/tabid/1128/Default.aspx>) Hard copies of both volumes of the FEIS were placed in the Ontario County Planning Office for public review. The NYSDEC received a hard copy of the FEIS for review. Written comments regarding the FEIS were accepted until October 4, 2012. Seven comments were submitted, five from individuals, one from a citizen's group, and one (consisting of two separate letters) from the Town of Seneca. After reviewing each comment, the County determined that these comments could be addressed by clarification through a responsiveness summary and that no additional analysis was required. A copy of all comments received and the corresponding responsiveness summary are included as Appendix A to this Findings Statement.

### III. Potential Environmental Impacts and Proposed Mitigation Measures

The FEIS, which incorporates the DEIS by reference, addresses in detail potential environmental impacts and proposed mitigation measures associated with the proposed landfill expansion project as a whole. Analysis of these potential impacts was not limited by geographic boundaries and was conducted for potential impacts across New York State. A summary of the potential environmental impacts is presented below, along with a review of various mitigation measures that are included as part of the proposed landfill expansion project.

#### **A. Topography and Subsurface Geologic Conditions**

The topography of the project area will be changed by re-grading, excavation and the deposition and covering of waste. These topographic changes will occur over the approximate 18-year estimated useful life of the proposed maximum build-out landfill expansion, since construction will occur in stages. Currently, the existing landfill is permitted to reach a height of 997 feet above mean sea level. The topography of the landfill expansion will eventually reach a maximum elevation of 1025 feet above mean sea level. The proposed maximum height of the landfill will be approximately 155 to 195 feet above existing ground surface surrounding the facility; this is less than other landfills in the region.

Potential impacts to subsurface geologic conditions will involve the disturbance of soils through the excavation, filling, and stockpiling activities conducted during construction and operation of the landfill as well as borrow activities. The subsurface geologic conditions at the proposed landfill expansion site are suitable for a sanitary landfill. The geologic units at the site are designated as glacial till, glacio-lacustrine silt and clay, and glacial outwash sand and gravel in the overburden unit and Devonian Shale and Siltstone, Carbonate Rocks, and Silurian Shale as the bedrock unit (from south to north, or youngest to oldest). Sufficient appropriate soil material does not exist on-site to construct, operate, and cap the proposed landfill expansion area. Some on-site borrowing will be necessary outside the landfill footprint; other soils will need to be obtained from offsite.

A minimum separation distance of 10 feet will be provided between the top of the bedrock and the bottom of the double composite liner system. The potential for instability of constructed slopes during construction of the landfill has also been analyzed for appropriate engineering design consideration. To prevent and/or minimize the potential for impacts related to these activities, a number of engineering design controls and mitigation measures such as proper soil management and stormwater management systems (as outlined in Section 3.1.2.3 of the DEIS) will be implemented. Employing these practices will mitigate any potential significant adverse environmental impacts to the maximum extent practicable.

## **B. Groundwater Resources and Drinking Water Concerns**

The landfill expansion has the potential to impact groundwater resources if leachate reaches groundwater and negatively impacts water quality. The Town of Seneca is currently serviced by a public water supply system. One resident in the immediate vicinity of the landfill obtains drinking water from a private well; two other residents use wells for non-potable purposes.

Ontario County's proposed landfill expansion will comply with important regulatory standards and construction design safeguards to ensure that nearby groundwater and drinking water supplies will not be impacted by the landfill. In addition to the engineering methods discussed below, the network of groundwater monitoring wells at the landfill site will be expanded to adequately monitor the landfill expansion area in addition to the existing landfill areas. These wells will be regularly sampled (quarterly) to provide another means to identify whether landfill operations have impacted groundwater.

### **B.1 Double Composite Liner System**

Municipal solid waste will be deposited on top of a double composite liner system at the proposed landfill expansion site. A similar liner system is already in place and functioning properly in the Stages IV through VII liners. The top portion of the liner system (i.e., the primary liner system as detailed in Section 2.4.2 of the DEIS) will be designed to

collect virtually all of the leachate (water which comes into contact with solid waste). Collected leachate will be piped to the two expanded double composite lined leachate storage lagoons and then hauled primarily to the Canandaigua Wastewater Treatment Plant for treatment. In the event that a backup leachate treatment facility is needed, smaller volumes of leachate will be hauled to the City of Geneva Wastewater Treatment Plant. Both facilities have the capacity to accept and properly treat leachate generated by the landfill expansion.

The bottom portion of the liner system (i.e., the secondary liner system as detailed in Section 2.4.2 of the DEIS) collects any leachate that passes through the primary liner system. The amount of leachate collected in the secondary system is monitored daily to measure the performance of the primary liner system. With the primary liner system functioning as designed, minimal amounts of leachate flow to the secondary collection system. In the event daily monitoring activities identify concerns regarding the primary liner system's performance, a series of steps would be initiated to investigate and to take appropriate corrective action as detailed in Section 2.6.5.2 of the DEIS. Based on 2009 data, 98.4% of all leachate generated at the County's existing landfill was collected by the primary liner system and the remaining 1.6% of leachate generated at the landfill was collected by the secondary liner system. It is anticipated that the expansion will similarly prevent groundwater contamination.

## B.2 Pore Water Collection and Drainage System

The pore water collection and drainage system would be constructed directly below the double composite liner system. The pore water collection and drainage system will consist of either a composite geonet on slopes greater than 25 percent or a 12-inch granular fill layer between two layers of nonwoven geotextiles on the remaining areas that will collect groundwater seeping inward toward the landfill. This groundwater will be pumped to the surface by side riser pump stations located along the perimeter road around the landfill. In the unlikely event that leachate migrates through both landfill liner systems, the groundwater suppression system would serve as another active collection system for the removal of leachate. Water quality within the pore water collection and drainage system will be monitored as an additional measure to proactively identify any liner system leakage. The pore water collection and drainage system, therefore, acts as a tertiary layer in addition to the leachate collection and detection systems for detection of any release from the landfill. In addition, the underlying glacial till foundation soils, which range in thickness (post-construction) from 10 to 100 feet, would function as a natural low permeability liner system to prevent further leachate migration.

Pumping of the pore water collection and drainage system during landfill operations will lower the water table, create an inward hydraulic gradient in the immediate vicinity of the landfill, and induce groundwater to flow towards the landfill area rather than away from the landfill. Groundwater recharge within the footprint area will also be eliminated as water is removed from storage by the pore water collection and drainage system, as the infiltration of precipitation through the waste is removed by the leachate collection system and as surface water runoff is directed to the detention basins. Although this lowering is unavoidable, most of the local area is already impacted by the existing pore water collection and drainage system for the active landfill. There would be minimal lowering of the groundwater table outside of the project area and there will be no noticeable affects to residential water supply wells.

With the extensive groundwater protection systems in place, as described above and included in Section 3.1.4.3 of the DEIS, any potential significant adverse environmental impacts will be mitigated to the maximum extent practicable.

### **C. Surface Waters and Stormwater Management**

The landfill expansion may have impacts on surface water and/or stormwater management during construction and operation. The entire proposed project area ultimately drains into Flint Creek (NYSDEC Water Index No. Ont.-66-12-52-40). Flint Creek and its tributaries are classified as Class C waters with C Standards according to the New York State Department of Environmental Conservation (6 NYCRR Part 898). Class C waters are not included in the definition of a protected stream according to 6 NYCRR Part 701 Classifications-Surface Waters and Groundwaters.

Construction and operation of the proposed landfill expansion would include a number of mitigative measures to prevent and/or minimize the potential for impacts to surface water resources. Additionally, stormwater will be properly managed in accordance with NYSDEC requirements. All stormwater that comes in to contact with waste will be collected as leachate by the landfill liner system. Other stormwater runoff from the landfill footprint area will be directed to on-site detention basins. The proposed maximum build-out expansion will require the construction of two (2) new stormwater basins and the modification of two (2) existing basins to offset the increased stormwater quantity from the additional cell construction. This system will allow sediment to settle out prior to discharge. Other measures to reduce the potential for siltation of surface waters include: the use of check dams, the use of silt fences as filters, the construction of riprap lined ditches to direct stormwater runoff and minimize erosion, and annual cleaning of stormwater ponds.

As described in the preceding section on groundwater resources, the double composite liner system, pore water collection and drainage system, and groundwater monitoring activities will prevent leachate from contaminating nearby creeks and wetland

areas. These mitigation measures are included in Section 3.1.3.3 of the DEIS, and will be imposed as conditions to the County's approval. Therefore, any potential significant adverse environmental impact will be mitigated to the maximum extent practicable.

#### **D. Air Quality**

Potential impacts to air quality could result from landfill gas, the operation of equipment, and fugitive dust. The decomposition of solid waste in the landfill will produce different gases including methane, carbon dioxide, and non-methane organic compounds. The landfill is subject to federal regulation (40 CFR 60 Subpart WWW) requiring the collection and control of landfill gas. The landfill's design includes an active gas collection and control system (GCCS) to collect the gas in accordance with these requirements to protect public health and the environment. The gas will then either be combusted in flares or beneficially used as an energy source at the landfill gas to energy facility. This will prevent the majority of the gases from migrating offsite.

An air quality review and a supplement to this review (included as Attachment G of the DEIS and FEIS, respectively), were completed by Barton & Loguidice, P.C. to assess the potential impacts of the expansion on air quality. An ambient air screening analysis was conducted as part of the review to confirm that applicable hazardous air pollutant (HAP) thresholds were not exceeded at the facility property boundary for the proposed project based on conservatively high landfill gas generation estimates. The system operation will be monitored in accordance with New Source Performance Standards (NSPS) requirements for surface emissions to ensure that the GCCS is sufficiently collecting landfill gas and methane. This monitoring provides opportunities for inspection and improvement of the GCCS if needed throughout operation. As an additional mitigation measure, Casella has offered to provide an annual stipend to the County so that the County may hire a qualified environmental professional to conduct an audit of the gas collection system performance at the landfill to ensure proper odor control. Based on the results of each annual audit, Casella will work with both the County and the auditor to remediate any performance issues that may be identified with the gas collection system.

Landfill gas will be also controlled by a separately owned, operated and permitted landfill gas to energy (LFGTE) facility. This facility will utilize the collected landfill gas to fuel engine/generator sets to generate electricity for sale on the open market. Although this facility is considered to be separate from the landfill for permitting purposes, the combined emissions were evaluated in the air quality review. The operation of the LFGTE facility will significantly reduce greenhouse gas emissions through the destruction of landfill gas methane and the generation of electricity which might otherwise be provided by fossil fuel electricity generators. The landfill will maintain onsite destruction devices to control available landfill gas the LFGTE facility cannot utilize, and during periods when the LFGTE is not operational. A detailed description of the proposed landfill gas collection and control system, the monitoring and maintenance schedule, and the gas combustion devices to be utilized was included in Section 3.1.5.3 of the DEIS.

Emissions from the construction equipment, the landfill's operation equipment, and waste hauling vehicles are not anticipated to have a significant impact on local air quality due to the emission controls installed on such equipment, as emissions are addressed by vehicle emission standards under the Federal Clean Air Act. In addition, waste hauling activities are not expected to increase from existing operations; therefore, average vehicle related emissions are not expected to increase with the addition of the proposed landfill expansion.

Fugitive dust caused by construction and operation will be mitigated through various methods. Limiting the working face and borrow area size, re-vegetation of exposed areas, watering down haul roads and maintaining speed limits for vehicles and traveling on site roads will minimize the amount of dust. This dust will be confined to the proposed development area and will be temporary in nature. These mitigation measures are described in Section 3.1.5.3 of the DEIS, and are hereby made conditions of the County's approval. Therefore, any potential significant adverse environmental impacts will be mitigated to the maximum extent practicable.

### **E. Ecological Resources**

Information regarding the ecological resources of the proposed landfill expansion site was gathered through site visits, aerial photography, review of prior studies, and correspondence with various agencies. These agencies included the NYSDEC Division of Fish, Wildlife & Marine Resources Natural Heritage Program, and the U.S. Fish and Wildlife Service. Based on these sources and field surveys conducted on-site, no endangered or threatened species or unique ecological resources have been identified within the proposed landfill expansion area. The closest Critical Environmental Areas (specific geographic areas that have an exceptional or unique character with respect to their ecological, social, cultural, and/or historic values or qualities) to the proposed expansion is located approximately 16 miles from the landfill and will not be impacted.

All of the cover types and vegetative species observed on the existing landfill site and within the proposed expansion area are not ecologically sensitive or important areas; care was taken to ensure protected species known to exist in Ontario County were not in fact present within or adjacent to the landfill property. Therefore, no adverse impacts to ecological resources are expected and no mitigation measures are required.

### **F. Wetland Resources**

No wetland resources are located within the proposed landfill expansion site. The proposed expansions have been designed to provide ample surface and groundwater discharge of appropriately managed and treated water to the existing wetlands. No net loss of hydrology will occur. Onsite proposed stormwater pollution prevention infrastructure will protect existing wetland resources. Incidental work such as stormwater swale construction, silt fence installation, and vegetation planting will be required within the 100-foot adjacent area to New York State regulated wetland ST-6, a Class 2 wetland, and, therefore, an ECL Article 24 permit application will be necessary. The existing

monitoring program for Wetland H (Part of ST-6) will continue until the construction of the proposed expansion is complete as described in detail in Section 3.1.7.3 of the DEIS. Any potential significant adverse environmental impacts will therefore be mitigated to the maximum extent practicable.

### **G. Local Land Use, Zoning, and Agricultural Resources**

Current land uses on the proposed expansion area are industrial. Local land cover includes predominantly agricultural fields with some forestland. Some adjacent properties have typical urban/rural land uses. Land uses within the vicinity of the landfill site are consistent with those land uses observed throughout Ontario County.

According to the Town of Seneca Comprehensive Plan, the area of the proposed landfill expansion is identified on the Future Land Use Plan as continuing to be used for public services (i.e., landfill). This area is currently zoned M-1, Industrial, which allows public facilities subject to site plan review. However, the County is entitled to rely on the exemption from zoning for the proposed expansion under the reasoning of *In re County of Monroe*, 72 N.Y.2d 338 (1988), as a balancing of public interests favors exemption from local zoning. State law firmly establishes that solid waste management in an effective and efficient manner is an important policy and goal of New York State. The Legislature has also authorized counties to purchase, operate and maintain solid waste management facilities, as well as to enter into agreements with third parties to operate the landfill, and *County of Monroe* would apply notwithstanding a private entity is involved because of the numerous public benefits associated with the landfill, including benefits derived from its operation by Casella.

Here, the land use involved is an expansion of an existing, long-established use. If the landfill expansion were subject to local zoning, local approvals would be necessary, and whether or not the approvals are issued, litigation could result. Any of these actions could cause a substantial delay in permitting and opening the expansion. The landfill will reach capacity in the near future, and a delay would create the risk that the landfill could not accept waste for an undetermined amount of time, even after the landfill undergoes the time and expense of environmental review and NYSDEC Part 360 permitting. Such a shut-down risks numerous entities and individuals having to find an alternative disposal location for their solid waste.

The Town has an interest in enforcement of its zoning provisions for the expansion, however, given that an existing landfill is being operated and the expansion would be consistent with that long-standing use, the landfill would continue to be subject to comprehensive regulation by NYSDEC, and that the Town receives benefits from the landfill, those interests should, on balance, not outweigh the important public purposes served in maintaining a solid waste management facility at this location.

The landfill expansion is currently located in the least restrictive zoning district in the Town of Seneca. The FEIS examined a number of alternatives to the proposed expansion, including an alternative location, and found that an alternative location is not

workable. Because of the existing landfill and significant prior studies and review, expanding the existing use is much more practical than creating a new landfill elsewhere. The FEIS also discusses the various opportunities for participation in development of the proposed landfill, where the Town of Seneca has had an opportunity to be heard and has participated in the SEQRA review process. Further opportunities will be provided during the NYSDEC permitting process. Therefore, in balancing the public interests, the County's interests outweigh those of the Town, and therefore the County should continue to be exempt from zoning for this landfill.

The current proposal also includes the possible acquisition of property adjacent to the existing landfill to be used as a soil borrow area. This property is expected to be owned by the Town, subject to approval by the County and the Town. The DEIS discusses the current agricultural use, and potential impacts to land use and agriculture resulting from the soil borrow area, finding that no significant adverse impacts result. See DEIS at Section 3.2.1. No waste disposal activities will occur on this parcel. The proposed soil borrow area is located in the Agricultural District which would permit the use of the property for soil borrow by special permit. While the use of the soil borrow area for excavation is consistent with local zoning, if necessary, Town zoning could be modified, or an exemption under *County of Monroe* may be relied upon for this use as well. The factors discussed above for the landfill expansion apply equally here, although a few additional facts further support an exemption from local zoning.

The soil borrow area serves the same critical public purposes as the landfill itself, particularly since it will promote efficient and prudent land use because of its adjacency to the existing landfill. There are fewer legitimate local interests in relation to the soil borrow area than for the existing landfill, as fewer impacts associated with landfills result from this use (i.e., odor, noise, vectors), and because of the mitigation proposed. There are no less restrictive zoning areas for this use, as a special permit would be required for all districts for this use. The FEIS similarly reviewed alternatives for the soil borrow area, which were ruled out. If a different location were selected for the soil borrow area, it would increase environmental impacts and cost to load and truck the soil from another location to the landfill. It is commonplace to site soil borrow areas adjacent to landfills as is proposed here.

The soil borrow area is expected to ultimately be owned by the Town, subject to approval by the County and the Town. The facts support an exemption from local regulation under *County of Monroe*. Like the County, the Town is authorized by statute to develop and operate solid waste management facilities, including related features such as the soil borrow area. A comprehensive environmental review of the soil borrow area was performed, and land use considerations have been a part of that review, with input from the Town, the County, and members of the public. Therefore, the soil borrow area would similarly be entitled to rely upon the zoning exemption under *County of Monroe*.

Finally, the DEIS at Section 3.2.1 analyzes potential impacts and the need for mitigation. The County is proposing as mitigation for the loss of agricultural land with respect to the proposed soil borrow area that the Town of Seneca own the soil borrow

area. Additionally, Casella has offered to establish a conservation easement consistent with ECL Article 49 Title 3 over twelve separate pieces of property owned by Casella which are located in the vicinity of the Landfill. These easements are intended to preserve the agricultural character of those properties. These easements are expected to be held by the Town. Any potential significant adverse environmental impacts to land use, zoning, and/or agriculture would therefore be mitigated to the maximum extent practicable.

## **H. Noise**

Operation of equipment associated with construction of the expansion and with waste disposal activities has the potential to generate noise impacts. To assess potential noise impacts from operation of the expansion, a noise analysis was completed by Barton & Loguidice and is included as Appendix BB and Attachment M of the FEIS. The results of noise impact analyses completed for this project indicate that increased noise levels from current landfill operations will be below applicable noise standards (6 dBA increase from current noise levels) at offsite receptor locations. Landfill operations, specifically the waste acceptance rate, are not expected to increase significantly with the addition of the proposed expansion. As such, it was assumed that future truck traffic levels and working face equipment operations would remain similar to existing conditions, and noise readings from current landfill working face operations provided a reasonable estimate of future noise levels.

The analysis included conservative assumptions of noise generation and propagation as it relates to potential offsite impacts. In general, the predominant change in sound levels generated from expansion operations and corresponding offsite impacts will be due to the closer proximity of landfill operations to certain nearby sensitive receptors after the proposed expansion. During typical operations, it is anticipated that there will be little to no change in current sound levels experienced at offsite locations.

The soil borrow area will employ a soil berm to act as a physical barrier between borrow activities and potential receptors, eliminating the "line of sight." This will result in significant noise attenuation, particularly over time as the borrowing activities occur further below the berm. The noise analysis also includes a number of noise abatement and mitigation measures that may be used as needed.

The analysis also included the cumulative impacts of the nearby LFGTE facility. The LFGTE facility does not contribute a significant amount of noise to offsite receptors when compared to operation of the landfill facility.

Noise levels generated during landfill construction will be temporary and limited to the duration of construction activities. Noise generated during landfill construction will be mitigated by ensuring that all equipment used has noise abatement mufflers in accordance with state regulations. Noise levels during landfill construction will be further reduced by preventing any unnecessary operation of equipment near property lines, ensuring proper maintenance of equipment, and limiting potential noisy

construction operations to normal daytime operating hours. Additional mitigation measures are described in Section 3.2.10.3 of the DEIS. With the inclusion of these mitigation measures as conditions to the County's approval, any potential significant adverse environmental impacts will be mitigated to the maximum extent practicable.

### **I. Visibility**

The final height of the proposed landfill expansion will be approximately 28 feet higher than the maximum permitted elevation of the current landfill. To assess potential visual impacts, a visual impact assessment was conducted by Barton & Loguidice, P.C. for the proposed landfill expansion project and was included as Attachment F of the DEIS. This analysis indicates that the visibility impact and view reaction to the proposed expansion will vary based on landscape and geographical setting, extent of screening and structural obstructions, viewer sensitivity, and distance of the respective viewer from the proposed project site. The project's overall impact on the visual character of the area is considered to be very low to moderate, depending on the distance of the viewer to the proposed landfill site. The greatest visual impacts of the proposed landfill expansion project are similar to the permitted landfill, and will be experienced by viewers located immediately adjacent to the landfill site along NYS Route 5 and 20. The visual impact assessment in the DEIS and its supplement in the FEIS thoroughly analyzes any potential significant adverse environmental impacts to these viewers.

Screening mechanisms such as earthen berms, fences or planted vegetation will be utilized to decrease visual impacts, when appropriate. As demonstrated in the visual simulation prepared, the natural colors of the landfill are expected to generally minimize contrast with the sky and background under most conditions. The landscape surrounding this project will retain its open space character and overall spatial organization, even at the time in which the landfill expansion has been fully constructed. Mitigation measures are discussed in the DEIS at Section 3.2.9.3, and further clarified in the FEIS. Those mitigation measures discussed in the DEIS and FEIS are imposed as conditions to the County's approval. Accordingly, any potential significant adverse environmental impact will be mitigated to the maximum extent practicable.

### **J. Odors**

The project may generate odor impacts as a result of waste disposal. Once wastes are received at the landfill, the following best management practices will be used to minimize odors and prevent them from emanating off-site. Waste loads having particularly strong odors will be covered immediately after being emptied from the delivery vehicles. On those days when atmospheric conditions are optimal for odor generation, wastes will be covered more frequently throughout the day, rather than just at the end of each day. The County's active landfill GCCS will help to reduce odors generated at the facility. The existing system will be expanded throughout the life of the landfill expansion in order to collect landfill gas from developed landfill areas. The GCCG will significantly reduce odors through the destruction of odor causing components of landfill gas.

Any odor impacts will also be managed by the Odor Management Plan that will be prepared and submitted to the Department for review during the Part 360 Solid Waste permitting for the proposed landfill expansion project. The Odor Management Plan will include the specific procedures for documenting complaints, conducting follow up, and documentation resolution of the complaint. Mitigative measures, which will also be included in the Odor Management Plan, were described in detail in Section 3.1.5.3 of the DEIS and included proper daily and intermediate cover placement, working face management procedures, and maintenance of the active gas collection and control system. The measures described in DEIS Section 3.1.5.3 are imposed as conditions of the County's approval. Additionally, as mentioned above, Casella has offered as an additional mitigation measure to provide an annual stipend to the County so that the County may hire a qualified environmental professional to conduct an audit of the gas collection system performance at the landfill to ensure proper odor control. Based on the results of each annual audit, Casella will work with both the County and the auditor to remediate any performance issues that may be identified with the gas collection system. Following these practices will result in mitigation of any potential significant adverse environmental impacts resulting from odor to the maximum extent practicable.

#### **K. Historic and Archeological Resources**

A preliminary review of the State Historic Preservation Office's (SHPO) website was conducted to determine if any sites listed on the State or National Historic Registers were located within or adjacent to the proposed expansion limits. This query reported no known historic sites within the referenced search area. The Ontario County Landfill is located within a mapped archaeologically sensitive area according to the SHPO website. Written correspondence from SHPO, included in Attachment D of the DEIS, confirmed that the wrap-around expansion will not impact historic or cultural resources in the area. The proposed eastern expansion and soil borrow area required an archaeological survey to verify the same, which determined no impact to historic or cultural resources. The archaeological investigation report, prepared by the Rochester Museum & Science Center, was included as Attachment E of the DEIS. No Impact determinations were received from SHPO for both areas. Accordingly, no impacts to historic and archaeological resources are expected and therefore no mitigative measures are required.

#### **L. Transportation Facilities and Traffic**

Vehicle trips generated by trucks traveling to and from the expansion, as well as employee traffic, may generate impacts to traffic. The landfill's truck traffic utilizes New York State and County routes to access the Ontario County landfill. The main haul route is NYS Route 5 & 20 to County Route 49 (Post Lane Road). Another entrance off Post Lane Road is used by recycling traffic and office and maintenance personnel use an entrance from NYS Route 5 & 20. To facilitate through traffic, the landfill operator Casella has provided the design and construction of new turn lanes on NYS Route 5 & 20 at the intersection of County Route 49. A queuing lane was also constructed to provide greater queuing distance for trucks entering the landfill access road. All these roads are adequate truck routes, which minimize environmental and traffic impacts.

Waste is currently transported to the landfill directly by private individuals or haulers, or they are transported from one of the County's transfer stations. The Ontario County Landfill's current tonnage is permitted at 2,999 tons per day. The landfill obtained a permit modification from the NYSDEC in 2007 to allow for the acceptance of up to 2,999 tons per day of waste at the landfill. As part of the environmental analysis undertaken for this 2007 permit modification, a traffic analysis was performed to determine the impact of the proposed tonnage increase at the intersection of County Road 49 and NYS Route 5 & 20. The traffic analysis determined that no significant impacts to the level of service would occur as part of the permit modification. The amount of waste being disposed of at the landfill would not increase as part of this proposed expansion project, which in turn would not increase potential truck traffic accessing the Ontario County Landfill beyond the levels previously analyzed as part of the 2007 permit modification. The current permitted hours and days of operation would also not change as part of this expansion project. Therefore, it is reasonable to rely on the previous traffic analysis to estimate traffic impacts associated with the current expansion.

Level of service is a qualitative measure describing operational conditions within a traffic stream, based on service measures such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, and convenience. Letters designate each level of service, from A to F, with a LOS A representing the best operating conditions and a LOS F the worst. Each level of service represents a range of operating conditions and the driver's perception of those conditions. The Ontario County Landfill maintained a LOS A for traffic entering the facility and a LOS C for traffic leaving the facility, even with the 2007 daily tonnage increase. LOS C is considered the limit of stable flow. Traffic flowing through the intersection of NYS Route 5 & 20 and County Route 49 was determined to not experience any significant adverse impacts. With the roadway improvements being provided by Casella and based on the traffic analysis, no significant adverse environmental impacts to traffic are expected, and therefore no mitigation is required.

### **M. Litter**

The landfill expansion has the potential to create impacts based on litter moving from the landfill during and after deposit. Litter control was described in detail in Section 2.6.5.5 of the DEIS and will include manually picking up windblown items and bringing them to the working face of the landfill. Permanent and/or portable fences will be used where necessary to prevent litter from blowing away from the working face of the landfill. The need for litter control will be reduced by selecting lower levels of the landfill for daily waste placement during extremely windy conditions, when practicable. Litter will also be controlled by requiring all waste loads delivered to the landfill to be completely covered. Following these practices is expected to mitigate any potential significant adverse environmental impacts to the maximum extent practicable.

## **N. Pest Control**

The landfill expansion may generate pests such as birds, insects and other vectors. Proper operation and maintenance of the landfill is the key to controlling pests. Measures which will be used to control pests were described in detail in Section 2.6.5.6 of the DEIS and include adequately compacting wastes, keeping the size of the landfill's working face to the smallest practicable area, covering the working face with a minimum of six inches of daily cover soil, and properly applying intermediate cover soil to inactive areas of the landfill. These mitigation measures are required as a part of the County's approval of the expansion. Any materials used as alternative daily cover (ADC) would be demonstrated to be as effective as cover soil in controlling vectors, as part of the NYSDEC's ADC approval procedures. Following these practices is expected to mitigate any potential significant adverse environmental impacts to the maximum extent practicable.

## **O. Fire Control**

The primary risk of fires at the site would arise from small amounts of smoking or smoldering waste which is mixed with other wastes shipped to the landfill. Practices to reduce this risk were described in detail in Section 2.6.5.7 of the DEIS and include properly training staff to inspect waste loads at the transfer stations prior to delivery to the landfill as well as at the landfill working face.

In the event that smoking or smoldering waste is delivered to the landfill, it would be pushed aside and covered with soil to extinguish any fires. The waste would not be placed in the landfill until it is cool. The responsible hauler would be notified to review and implement, as necessary, corrective procedures. Small fires will be handled by landfill personnel with on-site equipment. Small fires may also be fought with on-site fire extinguishers and, when appropriate, the water truck. A fire prevention and control plan will be maintained at the landfill as part of the Operations and Maintenance Manual. Fires in any of the structures or other fires requiring assistance would be immediately called into the Ontario County 911 system. Following these practices is expected to mitigate any potential significant adverse environmental impacts to the maximum extent practicable.

## **P. Property Values**

It is impossible to determine with certainty whether the operation of the current landfill has affected the value of any particular parcel of land. However, the statistics kept by the Ontario County Real Property Office indicate that there have not been any negative town-wide impacts on real property values in Seneca during the period of 2007 to 2011, when compared to other Towns in Ontario County. The average increase in real property values during that time period in Ontario County was 12 percent (%). Seneca, where the current landfill cells are located, saw an increase in value of 16 percent (%) during that period, exceeding the average. In comparison, nearby Hopewell saw an increase in value of only eight percent (%) during that same time period. Based on

historic data, it is not anticipated that the expansion of the landfill facility will greatly impact the property values for the Town of Seneca.

In order to mitigate potential reductions in surrounding property values, Casella implemented a Property Protection Plan, as detailed in Section 3.2.5.3 of the DEIS, to protect nearby property owners from declining property values as a result of the landfill. This plan applies to landowners within  $\frac{3}{4}$  mile of the landfill and ensures the owner receives fair market value for the property or reimbursement from Casella for the difference. Based on historical data, and through use of the Property Protection Plan, any potential significant adverse environmental impacts are not expected, and will be properly mitigated if they arise.

### **Q. Cumulative Impacts**

The landfill has the potential to generate cumulative impacts through either encouraging development of other projects due to nearby landfill capacity, or through operation of nearby facilities that use landfill gas. At this time, no community development or agricultural improvement developments are proposed in the vicinity of the landfill. Given the lack of other planned developments, cumulative impacts to the surrounding community within the project area will not occur.

Cumulative impacts of the proposed project and the operation of the nearby LFGTE facility, a separately owned, operated and permitted facility, were also included the air quality and noise impact assessments. The operation of the LFGTE facility will decrease the amount of landfill gas that would otherwise be flared at the landfill. In addition, the operation of the LFGTE facility will beneficially utilize the landfill gas, and generate electricity that will offset emissions generated from fossil fuel electricity generation. Cumulative noise impacts from the two (2) facilities are not expected to create a significant adverse impact based on the results of the noise impact analysis included as Appendix BB, Attachment M of the FEIS. Otherwise, positive impacts are expected.

### **R. Growth Inducing Impacts**

The proposed landfill expansion is not expected to directly induce population growth within the Town of Seneca or within Ontario County. However, the development of the proposed landfill expansion area will continue to ensure the availability of environmentally and economically sound long-term waste disposal capacity within Ontario County. The proposed expansion will thus help to extend the economic benefits derived from the Ontario County Landfill and provide additional short-term economic benefits associated with the future construction and operation activities.

### **S. Energy Use and Conservation**

The development of the proposed expansion of the existing Ontario County Landfill would not result in a change in the permitted waste acceptance rate.

Accordingly, with no change in the permitted tonnage limit there would not be any significant changes in daily activities permitted at the landfill; there would be no significant change in the maximum amount of fuel consumed by trucks delivering waste or soil to the landfill or the maximum amount of fuel consumed by operating equipment. Also, the development of the proposed landfill expansion will continue to provide a local waste disposal facility for Ontario County. When considering alternatives such as exporting wastes to another landfill out of the County, it is apparent that the proposed expansion would result in less fuel consumption. Further, delivery of landfill gas to the LFGTE will create efficiencies in energy use and conservation.

#### T. Thoroughness of Review and Compliance with SEQRA

During the public review process for the DEIS and the FEIS, comments were received challenging the sufficiency of impact assessment and proposed mitigation measures included in the EIS. The County analyzed these comments, as well as the DEIS and FEIS, and finds that the County has sufficiently, and independently, considered all relevant potential significant adverse environmental impacts during this SEQRA process. SEQRA requires that an agency exercise its own judgment in determining whether a particular circumstance adversely impacts the environment, however, this does not affect the jurisdiction of other agencies that have ultimate responsibility to determine whether permit applications comply with substantive areas of law outside SEQRA. There is no requirement that permitting issues be resolved prior to the County making its findings provided that the County has taken a “hard look” at potential significant adverse environmental impacts and mitigation measures. Here, the County has sufficiently considered each of the environmental concerns related to the proposed expansion, including those addressed by the particular permits, and may properly exercise its independent judgment on those issues, including, as it has done in this Findings Statement, imposing mitigation measures that must be satisfied as a condition of approval.

Further, the County may impose mitigation measures which are still under review, particularly where, as here, a more precise plan for mitigation would be impractical until design plans are more fully developed, given the specialized nature of landfill development and permitting. The County believes that it has imposed sufficient mitigation measures, in sufficient detail, to ensure that all potential significant adverse environmental impacts related to the expansion are minimized or avoided to the maximum extent practicable, and that it has exercised independent judgment in determining what is required in full compliance with SEQRA.

Moreover, the County’s SEQRA review includes sufficient detail for each of the impacts and proposed mitigation measures to fulfill the obligations of SEQRA, without the need for having individual permit applications. It would be impractical and imprudent for permit applications to be prepared for the entire expansion of the landfill being reviewed in the context of the FEIS when the ultimate expansion will be permitted cell by cell. Conversely, if the County were to limit SEQRA review to an individual cell and apply for a permit for that cell simultaneously, the County would face criticism for failing

to review the full build out of the landfill contemplated by the operating agreement. Therefore, the County finds that the EIS, and its review under SEQRA, is in full compliance with the mandates of SEQRA.

#### IV. Alternatives to Landfill Expansion

The EIS examined a number of alternatives as required by 6 NYCRR 617.9(b). These alternatives, and the County's conclusions regarding feasibility, are described in this section.

##### **A. Waste Exportation**

The waste exportation alternative would require that wastes generated within Ontario County be disposed of at a facility outside of the County. Waste would be received at the local transfer stations and be hauled by local transfer trucks to another disposal facility. Either the municipalities who run the transfer stations or the private transfer station operators would have to pay for the transportation and the tipping fees charged by the out-of-county disposal facility. The costs of exporting waste to out-of-county disposal sites are typically more expensive to Ontario County residents and businesses than disposal at the current in-county regional landfill, or the continued disposal at an expanded in-county regional landfill site. In addition, there is an element of inherent unreliability and unpredictability in a waste exportation arrangement. Tipping fees charged at landfills are subject to market fluctuations and the County, and County residents and businesses, would be subject to the variability of the market. Waste exportation costs will also be more sensitive to changes in diesel fuel prices which, in the recent history, have risen substantially. For these reasons, this alternative is not feasible.

##### **B. No Action**

The "no action" alternative and the waste exportation alternative are effectively the same, since taking "no action" will eventually result in waste exportation. If no action were taken, the existing Phase III landfill would reach capacity in the year 2015, depending on the actual waste densities and quantities received. At that time, no additional waste could be accepted at the Ontario County landfill site. Wastes generated within Ontario County would then need to be transported to an out-of-county landfill for disposal. As described above, the cost of exporting waste to an out-of-county disposal site is typically more expensive than disposal at the current in-county regional landfill. Therefore, the no-action alternative is not feasible.

##### **C. Alternate Landfill Sites**

A number of sites in Ontario County and three surrounding counties were previously analyzed for landfill development during the initial construction and operation of the Ontario County landfill. Developing additional possible alternate sites would necessitate a series of expensive and time intensive studies. Site suitability investigations, environmental assessments, impact analyses, geologic investigations and

engineering investigation would all be required to pursue the development of an alternative landfill site. A new landfill site could not be identified, evaluated, permitted, and built in time to meet Ontario County's need for a new disposal capacity, which is anticipated to be in the year 2015, depending on waste densities and waste quantities accepted. Therefore, using alternative landfill sites continues to be a non-workable alternative.

#### **D. Alternative Soil Borrow Site**

The design of the proposed soil borrow area is based on the quantity of soils required and the proximity of the area to the proposed landfill expansion. There are not sufficient soils on-site within the proposed expansion area for use in subgrade construction, perimeter berm and roadway construction, and operational soil placement. As proposed, on-site soils will be supplemented by a soil borrow area on a contiguous property to the south of the existing landfill property. Failure to proceed with the proposed soil borrow area contiguous to the landfill property would require the need to obtain the necessary soils from off-site sources. Although technically possible, costs would be higher, and transport to the landfill would result in increased environmental impacts associated with road maintenance, traffic impacts, air quality and noise. An alternative soil borrow site is accordingly not feasible.

#### **E. Alternative Expansion Scenarios**

Additional expansion placement options were inherently investigated (and found unworkable) as part of the preliminary design concept for this expansion. The analysis of alternatives factored in hydrogeologic conditions, drainage patterns, operational considerations, topography, cost, and minimization of wetland impacts. Detailed final design of the landfill expansion and ancillary support systems such as leachate storage, stormwater management, power distribution, and on-site access roads will occur with further permit reviews and the development of more detailed design information, though confirmatory investigations and calculations determined the proposed expansion design to be feasible.

#### **F. Alternative Scale or Magnitude**

The primary disadvantage of smaller footprint configurations is that they will ultimately not provide as much disposal capacity as a larger footprint, such as what is being proposed as part of the Ontario County landfill expansion project. This, in turn, means that the costs and environmental impacts associated with the development of a new landfill site, or with the long distance transportation of waste to an out-of-county disposal site, will occur sooner than they will if the currently proposed expansion occurs. The proposed footprint expansion area represents a balance between providing for long-term waste disposal for the County and developing cost effective waste disposal. Developing a larger expansion would require additional capital expenditures. Developing a significantly smaller footprint expansion would not justify the expense of

development, would provide less long-term waste disposal capacity and would generate less revenue.

Obviously, the demand for waste disposal will likely require further expansion over time, which makes pursuing a smaller footprint an impractical alternative. The phased approach that is proposed for the future permitting and construction of the proposed landfill expansion will not only provide further assurances that all environmental requirements will be met, but it will also mean that the amount of landfill disposal capacity built and made available at any point in time can be adjusted to match what the projected waste disposal needs are at that time.

### **G. Alternative Implementation Schedule**

The proposed implementation schedule for the current project allows for the continued low-cost in-county disposal of waste for Ontario County residents with the imminent expiration of the permitted landfill airspace. Another implementation schedule may not provide for additional landfill airspace as the current landfill reaches capacity, which would require waste exportation. The costs and other adverse impacts noted above for the waste exportation option would apply, even if on an interim basis. Therefore, this alternative is not feasible.

### **H. Alternative Site Use**

If the current landfill were put to an alternative use, it would require closing the landfill in accordance with NYSDEC requirements and alternative uses of the site would have to accommodate the mandatory 30-year post-closure monitoring as well as allow for the settlement of the landfill over time. With both active and closed landfill areas, site development is limited, as is development of the surrounding area, which acts as a buffer for monitoring operations. Portions could potentially be used for recreational activities, wildlife habitat enhancement, industrial co-location, or other economic development opportunities. However, the site is much more productively used as a landfill, therefore, this alternative is not feasible.

### **I. Alternative Waste Disposal Technologies**

A series of alternative waste disposal technologies are available for consideration by the County, and were evaluated in the DEIS. Some of these were considered by Ontario County in the development of the 2011 solid waste management plan. Technologies reviewed include: gasification, combustion waste-to-energy, mixed MSW 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. The byproducts or end products of the majority of these alternative technologies would still require a landfill for disposal. At some point in the future, some type of alternative waste disposal technology could potentially be used as a component of Ontario County's solid waste management plan,

and would help extend the useful life of the proposed landfill, but, in the short term, they are not practicable alternatives to landfilling.

Additionally, some comments were received during the SEQRA process requesting additional alternatives be evaluated beyond the alternatives described above, including evaluation of an alternative where a sewer interceptor would be constructed to transport leachate from the landfill to the Canandaigua Waste Water Treatment Plant, as well as for alternative sites for the soil borrow area. The County previously reviewed a similar proposal for a sewer interceptor to transport leachate, and found that, in addition to excessive cost, there was significant public opposition to the proposal. Therefore, the proposal was abandoned. On the basis of this prior review, the County reasonably determined that the suggested alternative is infeasible. The County also considered whether further review of alternative soil borrow sites was necessary. The County determined as part of its EIS review that the currently proposed site was the preferred alternative. Additionally, Casella has offered as mitigation to place conservation easements in favor of the Town over certain buffer properties to the landfill to preserve their agricultural character. Therefore any potential significant adverse environmental impact to agriculture will be mitigated to the maximum extent practicable. Additionally, a number of adverse environmental impacts and added transportation costs, would result from use of an off-site soil borrow area location. Accordingly, the County maintains the conclusion reached in the DEIS that specific site evaluation of proposed soil borrow areas are unnecessary, as this alternative is infeasible.

Overall, the DEIS and FEIS demonstrate that County has evaluated a reasonable range of alternatives that are within the County's objectives and capabilities in full compliance with SEQRA.

V. Relevant Environmental Impacts Weighed and Balanced with Social, Economic, and Other Considerations

**A. Public Need and Benefits**

As summarized in Section III of this Findings Statement, Casella's development of the proposed landfill expansion will be undertaken in an environmentally sound manner. The implementation and mitigation measures that are included as part of the proposed landfill expansion will minimize potential environmental impacts to the maximum extent practicable. The public need and benefits associated with development of the proposed landfill are substantial. These needs and benefits for the landfill expansion can be described by the following environmental and economic factors:

- *Economic Viability* – Expansion of the Ontario County landfill would ensure that economically secure long-term disposal capacity would be available to Ontario County.
- *Environmental Security* – Expansion of the Ontario County landfill would provide the County with the highest level of long-

term security because of the certainty and control over the design, construction, and operation of the expansion's environmental protection system.

- *Economic Security* – Prices in the solid waste disposal marketplace can fluctuate significantly. Expansion of the Ontario County landfill would continue to ensure that Ontario County has a local disposal facility that is cost-based rather than market driven. This would help to insulate local disposal prices from market influences such as industry consolidation, reduction in available disposal capacity outside of the County, and changes in laws governing the interstate transport of solid waste.
- *Local Economic Benefits* – Exporting waste from Ontario County would result in less money in the local economy. Tipping fees would be paid to disposal facilities located outside the County, because waste as well as money would be exported out of the County. Development of the landfill expansion would also involve economic spin-offs from the local expenditure of construction money and annual landfill operating money, substantial portions of which would stay in the local economy. By exporting waste, the County would not receive revenue from tipping fees and the local economy would not benefit from construction revenue. Waste exportation would result in the payment of fees to an out-of-county facility which is neither a local employer nor a local taxpayer.

Ontario County receives royalty payments from Casella through the OML. These payments include:

- \$2.0 million dollar annual payment to the County over the course of the 25 year lease;
- \$15.0 million initial payment to the County at the start of the lease period;
- Approximately \$0.8-1.0 million / yr in excess tonnage payments (49 percent tonnage increase) to the County; and
- Approximately \$18 million payment to the County upon receipt of the Stage VIII and IX Part 360 landfill expansion permits.

Ontario County residents receive additional benefits including:

- No charge for recycling to County residents;
- Lower in-county tip fees;
- Ontario County taxes are offset by funds received from the operation of the landfill, which lowers County resident's taxes; and
- Ontario County residents are able to participate in the annual Household Hazardous Waste collection organized by Casella.

Additional host fees are paid to the Town of Seneca pursuant to a separate Host Community Agreement. In addition to these fees, Town residents receive additional benefits including:

- Town royalty payments help to offset town property taxes. As a result the Town of Seneca residents currently have no town tax levy and typically enjoy a 30-40% County tax levy "buy down";
- Town of Seneca residents can bring their waste to the Town of Seneca transfer stations, which are operated by Casella, at no cost to residents; and
- Town of Seneca receives payments for fire protection and sewer and water development projects.

In addition, the OML provides an on-going funding mechanism for closure and post closure obligations, as well as obligates Casella to perform closure and post closure obligations and any necessary remediation related to the landfill, including the expansion. Pursuant to the OML, the County and its municipalities are not at risk of being held responsible (financially or otherwise) for these obligations.

- *Local Environmental Infrastructure* - Development of the proposed landfill expansion would provide a long-term economic, environmentally sound disposal facility that could be relied upon by local residents and businesses as an integral component of the County's environmental infrastructure. The expansion would help protect the region from market-driven price increases associated with exporting waste.

## VI. Rationale for the County's Decision

The County believes it is important to proceed with the next stage of the landfill expansion process (i.e., the submittal of permit application to the NYSDEC and other regulatory agencies with jurisdiction). For the reasons described in Section V of this Findings Statement, Ontario County residents will benefit from the long-term security resulting from the proposed landfill expansion.

Development of the proposed landfill expansion will continue to provide a local, environmentally sound disposal facility that is cost-based rather than market-driven. The County's primary directive is to provide a long-term economical and environmentally sound disposal service to local residents and businesses. Development of the proposed landfill expansion will achieve that objective and will also continue to support local job creation and economic development activities, in addition to providing economic benefits directly associated with construction and operation of the landfill facility.

## VII. Certification of Findings to Approve/Fund/Undertake

Having considered the relevant environmental impacts, facts and conclusions disclosed in the Draft and Final EIS, having provided a rationale for the County's decision in the preceding portions of this Findings Statement pursuant to the decision-making and findings requirements of 6 NYCRR 617, and having weighed and balanced any relevant environmental impacts with social, economic and other considerations, this Statement of Findings certifies that:

- The requirements of 6 NYCRR Part 617 have been met;
- Consistent with the social, economic, and other essential considerations from among the reasonable alternatives available, the action approved is one which minimizes or avoids adverse environmental effects and impacts to the maximum extent practicable; including the effects and impacts disclosed in the Environmental Impact Statement; and
- Consistent with social, economic, and other essential considerations, to the maximum extent practicable, adverse environmental effects and impacts revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable.

Ontario County Board of Supervisors

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**Name of Agency**

John Marren

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**Signature of Responsible Party**

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**Name of Responsible Party**

Chairman of the Board

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**Title of Responsible Party**

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**Date**

20 Ontario Street, Canandaigua, New York 14424

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**Address of Agency**

4812-8234-2418, v. 4

## RESPONSIVENESS SUMMARY

The County of Ontario County Board of Supervisors (the "County"), as lead agency, is currently engaging in a review pursuant to the State Environmental Quality Review Act ("SEQRA") of a proposed expansion of the longstanding, currently permitted landfill footprint at the Ontario County Landfill, located on Routes 5 & 20 in the Town of Seneca, NY. To date, the County reviewed and made available for public review and comment a Draft Environmental Impact Statement ("DEIS") for this project, dated December 2011. A public hearing on the DEIS was held on January 26, 2012, and the written comment period for the DEIS concluded on February 21, 2012. The County thereafter engaged in a review of the comments received, and approved the issuance of a Final Environmental Impact Statement ("FEIS") on August 23, 2012.

Although not required by SEQRA, the County thereafter offered a public comment period of more than forty (40) days to provide potentially involved and interested agencies as well as the public opportunity to review the FEIS in detail and submit further comments. During this comment period, five individuals, one citizen's group, and one municipality submitted written comments. The purpose of this Responsiveness Summary is to provide a further response to these comments to aid the lead agency in fully assessing all potential adverse environmental impacts, and, to the extent necessary, weighing and balancing these impacts with the social, economic and other essential considerations prior to issuing its decision on the proposed expansion.

In preparing this Responsiveness Summary, the comments were reviewed and organized into categories so that substantively similar comments could be addressed in an organized fashion. In this Responsiveness Summary, comments are presented, accompanied by the source of the comment (name of the commenter and location of the written statement), and followed immediately by the response to the comment in bold. The comments received are attached to this Responsiveness Summary.

### 1.0 Alternatives

- A. An Environmental Impact Statement ("EIS") must contain an evaluation of alternatives to the proposed action, ECL §8-0109(2)... The "range of alternatives must include the no-action alternative," and "may also include, as appropriate, alternative: (a) sites; (b) technology; (c) scale or magnitude; (d) design; (e) timing; (f) use; and (g) types of action." 6 N.Y.C.R.R. §617.9(b)(5)(v). While for private applicants, "[s]ite alternatives may be limited to parcels owned by, or under option to [the] private project sponsor," the private party, there is no similar exception for public applicants like the County. Therefore, the County was required to examine alternative sites for the additional Landfill capacity, as well as a smaller scale or magnitude, and (as discussed below) alternative waste technologies. While the EIS gave lip service to alternatives, it did not seriously examine them at a sufficient level of detail so they could be intelligently evaluated by the ultimate decision makers. Letter dated October 4, 2012 submitted by Knauf Shaw, LLP on behalf of the Town of Seneca, at pp. 1-2.

RESPONSE: The DEIS devotes a chapter to the evaluation of nine (9) separate alternatives that, based on the County's review, could conceivably achieve the objectives of the proposed project. See DEIS Chapter 7.0. Two of these alternatives, alternative sites and alternative technologies, discuss multiple alternatives within that category that have either previously been examined in detail by the County in prior reviews, or are included in the DEIS. Therefore, altogether, the DEIS discusses more than 20 alternatives. Additionally, the FEIS further reviews these and other proposed alternatives in response to comments received relating to alternatives. See *Id.* pp. III-47 to 48; 50 to 51, 128, and 192-193. The County notes that the commenter's suggested alternatives, including alternative sites, smaller scale or magnitude, and/or alternative waste technologies, were investigated in the EIS, and in detail sufficient for comparison.

It is beyond ambit that the County need not identify or discuss every conceivable alternative, and here, the DEIS and FEIS discuss a reasonable range of alternatives. The review of alternatives was at a level of detail sufficient to permit a comparative assessment of alternatives. For example, the County discusses the increasing costs and impracticalities associated with developing landfills at other locations, as well as the history of review of alternatives related to solid waste in Ontario County and the use of proposed alternate technologies based on past experience with similar facilities or methods in New York, the US, or abroad. The EIS demonstrates that other alternatives, including other sites, were considered and evaluated by the County in this SEQRA review or as part of prior analyses occurring during the many years the existing landfill has been reviewed, developed, and in operation. Therefore, the County has fully complied with SEQRA with respect to alternatives.

In addition, although this is a County owned facility, the facility is being operated by a private operator under a long-term agreement, which gives the private operator certain rights to landfill disposal capacity during the term of the agreement. As such, it is inappropriate to dismiss the rules applicable to private operators in the context of this alternatives analysis.

- B. The EIS should have also examined alternate sites for the proposed borrow area ("Borrow Area"), or alternative sources for the required materials, but failed to do so. Given the County's land holdings and condemnation powers, other sites are available that would not result in the loss of prime agricultural land, but none were proposed. Nor did the EIS review the alternative of construction of a sewer line to the Canandaigua sewer plant to manage leachate, which would minimize on-site lagoon storage and eliminate leachate trucking. Letter dated October 4, 2012 submitted by Knauf Shaw, LLP on behalf of the Town of Seneca, at pp. 1-2.

RESPONSE: The County's analysis in the EIS found that the potential impacts generated from transporting soil from another location to the landfill significantly outweighed any potential impact to agricultural land. For this reason, it was determined that further exploration of alternative sites is infeasible. In any event, mitigation to compensate for the loss of agricultural land has been proposed. It is also noted that other sites would likely include land that could be used for agriculture, as undeveloped and/or unforested parcels are preferable for excavation and borrow. Therefore, the County would face a similar potential impact for other sites with additional potential significant traffic, noise, odor, and air impacts from transporting the soil to the landfill site.

An alternative examining construction of a sewer line to the Canandaigua sewer plant to manage leachate was not evaluated here because a similar proposal to pipe leachate to the Geneva wastewater treatment plant was previously examined by the County, and ultimately abandoned. When that proposal was reviewed, SEQRA was commenced. However, due to significant comments disfavoring the proposal, as well as excessive cost, the proposal was abandoned, and no current, concrete proposal for leachate disposal via construction of a sewer line exists. Additionally, the County determined in its discretion as lead agency, as a result of a detailed EIS process and SEQRA review, including extensive public comment that the range of alternatives currently included within the EIS is reasonable. See also RESPONSE 1(A) above.

- C. The commenter cited to FEIS Comment B.3.1.2 in the FEIS and commented that it is also the intent of SEQR that the DEIS/FEIS examine alternatives that can avoid or mitigate potential adverse environmental impacts. Since the Town of Seneca has noted in its comments on the DEIS that the use of the proposed borrow area could have significant impact on the land use, zoning and agricultural use of this property, the FEIS should have contained a more detailed analysis of how the proposed use of the borrow area could be avoided or mitigated. No such analysis was provided and no additional mitigation was considered or proposed. Letter from CHA Associates on behalf of the Town of Seneca dated October 2, 2012 at pp. 4-5.

RESPONSE: The County acknowledges receipt of the comment. The use of BUD materials in and of itself avoids or minimizes any potential adverse impact, as less soil will be extracted to the extent BUD materials are available. The DEIS notes that the Town has an abundance of agricultural property and that, compared to the more than 23,384 acres of agricultural property contained within its borders, excavation of up to +/-25 acres of a 40 acre parcel (or approximately 0.001% of the Town's agricultural acreage) is not expected to create a significant adverse environmental impact to land use, zoning and agriculture. Nevertheless, subject to approval by the County and the Town, the County is proposing as mitigation for the loss of agricultural land with respect to the proposed soil borrow area that the Town of Seneca own the soil borrow area. Additionally, Casella has offered to establish a conservation easement

consistent with ECL Article 49 Title 3 over twelve separate pieces of property owned by Casella which are located in the vicinity of the Landfill. These easements are intended to preserve the agricultural character of those properties. These easements are expected to be held by the Town. As such, any potential significant adverse environmental impacts to land use, zoning, and/or agriculture would be mitigated to the maximum extent practicable. In addition, since the borrow area will be immediately adjacent to the landfill, the location of the borrow area is a significant mitigation measure in and of itself relative to traffic and the noise associated with traffic.

- D. The Commenter cites FEIS Comment B.3.1.3 and comments that, in their opinion, the response in the FEIS did not address the comment of the DEIS, and the analysis of these alternatives does not meet the standards set forth in the SEQR regulations. The statement in Section 7.5 of the DEIS that “all off-site soil borrow areas as an alternative based on increased costs and increased impacts associated with road maintenance, traffic impacts, air quality and noise” is not supported by any factual presentation regarding the “increased costs” and “increased impacts” and as such is simply an opinion or speculation. Section 617.9 (b)(5)(v) of the SEQR regulations requires an EIS to include a description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. Letter from CHA Associates on behalf of the Town of Seneca dated October 2, 2012 at p. 5.
- a. See the County’s response to 1(A) and 1(B), above.

## 2.0 Solid Waste Hierarchy

- A. ECL §27-0106 sets the following priorities for solid waste management (the “Solid Waste Hierarchy”):
- (a) first, to reduce the amount of solid waste generated;
  - (b) second, to reuse material for the purpose for which it was originally intended or to recycle material that cannot be reused;
  - (c) third, to recover, in an environmentally acceptable manner, energy from solid waste that cannot be economically and technically reused or recycled; and
  - (d) fourth, to dispose of solid waste that is not being reused, recycled or from which energy is not being recovered, by land burial or other methods approved by the department [of environmental conservation].

Under the State Solid Waste Hierarchy, landfilling is the least desired alternative. 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") available at [http://www.dec.ny.gov/docs/materials\\_minerals\\_pdf/frptbeyondwaste.pdf](http://www.dec.ny.gov/docs/materials_minerals_pdf/frptbeyondwaste.pdf), 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.

Since only about 8.81% of the waste landfilled originates in the County, FEIS §2.2.1, the Expansion is clearly not necessary to serve County residents. The assertion that it is, DEIS §1.5, is camouflage for the true intent to extend the stream of royalties the County will receive from its private Landfill operator, Casella Waste Services of Ontario, LLC ("Casella"). But even if County residents truly needed more capacity for waste disposal, not only is the EIS analysis of the preferred alternatives insufficient, but the County cannot make the necessary findings (see below) that the Expansion will avoid or mitigate environmental impacts. Rather, the Expansion will only make it easier to landfill waste, and result in less waste recycling, and less utilization of waste for energy production. Letter dated October 4, 2012 submitted by Knauf Shaw, LLP on behalf of the Town of Seneca, at p. 2.

RESPONSE: The comment is acknowledged. The proposed expansion will be consistent with the hierarchy as it will provide for continued use of the landfill as the primary disposal option for non-recyclable/recoverable waste, while other waste streams that can be recycled, reused, or otherwise sustainably managed, will be managed pursuant to other programs and facilities unrelated to this proposal. It is entirely speculative to assert that the landfill expansion will, de facto, result in less waste recycling and utilization of waste for energy production. Contrary to this assumption, County residents have a financial incentive to recycle, as they incur no tipping fees for recycling, unlike landfilling.

While the commenter's suggestion that the County's "true intent" is "to extend the stream of royalties it receives" is unsubstantiated and beyond the scope of SEQRA review, the County notes that tipping fees received by the County provide revenue for the County, thus reducing the tax burden on residents and providing a positive benefit to all County residents beyond the availability of nearby landfilling. In addition, as noted above, the County has committed to long-term private operations at the landfill, which is a pre-existing commitment that is not part of this action. As such, any waste disposal alternative that would put the County in breach of its contractual commitments is not a viable alternative.

- B. Given the "regional component to the flow of waste," not confined to a single county, this FEIS should address the environmental impact of the landfill expansion in better compliance with statewide DEC Solid Waste Management goals. Email from Ann van der Meulen and Marvin Bram dated September 28, 2012.

RESPONSE: See RESPONSE to comment 2(A), above.

### 3.0 Segmentation & Cumulative Impacts

- A. The SEQRA regulations recognize that “[a]ctions commonly consist of a set of activities or steps,” 6 N.Y.C.R.R. ‘617.3(g)(1), and provide that “[c]onsidering only a part of segment of an action is contrary to the intent of SEQR.” 6 N.Y.C.R.R. 617.3(g)(1). Thus, SEQRA generally prohibits “segmentation,” which is defined as “the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance.” 6 N.Y.C.R.R. ‘617.2(ag). Accordingly, “[e]nvironmental review of the entire project is required before ‘any significant authorization is granted for a specific proposal...This review must include later projects or phases that are contemplated at the time of the SEQRA review.

The FEIS acknowledges that a master plan will be developed for the Landfill. However, the substance of the master plan and the resulting environmental impacts are not discussed in the FEIS. The Town is concerned that the plan may be to convert the planned new Borrow Area to a future Landfill expansion at a later date, or to pile the Landfill higher than 1025 feet. Given the acknowledgement that there will be a master plan, it is likely that another expansion will be proposed as part of the plan. Therefore, it is imperative that the master plan be reviewed as part of the EIS. Like in *Penfield Panorama Area Community, Inc. v. Town of Penfield Planning Bd.*, 253 A.D.2d 342, 688 N.Y.S.2d 848 (4th Dep’t 1999), where the EIS deferred analysis of a plan to remediation soil contamination, the deferral of discussion of the master plan was an illegal segmentation that fails to meet the requirements of SEQRA. Letter dated October 4, 2012 submitted by Knauf Shaw, LLP on behalf of the Town of Seneca, at p. 3.

RESPONSE: The Master Plan referred to by the commenter was a proposal in the nature of preliminary planning. To date, the Master Plan has only been, at most, discussed in committee within the County Legislature. It has never formally been introduced to the Legislature, and no resolutions or other decisions have been made regarding the Master Plan. Therefore, there is no specific, concrete proposal rising to the level of an “action” under SEQRA. Accordingly, SEQRA review is premature, and is not necessary unless and until a specific project is actually formulated and formally proposed by the County.

- B. Likewise, the FEIS relies on the proposed new Ontario County Solid Waste Management Plan, which relies upon continued use of the Landfill. The SEQRA review of this plan also should not have been segmented from the SEQRA review of the Expansion. Letter dated October 4, 2012 submitted by Knauf Shaw, LLP on behalf of the Town of Seneca, at p. 3.

RESPONSE: The issuance and approval process for the Ontario Solid Waste Management Plan (“SWMP”) is, as previously stated in the FEIS, a distinctly separate process. To the extent that any segmentation exists, which the County disputes, such segmentation is reasonable under the circumstances. The County has considered, and

determined, that the projects are separate for a number of reasons. For example, there is no common reason for the expansion of the landfill and the review and development of the SWMP to be occurring at the same time. The landfill expansion is proposed because of anticipated exhaustion of permitted capacity, while the SWMP is being updated due to separate legal requirements relating to long-term waste management planning pursuant to the New York State Environmental Conservation Law. The geographic locations will generally not be in common; to the extent that the landfill is discussed, it will be one of several waste management options discussed, with other options occurring at various locations within the County, the State, and possibly outside of New York State.

The different segments similarly are not expected to be under common ownership: the proposed expansion, owned by the County, is managed by Casella, while other aspects of the SWMP will likely be owned and operated by other entities than the County.

The proposed expansion and the SWMP are not part of the same identifiable overall plan or phases of one project. The SWMP is intended to provide guidance over all waste management practices for the County in the future, while the proposed expansion is a development already provided for in the OML between the County and Casella.

The proposed expansion and the SWMP have functional independence. The proposed expansion is subject to its own SEQRA review (including the DEIS and FEIS), as well as to detailed and extensive permitting requirements, which, assuming all approvals are ultimately approved, still has utility as an operating landfill regardless of the approval of the SWMP. In fact, even if the County determined not to send waste to the landfill anymore, Casella has contractual rights under the OML to receive waste independently. Therefore, regardless of the ultimate contents of the SWMP, the landfill could go forward as proposed. Conversely, the SWMP has independent utility as it is anticipated to propose waste management alternatives regardless of whether the expansion is approved. The approval of the expansion, or of the SWMP, does not commit the County to approve any other action. The expansion relates only to increased capacity at the existing landfill site, while the SWMP includes alternatives for waste management such as recycling, conservation, education and other reuse.

Furthermore, none of the dangers of segmentation are present with respect to the proposed expansion and/or the SWMP. As stated, approval of the expansion will not be practically determinative of approval of the SWMP, or vice versa. The nature of the impacts reviewed in each, as well as the scope of the action contemplated within each, differ vastly. The danger that these two projects, when separated, could result in an "action" that falls below the threshold for review is not present here as both

actions are being comprehensively reviewed under SEQRA independently. The proposed expansion has been reviewed in a comprehensive EIS, subject to substantial public comment and review. The SWMP is being fully reviewed by NYSDEC and will similarly be subject to a thorough and detailed review under SEQRA and all other relevant laws. Therefore, to the extent that segmentation exists here, it is no less protective of the environment.

- C. Moreover, many details of the proposed Expansion are absent due to the fact that the County has not yet prepared its applications to NYSDEC for a solid waste management facility permit under 6 N.Y.C.R.R. Part 360 or for a Title V air permit. This also constitutes illegal segmentation, since it is improper to defer analysis of environmental impacts for later study ... Thus, in *Town of Red Hook v. Dutchess County Resource Recovery Agency*, 146 Misc.2d 723, 728, 552 N.Y.S.2d 191, 194 (Sup. Ct. Dutchess Co. 1999), the FEIS for a proposed county landfill was insufficient because it deferred certain environmental review until the later submission of a Part 360 permit application, since that would “effectively insulate” the additional data and analysis from the SEQRA process. Letter dated October 4, 2012 submitted by Knauf Shaw, LLP on behalf of the Town of Seneca, at p. 3.

RESPONSE: The cases cited by the Commenter are inapposite, as, in each case either a negative declaration was issued when an EIS was required, or no SEQRA review was completed at all with respect to significant potential adverse environmental impacts while the lead agency made findings that an EIS would be prepared for those issues at a later date. Here, no improper deferral has occurred. All potential significant adverse impacts have been identified and the County has reviewed them in the EIS. While further, more specific review may occur during the design and permitting phase pursuant to 6 NYCRR Part 360, such review is a distinct avenue of environmental review from SEQRA and the County has sufficiently, and independently, considered the environmental concerns addressed in the Part 360 permit and determined what significant environment impacts may result. Moreover, sufficient detail has been provided for each of the impacts and proposed mitigation measures to fulfill the obligations of SEQRA, without the need for having individual permit applications. It would be impractical and imprudent for permit applications to be prepared for the entire expansion of the landfill being reviewed in the context of the FEIS. Conversely, if the County were to limit SEQRA review to an individual cell and apply for a permit for that cell simultaneously, the County would face criticism for failing to review the full build out of the landfill contemplated by the operating agreement.

- D. The proposed landfill expansion should be coordinated with and reviewed in the context of this Master Plan. Letter dated October 4, 2012 submitted by Katie Bennett Roll at p. 3.

RESPONSE: See RESPONSE to Comment 3(A) above.

- E. "Considering only a part or segment of an action is contrary to the intent of SEQRA. If a lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance and any subsequent EIS the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible." (6 NYCRR 617.3 (k)(1)) Since neither the DEIS nor the FEIS has reviewed this project in conjunction with (a) the approved Local Solid Waste Management Plan or (b) the Landfill Master Plan, this project review has violated SEQRA regulations and has been segmented, which is impermissible under SEQR.(6 NYCRR 617.2(ag)).

...For the purpose of determining whether an action will cause a significant effect on the environment, the reviewing agency must consider reasonably related long-term, short-term and cumulative effects, including other simultaneous or subsequent actions which are included in any long-range plan of which the action under consideration is a part." (6 NYCRR 617.11 (b)(1)). The County has not complied with this section, as it has failed to review the long-term Master Plan and has not as yet received approval of its Local Solid Waste Management Plan (LSWMP). At this point in time, the County has no idea what modifications might be required in its LSWMP by the NYSDEC. It is obvious that the LSWMP cannot be reviewed if it has not yet been approved or determined complete by the DEC. In addition, it has come to our attention that there is a plan for a leachate evaporation system to be installed at the landfill. There is no mention of this action in either the DEIS or the FEIS. We would consider any future application for a permit modification to implement such an action to be a clear case of impermissible segmentation under SEQR. Letter submitted by Douglas C. Knipple on behalf of the Finger Lakes Zero Waste Coalition, Inc. dated October 4, 2012 at pp. 1-2.

RESPONSE: As the Master Plan is preliminary in nature, review of cumulative impacts would be, as previously stated, speculative. With respect to the SWMP, its purpose is to provide a broadly conceived policy for waste management, and to guide later development of waste management practices and facilities. To require a cumulative impact review of the SWMP as part of the EIS would undermine NYSDEC's review of proper waste management for the County, and, as it may relate, for other areas of New York State. See also RESPONSES to Comments 3(A), 3(B), above.

- F. The commenter recites the FEIS at Page II-12, Section 6 and comments that, for the purpose of determining whether an action will cause a significant effect on the environment, the reviewing agency must consider reasonably related long---term, short---term and cumulative effects, including other simultaneous or subsequent actions which are included in any long---range plan of which the action under consideration is a part. (6 NYCRR 617.11 (b)(1)). You have not complied with this section, as you have failed to review the long---term Master Plan and you have not received any narrative or approval of your Local Solid Waste Management Plan (LSWMP). At this point in time, the County has no idea what will be required by the NYSDEC in the LSWMP. You cannot review it if you do not have it approved or finished per the NYSDEC. In

addition, it has come to our attention that there is a plan for a leachate evaporation system to be installed at the landfill. There is no mention of this action in either the DEIS or the FEIS. Thus, in your brief and confusing narrative on cumulative impacts, you have admitted that the impacts cannot be evaluated. Thus, you cannot comply with the SEQRA regulations in this instance. Letter dated October 4, 2012 submitted by Katie Bennett Roll at pp. 3-4.

RESPONSE: The County is unaware of any plan to develop a leachate evaporation system for the landfill at this time. See RESPONSES to Comments 3(A), 3(B), and 3(E) above.

- G. The Commenter previously commented that, in the discussion of cumulative impacts in Section 6.1 it is noted that: "Due to the unique nature of the landfill expansion, it is anticipated the cumulative impacts would result from other development of commercial developments or agricultural improvements in the vicinity of the landfill. However, at this time, no other developments are proposed in the vicinity of the landfill. Given the lack of other planned developments, cumulative impacts to the surrounding community within the Project area will not occur." This is an inappropriate conclusion given the Master Plan for future Site Development that is currently underway and mentioned in Section 1.2.2 of the DEIS. The proposed landfill expansion should be coordinated with and reviewed in the context of this Master Plan.

The FEIS contained the following response: as discussed in section 1.2.2, while a conceptual Master Plan for future developments on and in the vicinity of the landfill property is in the preliminary stages, these developments would be considered to be independent of the proposed expansion project. Any developments ultimately recommended by the Master Plan would not be dependent on the construction of the proposed landfill expansion for their viability. In addition, any evaluations of cumulative impacts would be speculative and inappropriate given the preliminary nature of the Master Plan."

Based on this, the commenter stated: in one sentence, "cumulative impacts would result from other development...". Then, "...cumulative impacts to the surrounding community within the Project area will not occur." In the response, you have said, "...any evaluations of cumulative impacts would be speculative and inappropriate given the preliminary nature of the Master Plan." Thus, in this brief and confusing narrative on cumulative impacts, it is admitted that the impacts cannot be evaluated and it is therefore not possible to comply with the SEQRA regulations in this instance. Letter submitted by Douglas C. Knipple on behalf of the Finger Lakes Zero Waste Coalition, Inc. dated October 4, 2012 at pp. 1-2.

RESPONSE: In this case, cumulative impacts would be expected to result from commercial development or agricultural improvement in the vicinity of the landfill, however, at this time, no other developments are proposed in the vicinity of the landfill, therefore no cumulative impacts are expected. These statements reach the

same essential conclusion: no analysis of cumulative impacts is required for the EIS because there are no current projects under development that may generate them, and, any future projects that may be developed under the Master Plan are so remote from being developed that the impacts cannot be assessed. See *also* RESPONSE 3(E) above. As SEQRA requires analysis of cumulative impacts only if “applicable and significant,” the County is in full compliance with respect to the Master Plan and area development, as there are no applicable cumulative impacts at this time. See 6 NYCRR 617.9(b)(5)(iii)(a).

#### 4.0 Completeness of SEQRA Review

- A. An EIS must include “a description of the mitigation measures.” 6 N.Y.C.R.R. §617.9(b)(5)(iv). However, as set forth in the comments from CHA, the FEIS fails to fully assess measures necessary to mitigate impacts including severe odors, visual impacts, noise, landfill gas, and loss of agricultural lands. This is another example of improper deferral of the SEQRA analysis. Letter dated October 4, 2012 submitted by Knauf Shaw, LLP on behalf of the Town of Seneca, at p. 4.

RESPONSE: The County disagrees with the comment. As stated above, the County has sufficiently, and independently, considered all relevant potential significant adverse environmental impacts during this SEQRA process. SEQRA requires that an agency exercise its own judgment in determining whether a particular circumstance adversely impacts the environment; however, this does not affect the jurisdiction of other agencies that have ultimate responsibility to determine whether permit applications comply with substantive areas of law outside SEQRA. There is no requirement that permitting issues be resolved prior to the County making its findings provided that the County has taken a “hard look” at potential significant adverse environmental impacts and mitigation measures. Here, the County has sufficiently considered each of the environmental concerns related to the proposed expansion, including those addressed by the particular permits, and may properly exercise its independent judgment on those issues, including, as it has done here, imposing mitigation measures that must be satisfied as a condition of approval.

Further, the County may impose mitigation measures which are still under review, particularly where, as here, a more precise plan for mitigation would be impractical until design plans are more fully developed, given the specialized nature of landfill development and permitting. The County believes that it has imposed sufficient mitigation measures, in sufficient detail, to ensure that all potential significant adverse environmental impacts related to the expansion are minimized or avoided to the maximum extent practicable, and that it has exercised independent judgment in determining what is required in full compliance with SEQRA.

- B. The EIS is an “environmental ‘alarm bell’ whose purpose is to alert responsible public officials to environmental changes before they have reached ecological points of no return.” *Town of Henrietta v. DEC*, 76 A.D.2d 215, 220, 430 N.Y.S.2d 440, 448 (4th Dep’t 1980). Thus, the lead agency “must identify ‘the relevant areas of environmental concern,’ and take a ‘hard look’ at them.” *Merson v. McNally*, 90 N.Y.2d 742, 665 N.Y.S.2d 605, 609 (1997). Accordingly, the EIS must contain “a statement and evaluation of the potential significant adverse environmental impacts at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence.”

As set forth in the comments from CHA, the FEIS fails to remedy defects in the discussion of various impacts, including odors, dust and noise. In particular, as discussed in detail by CHA, the soil balance is nonsensical, and appears contrived in order to try to justify the Borrow Area. Letter dated October 4, 2012 submitted by Knauf Shaw, LLP on behalf of the Town of Seneca, at p. 4.

RESPONSE: The County disagrees with the comment. The DEIS and FEIS total thousands of pages and contain at least twelve (12) technical reports and analyses, as well as correspondence and consultation with state, federal and local agencies. Therefore, the level of detail provided amply reflects the severity of the impacts and the reasonable likelihood of their occurrence. As discussed below, the FEIS effectively provided clarifications of information already in the DEIS and/or involved topics that were fully discussed during public meetings. *See also* RESPONSE 9(A), below.

- C. The commenter referenced FEIS Comment B.3 and commented that they disagree with the conclusion that additional SEQR review is not expected to be necessary. In several of its responses to comments made on the DEIS, the applicant has noted that it will detail its mitigation measures as part of its Part 360 application. It remains to be seen whether the measures that are proposed will reasonably mitigate the impacts that have been identified. Other agencies, including the Town, also have or have asserted regulatory jurisdiction over the proposed action, and these agencies will be required to make SEQR Findings as part of their decision making. Letter from CHA Associates on behalf of the Town of Seneca dated October 2, 2012 at 3.

RESPONSE: The County has properly identified all potential significant adverse environmental impacts, taken a “hard look” at them, and proposed mitigation accordingly. *See also* Response 4(A) above. Any other agencies that make SEQRA Findings, while bound by this SEQRA review, similarly have an obligation to independently review the impacts in making their own findings.

- D. In its comment letter on the DEIS dated February 15, 2012 (Reference B.5.3 in the FEIS), CHA noted that if the soil borrow area is developed, the screening berms that will be built to mitigate

noise impacts should be appropriately vegetated with trees and shrubs to mitigate visual impacts.

The response presented in the FEIS noted that "The engineering drawings included in the Part 360 permit application documents will include a planting plan for the screening berm along the eastern edge of the proposed soil borrow area."

As noted previously, this is another one of several responses to comments made on the DEIS in which the applicant has noted that it will detail its mitigation measures as part of its Part 360 application. Letter from CHA Associates on behalf of the Town of Seneca dated October 2, 2012 at p. 7.

RESPONSE: The County's response included in B.5.3 of the FEIS at page III-137 agreed to include the requested vegetation on the berm and, therefore, imposes vegetation on the berm along the eastern edge of the proposed soil borrow area as mitigation. The specific design elements of this vegetation are properly developed during the design phase of the project. See *also* RESPONSE 4(A) above.

- E. All involved agencies must make SEQRA findings prior to making a decision on the Expansion so that "to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided," ECL §8-0109(8), "by incorporating as conditions to the decision those mitigative measures that were identified as practicable." 6 N.Y.C.R.R. §617.11(d)(5). However, without a full analysis of possible mitigation measures in the FEIS, it is not possible for involved agencies to make findings that mitigation measures have been incorporated "to the maximum extent practicable," since they are not fully identified and discussed.

Not only are mitigation measures absent for the Borrow Area, but the FEIS refused to even discuss possible amendments to the Host Community Agreement with the Town or the Property Protection Plan that might mitigate environmental impacts of the Expansion. In any event, given the inconsistency of the Expansion with the Solid Waste Hierarchy, and the unmitigated loss of agricultural lands, the necessary findings cannot be made. Letter dated October 4, 2012 submitted by Knauf Shaw, LLP on behalf of the Town of Seneca, at p. 6.

RESPONSE: As stated in RESPONSE 4(A), the County has analyzed mitigation measures in full compliance with SEQRA. See *also* RESPONSE 1(C), 2(A). And, similarly to alternatives, the County is not obligated to evaluate every conceivable mitigation measure. Nevertheless, mitigation is proposed for the Borrow Area, as described in RESPONSE 1(C), above. As stated in the FEIS, the Host Community Agreement is a standalone contract between Casella and the Town. If it is necessary to change it, Casella will discuss it with the Town.

- F. It is generally clear from the responses to comments on the Draft EIS, that Ontario County has made a poor effort to review environmental impacts expected from this project, along with balancing social and economic considerations, as is required by State Environmental Quality Review Act (SEQRA). In our review of your responses to the comments of residents, FLZWC, and the New York State Department of Environmental Conservation (NYSDEC), we have found that the SEQRA process has been seriously subverted.

Because it is beyond the scope of the time given to adequately narrate the deficiencies in this final document, we wish to note our objections below with citations from NYCRR Part 617. We also wish to confirm that FLZWC's comments and those of the NYSDEC and county residents on the DEIS are still at issue, as many have not been answered sufficiently for this FEIS to be found complete. We wish to direct you to consult NYCRR Part 617.9 (a)(7) as to the need for a supplemental EIS at this time. Since the DEIS and FEIS are inadequate as described in Part 617.9, we are requesting that a supplemental EIS be prepared, which addresses the following items contained in Part 617: 617.9 (b)(1), 617.9(b)(2), 617.9(b)(5)(i)(ii), 617.9(b)(5)(a)(b)(c)(d)(f)(g), 617.9(b)(5)(iv) and 617.9(b)(5)(v). None of these items has been adequately reviewed, explained or justified, as SEQRA requires. Letter dated October 4, 2012 submitted on behalf of the Finger Lakes Zero Waste Coalition by Douglas C. Knipple at p. 1.

RESPONSE: As noted above, the County provided more than forty (40) days for public comment on the FEIS, which is significantly longer than the public comment period required under SEQRA, such that potentially interested and involved agencies and the public would have additional time to review and submit comments on the FEIS. Contrary to the statements of the commenter, the County has fully complied with the procedural and substantive requirements of SEQRA by engaging in a detailed environmental review, including development and review of the DEIS, and now, development and review of an FEIS, which serves to clarify issues fully vetted in the DEIS. The EIS in total contains thousands of pages of analyses, technical reports, consultation with agencies, and public comment covering all aspects required pursuant to SEQRA.

SEQRA provides that it is within the County's discretion to determine whether a Supplemental EIS is required. Here, no changes have been proposed for the project since its evaluation in the EIS, no newly discovered information has been presented (indeed, the FEIS simply clarifies analyses contained in the DEIS), and there have been no changes in circumstances relating to the project justifying a Supplemental EIS. Notwithstanding that the regulatory triggers for an EIS do not exist here, based on the County's review of the EIS, there are no newly discovered potential significant adverse environmental impacts inadequately addressed in the FEIS, and thus warranting, a Supplemental EIS at this time.

## 5.0 Zoning

- A. Under the Town of Seneca Zoning Law, even assuming the present Landfill is a grandfathered use in the M-1 District, and the Expansion does not require a use variance from the Town of Seneca Zoning Board of Appeals (“ZBA”), see Seneca Zoning Law §§55.0, 57.0, 126.0(E), the Zoning Law does not allow establishment of the new Borrow Area.

In the A-G District where the Borrow Area would be located, an excavation operation requires a special permit from the ZBA. Seneca Zoning Law §§13.0(E), 70.0(A). Further, the excavation operation must have any required NYSDEC permit, Seneca Zoning Law §13.0(C), and a reclamation plan approved by the Town of Seneca Planning Board. Seneca Zoning Law §13.0(H). Although an “Excavation Site” is defined as “[a] parcel of land used for the purpose of extracting stone, sand, gravel or topsoil for sale as an industrial or commercial operation,” presumably the extracted soil will not be sold, so the Borrow Area may not qualify. More likely, the Town will determine that the planned Borrow Area will be part of the Landfill operation, which is not permitted in the A-G District. Seneca Zoning Law §10.0. And while the ZBA can grant a special permit for an excavation operation that constitutes a “quarry for the removal of stone in bulk without crushing, a sand or gravel pit and topsoil removal,” such an operation must meet various requirements, including a 300-foot setback from the road, and a NYSDEC-approved reclamation plan. Seneca Zoning Law §70.0(R). In any event, it is clear that some sort of zoning approval is required from the ZBA, and perhaps the Planning Board, under the Seneca Zoning Law, and that the ZBA and possibly the Planning Board is a SEQRA involved agency.

The FEIS concludes that under *Matter of County of Monroe v. City of Rochester*, 72 N.Y.2d 338, 533 N.Y.S.2d 702 (1988), the Expansion is exempt from local zoning. That conclusion is wrong, and at the very least premature.

At the outset, it is not clear that the County of Monroe analysis even applies. The Landfill is now effectively a private business operated by Casella. As the FEIS admits, “the County elected to privatize the landfill.” FEIS at III-47. The Expansion will not serve a County function, since more than 90% of the landfilled waste originates from outside the County. If the Landfill was only used for waste from inside Ontario County, there would be plenty of capacity for years to come.

Even if the County of Monroe analysis applies, not only would it be presumed that local zoning requirements apply, but it would be up to the Town of Seneca to apply the necessary balancing test. We expect that the Town would properly conclude that given the available alternatives, and the fact that the facility will be operated by a private enterprise to primarily landfill waste from outside the County, local zoning restrictions should apply. This is particularly true for the Borrow Area, in light of the loss of prime agricultural land, the importance under the Town’s Comprehensive Plan of preserving agricultural lands, and the lack

of serious analysis of alternatives or mitigation measures. Letter dated October 4, 2012 submitted by Knauf Shaw, LLP on behalf of the Town of Seneca, at pp. 4-5.

RESPONSE: In the view of the County, and as discussed in the EIS, the proposed expansion and its related soil borrow area would be exempt from local zoning pursuant to *County of Monroe*. The County believes this is true and that such a conclusion is not premature, nor is it made improperly by the County, as Courts have upheld a county's review of the *County of Monroe* factors during its SEQRA process for a solid waste management facility. Similarly, case law has established that a private lessee's involvement does not detract from, and, in the courts' view, can actually add to, the public benefit created by a project. Indeed, regardless of whether the waste is imported or generated solely within the County's borders, the County is properly implementing the State's Legislative purposes for proper waste management with the proposed expansion, and its related soil borrow area. As discussed above, the County has properly reviewed the potential environmental impacts, proposed mitigation, and alternatives related to the soil borrow area. See RESPONSES 1(B), 1(C), above.

The Town's statement that its zoning law would not allow establishment of the proposed soil borrow area is not supported by law. By designating an excavation operation as a special permit use, the Town has made "tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood." *North Shore Steak House, Inc. v. Bd. Of Appeals of the Incorp. Village of Thomaston*, 30 N.Y.2d 238, 243 (1972).

## 6.0 Agricultural Land

- A. The EIS fails to adequately analyze the loss of 40 acres of prime agricultural land for use as the Borrow Area, which is contrary to the Town's Policy 1.3 set forth in its Comprehensive Plan to "[e]ncourage the preservation of farmland in Seneca." While Town Law §272-a(11)(b) requires that "[a]ll plans for capital projects of another governmental agency on land included in the town comprehensive plan adopted pursuant to this section shall take such plan into consideration," the EIS fails to do so. Not only does the EIS fail to study alternative borrow sites or adequately consider the need for the Borrow Area in light of the current volume of BUD materials, but it fails to offer mitigation measures such as creation of new farmland to compensate for the loss, and the imposition of deed restrictions that can be enforced by the Town (rather than just the County) to ensure that this land is never used for waste disposal.

Since the Borrow Area will result in acquisition of more than 10 acres of farmland located in a state agricultural district, Agriculture and Markets Law ("AML") §305(4)(a) requires that the County "shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse impacts on agriculture in order to sustain a viable farm enterprise or enterprises within the

district.” However, acquiring 40 acres of prime agricultural land for use as a Borrow Area to support the Landfill does not minimize or avoid adverse impacts on agriculture, especially when alternative sites are available, and no provision has been made to mitigate the impact.

Furthermore, AML §305(4)(b) requires that “[a]s early as possible in the development of a proposal of an action” subject to the law, “but in no event later than the date of any determination as to whether an environmental impact statement need be prepared” under SEQRA, a preliminary notice of intent (“PNOI”) must be prepared and filed, in order to begin a comprehensive review of the loss of agricultural lands by the Commissioner of Agriculture and other officials. The PNOI should have been filed prior to the DEIS, and the agricultural review process should be ongoing and coordinated with the SEQRA review process. However, we are unaware of the status of this process.

Moreover, AML §305(4)(h-1) prohibits siting a “solid waste management facility” in an agricultural district, unless certain exceptions are met. In the event the Borrow Area was approved, in order to ensure compliance with this requirement, a deed restriction enforceable by the Town should be placed prohibiting use of that land for solid waste management facility. Letter dated October 4, 2012 submitted by Knauf Shaw, LLP on behalf of the Town of Seneca, at p. 5-6.

RESPONSE: The County stated in the FEIS Response B.3.2.1 that the soil borrow area will include a deed restriction prohibiting its use for waste disposal. Details as to who may enforce the restriction are beyond the scope of SEQRA. The County has repeatedly stated that the soil borrow area will be for soil borrow purposes only in the FEIS, this assurance, and the imposition of a deed restriction constitute satisfactory evidence that the Town’s concerns are unwarranted. In any event, the soil borrow area is expected to ultimately be owned by the Town, pursuant to discussions between the County, Casella and the Town. Additionally, mitigation in the form of conservation easements preserving the agricultural character of certain properties located near the Landfill has been proposed. See RESPONSE 1(C), above.

A waiver pursuant to Agriculture & Markets Law Section 305(4)(d) has been obtained for the soil borrow area, accordingly, compliance with AML 305(4) (b) and (c) is waived. Further, a written agreement was also obtained indicating the landowner’s consent for site consideration for the proposed soil borrow area, accordingly, the prohibition contained in AML 305(4)(h-1) does not apply. The Waiver and Agreement is attached to this Responsiveness Summary.

- B. The commenter references FEIS Comment B.1.4 and states that in its comment letter on the DEIS dated January 20, 2012 (Reference B.1.4 in the FEIS) the Town expressed numerous concerns about the annexation of adjacent agricultural land in connection with the proposed Landfill Expansion, and requested several mitigation measures. In response to FEIS Comment

B.1.4, the commenter states that the DEIS and the FEIS erroneously note that “Because the project will have no significant adverse impacts on land use and zoning, agricultural resources and open space and recreation, there is no need to propose mitigation”. The project includes the acquisition and use of a 40 acre parcel that is currently in agricultural use and that is not part of the existing permitted landfill operations. The Town of Seneca believes that the project as presently proposed will have a significant adverse impact on the land use, zoning and agricultural resources of the community, and has conveyed these concerns to the applicant and lead agency on numerous occasions including in comments on the DEIS.

The Town suggested mitigations to address the potential adverse impacts and those mitigations were initially accepted in resolution # 311-2012 by the County before being rescinded in resolution # 463-2012 adopted on August 23, 2012.

The lead agency under SEQR has an obligation to implement feasible mitigation measures intended to minimize adverse impacts. This FEIS is deficient because it does not acknowledge the adverse impacts to land use, zoning and agricultural resources noted above and provides no mitigation, without any substantive basis for its conclusions, nor any discussion of why the mitigation proposed by the Town is not feasible. Letter from CHA Associates on behalf of the Town of Seneca dated October 2, 2012 at p. 7.

RESPONSE: As stated in RESPONSE 1(C), above, mitigation with respect to agricultural impacts is proposed. As stated in RESPONSE 4(A) above, the County believes that it has assessed all potential significant environmental impacts and proposed mitigation in accordance with SEQRA. See *also* RESPONSE 1(B), 1(C). The County has reviewed and considered the Town’s comments in accordance with SEQRA, and is instead choosing to rely upon the expert analyses prepared as part of the EIS in making this determination. Such a determination is reasonable in this instance.

## 7.0 Screening

- A. The Commenter references B.1.1 in the FEIS. In the response presented in the FEIS it is noted that “language will be added to the Operations and Maintenance Manual submitted with the 6 NYCRR Part 360 Permit application documents to indicate the size and condition requirements for current and future trees planted for the purpose of visual screening. Provisions for the maintenance of such vegetation will also be included.” This response is inadequate to the commenter because it does not agree to remove and replace existing dead or dying trees. In addition the details of the proposed mitigation should be presented now, in advance of issuance of the Part 360 Application. SEQR requires that mitigation measures be identified where feasible and practicable. This response does not provide enough detail for the Town to be assured that the required mitigation will be provided. Letter from CHA Associates on behalf of the Town of Seneca dated October 2, 2012 at p. 7.

RESPONSE: The County agreed to provide current and future vegetation as requested, and to maintain it, which adequately addresses the comment. See RESPONSE 4(A) above.

## 8.0 Recycling

- A. Casella, a landfill operator, should not be a recycler too. That is conflict of interest because they make more money from landfilling than recycling. A landfiller should compete with recyclers for garbage. Since Casella doesn't compete with recyclers, they won't sell plastic to the guy in Palmyra that makes boards out of recycled plastic. If recyclers recycled everything that is recyclable in the garbage, Casella would have less than 30% of the waste stream to put into their landfill. When Ontario County started recycling, trucks with over 10% recyclables mixed with their garbage were supposed to be prevented from dumping. DEC lost its way and instead of protecting the environment, it protects Casella's profit.

There is no reason NYC can't recycle their garbage if they can afford to drive it all the way here to pay Casella's tipping fee. Why don't they sort it out there and drive what is left to the landfill? That would even create more jobs. People need to get a non-waste mind-set to cleanup our environment and get over taking as much money as they can get. Email dated September 30, 2012 submitted by David Gill.

RESPONSE: The comment is acknowledged. As stated above in Response 2(A), competitive interests are outside of the scope of SEQRA review. Notwithstanding this, the County does not believe a conflict of interest exists. Indeed, County residents benefit from the availability of recycling. In addition to increasing sustainable use of waste products, it costs residents less to recycle than to dispose of waste in the landfill, as recycling does not involve a tipping fee.

## 9.0 Soil Balance

- A. The FEIS provides no explanation about why the soil balance presented in the revised Section 2.5.3 is more accurate or why the soil balance presented in the DEIS needed to be revised. A comparison of the DEIS soil balance with the FEIS soil balance shows some significant discrepancies. Total soils available from net subgrade excavation decreased from an estimated 1,468,700 CY in the DEIS to 958,700 CY in the FEIS, a decrease of 510,000 CY of on-site soil that would be available to be used on site. What is the reason for this decrease?

The soil balance in the DEIS estimated soil utilization to include 1,150,500 CY for landfill operation cover soils (excluding alternative cover materials), which represented 10% of the estimated volume of the landfill expansion (11,504,800 CY as per section 1.3 of the DEIS). Section 2.5.3 of the FEIS reports revised soil utilization to include 3,195,900 CY for landfill operation cover soils (excluding alternative cover materials) at 20% of estimated volume. Given that 20% of the proposed landfill expansion volume is only 2,300,000 CY, an explanation is

needed of how the estimate of 3,195,900 CY presented in the FEIS was calculated. What was the reasoning for increasing the volume of cover material required from 10% as shown in the DEIS, to the 20% noted in the FEIS? This does not make sense given that the FEIS has also assumed an increase in use of alternative cover materials from 10% to 20%. The use of alternative cover materials will decrease the need for cover soil from on-site or off-site soil mines.

Finally, the revised section 2.5.3 in the FEIS now shows an overall soil deficit of 876,000 CY compared to 339,000 CY in the DEIS. Explain how was this was calculated. Letter from CHA Associates on behalf of the Town of Seneca dated October 2, 2012 at pp 3-4.

RESPONSE: The net subgrade excavation quantity was revised based on aerial survey data to account for soil material excavated from the on-site borrow area currently located within the future expansion area. This new survey showed that approximately 510,000 CY of available soil had been excavated from the borrow area.

The initial soil balance calculation was based on an assumed 20% total cover material ratio, by volume; 10% soil and 10% BUD materials. However, in the revised text section describing the soil balance, the percentage of BUD material was reported as 20% by weight, which is how it is reported in the annual report for the facility. Because the BUD materials utilized at the landfill typically have a density of approximately 1.9 tons/CY, the quantity of BUD material by weight essentially equates to 10 percent by volume. The revised soil balance shows, a total cover material requirement of 20% by volume (3,195,930 cubic yards) for the combined remaining permitted and proposed facility (remaining permitted capacity: 4,474,844 CY, proposed capacity: 11,504,807 CY). Keep in mind that this is the total cover material need, NOT the soil utilization excluding alternative cover materials as described in the comment above and in the original DEIS. Assuming 20% BUD materials by weight, based on a conservative average annual waste receipt (reported in tons,) and expected life of the landfill, it was determined that approximately 1,664,211 cubic yards of BUD material would be used over the life of the remaining permitted landfill and proposed landfill expansion. The total required cover material and the total BUD anticipated to be used are clearly presented in the revised section 2.5.3 included in the FEIS.

The soil balance was revised in the FEIS due to the exclusion of the quantity of soils required for the remaining capacity in the permitted landfill in the original calculation. The cover soils for the permitted landfill will come from the permitted borrow area which is situated within the footprint of the proposed expansion. Initially, the soils in this borrow area were included in the total net subgrade excavation quantity and were incorrectly counted as being available as cover soil for the proposed expansion. In reality, some of these soils were already utilized as cover material for the existing

permitted landfill. This explains the increase in the overall soil deficit as reported in section 2.5.3 of the FEIS. See also RESPONSE 4(B) above.

- B. This comment relates to the response to comment B.2.1 included in the FEIS. The commenter states that this response lacks a comparative component to answer the Town's questions about the consequences of the traffic resulting from the importation of soil from other offsite sources that require travel on public roads. The response also ignores the context of the Town's question, which relates to balancing potential impacts associated with hauling needed soils from offsite sources against the potential adverse impacts on the land use, zoning and agricultural resources that would result from the use of now productive agricultural land as a soil mine for the landfill expansion. Existing traffic volumes related to the facility were not presented in the DEIS, but section 3.2.7.2 did present a discussion about the potential traffic impacts associated with the addition of 3 trucks per hour for leachate hauling. That discussion concluded that the additional trucks would not adversely affect peak hour level of service at the NYS Route 5 & 20 and County Road 49 intersection.

In the absence of any contrary discussion presented in the FEIS response to this comment, we would conclude that it is highly unlikely that the addition of 5 to 8 trucks per hour associated with soil importation from an alternative off-site soil mine would result in a deterioration of LOS. This substantiates the Town's position that an off-site soil mine is a reasonable alternative that should have been examined. Letter from CHA Associates on behalf of the Town of Seneca dated October 2, 2012 at pp 2-3.

RESPONSE: The discussion on traffic impacts included in section 3.2.7.2 discusses the impacts of a peak total of three truck trips per hour for leachate transfer, not an additional three trucks per hour as stated in your comment above. This section also states that the past traffic analysis was completed assuming a peak total of nine truck trips per hour for maximum leachate hauling. If the estimated 5 to 9 truck trips per hour for soil hauling were added to the 3 truck trips per hour estimated for the leachate hauling, this would result in a total of 8 to 12 truck trips per hour, which is near to or exceeding the number of trucks included in the original traffic analysis. A conclusion that it is "highly unlikely that an additional of 5 to 8 trucks per hour associated with soil importation from an alternative off-site soil mine would result in a deterioration of LOS" is unsubstantiated and cannot be made. While it is possible that the NYSDOT LOS will not drop below acceptable standards when looking at the additional truck traffic from the soil borrow, the fact remains that an additional number of trucks would be required to be on the road should an off-site source be utilized. When considering alternatives to the adjacent soil borrow area, several other factors beyond the LOS of the surrounding road network need to be examined as a basis for determining that the on-site soil borrow is the preferred alternative. These include the additional costs associated with truck operation and road maintenance, as

well as the adverse impacts to air quality and noise associated with the addition of these vehicles to the highway. See also RESPONSES 1(B), (C), above.

- C. 20% BUD material usage is still too environmentally hazardous, given its composition. Email from Ann van der Meulen and Marvin Bram dated September 28, 2012.

RESPONSE: Each BUD material utilized in the landfill requires prior approval for use from the NYSDEC before it may be disposed of by the BUD generator. In many cases, laboratory analysis of the material is required and reviewed by the NYSDEC prior to approval to ensure that the material is not considered a hazardous waste and is appropriate for use in the landfill.

## 10.0 Emissions

- A. PM-10 Emissions presented in Appendix E of the Supplemental Air Quality Review are estimated to be 80.1 tons per year. By itself, this exceeds the potential to emit 15 tons per year threshold established by DEC policy CP-33, and therefore a more detailed modeling analyses of PM-2.5 air quality impacts for both stationary and mobile sources attributable to the project is required to demonstrate that the project emissions will not represent an unacceptable health risk.

Furthermore, potential emissions of both PM-10 and PM-2.5 presented in Appendix E are underestimated because they are only “based on the number of vehicles hauling waste, length of site roads, number of vehicles hauling soil, and equipment utilized in the soil borrow operations including soil cover spreading.” (See page 8 of the Supplemental Information to the Air Quality Review Prepared in Support of the State Environmental Quality Review which is appended to the FEIS) The estimates of particulate matter did not include non-vehicular emission resulting from soil excavation or particulate emissions from wind blowing across open mining excavations.

Additional potential to emit PM10 and PM 2.5 from new flare capacity associated with the proposed expansion is estimated at 12.3 tons per year in Table B-2 of the FEIS Supplemental Air Quality Review. Table I-1 presented in the Supplemental Air Quality Review incorrectly depicts total potential to emit for both PM2.5 as 12.3 tons per year, which only includes the potential to emit from the additional flares associated with the proposed action and does not include any estimates for the previously mentioned values associated with vehicle operation presented in Attachment E, or with soil excavation and windblown erosion within the new proposed soil borrow area. The applicant erroneously notes in Table I-1 that there will be “no increase in PM 2.5 emissions from facility expansion operations”, presumably because it will operate at the same level of daily tonnage as the existing facility. The reasoning ignores that the applicant has proposed to conduct soil mining outside the footprint of the existing facility, at a location that is

currently in agricultural use. Letter from CHA Associates on behalf of the Town of Seneca dated October 2, 2012 at pp 5-6.

RESPONSE: The emissions presented in Appendix E of the Supplemental Air Quality Review indicate particulate matter emissions, both PM10 and PM2.5, for the peak year of operation at the existing Ontario County Landfill. This Peak Year is considered pre-expansion and is already covered by, and in compliance with, the site's existing Title V permit. The PM10 emissions referenced in the comment above (80.1 tons per year) are uncontrolled emissions that do not take into account dust mitigation measures that are and will be implemented by the facility during operations. Dust mitigation measures include road watering with a site water truck. Dust mitigation measures were estimated to control approximately 57% of the dust emissions generated from site operations. The resulting PM10 emission estimate of 34.25 tons per year is presented in Appendix E of the Supplemental Information to the Air Quality Review section of the FEIS, following the estimate of uncontrolled PM10 emissions. Again, this quantity is in compliance with the existing permit.

The PM10 and PM2.5 emissions presented in the Appendix also include dust emissions resulting from soil excavation – loading/unloading activities. Emissions from these sources were calculated using the procedure described in AP-42 Section 13.2.4 – Aggregate Handling and Storage Piles (11/06). PM emissions from dozers traveling on haul roads were also included in the PM emission calculations. However, wind erosion emissions (from wind passing over freshly stockpile materials) were not included because the facility intends to continue operating as they are now, excavating and loading soils as they are excavated, thereby not stockpiling large volumes of soil.

Understanding the above information, truck traffic, cell construction/capping activities, soil borrow activities, working face activities, and leachate hauling activities are not anticipated to change for the landfill expansion. Similar mitigation measures employed today will be used to manage the proposed expansion. Therefore, site PM emission rates are not anticipated to change in the future. Because the anticipated expansion does not increase the facility waste acceptance rate, PM10 and PM2.5 emissions indicated by the sheets in Appendix E are also representative of the Peak Year to occur during expansion of the landfill. Therefore, under the direction of CP-33, and NYCRR Part 231-2, there is no net PM emissions increase from road dust emissions and no further emissions modeling is required.

In reference to Table I-1 of Appendix BB, Attachment G of the FEIS, we indicate a Landfill PM2.5 Emission increase of 12.3 tons per year for the Expansion Landfill Project. These PM2.5 emissions are related to installation of the new flare for combustion of landfill gas to be generated as part of the landfill expansion. Again, in reference to CP-33 and NYCRR Part 231-2, the net increase in PM10/2.5 emissions is

12.3 tons per year, well below the referenced threshold of 15 tons per year which would require further modeling. Therefore, no further emissions modeling is required.

- B. In its comment letter on the DEIS dated February 15, 2012 (Reference B.3.3.3 in the FEIS) CHA noted that Attachment G of the DEIS estimates that up to 4,000 lb of fugitive VOC emissions could be emitted from the leachate storage lagoons that will be re-located to the northern boundary of the site. These fugitive emissions could cause odor problems off-site and should be mitigated. At a minimum, the mitigating measures to be considered should include covering of the lagoons with collection and treatment of the exhaust gases and the establishment of a nuisance complaint hot-line that has been established to accept calls from citizens reporting odor problems or other nuisance conditions they believe are being caused by the landfill. The DEIS should also consider an alternative leachate management option which includes conveyance to the local wastewater treatment plant in Canandaigua through a sewer interceptor that could be constructed.

The response presented in the FEIS acknowledged these statements and noted that "Fugitive VOC emissions presented in Attachment G present a worst case potential to emit from leachate storage, assuming 100 percent volatilization of VOCs in the leachate. Actual VOC emissions from leachate storage are expected to be closer to 20% of the total VOCs. Leachate will be pumped daily from storage lagoons and transferred offsite for treatment. In conjunction with the existing landfill activity website provided for the site, an Odor Management Plan will be prepared as part of the Part 360 Solid Waste permitting for the proposed landfill expansion project. The Odor Management Plan will include the specific procedures for documenting complaints, conducting follow up, and documentation resolution of the complaint."

The response did not consider the suggested mitigation of covering the leachate lagoons and collection of off-gasses for treatment, or discuss why this is not a feasible mitigation. In addition, the response did not address the request that the DEIS should consider an alternative leachate management option which includes conveyance to the local wastewater treatment plant in Canandaigua through a sewer interceptor that could be constructed. Finally, with respect to the response regarding the "Odor Management Plan", as noted above, this is another one of several responses to comments made on the DEIS in which the applicant has noted that it will detail its mitigation measures as part of its Part 360 application, or at some other time in the future. Letter from CHA Associates on behalf of the Town of Seneca dated October 2, 2012 at pp 6-7.

RESPONSE: As noted in the FEIS, the potential to emit from the leachate storage area is presented as a worst case scenario, assuming 100% volatilization of VOCs when in reality the emissions should only be approximately 20% of the total VOCs. Daily pumping and removal of leachate from the lagoons and transfer offsite for treatment is considered a mitigating measure. Other measures, including conveyance of

leachate through a sewer interceptor, have been evaluated and deemed not to be feasible at this time. See also RESPONSES 1(B), 4(A) above.

- C. In its comment letter on the DEIS dated February 15, 2012 (Reference B.3.3.2 in the FEIS) CHA noted that the landfill gas generation estimates developed for the DEIS assume that leachate recirculation may occur during operation of the landfill expansion. This is a conservative assumption that results in an estimate of more rapid waste degradation with more landfill gas generation occurring during the operational life of the facility. However, the DEIS does not identify any additional mitigation measures that would need to be employed with the leachate recirculation program to ensure that these increasing quantities of landfill gas are efficiently collected and do not increase fugitive landfill gas emissions.

The response presented in the FEIS acknowledged these statements and noted that "The DEIS and associated air emission calculations assume worst case conditions, including gas generation while operating under leachate recirculation. The landfill expansion will operate under a landfill gas collection and control system design plan which will be designed to implement sufficient gas collection and control measures at the facility should leachate recirculation be introduced."

As noted previously in these FEIS comments, this is one of several responses to comments made on the DEIS in which the applicant has noted that it will detail its mitigation measures as part of its Part 360 application, or at some other time in the future. It remains to be seen whether the measures that are yet to be proposed will reasonably mitigate the impacts that have been identified. Letter from CHA Associates on behalf of the Town of Seneca dated October 2, 2012 at p. 6.

RESPONSE: As noted in the DEIS and FEIS, landfill gas production estimates are based on leachate recirculation and the assumed increase in landfill gas production (both time and quantity) caused by leachate recirculation. Because the landfill emission estimates, and landfill gas collection control system (GCCS) described in both the DEIS and FEIS are all based on this assumption, the emissions and landfill gas control system as designed, include mitigation measures necessary to handle the increased landfill gas production. Pursuant to the Federal New Source Performance Standards, the landfill GCCS is generally required to be expanded into areas where the waste has been in place for 5 years. While in most cases, GCCS components have been installed at the existing landfill much sooner than the 5-year NSPS requirement, there are areas where more gas may be produced than was modeled, and the GCCS has not yet been expanded into that area due to the nature of the fill progression at the site. Casella continues to install temporary gas collection components such as horizontal collectors to capture gas in areas where the fill progression does not allow for the installation of permanent vertical wells and the waste has not yet been in place for 5 years. These practices are expected to continue with respect to the expansion. Based on future

assessments, temporary capping systems may also be added to the temporary gas collection measures if it is determined that these would be effective.

As an additional mitigation measure, Casella has offered to provide an annual stipend to the County so that the County may hire a qualified environmental professional to conduct an audit of the gas collection system performance at the landfill to ensure proper odor control. Based on the results of each annual audit, Casella will work with both the County and the auditor to remediate any performance issues that may be identified with the gas collection system. This will allow the County to manage odor concerns more effectively and frequently than with the current landfill facility. Indeed, these mitigation measures will impose sufficient gas collection and control measures to ensure that any significant adverse impacts from gas generation are avoided or minimized to the maximum extent practicable. The design details of the landfill gas collection and control system will be presented in the Part 360 application in full compliance with NYSDEC permitting requirements. *See also* RESPONSE 4(A) above.

- D. Landfill gas constituents are typically found in ambient air at low concentrations and are unlikely to cause health effects. Odor-producing chemicals (i.e., hydrogen sulfide and ammonia) are not likely to produce long-term adverse health effects at the levels typically associated with landfill emissions.

NMOCs. In general, levels of individual landfill gases in ambient air are not likely to reach harmful levels. In other words, low levels of landfill gases are unlikely to cause obvious, immediate health effects.

"Obvious" and "immediate" health effects are all we should be concerned about? "Not likely" and "unlikely" are not reassuring terms either. They do not mean "won't happen", "improbable" or even "rarely". You could say a 49% chance was "unlikely", being less than even. I would ask the Board of Supervisors to consider, would you buy a car from a salesperson who told you it was "not likely" to break down?

The FEIS does not tell us that there will not be adverse health effects. What it should offer is a probability statement, without which the risk of landfill operation and expansion cannot be assessed. The FEIS should empirically define these terms. What exactly does "unlikely" mean?

From the July 2012 Monitor on Psychology:

Over the past decade, researchers have found that high levels of air pollution may damage children's cognitive abilities, increase adults' risk of cognitive decline and possibly even contribute to depression.

Appendix J of the FEIS lists tons of hazardous air pollutants emitted by the landfill per year.

After hydrogen sulfide, the second highest tonnage is toluene.

From Wikipedia:

Toluene should not be inhaled due to its health effects. Low to moderate levels can cause tiredness, confusion, weakness, drunken-type actions, memory loss, nausea, loss of appetite, and hearing and color vision loss.

Admittedly, toluene intoxication is primarily found in those who abuse inhalants. However, OSHA guidelines indicate that if you can smell a substance, you are at risk of toxic effects.

We will continue to experience landfill odors, which can only increase with expansion of the landfill. The FEIS documents that total emissions are below DEC standards. 4.4 tons per year of hydrogen sulfide may be below those standards but despite this, concentrations in the air downwind from the landfill regularly are noticeable. The odor from the landfill certainly is more complex than simply the rotten egg smell for which hydrogen sulfide is known. As the second leading emission, at 3.3 tons per year (@75% of the hydrogen sulfide total), toluene would appear the most likely candidate contributing to that odor.

The landfill cannot be considered safe at its current size, and can only present a greater health risk if expanded. The FEIS confirms this. Email dated October 2, 2012 from Rick Hoyt.

RESPONSE: The requirements established by the NYSDEC and USEPA are based on risk guidelines and have been established over years of research and data. These guidelines and adherence to those guidelines in themselves are considered risk-based values, where research has found that there is unlikely adverse effect to the general population when a facility complies with these guidelines. Proper understanding and use of these guidelines is the only means for industry to ensure protection of human health as directed by the NYSDEC and USEPA. The County acknowledges the concerns of the commenter and notes that, based on its SEQRA review in the DEIS/FEIS process and proposed mitigation, the expansion will fully comply with established emission levels and therefore will, in accordance with SEQRA, minimize or avoid potential significant adverse environmental impacts to the maximum extent practicable.

- E. The procedure described for dust control is laughable. It's "impossible to predict", according to the FEIS. There will be water trucks available daily, IF NEEDED. Who decides that? The sub-contractor who cannot predict whether dust will be an issue? The scientific material on particulate matter and its harm to public health is voluminous. There is no plan here. There is no responsibility. There is no concern for the public, only for the bottom line. You will hire mud-cleaners during muddy periods. Do you know when those periods will occur? If you do, you might want to notify the meteorological service, because they can't even predict when it's going to rain. Will there be anything else on the truck tires, like garbage or sludge? Maybe you could hire some garbage and sludge cleaners during garbage and sludgy periods. You have not

provided any mitigation or any plan. You have not thoroughly reviewed alternatives, or even distinguished between the landfill and the proposed soil borrow area. This is pathetic. You are continually violating the intent of SEQRA to review each part of the action at a level of detail sufficient for an adequate analysis of the significant adverse effects of environmental impacts. Letter dated October 4, 2012 from Katie Bennett Roll at pp. 1-2.

RESPONSE: The proposed mitigation measures are consistent with well-established best management practices for dust, which are followed by numerous industries, construction sites, and others on a daily basis. It is, therefore, reasonable for the County to impose these measures as mitigation here. As stated in RESPONSES 4(B) and 4(F), the County has engaged in a thorough, detailed environmental review in accordance with SEQRA. *See also* RESPONSE 10(A), above.

- F. With climate change, "abnormal atmospheric conditions" (as evidenced in 2011) are the new normal. This FEIS includes models that have reduced validity, due to unpredictable alterations in our climate, especially during the duration of this proposed expansion. Additional and more stringent mitigations should be included. Email from Ann van der Meulen and Marvin Bram dated September 28, 2012.

RESPONSE: The models utilized in the gas generation analysis relied upon in the SEQRA review rely on models and emissions factor currently accepted by the USEPA and the NYSDEC for use. Any changes in these factors due to "unpredictable alterations in our climate" would need to be issued by the USEPA prior to being used as an industry standard. Furthermore, the FEIS discusses at Section A.1.1 the measures used by the County to ameliorate the odor in that instance, and measures to be employed going forward at the landfill which will reduce odor. As mentioned above, Casella has also proposed as additional mitigation to provide an annual stipend to the County so that the County may hire a qualified environmental professional to conduct an audit of the gas collection system performance at the landfill to ensure proper odor control. This will allow the County to manage odor concerns more effectively and frequently than with the current landfill operation.

## 11.0 Visual

- A. In its comment letter on the DEIS dated February 15, 2012 (Reference B.5.2 in the FEIS), CHA noted that visual impact simulations should be constructed from several additional residential vantage points immediately to the south of the proposed soil borrow area. These simulations should show the screening berms that are proposed for the soil borrow area.

The response presented in the FEIS noted that "An additional rendering has been completed based on a photograph taken at the corner of Rilands Road and County Road 5. The additional rendering is provided in Appendix BB as Attachment F."

The FEIS only provided a simulation from one additional location. Additional simulations should be provided from other residences on Rilands Road west of County Route 5. Letter from CHA Associates on behalf of the Town of Seneca dated October 2, 2012 at p 7.

RESPONSE: The residence located closest to the landfill on Rilands Road is owned by Casella and was therefore not considered in the visual analysis. The other four residences located on Rilands Road between County Road 5 and Flint Road are located such that a large forested area exists between the residences and the landfill; therefore, no potential for adverse visual impact exists for those properties. The EIS contains a detailed technical analysis assessing potential visual impacts, including a viewshed analysis, a field evaluation, and development of fourteen (14) visual simulations, all assessing a worst case scenario in leaf-off conditions. Additionally, mitigation measures to avoid or minimize adverse impacts, including vegetation of the berm, are proposed. It is reasonable for the lead agency to rely upon this analysis, and its 14 visual simulations, and such analysis provides sufficient information regarding potential adverse aesthetic impacts, as well as mitigation measures, to allow the County to assess the visual impacts of the landfill expansion in full compliance with SEQRA.

## 12.0 Noise

- A. The commenter references FEIS comment B.3.6.1, stating that they have reviewed the Noise Impact Assessment (NIA) and have identified a number of questions and comments.

The points of compliance for this NIA should be any land permitted for residential use that is closest to the proposed action. The Noise Impact Assessment notes that the applicant owns or has obtained noise easements from "several properties" in the vicinity of the landfill. The location of these easements should be shown in the NIA so that the location on the receptors can be independently confirmed as the closest to the proposed activities.

Estimated noise from landfill construction and operation does not adequately consider the cumulative noise impact associated with landfill cell construction, landfill closure construction, as well as landfill operations all occurring simultaneously. The NIA should also explain how on-site traffic travelling on internal access roads is appropriately considered included in the analysis. Letter from CHA Associates on behalf of the Town of Seneca dated October 2, 2012 at p 8.

RESPONSE: The referenced easements can be independently reviewed as they are publicly available documents maintained at the Ontario County Clerk's office. Construction noise resulting from new cell construction and cell closure will be temporary, and will be similar in nature to construction work at the existing landfill facility. Working face operations are expected to be the predominate noise source at

the site and are expected to be more than 10 dB greater than construction operations on a one-hour Leq basis<sup>1</sup>. In accordance with the NYSDEC program policy document, Assessing and Mitigating Noise Impacts, a difference between two sound levels of 10 dB or more results in a 0 dB cumulative effect on noise. NYSDEC Program Policy Document Dated February 2001, Assessing and Mitigating Noise Impacts, Table A, Page 9. Therefore, any potential adverse cumulative impact to noise resulting from expansion and existing operations is not expected to be significant.

Landfill access road noise was included in the measurements made for the study and is included in the working face sound levels as well as the borrow area sound levels used in the Operating Noise Impact Assessment. Therefore, any potential adverse environmental impact has been sufficiently analyzed and assessed.

- B. You mention that you will meet noise requirements by obtaining easements from “developed properties.” The 360 regulations address noise at property boundaries, regardless of whether a home exists on the property. I don’t think that you have all the easements you need. You have failed to submit the required noise information which the DEC told you to submit. You have presumed that the policy guidance document is sufficient. You “expect” to be able to meet the 360 requirements, and will be submitting additional noise documents with the application. You have again failed to meet the requirements of SEQRA, and have failed to provide an opportunity for public review of new data. You are unable to evaluate the adverse impacts of noise related to Part 360 1.14 because you have not prepared or submitted the information. Letter dated October 4, 2012 from Katie Bennett Roll at p. 2.

RESPONSE: The Operating Noise Impact Assessment included as Attachment M to the FEIS states that easements were obtained for some potentially sensitive receptors, that Casella owns other properties, and that properties that are not either (1) owned by Casella, or (2) subject to an easement, are evaluated as sensitive receptors. This is a reasonable approach. Further, the NYSDEC’s Guidance Policy DEP-00-1, Assessing and Mitigating Noise Impacts, is routinely used to evaluate and assess potential noise impacts from facilities such as the proposed expansion. The County’s reliance on it is therefore reasonable.

The County, based upon its review of the DEIS and FEIS, including the Operating Noise Impact Assessment and other technical studies, rationally determined, in its independent judgment, that potential significant adverse environmental impacts to noise have been sufficiently assessed for purposes of SEQRA review, and mitigation designed to avoid or minimize any potential significant adverse environmental impacts to noise have been identified and will be imposed as conditions to the County’s decision in full compliance with SEQRA. *See also* RESPONSE 4(A) above.

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<sup>1</sup> Reference: Analysis of Potential Noise Impacts Related to the Expansion of Seneca Meadows Landfill, Waterloo New York. Angevine Acoustical Consultants, Inc. 08/13/1997.

- C. You have submitted an attachment "M" which purports to be measurements of noise levels from the landfill and LFGTE Facility combined. You have complicated these studies such that they are not understandable by members of the public, which is another violation of SEQRA. (617.9 (b)(2). In addition, you have violated Part 617.9 (b)(1), which requires that "An EIS must assemble all relevant and material facts upon which an agency's decision will be made. It must analyze the significant adverse impacts and evaluate all reasonable alternatives." You have chosen to submit the relevant facts with the 360 application in an attempt to sidestep the regulations. Letter dated October 4, 2012 from Katie Bennett Roll at p. 4.

RESPONSE: It is the County's position that Attachment M and the discussion of noise analysis in the EIS fully comply with SEQRA's requirements. Per the SEQRA regulations at 6 NYCRR Part 617.9 (b)(2), "EISs should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts. Highly technical material should be summarized and, if it must be included in its entirety, should be referenced in the statement and included in an appendix." A summary of the analysis has been included in the text of the FEIS (Section 3.2.12) that can be reasonably understood by the public in compliance with this requirement. Attachment M has been provided as "highly technical material" due to multiple comments received requesting such information. It has been included by reference per this part. The County's review of the proposed expansion has included an assessment of all potential adverse environmental impacts as well as proposed mitigation in a level of detail sufficient to allow it to make findings in accordance with SEQRA. See also RESPONSE 4(A), above.

- D. The County has failed to review significant effects on the environment in relation to noise. Indicators of significant effects on the environment include actions which result in a significant adverse change in noise levels. (6 NYCRR 617.11(1) The Operating Noise Impact Statement addresses a presumed noise increase which is based on a NYSDEC Policy guidance document, and does not include data which would confirm that the Part 360 noise requirements can be met. This data, and much else, was omitted in the DEIS and FEIS despite the request from the NYSDEC and the Finger Lakes Zero Waste Coalition that it be submitted. The submission of new data after the SEQRA process is over does not provide for the public review required by SEQRA. For this reason, a supplemental EIS is required. (6 NYCRR Part 617.9(a)(7). Since we do not know what the data will show, this part applies. Letter dated October 4, 2012 submitted on behalf of the Finger Lakes Zero Waste Coalition by Douglas C. Kipple at 3.

RESPONSE: As stated in RESPONSE 12(B), it is reasonable for the County to rely on the NYSDEC Guidance Document DEP-00-1, Assessing and Mitigating Noise Impacts. Similarly, the County has evaluated all potential significant adverse environmental impacts from noise and made an independent judgment on the impact and necessary mitigation. As stated in Response 4(A) above, compliance with permitting

requirements pursuant to Part 360 need not be fully determined at this time. The County has properly reviewed the expansion in accordance with SEQRA. See also RESPONSE 4(F).

### 13.0 Odor

- A. The County states that an Odor Management Plan “will be submitted for review during the 360 permitting” period, including specific procedures for documenting complaints, follow-up, and complaint resolution documentation. “Significant” odor has been described as more than one hour per day on the EAF. Most days, odor is present more than 8 hours. If the odor is already significant, how will it be mitigated? An “Odor Management Plan” which describes documentation only will not provide mitigation. How are odor complaints “resolved”, other than getting rid of the odor? In the past, when complaints to the NYSDEC have been submitted, the landfill has dispatched an unknown person to the home of the complainant. This unknown person then tells the DEC person, “I don’t smell anything.” Is that your idea of mitigation? Another scenario involves the DEC person explaining, “Well, we are excavating garbage” in response to a complaint of odor. This does not provide mitigation, or even consolation. If the odor cannot be mitigated, then the expansion cannot go forward. It’s as simple as that. It is a violation of Part 360, that notwithstanding any particular air quality standard, odors may not cause interference with the ability of a person to enjoy their home and property. Since I cannot enjoy my property when there is excessive noise and odor, the landfill is out of compliance. I have not received any response to any of my written complaints. The information on odor control is not available for public review if it has not been submitted until after the SEQRA process is over. This is a violation of the intent of SEQRA. Letter dated October 4, 2012 from Katie Bennett Roll at p. 1.

RESPONSE: The odor management process which is commonly used at landfills, including the existing landfill, includes verification and recording of off-site odors, cessation of work if odors are recognized, and multiple other mitigating factors including installation of temporary cover materials, adjustments to the landfill gas collection/control system, and installation of additional landfill gas control devices if needed, including any devices determined necessary by the annual audit Casella proposes to fund. These measures, which have generally been reviewed in the EIS, will be implemented at the proposed expansion and the odor management plan will be developed during the design phase. See DEIS Section 3.1.5.3. It must be remembered that the odor management plan itself is required by 6 NYCRR Part 360, and that the County’s obligation here is to independently review potential odor impacts and impose mitigation measures that, in its judgment, avoid or minimize potential significant adverse environmental impacts to the maximum extent practicable. See also RESPONSE 4(A), above.

- D. The FEIS states: Under normal atmospheric and landfill operating conditions, including operation of an active landfill gas collection system, placement of daily cover materials, and capping of closed landfill areas, as described in the DEIS, these odors would be mitigated and the odors experienced during 2011 would not happen.

In other words, only when the situation is “normal”, will the odors be mitigated. How much of the time conditions are expected to be “normal” is not specified. Inevitably, conditions will not be “normal” on a frequent basis, particularly since climate change is making for more extreme atmospheric fluctuations. The landfill cannot guarantee an absence of abnormal events in its operations. The FEIS is stating we will be subject to noxious emissions on a regular basis whenever an abnormal event occurs at the landfill. Email dated October 2, 2012 from Rick Hoyt.

RESPONSE: Landfill gas production and gas collection system designs are based on modeled estimates which take into account historic atmospheric conditions as a guideline for rainfall and temperature, two significant driving factors in landfill gas production. These estimates are often elevated to provide an even further conservative measure for gas production estimates, by which gas collection systems are designed. Under this engineering practice, landfill gas collection systems typically are quite adequate at collecting and controlling landfill gas, and often “over built” to provide better collection when extreme atmospheric conditions occur. The engineering standards described above for estimation of landfill gas and design of landfill gas collection systems are those developed over years of research and approved by the NYSDEC and USEPA, and are the guidelines by which all landfills must follow. It is, therefore, reasonable for the County to rely on these modeling estimates in the manner it did in the EIS. It is noted, however, that these complaints related to odor are likely the result of short term odor impacts that may occur during cell construction and gas system installation when the waste mass must be open to the atmosphere. Although these impacts may occur sporadically, they will ultimately result in construction of the landfill GCCS, which will manage odors for the duration of landfill operations.

- E. Noting the overwhelming number of comments related to odor and health implications, an independent air quality review and public health assessment should be required. Email from Ann van der Meulen and Marvin Bram dated September 28, 2012.

RESPONSE: The air quality review and public health assessment upon which the conclusions of the DEIS and FEIS are based were performed by organizations qualified to perform the work who have prepared numerous studies of these types, and conducted according to industry and government standards. Therefore, it is reasonable for the County to rely on the results of these studies during SEQRA review. Notwithstanding, Casella has offered to provide an annual stipend to the County so

that the County may hire a qualified environmental professional to conduct an audit of the gas collection system performance at the landfill each year to ensure proper odor control.

- F. Environmental Monitoring and Odor Management Plans should be fully and specifically completed, rather than just outlined in this FEIS. Email from Ann van der Meulen and Marvin Bram dated September 28, 2012.

RESPONSE: See RESPONSES to comment 4(A), 13(A) above.

#### 14.0 Groundwater

- A. You have said that you would provide “follow---up” on the people with potable water wells which are within 0.25 to 1 mile of the dump. No one ever contacted me about my well, which I drink from, bathe in and do laundry with. I have notified you several times. You have never answered my questions about my water usage. Do I need to be concerned about drinking it? I do not have public water to my house. Do I need to install it? How much will that cost me? Letter dated October 4, 2012 from Katie Bennett Roll at p. 2.

RESPONSE: The DEIS states at pp. 64-65 that, based on extensive water sampling performed, water quality is not being impacted by the existing landfill. The proposed expansion has been subject of extensive SEQRA review, including of groundwater quality, and will be subject to similar permitting requirements as the existing landfill; therefore, groundwater quality will be appropriately managed and monitored.

Barton & Loguidice, P.C. performed a water supply source survey on behalf of Casella and the County as part of the Hydrogeologic Investigation included in the EIS. The water supply source survey was performed in accordance with NYCRR Part 360-2.11(a)(5), which states: “A survey of public and private water wells within one mile downgradient and one-quarter mile upgradient of the proposed site must be conducted. Surveys must obtain, where available, the location of wells, which must be shown on a map with their approximate elevation and depth, name of owner, age and usage of the well; stratigraphic unit screened; well construction; static water levels; well yield; perceived water quality; and any other relevant data which can be obtained.” Each residence identified as falling within the requirements described in this part was contacted for the completion of a survey. As described in Section 2.3 of Attachment L of the DEIS, responses were obtained from 67 of the 86 residences contacted at the time that the Hydrogeologic Investigation Report was published. Attempts will be made to contact the remaining residences prior to the completion of the Hydrogeologic Investigation Report prepared for the Part 360 Permit application documents. However, for purposes of SEQRA review, the County believes that

obtaining responses from more than three-quarters of potentially affected residents sufficiently allows the County to assess potential impact and propose mitigation. See *also* RESPONSE 4(A), above.

#### 15.0 Miscellaneous

- A. I am a homeowner on Slate Rock Rd in Geneva, Ontario county and DO NOT WANT THE CASELLA expansion to be approved. Email from Phyllis LeBrun dated September 30, 2012.

RESPONSE: The Comment has been received and acknowledged.

- B. The commenter discusses and attaches the letter to Roger McDounough dated August 17, 2012 regarding the Ontario County Lfg to Energy Facility, Article 19 Air Title V Facility, DEC Application ID # 8-3244-00040/00002. Letter dated October 4, 2012 submitted on behalf of the Finger Lakes Zero Waste Coalition by Douglas C. Knipple at p. 3.

RESPONSE: Reference to, and inclusion of, previous documents regarding the Seneca Energy II, LLC Title V Permit modification application for the Ontario County Landfill Gas to Energy Facility was received and is considered to be beyond the scope of this responsiveness summary.

- C. The commenter discusses and attaches various documents submitted in relation to the April 4, 2012 Equipment Noise Variance Application, DEC ID # 8-3244-00004/00001, Ontario County Landfill. Letter dated October 4, 2012 submitted on behalf of the Finger Lakes Zero Waste Coalition by Douglas C. Knipple at p. 3.

RESPONSE: Reference to, and inclusion of, previous documents regarding Ontario County's previous Part 360 Permit application for a Variance from Sound Levels at the Ontario County Landfill facility was received and is considered to be beyond the scope of this responsiveness summary.

- D. The commenter states that her home is included as "sensitive receptor", stating "(I feel so special now.) Do you think that will make any difference to a judge when a petition for "standing" is decided? I am still part of the ill---named Ontario County Property Protection Plan, which provides me with no protection from noise or odor. You can have the money back if you want it. I'll write you a check tomorrow. Let me know. I'd rather do that than subject myself and my family to the disingenuous statements in this document. "The commenter also discusses and attaches various documents submitted in relation to the April 4, 2012 Equipment Noise Variance Application, DEC ID # 8-3244-00004/00001, Ontario County Landfill. Letter dated October 4, 2012 from Katie Bennett Roll at pp. 2-3.

RESPONSE: The Comment is noted. As stated above in RESPONSE 4(E), the Property Protection Plan is part of a separate Casella contract for which the Town acknowledges an administrative function. It is also noted that reference to, and

inclusion of, previous documents regarding Ontario County's previous Part 360 Permit application for a Variance from Sound Levels at the Ontario County Landfill facility was received and is considered to be beyond the scope of this responsiveness summary.

4835-6024-2962, v. 4-6024-2962, v. 3

Responsiveness Summary

Documentation/Description	DATE
Email from Phyllis Lebrun .....	9/03/2012
Email from Ann van der Meulen and Marvin Bram .....	9/28/2012
Email from Dave Gill .....	9/30/2012
Email from Rick Hoyt .....	10/02/2012
Letter from Kenneth G. Gallagher, CHA Project Manager, CHA Associates, Submitted on behalf of The Town of Seneca.....	10/02/2012
Email from Douglas C. Knipple Sent on behalf of The Finger Lakes Zero Waste Coalition with letter and attachments .....	10/04/2012
Email from Katherine Bennett Roll with attachments .....	10/04/2012
Letter from Alan J. Knauf, Knauf Shaw LLP, Submitted on behalf of The Town of Seneca.....	10/04/2012
Agriculture & Markets Law Section 305 Waiver and Agreement .....	12/28/2011