

***Breezy Hill Group VI, LLC  
C&D Processing Facility  
Site Plan & SEQRA/DEIS Review  
1792 Middle Road  
Calverton, NY  
SCTM# 600-100-2-4.2***

*Review of  
Nelson Pope Voorhis Correspondence: November 24, 2021*

**Executive Summary**  
***December 1, 2021***

*Prepared for:  
Town of Riverhead Planning Board  
SEQRA Lead Agency  
201 Howell Avenue  
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***Executive Summary***  
***Review of***  
***Nelson Pope Voorhis Correspondence: November 24, 2021***  
***Date: December 1, 2021***

The Breezy Hill Group VI, LLC Site Plan & SEQRA/DEIS is undergoing the Planning Board's SEQRA and Site Plan review process. On November 4, 2021, a SEQRA Hearing was conducted by the Planning Board acting as the Lead Agency for the purpose of receiving comments to the DEIS. Additional comments on this matter were offered on November 18, 2021. The continuation of SEQRA Hearing is planned for December 2, 2021.

**Status & Overview of the SEQRA Process**

Once a SEQRA Hearing is closed, the written comment period remains open for 10 days. The Lead Agency then determines the list of "substantive comments," which must be addressed in the Final EIS.

The FEIS is to be completed within 45-days of the closing of the SEQRA Hearing. After the Lead Agency receives the FEIS, within a period of not less than 10 days, and not more than 30 days, the Lead Agency must issue its SEQRA Findings Statement.

The Findings Statement defines and defends the Lead Agency's determination of a Positive Findings (the project demonstrates it does not generate significant adverse environmental impacts and can move ahead through additional approval processes); or a Negative Findings (the project generates significant adverse environmental impacts and cannot move ahead through additional approval processes).

The SEQRA Hearing on the DEIS can be extended until the Lead Agency has the necessary information it requested; or it may require the Applicant submit a Supplemental DEIS if the Lead Agency has discovered information not previously identified in the DEIS and determines the new information is substantive to the application.

The SEQRA process requires the Applicant's accurate and honest response to comments must be included in the FEIS. The authenticity of the DEIS/FEIS statements are the responsibility of the preparer, and knowingly making misleading or false statements result in Lead Agency rejection of the proposed action, litigation and/or criminal prosecution for "filing a false instrument," a Class D felony in New York State.

Closing the SEQRA Hearing sets the timeclock.

**Executive Summary of the Review**

This Executive Summary offers significant highlights on how the Applicant responded to the SEQRA/DEIS comments recorded to date and offers recommendations to the Board on how to proceed. The full review on which this summary is based is attached and contains critical information for the Lead Agency.

The NPV letter incorrectly stated the Riverhead Town Board is the SEQRA Lead Agency. The SEQRA Lead Agency is the Riverhead Town Planning Board.

- **Hours of Operation**

An in-depth discussion is required on the potential impacts generated by the operation that is accepting wastes and operating its equipment Monday-Friday 6:30 AM to 6:00 PM; Saturday 6:30 AM to 5:00 PM and Sunday 7:00 AM to 2:00 PM (dumping only/no crushing) on nearby residential properties. Mitigation of these impacts must be clearly addressed.

An accurate EIS level assessment of potential impacts is to be performed on the full-scale daily operations during the periods of operation that the Applicant has proposed.

The proposed action describes mitigating measures in generic form, such as limiting operations (days, hours, processing, delivery) but provides no specific days of the week or limitation of hours of operation. These must be clearly identified using specific statements in the FEIS.

The November 24, 2021, letter does not adequately address the question of wholesale operations within the Industrial A zone, where a Special Permit will be required. A Special Permit application was not filed with the Town of Riverhead.

The NPV letter only offered a simplified statement that says,

*“Applicant will only process materials for his own use.”*

Comments on the DEIS requested quantifiable information regarding the Applicant's own use of the processed materials. This comment becomes more significant as the Applicant now proposes to use 100% of the processed materials *“for his own use.”* What uses? How much will be processed ad how quickly?

It is recommended the Lead Agency strongly consider these potentially significant nuisance impacts upon the residential dwellings in the vicinity of the site when weighed against the Applicant's proposed hours of operations.

- **NYSDEC Violations**

The letter states,

*“Communication with the Division of Materials Management, NYSDEC since its November 5, 2018, e-mail confirms that that office is awaiting completion of the SEQRA process on the Breezy Hill Group VI, LLC site plan application (completion to be documented by issuance of the Findings Statement) to render its decision on compliance to the Order on Consent.”*

The response is false. The NYSDEC provided no requirement in its Order on Consent or in its remediation schedule that the Lead Agency file a SEQRA Findings Statement prior to enforcement of the order. The NYSDEC is an involved agency under SEQRA for its responsibilities of a Part 360 Permit. The Planning Board as Lead Agency has the responsibility for the SEQRA Findings Statement, which is not used by the NYSDEC to delay enforcement of NYS-ECL.

According to the NYSDEC, November 5, 2018, email regarding the cleanup of the site, Order of Consent, and its attendant remediation schedule for compliance for removal of all the materials on the site and the DEC's October 26, 2021, NOV, there is no

requirement for a SEQRA Findings Statement. Previous waste remains at the site, in violation of the consent order. The NYSDEC requires a Findings Statement and Site Plan approval only for the DEC's review and decision making with respect to the Applicant's Part 360 Permit Application to construct and operate a C&D Processing Facility.

The NYSDEC provided an email confirming the Town's issuance of a SEQRA Findings Statement **is not** required for site remediation.

The Applicant's response to comments regarding the status of outstanding NYSDEC violations, the site cleanup activities and documentation of the site's full remediation is unacceptable. The Lead Agency has requested the information be provided multiple times.

It is recommended that the SEQRA Hearing remain open until the Lead Agency has received confirmation from the NYSDEC that all Order on Consent, cleanup schedules, and ongoing violations have been satisfied. The Lead Agency has the authority to require the Applicant provide the necessary information the Lead Agency needs to develop and to defend its SEQRA Findings Statement. If accurate information is not provided the Lead Agency can reject the proposal.

- **NYSDEC Required Transporter Registration**

The applicant must file a completed application for the registration. Providing a blank registration form does not respond to the comment.

- **NYSDEC Part 360 Series Waste Tracking Document for C&D Debris**

In contrast to statements made by the Applicants, the presence of unauthorized waste materials onsite and the subject of two NYSDEC Notice of Violations, clearly demonstrates the waste has not been removed from the site, or if wastes had been removed, the Part 360 Series Waste Tracking Document would provide validation. The Lead Agency requests the completed form be provided, not the blank form as provided in the NPV November 24, 2021, letter as an attachment.

- **Groundwater Resources**

The site is outside the Riverhead Water District. An extension of the District and extension of infrastructure would be needed to provide public water.

The Applicant has installed one (1) upgradient groundwater monitoring well and three (3) down gradient groundwater monitoring wells. Each well is installed with a screen depth located at seven (7) feet below groundwater. Groundwater elevation was recorded at nineteen (19) feet AMSL; with the bottom of the screen elevation located at twelve (12) feet AMSL. Water quality samples were analyzed, and lab results provided in the DEIS.

The Applicant stated that continued groundwater monitoring at this location will not continue.

This area of Riverhead is currently experiencing compromised groundwater quality, additional monitoring may be advisable. The Riverhead Water District will be contacted for additional comments on this matter.

The Part 360 Permit application requires the Applicant depict all private and public water supply wells within an 800-foot radius of the subject site's property boundaries.

- **Existing & Proposed Water Supply**

The Applicant proposes using the onsite private drinking water well as its water supply. However, the Applicant reported they were unable to locate the well, provide details on well size, depth, pumping capacity or water quality.

Pursuant to Riverhead Town Code, Article LVI Site Plan Review, section 301-306 requires that existing {301-306 B. (3) (c)} and proposed utilities {301-306 B (4) (g)} (including waterlines) be depicted on the Site Plan.

Town of Riverhead tax rolls (2021 Final Assessment Roll, Town of Riverhead, NY) depicts Breezy Hill Group VI, LLC as property owner of SCTM 600-100-2-4.2. The Applicant has full access to the site to locate the private well. The Lead Agency has requested onsite well information and it must be provided prior to the Final EIS preparation. This information is required by the Lead Agency and Town of Riverhead Planning Department for both Site Plan and SEQRA review.

- **Emergency Response: Fire Protection**

Additional information on potable and fire protection water supply is required. The Applicant states the Riverhead Fire Department's 4,000-gallon tanker truck, "*supplemented by water from the existing onsite well, as well as by other private wells that serve developed properties in the area*" will be used for firefighting.

The Applicants must identify who provided permission to use other property owner's private wells, what capacity of water supply is available from these other wells, and what capacity is available from the onsite well.

- **Provide Copies of the Part 360 Series Waste Tracking Document**

The response was not acceptable. The Applicant has not removed materials from the site or provided the requested completed waste tracking documentation.

- **Traffic Impact Assessment**

The Applicant will expand the Traffic Impact Study in response to comments.

- **Special Permit & Use of Processed C&D Materials**

This issue has not been adequately addressed.

- **Sound Level Assessment Based on NYSDEC Part 360.19 for Rural Areas**

The Lead Agency is interested in potential for nuisance (including noise) impacts using methodologies and data that reflects the specific type of local community characteristics where the proposed action is located. This is of particular concern because the site is potentially within an Environmental Justice Area. The concerns of the Lead Agency include the potential impacts of sound level on the residential dwellings located in the immediate area. Certainly, this local community can be best described as rural.

The Applicant is requested to assess noise impacts in accordance with the SEQRA comments on the DEIS, and respond with the requested Rural sound level analyses, as described in 6NYCRR Part 360.19.

- **Lead Agency Options**

The Lead Agency has the option to:

- keep the SEQRA Hearing open until it receives additional information.
- require a Supplemental DEIS to address the specific information it believes has changed or been inadequately addressed by the Applicant's DEIS and comment responses.
- close the SEQRA Hearing, summarize the substantive comments and instruct the Applicant respond with the FEIS and upon receipt/review of the FEIS prepare its Findings Statement
- determine if the Applicant has been non-responsive and terminate further review (although the responses to date have been in letter form).

- **Housekeeping-SEQRA Review Fees**

The original hourly fee estimate for the SEQRA review has now been exceeded. The Applicant's DEIS review and inability to accurately address review comments and provide requested information has extended the estimated time to review submissions categorize deficiencies and provide comments to the Lead Agency.

The Applicant will need to provide additional funds to the Town to continue the coordinated SEQRA review. If the Applicant does not provide the Town with additional funds, the Lead Agency has the right to terminate review.

Please advise the undersigned of any questions or comments regarding this matter.

Prepared by:

*Jeffrey L. Seeman*

Jeffrey L. Seeman, CGCS/CEP

Certified Environmental Professional

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**Date: December 1, 2021**

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Once a DEIS is accepted and circulated by the Lead Agency for comment, the Lead Agency must respond to substantive comments in the form of a Final Environmental Impact Statement (FEIS). Although the Applicant through their consultant, Nelson Pope Voorhis (NPV) have provided a letter response to the DEIS and SEQRA Hearing comments, the responses are not a substitute for the FEIS. A FEIS must be prepared as a standalone document.

This review is to offer technical input, with comments, on how the Applicant responded to the SEQRA/DEIS comments recorded to date, and to offer recommendations to the Board on how to proceed. Be advised that the undersigned is responding to the Applicant's letter as a courtesy, as the SEQRA process requires that the Applicant's accurate response to substantive comments be formally incorporated into the FEIS for its review and distribution by the Lead Agency.

This review is organized by numbering the Applicant's "Response." Each number corresponds to the numbered Response given in the NPV letter. Applicant/NPV statements and quotations are placed in *italics*. Beneath each numbered Response review comments are stated in standard typesetting.

Beginning with page 1 of the Nelson Pope Voorhis (NPV) letter dated November 24, 2021, the second paragraph it states,

*"It is important to note the DEIS has been accepted as complete by the Town Board as SEQRA lead agency, indicating that it provides the information requested in the Final Scoping document. And provides information to enable review by the public and involved agencies."*

The Riverhead Town Board is not the SEQRA Lead Agency. The SEQRA Lead Agency is the Riverhead Town Planning Board.

**NPV Response to November 4, 2021, SEQRA Hearing and Written Comments:**

**Response 1: Stormwater Controls-**

Comments reserved/No additional comments at this time. A Stormwater Pollution Prevention Plan (SWPPP) will need to be prepared by the Applicant.

**Response 2: Hours of Operation**

The letter states,

*"Regarding the inter-relationship between equipment processing rates, raw material generation and availability, and operating hours, it must be understood that the nature of the facility's operation is such that the generation of the C&D materials on which the Applicant relies is not under the Applicant's control. So, the Applicant can only operate the facility when and as permitted C&D materials become available."*

Response 2 claims the Applicant has no or limited controls over the incoming C&D solid waste and is dependent upon the C&D material supplier's availability of material and delivery schedule. These C&D material suppliers include the Applicant, who will provide 25% of the raw C&D materials and other contractors who will deliver 75% of the raw C&D materials to the site (This was stated on page 1-2 of the DEIS, rev. August 2021).

As owner/operator of the facility the Applicant has complete control over the hours of site operations. For mitigating measures the Applicant can limit delivery times, processing equipment run times, and control loading and offloading schedules.

The accepted DEIS (August 2021) stated the Applicant will be the primary user of processed materials and sell the balance of processed material (crushed concrete, asphalt millings, soil, rock, brick) to other contractors.

The November 4, 2021, SEQRA Hearing raised a question regarding the resale of processed materials to contractors and whether this sale was considered a wholesale operation located within the Industrial A Zoning Use District, a use that requires a Special Permit. The Special Permit application was not identified under the "Approvals Section" of the FEA or within the DEIS. A Special Permit application was not filed with the Town of Riverhead.

The November 24, 2021, letter does not adequately address this question. The NPV letter only offered a simplified statement that says,

*“Applicant will only process materials for his own use.”*

Comments on the DEIS requested quantifiable information regarding the Applicant's own use of the processed materials. This comment becomes more significant as the Applicant now proposes to use 100% of the processed materials *“for his own use.”*

New questions arise as to what type of use(s) the Applicant envisions. Will the subject site or an offsite location offer processed material for retail sales, wholesale, or only for new/renovation construction markets? The statement that the Applicant will only process what the Applicant can use is new information and differs from how the accepted DEIS described the operations and processed material use.

However, no quantifiable information from the Applicant has been provided (no historical records of volume/tonnage used by the Applicant, no past records of project size(s) performed by the Applicant, no anticipated projects/markets projected by the Applicant).

The response is inadequate. How, when, and why will the Applicant need 13,000 CY of processed materials? The answers must be clear.

The Applicant's statement also brings into question, what happens to the unprocessed materials, because the Applicant will ONLY PROCESS for his own use?

The 13,000 CY of unprocessed material may (as per Part 360 regulations) be legally stored onsite for 365 days. If only a small portion of the 13,000 CY is needed by the Applicant and then this quantity replenished and stored for another 365 days, how and when will a balance between incoming and stored unprocessed material be achieved with processed and outgoing material?

Prior DEIS comments suggested the proposed processing equipment could process all 13,000 CY of material in 3-4 days. The proposed hours of operation appear excessive if the facility only operates intermittently due to a dependence on unknowns consisting of incoming waste volumes, waste availability, outside contractor delivery schedules, and processing C&D solely for the Applicant's uses.

Research into NYSDEC permitted and registered C&D processing facilities operating in Region One, and one specifically mentioned in the vibration and sound studies of the DEIS, listed a facility located on Grand Boulevard, Westbury, NY. This facility was identified by the NYSDEC records as operated under the Stassi name (the same last name listed in the Applicant's NYSDEC Part 360 Permit for the Breezy Hill Group VI, LLC/Roadwork Ahead Calverton site). The Grand Boulevard, Westbury facility is like the one proposed in Calverton.

A second facility located on Maple Avenue in Westbury was listed by NYSDEC as operated by Stassi Brothers Asphalt Corp.

An Annual Report must be filed with NYSDEC for all registered and permitted C&D processing facilities. (A blank NYSDEC Annual Reporting Form was included in the Applicant's revised Part 360 Permit Application appendix section, listed as an attachment to the NPV November 24, 2021, letter).

Because the Applicant has again, not provided quantifiable information on processed materials intended for its own use or described the amounts anticipated during periods of operations, or described details on the processed material acceptable uses for their own use; it is recommended the Lead Agency FOIL the NYSDEC for the Annual Reports filed by the following entities:

Rock Crush Recycling LLC 478 Grand Blvd. Westbury, NY: NYSDEC # 30W48R

Stassi Brothers Asphalt Corp 422 Maple Ave. Westbury, NY: NYSDEC # 30W43R

The information may provide insight on expected process material quantities, types of material used and types of uses when 100% will be utilized by this Applicant.

Due to the Applicant's revised operating procedures (where only material the Applicant needs will be processed) the Lead Agency may consider limiting the size (magnitude) and operating periods of the facility as a form of mitigation to control noise, dust, traffic, preserve local community character and protect water resources.

It is expected that nuisance impacts (including noise, dust, traffic) will be generated by the proposed action, however under the proposed hours of operations, using "intermittent" availability of raw material and periodic equipment operation provides no measurable form of mitigation.

Response 2 also stated,

*“... the above discussion of the anticipated facility operations suggests that the potential impacts on the community would be limited in time and duration.”*

It is recommended the Lead Agency strongly consider these potentially significant nuisance impacts upon the residential dwellings in the vicinity of the site when weighed against the Applicant's proposed hours of operations.

An in-depth discussion is required on the potential impacts generated by the operation that is accepting wastes and operating it's equipment Monday-Friday 6:30 AM to 6:00 PM; Saturday 6:30 AM to 5:00 PM and Sunday 7:00 AM to 2:00 PM (dumping only/no crushing) on nearby residential properties. Mitigation of these impacts must be clearly addressed.

An accurate EIS level assessment of potential impacts is to be performed on the full-scale daily operations during the periods of operation that the Applicant has proposed.

If the proposed action describes mitigating measures such as limiting operations (days, hours, processing, delivery) these must be clearly identified using specific statements in the FEIS.

If the Lead Agency does accept the Applicant's statement, that due to intermittent deliveries and intermittent equipment operations, potential for community impacts would be generated, unavoidable and "limited in time and duration," then a significant

reduction in the facility's operations would serve to provide greater mitigation by reducing or avoiding potential community impacts altogether.

#### **Response 3: Part 360 Permit Engineering Report**

Comments reserved/No additional comments at this time.

#### **Response 4: NYSDEC Violations**

The letter states,

*“Communication with the Division of Materials Management, NYSDEC since its November 5, 2018, e-mail confirms that that office is awaiting completion of the SEQRA process on the Breezy Hill Group VI, LLC site plan application (completion to be documented by issuance of the Findings Statement) to render its decision on compliance to the Order on Consent.”*

The NYSDEC, November 5, 2018, email regarding the cleanup of the site, Order of Consent, and its attendant remediation schedule for compliance for removal of all the materials on the site, made no statement regarding the need for the Lead Agency's issuance of the SEQRA Findings Statement before site cleanup. The statements provided in Response 4 are not accurate.

An email received from NYSDEC, Division of Materials Management dated November 30, 2021, states, **“DEC does not need the Town’s findings statement to allow the clean up to happen.”**

Furthermore, the NYSDEC October 26, 2021 Notice of Violation (NOV) sent via certified mail, return receipt requested, identified under Item 3, Violation of Attachment A-Compliance Schedule of Consent Order- *“The consent order requires the facility to cease operations without authorization and remove all wastes from the subject site within 120 days from the effective date (March 21, 2018) of the current Order, which was July 20, 2018. Waste continues to be dumped at the facility and previous waste remains at the site, in violation of the consent order.”*

Again, according to the October 26, 2021, NOV, there is no requirement for a SEQRA Findings Statement and “previous waste remains at the site, in violation of the consent order.”

#### **Responses 5: Transporter Registration**

The applicant must file a completed application for the registration. Providing a blank registration form does not respond to the comment.

#### **Response 6: Part 360 Series Waste Tracking Document for C&D Debris**

In contrast to statements made by the Applicants, the presence of unauthorized waste materials onsite and the subject of two NYSDEC Notice of Violations, clearly demonstrates the waste has not been removed from the site, or if wastes had been removed, the Part 360 Series Waste Tracking Document would provide validation. The Lead Agency requests the completed form be provided, not the blank form as provided in the NPV November 24, 2021, letter as an attachment.

**Response 7: Future Disposal of Unprocessed C&D and Part 360 Series Waste Tracking Document for C&D Debris**

Comments reserved/No additional comments at this time. The Applicant demonstrate compliance with these requirements.

**Response 8: Chapter 229 Permit/NYSDEC and Town Clearing Violations**

The response states,

*“The Applicant did not have a Chapter 229 Permit to import the materials to the site that were dumped in the cleared area and became subject of the NYSDEC Notice of Violation. The Applicant performed the necessary removal. The Division of Materials Management, NYSDEC is awaiting completion of the SEQRA process on the Breezy Hill Group VI, LLC site plan application to render its decision on compliance to the Order on Consent.”*

The statement claims, *“the Applicant performed the necessary removal”* of solid waste materials dumped at the site.

The statement is inconsistent with the requirements set forth in the NYSDEC November 5, 2018, that required, “All solid waste materials both processed and unprocessed (everything on the site), must be removed from the site within 120 days (March 5, 2019) of this approval on the Remediation Plan”

The statement is inconsistent with the NYSDEC Notice of Violation, dated October 26, 2021, including non-compliance with the first violation Order on Consent and its attendant schedule (timeframe) for site remediation.

The NYSDEC provided no requirement in its Order on Consent or in its remediation schedule that the Lead Agency file a SEQRA Findings Statement prior to enforcement of the order.

The NYSDEC is an involved agency under SEQRA for its responsibilities of a Part 360 Permit. The Applicant has no Part 360 Permit for a Solid Waste Management Facility or local approvals for this use at the subject site and cannot use the location for any solid waste facility operation.

The Planning Board as Lead Agency has the responsibility for the SEQRA Findings Statement and Site Plan review, which cannot be used by the NYSDEC or the Applicant to delay enforcement of NYS-Environmental Conservation Law.

The Applicant’s response to comments regarding the status of outstanding NYSDEC violations, the status of site cleanup activities and documentation of the site’s full remediation is unacceptable. The Lead Agency has requested the information be provided multiple times.

It is recommended that the SEQRA Hearing remain open until the Lead Agency has received confirmation from the NYSDEC that all Order on Consent, cleanup schedules, and ongoing violations have been satisfied. The Lead Agency has the authority to require the Applicant provide the necessary information the Lead Agency needs to develop and to defend its SEQRA Findings Statement.

**Response 9: Special Requirements for Pre-Determination of BUD Fill Materials and Testing Protocols**

See comments under Response 13. Comments reserved/No additional comments at this time.

**Response 10: DEIS Site Plan Revision & Sound Level Assessment**

See comments under Response 18. Comments reserved/No additional comments at this time.

**Response 11: Update to C&D Facilities**

Comments reserved/No additional comments at this time.

**Response 12: Wetlands and Surface Waters**

Comments reserved/No additional comments at this time.

**Response 13: Water Resources**

The Applicant has installed one (1) upgradient groundwater monitoring well and three (3) down gradient groundwater monitoring wells. Each well is installed with a screen depth located at seven (7) feet below groundwater. Groundwater elevation was recorded at nineteen (19) feet AMSL; with the bottom of the screen elevation located at twelve (12) feet AMSL.

The Applicant stated that continued groundwater monitoring at this location will not continue. The Applicant justifies discontinuing long term groundwater monitoring because:

- (a) the site is not presently causing adverse impact to groundwater quality; and
- (b) the facility will not receive, accept, process, or store any potentially hazardous materials.

In response to item (a) the site has been used as a residential property and in most cases a residential use except for sanitary wastewater disposal seldom generates significant adverse impacts to groundwater. However, under the proposed use as a solid waste facility the proposed use would increase potential for groundwater quality adverse impact generated by leachate.

Although as per item (b), the site will not intentionally accept or process any potentially hazardous materials, 75% of the C&D waste will be delivered by carters other than the Applicant.

The residential community located downgradient of the site remains within the pathway of groundwater flow that could potentially become compromised either from the onsite C&D leachate or from an offsite location upgradient of the proposed waste facility. Because this area of Riverhead is currently experiencing compromised groundwater quality, additional monitoring may be requested. The Riverhead Water District will be contacted for additional comments on this matter.

Pursuant to Riverhead Town Code, Article LVI Site Plan Review, section 301-306 requires that existing {301-306 B. (3) (c)} and proposed utilities {301-306 B (4) (g)} (including waterlines) be depicted on the Site Plan. The Part 360 Permit application

requires the Applicant depict all private and public water supply wells within an 800-foot radius of the subject site's property boundaries. This information is required by the Lead Agency and Town of Riverhead Planning Department for both Site Plan and SEQRA review.

The long-term groundwater monitoring wells could provide a method for continued monitoring of groundwater quality. In lieu of the unknowns associated with the presumed onsite private drinking water and the Nassau/Suffolk County sources of incoming C&D waste streams, monitoring groundwater quality trends would aid in the protection of groundwater resources where both local community private wells, and the Applicant's own drinking water well may be better served by a long-term program.

The Applicant proposes using the onsite private drinking water well as its water supply. However, the Applicant reported they were unable to locate the well, provide details on well size, depth, pumping capacity or water quality.

Town of Riverhead tax rolls (2021 Final Assessment Roll, Town of Riverhead, NY) depicts Breezy Hill Group VI, LLC as property owner of SCTM 600-100-2-4.2 (the subject site) and therefore not having complete site/onsite structure access and ability to describe location and conditions of the onsite well is not an acceptable response. The Lead Agency has requested onsite well information and it must be provided prior to the Final EIS preparation.

Additional information on potable and fire protection water supply is required. Furthermore, the Applicant states the Riverhead Fire Department's 4,000-gallon tanker truck, "*supplemented by water from the existing onsite well, as well as by other private wells that serve developed properties in the area*" will be used for firefighting.

The Applicants must identify who provided permission to use other property owner's private wells, what capacity of water supply is available from these other wells, and what capacity is available from the onsite well.

**Response 14: Provide Copies of the Part 360 Series Waste Tracking Document**

The response is not acceptable. The Applicant has not removed materials from the site or provided the requested completed waste tracking documentation. The response is unacceptable.

**Response 15: Traffic Impact Assessment**

Comments reserved/No additional comments at this time.

**Response 16: Special Permit & Use of Processed C&D Materials**

See comments to Response 2. Comments reserved/No additional comments at this time.

**Response 18: Sound Level Assessment Based on NYSDEC Part 360.19 for Rural Areas**

The NYSDEC sound level limits for Rural and Suburban areas are for the purpose of assessing and complying with NYS requirements under Part 360.19. As presented by the Applicant's letter response, the area within a 1-mile radius of the subject site described population density calculated at 469 persons per square mile. The NYSDEC

defines Suburban as having a population density of between 350 and 5,000 persons per square mile.

The concerns of the Lead Agency include the potential impacts of sound level on the residential dwellings located in the immediate area. Certainly, this local community can be best described as rural. The population density of 469 persons as calculated by the Applicant is much closer to 350 persons which is used as a Statewide threshold used to separate Rural from Suburban, and well below the upper limit of 5,000 persons used to define Suburban.

The Lead Agency is not issuing a Part 360 Permit but is interested in potential for nuisance (including noise) impacts using methodologies and data that reflects the specific type of local community characteristics where the proposed action is located. This is of particular concern because the site is potentially within an Environmental Justice Area.

The Applicant is also advised that meeting a prerequisite standard (i.e. Town of Riverhead Noise Ordinance Code and/or NYSDEC Part 360.19 noise limit) is not an acceptable form of mitigation pursuant to SEQRA. Compliance with building, zoning and other municipal codes is simply a minimum requirement to avoid a non-compliant situation or the need for a variance or exception to the code.

The Applicant is requested to assess noise impacts in accordance with the SEQRA comments on the DEIS, and respond with the requested Rural sound level analyses, as described in 6NYCRR Part 360.19. The Lead Agency's use of the NYSDEC methodology was for it's SEQRA level evaluation of potential noise level impacts utilizing the most appropriate and acceptable science-based standards designed for solid waste management facility operations.

#### **NPV Response to November 18, 2021 Written Comments**

##### **Response 1: NYSDEC Second Notice of Violations, October 26, 2021**

See above comments to Responses 4, 6 & 8: November 4, 2021, SEQRA Hearing & Written Comments.

##### **Response 2: Additional Traffic Impact Assessment**

Comments reserved/No additional comments at this time.

Please advise the undersigned of any questions or comments regarding this matter.

Prepared by:

*Jeffrey L. Seeman*

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