

COPY

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

BRUCE PETRIE and GINGER PETRIE,  
ANDREW G. KRASNANSKY and TINA-LOUISE  
KRASNANSKY, and ROBERT DUANE BLASKO  
and ELIZABETH A. BLASKO,

Appellants

vs.

LOWER SAUCON TOWNSHIP,

Appellee

NO. C0048CV2024-0049

LAND USE APPEAL

LAND USE APPEAL

FILED  
2024 JAN - 3 A 10: 12  
COURT OF COMMON PLEAS  
CIVIL DIVISION  
NORTHAMPTON COUNTY, PA

AND NOW, Come Bruce Petrie and Ginger Petrie, Andrew G. Krasnansky and Tina-Louise Krasnansky, and Robert Duane Blasko and Elizabeth A. Blasko, Appellants, and appeal from the Decision of the Board of Commissioners of Lower Saucon Township, Northampton County, Pennsylvania, granting Bethlehem Landfill Company - Phase V Preliminary Land Development & Lot Consolidation Plan on December 6, 2023, and in support thereof, aver the following:

1. Appellants, Bruce Petrie and Ginger Petrie, are adult individuals, citizens, taxpayers, property owners, and residents of the Township of Lower Saucon with their principal address of 2626 Redington Road, Hellertown, PA 18055.
2. Appellants, Andrew G. Krasnansky and Tina-Louise Krasnansky, are adult individuals, citizens, taxpayers, property owners, and residents of the Township of Lower Saucon with their principal address of 2430 Applebutter Road, Hellertown, PA 18055.

3. Appellants, Robert Duane Blasko and Elizabeth A. Blasko, are adult individuals, citizens, taxpayers, property owners, and residents of the Township of Lower Saucon with their principal address of 2510 Redington Road, Hellertown, PA 18055.

4. Appellee is Lower Saucon Township, a second class township organized and existing pursuant to the Second Class Township Code, 35 P.S. § 65101, et seq., and an Optional Plan of Government in accordance with the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. § 2901, et seq., with an address of 3700 Old Philadelphia Pike, Bethlehem, Pennsylvania 18015.

5. On September 11, 2023, Bethlehem Landfill Company (hereinafter referred to as "Landfill") submitted a Preliminary Land Development and Lot Consolidation Plan for the Phase V Expansion at the Bethlehem Landfill located at 2335 Applebutter Road within the Township.

6. The Township earlier, on August 30, 2023, at the Landfill's request and after a previous attempt to rezone failed for failure to comply with the procedural requirements of the Pennsylvania Municipalities Planning Code, adopted Ordinance No. 2023-05 rezoning the Landfill's property and converting what had previously been landfills and waste disposal facilities as a special exception, then conditional, now as a permitted use upon the rezoned property.

7. Township and Landfill had known that Appellants and others had secured expert witnesses in the areas of land planning, geology, hydrogeology, and history of the site, however subsequent to September 11, 2023, and the date of approval of the

aforesaid Plan on December 6, 2023, failed to permit public participation in the review process by limiting comment to only three (3) minutes, and only then by residents and taxpayers, thus excluding nonprofit corporations and expert witnesses.

8. Substantive review comments were received by the Township's engineering firm, Hanover Engineering, dated October 19, 2023, a copy of which is attached hereto, made a part hereof, and whose contents are incorporated herein, and marked Exhibit "A." Substantive review of the Land Development and Lot Consolidation Plan was also received from the Lehigh Valley Planning Commission pursuant to its duties statutorily required by the Pennsylvania Municipalities Planning Code. A copy of the Lehigh Valley Planning Commission comment letter dated October 13, 2023, is attached hereto, made a part hereof, and contents incorporated herein, marked Exhibit "B."

9. The Township Engineer did not recommend approval or conditional approval of the Plan in its review letter of October 19, 2023, or publicly during Township Council Meeting on December 6, 2023.

10. At Township Council Meeting on December 6, 2023, Council was presented with a document which by motion it approved purporting to grant preliminary lot consolidation and land development along with 23 individual waivers from provisions of the Lower Saucon Township Subdivision and Land Development Ordinance.

11. Appellants aver that the action of the Lower Saucon Township Council in approving the Land Development and Lot Consolidation Plan of Bethlehem Landfill Company - Phase V as set forth in Exhibit "C" attached hereto, incorporated herein, and

made a part hereof, was arbitrary, capricious, an abuse of discretion and contrary to law for the reasons as set forth herein.

12. Hanover Engineering cited 20 specific Subdivision and Land Development Ordinance deficiencies, to wit: Section 145-9, Section 145-21.B.(d)(7), Section 145-30, Section 145-33.B.(1), Section 145-33.B.(1), Section 145-33.C.(1), Section 145-33.C.(2), Section 145-33.C.(3), Section 145-33.D.(9) and Section 145-44.G, Section 145-33.E.(6), Section 145-33.E.(7), Section 145-33.F.(1)(a) and Appendix B-7, Section 145-41.B.(4) and Section 145-45.B.(3), (4) and (9), Section 145-44.B, Section 145-44.D.(1), Section 145-45.G.(2)(a), Section 145-46.B.(3), Section 145-49, Section 145-50, and Section 145-51.

13. Hanover Engineering cited 32 specific deficiencies of the Lower Saucon Township Stormwater Management Ordinance, to wit: Section 137-6.D and 137-29, Sections 137-11.L and 137-15.A, Section 137-13.B, Section 137-13.C, Section 137-14.2.A, Section 137-14.D.(2), Section 137-14.N, 137-18.E, Section 137-18.G, Section 137-18.H, Section 137-18.K, Section 137-18.L, Section 137-18.N, Section 137-18.O, Section 137-18.P, Section 137-19.D.(1), Section 137-19.F.(2), Section 137-19.G.(8), Section 137-19.G.(10), Section 137-19.G.(13), Section 137-19.G.(14), Section 137-19.G.(17), Section 137.21.A and D and 137-22.A(1), Section 137-21.B, Section 137-21.C, Section 137-22.B, Section 137-23.M, Section 137-26.B.(14), Section 137-26.D and E, -34, -36, -37, and -38, Section 137-28.B, Section 137-37.B and C, and Appendix I.

14. Section 503(8) of the Pennsylvania Municipalities Code does in fact grant governing bodies the authority to administer waivers or modifications to the minimum standards contained in Subdivision and Land Development Ordinances, however only upon proof that those standards are unreasonable, cause undue hardship, or when an alternate standard can be demonstrated to provide equal or better results. The record is devoid of any finding or proof that any of the standards required to grant a waiver exist in this case. Accordingly, the Township erred as a matter of law in granting waivers and approving the Land Development and Lot Consolidation Plan containing those waivers. The record is devoid of any evidence to establish that literal enforcement of the Lower Saucon Township Subdivision and Land Development Ordinance would exact undue hardship, be contrary to the public interest **and** that the purpose and intent of the Ordinance can be observed via modification.

15. The waivers granted deal with health, safety, and welfare issues, have the potential of causing damage to the environment, the currently existing Conservation Easement, and the public waterways of the Commonwealth of Pennsylvania.

16. Approving the Land Development and Lot Consolidation Plan and waivers in connection therewith are violative of the Natural Resources Plan of FutureLV and the Bull Run Natural Heritage Inventory Core Habitat threatening deforestation of existing woodlands which is likely to cause environmental stress via stormwater runoff, groundwater recharge, erosion, etc. This is deemed a Regional High Preservation Priority Area and is a Natural Heritage Core Habitat of State Significance.

17. The Lehigh Valley Planning Commission comments, incorporated herein, made a part hereof, and making specific reference to the environmental protections contained in the Lower Saucon Township Multimunicipal Comprehensive Plan, set forth detailed rationale why justification for the waivers do not exist.

18. In accordance with the comments made by Hanover Engineering in its October 19, 2023 review letter, there are 15 specific Lower Saucon Township Zoning Ordinance deficiencies, to wit: Section 180-22 and Section 180-23, Section 180-78 and 180-93.D, Section 180-95.A(2)(a), Section 180-95.B.(17), Section 180-96.C, Section 180-97.C.(2)(b), Section 180-97.C.(3)(a), Section 180-97.C.(4)(a), Section 180-98, Section 180-98.B, Section 180-98.B.(4), Section 180-109.F.(3)(a) and 180-109.C.(2), Section 180-109.F.(3)(a), Section 180-109.F.(3)(h), and Section 180-109.G.

19. Township has committed an error of law in approving the Land Development and Lot Consolidation Plan where Landfill has not shown it has complied with the Lower Saucon Township Zoning Ordinance.

20. The most egregious of the zoning violations is one that everyone knows about and has been discussed for months. Section 180-109.F(3)(a) provides that no landfill or waste disposal facility activities shall be conducted within 100 feet of the bank of any stream. The Township Engineer points out again that there are two (2) existing streams located within the Phase V expansion limit of disposal. No zoning variance has been secured.

21. As set forth above, Appellants have secured the benefit of expert witnesses,

one of which is Thomas Comitta, Land Planner, whose Plan deficiencies would have been presented to Council but he is neither a resident nor taxpayer of the Township. That which Council would have heard is attached hereto, incorporated herein, and made a part hereof as identifying other specific grounds upon which the Court ought to determine approval of the Land Development Plan as contrary to law. See Exhibit "D."

22. Prior to consideration of the Land Development and Lot Consolidation Plan, the Landfill and Township by and through their counsel had entered into an Agreement to privately share information in an effort to thwart the efforts of citizens challenging efforts to amend the Zoning Ordinance and strip existing Conservation Easements from protected areas. Township consented to be subject to "the common interest doctrine," and "joint defense doctrine," among other privileges so as to permit it to work outside of the public eye in addressing landfill related legal issues. An apparent conflict of interest or appearance of conflict of interest arises in light of the manner in which it then treated the Landfill's Application. See Joint Defense and Joint Privilege Agreement dated September 20, 2023, attached hereto, made a part hereof, and marked Exhibit "E."

23. The approval of the Land Development and Lot Consolidation Plan was based on an invalid Zoning Ordinance amendment currently subject to a Procedural Validity Challenge in the Court of Common Pleas of Northampton County at Docket No. C0048CV2023-7174 and a Substantive Validity Challenge docketed at No. C0048CV2023-9455 and Declaratory Judgment Action pending at Docket No. C0048CV2023-6089, the pleadings of which are incorporated herein by reference.

24. During the pendency of the efforts by Bethlehem Landfill Corporation to expand its landfill, seeking Zoning Ordinance and Zoning Map relief and approval of the instant Land Development and Lot Consolidation Plan, Bethlehem Landfill Corporation and Lower Saucon Township entered into an Amended and Restated Host Community Agreement which is attached hereto, made a part hereof, and marked Exhibit "F." It is asserted that the aforesaid Agreement constitutes an unlawful Agreement to approve landfill expansion impairing and precluding the Township from exercising its proper role, duties, and responsibilities pursuant to the Pennsylvania Municipalities Planning Code and the Second Class Township Code. Section 6 of the aforesaid Amended and Restated Host Community Agreement provides as follows:

**Section 6. FUTURE EXPANSION OF THE LANDFILL**

- A. The Township recognizes that BLC intends to expand the Landfill as depicted on the Phase V Conceptual Plan, and the Parties acknowledge that the Phase V Expansion and the issuance of the Phase V Permit Modification are fundamental and integral to this Agreement and that it is in the best interest of both Parties that the Phase V Permit Modification is obtained.
  
- B. The Township, including all Council members, officers, employees, and representatives acting on behalf of the Township, shall not oppose the Phase V Expansion and BLC's efforts to obtain all necessary permits, licenses, authorizations and approvals that are required for the Phase V Expansion; provided the Phase V Expansion is: (i) designed in compliance with the Solid Waste Management Act and Implementing Regulations ("Condition 1"); and (ii) designed in compliance with applicable, valid Township ordinances that are not preempted or otherwise meet the criteria for preemption (Condition 2"), and that the Landfill is being operated in material compliance with all applicable PADEP rules and regulations and the Solid Waste Permit ("Condition 3").



...

- E. If the Township, including all Council members, officers, employees, and representatives acting on behalf of the Township, in good faith and pursuant to Section 6.D above opposes, including by an appeal to or intervention before an agency or court of competent jurisdiction, the Phase V Expansion and is unsuccessful in such opposition, the Township shall not be subject to damages, provided that prior to initiating any such opposition, the Township has obtained and provided to BLC:
- 1) where the basis for the opposition is that BLC has not met the terms of Conditions 1 and/or 3 above, unqualified written opinions from both the Township Engineer and an independent professional engineering firm which professional engineering firm has, in the preceding six (6) months, performed substantive services on at least one landfill in Pennsylvania, which opinions detail the basis for the conclusion that BLC has not met the terms of Conditions 1 and/or 3 above; or
  - 2) where the basis for the opposition is that BLC has not met the terms of Condition 2 above, unqualified, written opinions from both the Township Solicitor and a law firm with at least 25 attorneys and experience in zoning matters, which opinions detail the basis for the conclusion that BLC has not met the terms of Condition 2 above.

25. The aforesaid Agreement was designed to thwart Township opposition to future expansion of the landfill under threat of damages, undermine the authority of the Township Engineer and Township Solicitor, violative of the Second Class Township Code and constitutes an ultra vires and unconscionable impediment upon lawful governmental authority.


26. The Land Development and Lot Consolidation Plan approval is contrary to the Environmental Rights Amendment of the Pennsylvania Constitution, Article I,

Section 27, and in connection therewith Appellants incorporate Paragraph 15, 16, 17, and 20 as set forth above.

27. The Landfill has not complied with the specific requirements of the Lower Saucon Township Subdivision and Land Development Ordinance, Lower Saucon Township Stormwater Management Ordinance, and Lower Saucon Township Zoning Ordinance, for the reasons as set forth above and articulated by its own Engineer. There being no hardship established on the record, Appellants aver that Township abused its discretion and committed an error of law in granting land development and lot consolidation approval.

WHEREFORE, Appellants respectfully pray your Honorable Court reverse the Decision of Lower Saucon Township Council and remand the Plan with direction to review the Plan in accordance with the Lower Saucon Township Subdivision and Land Development Ordinance, Lower Saucon Township Stormwater Management Ordinance, and Lower Saucon Township Zoning Ordinance.

**Respectfully submitted,**



**GARY NEIL ASTEAK, ESQUIRE**

**ID: 19233**

**726 Walnut Street**

**Easton, PA 18042**

**(610) 258-2901**

**asteaklaw@gmail.com**

**Attorney for Appellants**

**VERIFICATION**

We, Bruce Petrie and Ginger Petrie, being duly sworn according to law, depose and say that the facts set forth in the foregoing Land Use Appeal are true and correct to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

DATED: 12/21/2023

  
**BRUCE PETRIE**

DATED: 12/21/2023

  
**GINGER PETRIE**

**VERIFICATION**

We, Andrew G. Krasnansky and Tina-Louise Krasnansky, being duly sworn according to law, depose and say that the facts set forth in the foregoing Land Use Appeal are true and correct to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

DATED: 12-20-23

  
**ANDREW G. KRASNANSKY**

DATED: 12-20-23

  
**TINA-LOUISE KRASNANSKY**

**VERIFICATION**

We, Robert Duane Blasko and Elizabeth A. Blasko, being duly sworn according to law, depose and say that the facts set forth in the foregoing Land Use Appeal are true and correct to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

DATED: 12/19/2023

Robert Duane Blasko  
**ROBERT DUANE BLASKO**

DATED: December 19, 2023

Elizabeth Blasko  
**ELIZABETH A. BLASKO**



# Hanover Engineering

252 Brodhead Road • Suite 100 • Bethlehem, PA 18017-8944  
Phone: 610.691.5644 • Fax: 610.691.6968 • HanoverEng.com

October 19, 2023

Mr. Mark Hudson, Manager  
Lower Saucon Township  
3700 Old Philadelphia Pike  
Bethlehem, PA 18015-5426

RE: Bethlehem Landfill Company  
Phase V Preliminary Land Development & Lot  
Consolidation Plan  
LST Project #LD 01-23  
Hanover Project LS23-34

Dear Mr. Hudson:

We have reviewed the first submission of the following above-referenced Plan and supporting documentation, prepared by Martin and Martin, Inc.:

1. Preliminary Land Development & Lot Consolidation Plan for Bethlehem Landfill Company, Sheets 1 through 29 of 29, dated September 11, 2023.
2. Post Construction Stormwater Management Plan, Sheets 1 through 13 of 13, dated September 11, 2023
3. Land Development and Lot Consolidation Plan Supporting Documents, Volumes 1 & 2, dated September 11, 2023.
4. Cover letter, dated September 11, 2023.

The Applicant proposes a lot consolidation/subdivision and lateral expansion land development at the existing Bethlehem Landfill Company property located at 2335 Applebutter Road. The proposed consolidation includes merging Parcels B, C, D, & E (Sheet 2) with the "existing" (approved with the Northern Realignment plans) 421.47 acre landfill property. Parcel A is proposed to be subdivided from the landfill property and added to the landfill owned parcel to the west (DBY 2002-1-023852). This results in a 503.46 acre parcel containing the existing and the proposed expansion to the landfill.

The proposed waste disposal expansion area will be located beyond the current PaDEP Permit Boundary and consists of 86 acres of new disposal footprint and 27.28 acres of disposal footprint atop previously permitted lined disposal area. This project will require DEP approval for the expansion. The proposed landfill expansion will have a total disturbance of 171 acres, with approximately 27 acres of disturbance proposed within the existing approved landfill disposal footprint. The waste stream anticipated for the proposed facility will be similar to those currently accepted. The landfill is served with both public water and sanitary sewer services.

According to the Zoning Map, the landfill property is located in the Light Industrial (LI), Light Manufacturing (LM) and Rural Agricultural (RA) Districts, with a portion of the property located in the Carbonate Geology (CG) Overlay District. All proposed landfill activities are within the Light Industrial (LI) District.

---

*Envisioning and Engineering sustainable, cost-effective, and environmentally responsible projects since 1971*

**Exhibit "A"**

**SUBDIVISION AND LAND DEVELOPMENT ORDINANCE COMMENTS**

1. Section 145-9 and SMO Section 137-30 – The Approved Waivers note on Sheet 1 shall be revised accordingly based on action by the Township Council. Additionally, all waivers referencing final plan shall be removed, as the applicant has only submitted the preliminary plans.
2. Section 145-21.B.(d)[7] – Reports from the Township Police Chief and appropriate Fire Chief should be reviewed. Please note that the City of Bethlehem provides fire service to the current landfill. Also, the appropriate Fire Chief should review the access provisions for emergency response into the expansion area, as well as any fire hydrant issues.
3. Section 145-30 – A certificate of insurance naming the Township and Township Engineer shall be provided. **The Applicant has requested a waiver of these requirements.**
4. Section 145-33.B.(1) – For the plan layout, the horizontal scale shall be a minimum of one inch equals 100 feet for lots greater than one (1) acre. Several overall plan views are drawn at a scale of one inch equals 300 feet. **The Applicant has requested a waiver of this requirement.**
5. Section 145-33.B.(1) – The access road profile on sheet 25 shall provide a vertical and horizontal scale.
6. Section 145-33.C.(1) – The location of all existing features within 500 feet of any part of the land to be developed shall be identified on the plan. **The Applicant has requested a waiver of this requirement.**
7. Section 145-33.C.(2) – The location of all existing contour lines on or within 500 feet of any part of the land to be developed shall be identified on the Plan. **The Applicant has requested a waiver of this requirement.**
8. Section 145-33.C.(3) – The applicant shall provide the approximate age of the existing single family detached dwellings and the existing storage buildings. Additionally, clarify the proposed uses for the existing single family homes whose parcels are to be consolidated as part of this plan.
9. Section 145-33.D.(9) and Section 145-44.G – The plans shall provide a profile for the entirety of the proposed access road and existing access roads with proposed grade changes.
10. Section 145-33.E.(6) – A soil erosion control plan and narrative shall be provided in accordance with this section.
11. Section 145-33.E.(7) – It appears that lighting is proposed in the vicinity of the proposed tanks. A lighting plan shall be provided in accordance with this section.

12. Section 145-33.F.(1)(a) and Appendix B-7 – The Township standard notices for drainage facilities and easements shall be listed on the Plan. **The Applicant has requested a waiver of this requirement.**
13. Section 145-41.B.(4) and Section 145-45.B.(3), (4) and (9) – When the existing roads (Applebutter Road, Skyline Drive and Riverside Drive) adjacent to the property being developed do not meet the construction standards (right-of-way width, cartway width, curbing, and sidewalk) of this chapter and its Appendix A, then in that case, the Developer shall provide those improvements. **The Applicant has requested a waiver of these requirements.**
14. Sections 145-44.B – The Applicant shall provide documentation from PennDOT that both existing driveways to Applebutter Road are adequate to service the proposed landfill addition.
15. Section 145-44.D.(1) – The width and slope depicted on the Typical Access Road Section Detail appears to be inconsistent with the Phase V Disposal Boundary Typical Section on Sheet 25.  
  
The contours in the area of the MSE wall, downstream of the wall, and the roadside channel shall be clarified.
16. Section 145-45.G.(2)(a) – The minimum width of the access roads shall be 24 feet for two-way traffic and 16 feet for one-way traffic. The applicant shall clearly define access roads to be utilized for one-way traffic versus two-way traffic. Additionally, the proposed access road along the northern phase V disposal boundary shall be revised to be the minimum width in accordance with this section. **The Applicant has requested a waiver to permit driveways that do not meet the required pavement widths and thicknesses.**
17. Section 145-46.B.(3) – Storm drainage easements shall be provided. **The Applicant has requested a waiver of this requirement.**
18. Section 145-49 – Following comments on sanitary sewer shall be addressed:
  - a. Flow projections shall be provided.
  - b. A DEP Planning Module shall be provided or a determination from DEP should be provided that a Planning Module is not required.
  - c. No sewer lines are shown on the plan to be extended into the proposed new cell areas.
  - d. The host agreement provides that the landfill is a direct sewer customer of the City of Bethlehem. The agreement also provides for a maximum flow amount in the existing sewer line in Applebutter Road and a provision for Township use for the sewer line. The flow projections should be compared to the flow amounts listed in the agreement.



Please note that the site data on Sheet 11 lists the sewer provider as Lower Saucon Authority.

- e. The plan proposes a leachate storage tank system. A letter should be provided by the City of Bethlehem that approves of the use of the system and demonstrates compliance with the industrial waste provisions in Chapter 130-48.
  - f. Certification of capacity for treatment from the City shall be provided.
19. Section 145-50 – Plans do not show an extension of the water line or fire hydrants into the proposed expansion area.
20. Section 145-51 – The Township shall determine whether the Applicant shall meet the Township Open Space and Recreation requirements for non residential development.

### STORMWATER MANAGEMENT ORDINANCE COMMENTS

1. Sections 137-6.D and 137-29 – Please note that our Stormwater Management Ordinance Review was limited to only those features which have been added/revised and does not comment on the current Ordinance compliance of existing facilities (pipes, swales, basins, etc.) that were previously analyzed for drainage areas that have not been revised.
2. Sections 137-11.L and 137-15.A – No earth disturbance activities associated with any regulated activities shall commence until approval by the Township of a plan which demonstrates compliance with the requirements of this Chapter.
3. Section 137-13.B – The pre-development release rate for DP009 in the pre-development release rate table (Sheet SW-1) does not appear to be reduced by 50%.
4. Section 137-13.C – The exact location of the stormwater management district boundaries and their applicable release rates shall be provided on the drainage plans for clarity.
5. Section 137-14.2.A – It appears the Water Quality Volume controls are not adequate for the difference in runoff volume from the pre-development to post-development for the 24-hour, 2-year return period storm. Revise the design to meet the Water Quality Volume for each watershed.
6. Section 137-14.D.(2) – Since the detention facilities are proposed without lining, the engineer must sign and seal the following note which shall be attached to all drainage plans, subdivision plans, and land development plans:” I, [name], certify that the proposed facilities are not underlain by carbonate geology.”
7. Section 137-14.N – The time of concentration flow path shall be shown for the post development drainage areas. Additionally, the longest time of concentration flow path shall be shown on the pre-development drainage area boundary 2, as it appears that multiple flow paths are depicted. The calculations shall be revised to be consistent with these changes.

8. Section 137-18.E – The minimum circular orifice diameter for controlling discharge rates from detention facilities shall be three inches. **The Applicant has requested a waiver of this requirement to allow a 1-inch and 2-inch orifice.**
9. Section 137-18.G – An access ramp of 10 to 1, 10 feet wide, shall be provided to allow maintenance equipment to reach the detention basins floor. **The Applicant has requested a waiver of this requirement.**
10. Section 137-18.H – A fence, with locking gate, shall be provided around the basins, and the fence shall be at least three (3) feet from the inside edge of the berm (or top of slope) and five (5) feet from the outside top of the berm. **The Applicant has requested a waiver to allow the outside perimeter fencing to serve as the basin fencing.**
11. Section 137-18.K – The detention basins' outside slope of a berm shall not be steeper than a ratio of 3:1, horizontal to vertical. **The Applicant has requested a waiver of this requirement.**
12. Section 137-18.L – The detention basins shall meet the maximum depth, interior slope, drawdown times, and fencing requirements of this Section. **The Applicant has requested a waiver of these requirements.**
13. Section 137-18.N – The minimum slope of the bottom of the detention basins shall be 1% towards the outlet structure. **The Applicant has requested a waiver of this requirement.**
14. Section 137-18.O – Basin 7 and Basin 8 shall be revised to provide the required freeboard in accordance with this section.  
  
Additionally, an emergency spillway for each basin shall be designed to pass the one-hundred-year storm peak basin inflow rate, as if the basin were full prior to the storm, with a minimum 0.5 foot freeboard measured to the top of basin. Provide emergency spillway calculations to show compliance with this section.
15. Section 137-18.P – The detention basins' one-hundred year water storage surface elevation perimeter shall be shown on all plans.
16. Section 137-19.D.(1) – Since a level spreader is proposed, the post development peak rate of discharge across the width of the level spreader shall not exceed the predevelopment peak flow across the same width at the same location. Provide calculations to show compliance with this section.
17. Section 137-19.F.(2) – Slopes for swale banks shall not be steeper than one (1) vertical to three (3) horizontal. **The Applicant has requested a waiver of this requirement.**
18. Section 137-19.G.(8) – Inlet and manhole castings and concrete construction shall be equivalent to Pennsylvania Department of Transportation Design Standards. **The Applicant has requested a waiver of this requirement.**

19. Section 137-19.G.(10) – Concrete end walls or wing walls in accordance with PennDOT standards and with 30-inch concrete footings shall be provided. Additionally, flared end sections are not permitted on open-ended pipes. **The Applicant has requested a waiver of these requirements.**
20. Section 137-19.G.(13) – The maximum permissible storm sewer pipe velocity shall be 15 feet per second. Calculations documenting the pipe velocities shall be provided.
21. Section 137-19.G.(14) – Fixed pipe conveyance of stormwater must be to the same destination as stormwater would be conveyed overland if the fixed pipe conveyance system were to fail. **The Applicant has requested a waiver of this requirement.**
22. Section 137-19.G.(17) – Provide capacity calculations for all sections of the storm water collection system to show adequate collection and conveyance of the design flows. Provide inlet capacity calculations for all inlets in the proposed collection system.
23. Section 137-21.A and D and 137-22.A(1) – No regulated earth disturbance activities within the Township shall commence until approval by the Township of an erosion and sediment control plan for construction activities. Written approval by DEP or the Northampton County Conservation District shall satisfy this requirement.
24. Section 137-21.B – A soil erosion control plan and narrative shall be provided.
25. Section 137-21.C – A copy of any required NPDES Permit or Permit Modification shall be provided to the Township.
26. Section 137-22.B – A copy of all plans, with supporting calculations, which have received a government agency permit, including the revised DEP Solid Waste Permits for the landfill expansion and the DEP Chapter 105 Permits for the removal of the streams and wetlands, shall be provided to the Township and Township Engineer. If the stream and wetland removals are approved, the corresponding easements should be noted to be removed.
27. Section 137-23.M – No ground may be proposed or altered to exceed a slope steeper than one (1) vertical for three (3) horizontal. **The Applicant has requested a waiver of this requirement to allow a proposed slope of one (1) vertical for two (2) horizontal.**
28. Section 137-26.B.(14) – The pre development drainage area boundaries between Drainage Area 4 and Drainage Area 6, as well as the boundaries between Drainage Area 6 and Drainage Area 2, appear to be inconsistent with the contours. Additionally, the post development drainage area boundaries between Drainage Area 8B and Drainage Area 12B shall be revised to be consistent with the contours presented.
29. Section 137-26.D and E, -34, -36, -37, and -38 – The BMP operations and management plan, describing how each permanent stormwater BMP will be operated and maintained and the identity of the person(s) responsible for operations and maintenance, and a statement, signed by the owner, acknowledging that the stormwater BMPs are fixtures that cannot be altered or removed without approval by the Township, shall be provided. **The Applicant is requesting**

a waiver from the requirement to provide a legal agreement between the Owner and Township describing the owner's responsibility for stormwater management facility ownership, maintenance, repair, and replacement.

30. Section 137-28.B – Lehigh Valley Planning Commission consistency review shall be provided.
31. Section 137-37.B and C – Easement shall be provided around any proposed stormwater management facilities. The Applicant has requested a waiver of this requirement.
32. Appendix I – The Storm Drainage Maintenance and Easement Notes shall be provided on the Plans. The Applicant has requested a waiver of this requirement.

### ZONING ORDINANCE COMMENTS

1. Section 180-22 and Section 180-23– Provide the lot requirements and yard requirements for the RA District in the Site Data.
2. Section 180-78 and 180-93.D – Provide the proposed use of the existing dwellings in the Site Data.
3. Section 180-95.A(2)(a) – Provide aerial photo showing features within 1,000 ft of the parcel.
4. Section 180-95.B.(17) – The following comments regarding the Carbonate Geology Area Investigation shall be satisfactorily addressed:
  - a. The report contains references to “Drawing ME-1”. No drawing labeled as such is found in this submission.
  - b. The report does not address the presence or absence of sinkholes and previously filled sinkholes as required by Zoning Ordinance Section 180-95.B.(17)(c)[10][a][vi].
  - c. The report states that the carbonate Leithsville Formation normally overlies the older, non-carbonate Hardyston Formation in the stratigraphic sequence. However, on this site, the Hardyston Formation is on top due to the Hellertown Thrust Fault. The consultant should clarify and justify the placement of the carbonate boundary line based on the results of the exploratory drilling. Numerous drilling locations that encountered the dolomite of the Leithsville Formation at depths of 53.5 feet to 122 feet are situated on the non-carbonate side of the boundary line. However, several drilling locations that encountered dolomite at similar depths (22 feet to 91 feet) are situated on the carbonate side of the boundary line. The consultant shall justify considering an area as non-carbonate when carbonate bedrock exists in that area, albeit at depth below an intervening non-carbonate formation.
5. Section 180-96.C – It appears lighting is proposed on the eastern side of the site. Provide lighting plans and details to show compliance with this section.

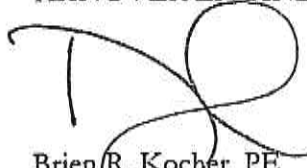
6. Section 180-97.C.(2)(b) – Provide the height and details for the proposed litter control fence shown on the Typical Section Detail.
7. Section 180-97.C.(3)(a) – Provide the proposed fence material and finishing type in accordance with this section.
8. Section 180-97.C.(4)(a) – Provide all locations of the litter control fence in plan view.
9. Section 180-98 – Traffic impact; driveways; off-street parking and loading; drive-in facilities; required rights-of-way. The applicant shall address the following comments pertaining to the undated Traffic Impact Evaluation and the Transportation Impact Analysis (TIA), prepared by Pennoni Associates, Inc., dated December 2022.
  - a. Provide copies of the existing HOP permit and plans referenced in the April 16, 2023 correspondence.
  - b. Provide HOP permit for the proposed driveway access to the leachate tanks or confirm with PennDOT an HOP is not required.
  - c. Provide evidence, including turning templates, the existing/proposed access to the leachate tanks is adequate for the largest anticipated vehicle.
  - d. Expand/augment the narrative of the TIA to clarify the various references to trip generation referencing “no change” and/or “new” trips.
  - e. Document adequate sight distance for all three scenarios on the PennDOT M-950S for the existing and proposed driveways in the Sight Distance narrative/chart.
  - f. Verify Table 5 Trip Generation matches the narrative, figures and analyses.
  - g. Provide Signal Warrant analyses for all study time frames and Warrant Criteria.
  - h. Provide clarification in the narrative whether the Peak Hour analyses were based on peak site generation observations or typical adjacent street peak hours.
  - i. Expand the “Roadway Condition Review” to evaluate the adequacy of the roadway and shoulder areas for the largest anticipated vehicles, particularly in the areas of roadway curvature and make recommendations for mitigation of any observations. It is noted the report identifies shoulder, signage and pavement marking observations which could be incorporated into recommendations for improvements.
10. Section 180-98.B. – The applicant shall meet the requirements of this Section for all driveways.
11. Section 180-98.B.(4) – Regardless of frontage, a development may be restricted to a single entrance/exit driveway. It appears there are 2 driveways onto Applebutter Road. Clarify the usage of the second driveway from the southeast portion of the site onto Applebutter Road.

12. Section 180-109.F.(3)(a) and 180-109.C.(2) – An earthen berm shall be placed no closer than 50 feet to all adjacent uses around the perimeter of a landfill or waste disposal facility and buffer yards and screening shall be provided. The Applicant requests that Township Council determine that the existing features serve as an acceptable substitute for the required berms, screening, and buffers.
13. Section 180-109.F.(3)(a) – No landfill or waste disposal facility activities shall be conducted within 100 feet of the bank of any stream. Two (2) existing streams are located within the Phase V Expansion limit of disposal and are proposed to be eliminated.
14. Section 180-109.F.(3)(h) – Upon cessation of waste disposal operations for a period of more than 18 month, the site shall be reclaimed to a condition that is non hazardous and does not result in environmental or neighborhood degradation.
15. Section 180-109.G – The Applicant shall dedicate 92.99 acres to the Township for preservation of land to account for the proposed Excess Resource Utilization. In the event that the Applicant demonstrates to the satisfaction of the Township Council, that it was unable to obtain any or enough property for dedication pursuant to this Section, the Applicant may meet the requirements of this Section by submitting a fee-in-lieu of dedication in accordance with the calculations in the Lower Saucon Township Subdivision and Land Development Ordinance, Section 145-51.E.

If you have any questions concerning this review, please contact the undersigned.

Respectfully,

HANOVER ENGINEERING

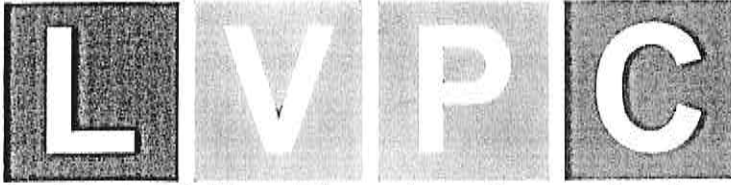


Brien R. Kocher, PE  
Township Engineer

brk:avy/jlw2

S:\Projects\Municipal\LowerSaucon\Twp\12-23-34-LandfillExpansion-PhaseV\Docs\10-19-2023-Landfill Expansion-PrelimPlanReviewLtr.doc

cc: Mr. James Young, Zoning Officer (by e-mail)  
Ms. Molly Bender, Zoning Clerk (by e-mail)  
Ms. Rachelle Markovic, Receptionist (by e-mail)  
B. Lincoln Treadwell Jr., Esquire (by e-mail)  
Maryanne Garber, Esquire (by e-mail)  
Joe McDowell, PE (by e-mail)



## Lehigh Valley Planning Commission

STEVEN GLICKMAN  
Chair

CHRISTOPHER AMATO  
Vice Chair

KEVIN SCHMIDT  
Treasurer

BECKY A. BRADLEY, AICP  
Executive Director

October 13, 2023

Mr. Mark Hudson, Manager  
Lower Saucon Township  
3700 Old Philadelphia Pike  
Bethlehem, PA 18015

**Re: Bethlehem Landfill Phase V Expansion – Land Use of Regional Significance  
Lower Saucon Township  
Northampton County**

Dear Mr. Hudson:

The subject application is considered a Land Use of Regional Significance under *FutureLV: The Regional Plan* in the Landfills and other Solid Waste Facilities category. The Lehigh Valley Planning Commission (LVPC) will consider the application at its Comprehensive Planning Committee and Full Commission meetings, pursuant to the requirements of the Pennsylvania Municipalities Planning Code (MPC). Discussion on agenda items largely happens during the Committee meeting and we encourage your virtual participation. The LVPC will issue a follow-up letter after the Commission meeting if Commission members have any additional comments. Meeting participation details are below:

- LVPC Comprehensive Planning Committee Meeting
  - o October 24, 2023 at 11:00 AM
  - o <https://lvpc.org/meetings.html>
- LVPC Full Commission Meeting
  - o October 26, 2023 at 5:30 PM
  - o <https://lvpc.org/meetings.html>

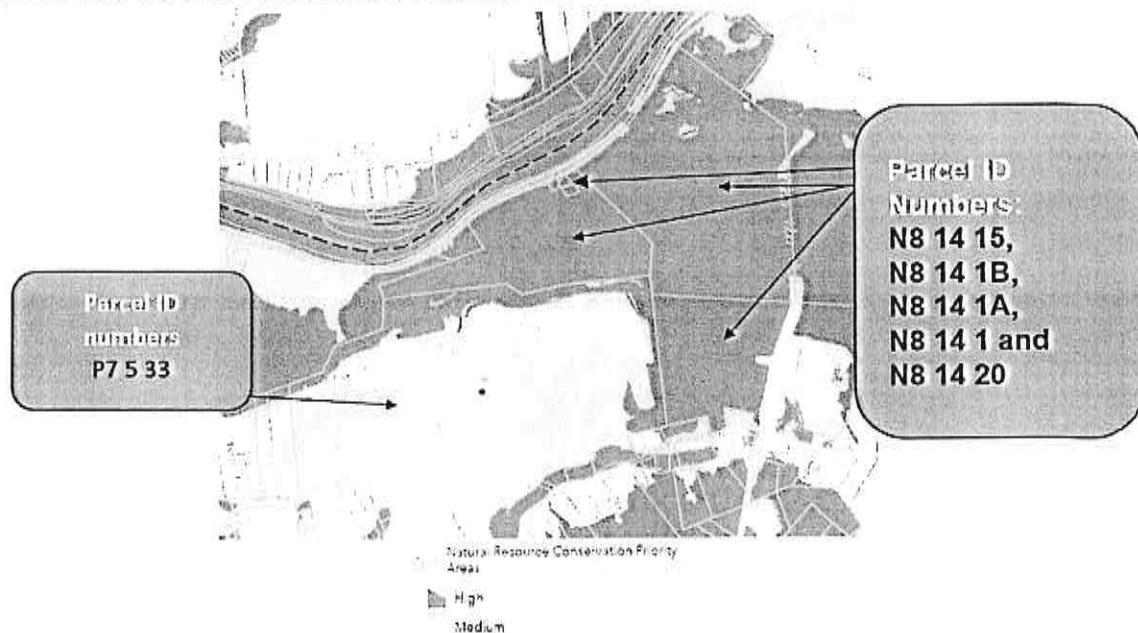
The subject applicant proposes an 86-acre expansion of the existing landfill located at 2335 Applebutter Road (parcel numbers P7 5 33, N8 14 15, N8 14 1B, N8 14 1A, N8 14 1 and N8 14 20). A lot consolidation is also proposed to facilitate the expansion. Landfills and Waste Disposal Facilities are high intensity land uses that have significant social and environmental impacts. Impacts to residents and/or the environment resulting from expanding and increasing operation must be cautiously scrutinized and mitigated to 'reduce greenhouse gas emissions' (of *FutureLV* Policy 3.4), 'provide environmentally responsible and economical solid waste disposal and recycling', 'protect the quality and quantity of surface water and groundwater' and 'improve regional air quality' (of *FutureLV* Policy 3.2) and promote safe, healthy, inclusive and livable communities (*FutureLV* Goal 5).

**Exhibit "B"**

While the area of the landfill currently in operation is located within the Development area of the General Land Use Plan of *FutureLV: The Regional Plan*, the proposal conflicts with *FutureLV* because most of the area proposed for expansion of the landfill to the northeast is within a Character-Defining area of the General Land Use Plan, representing the natural and scenic character of the Lehigh Valley.

### Natural Resource Conservation

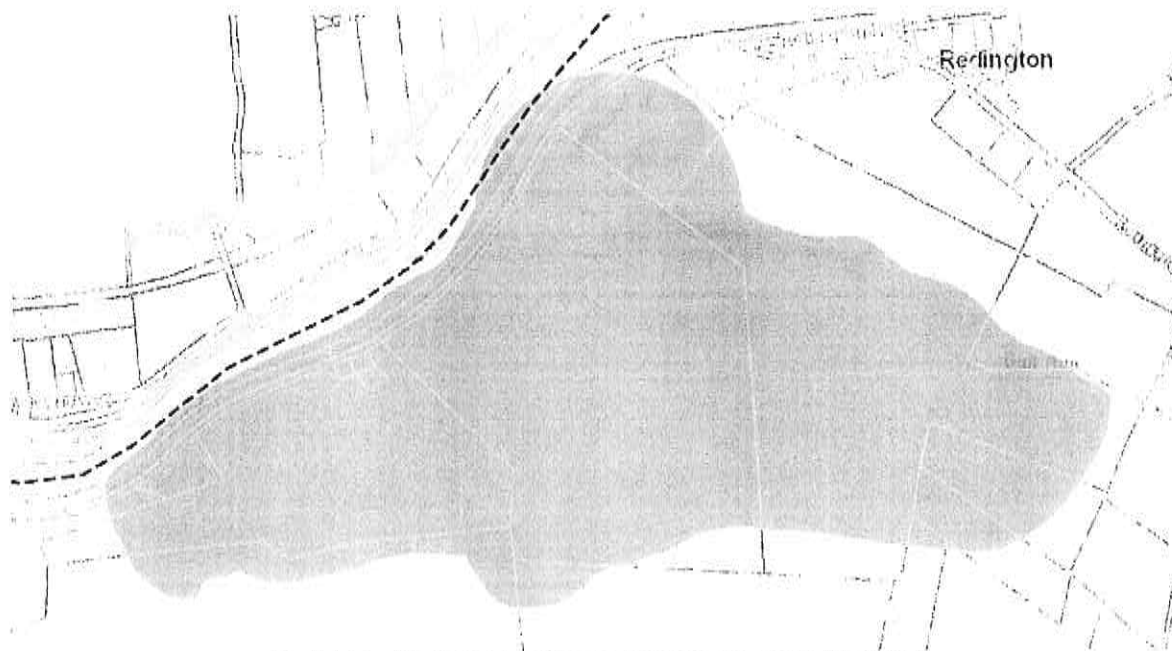
The Natural Resources Plan of *FutureLV* identifies natural features for preservation within the proposed expansion area, including woodlands, steep slopes of 15-25% grade and the Bull Run Natural Heritage Inventory Core Habitat:



The Bull Run Natural Heritage Inventory Core Habitat is shown below in purple and is a Natural Heritage Core Habitat of State significance. The area includes a relatively diverse and richly forested habitat along the Lehigh River. According to the Natural Heritage Inventory (NHI) of Lehigh and Northampton Counties (2013), maintaining the current hydrologic regime is critical to the persistence of the community and rare species at this site. Additionally, fragmenting the existing forested areas should be avoided. Landfill expansion in this area is strongly discouraged to 'preserve natural, recreational, and scenic assets' (of Policy 3.1). The existing woodlands in this area further mitigate environmental stress by reducing stormwater runoff, filtering groundwater recharge, controlling erosion and sedimentation, moderating local microclimates and purifying air.

The types of uses recommended in High Preservation Priority areas are parks and open space, woodlands, agriculture, and low-intensity, limited scale development that preserves natural and scenic resources.





Bull Run Natural Heritage Inventory Core Habitat

### **Conservation Easements**

The submitted plans depict an existing conservation easement to the north and east the proposed landfill expansion. The National Conservation Easement Database also identifies a conservation easement to the northeast of the proposed project site. In 2001, the Pennsylvania Conservation and Preservation Easements Act (P.L. 390, No. 29) was created to enable conservation easements, which are legal agreements between a landowner and a land trust or government agency that permanently limit land uses in order to protect its conservation values. In addition to conserving natural resources for the purposes mentioned above, the LVPC strongly recommends confirmation that the proposal does not infringe upon any legal agreements in the interest of the fiscal health and sustainability of the Township (of Policy 4.6).

Landscaping and existing tree line is proposed between the area of the proposed landfill expansion and the conservation easement area. The submitted plans do not depict woodlands in the Existing Features plan sheets, however aerial imagery dated May 2023 shows existing tree cover in those areas. The LVPC strongly recommends retention of existing woodland areas rather than tree removal and landscaping plantings to better serve as a buffer between development and the conservation easement area, and to 'maximize preservation of woodlands and critical habitats' (of Policy 3.1).

### **Federal Emergency Management Agency (FEMA) Flood Zone**

A FEMA flood zone, with a 1% annual chance of flooding, runs through the northernmost parcel (N8 14 1). The existing riparian corridor buffer should continue to be maintained as a hazard mitigation step which supports 'safe and secure community design and emergency management' (of Policy 5.1).

### **Traffic Impact Study**

A Transportation Impact Study (TIS) was included with the proposal, dated December 2022. The trip generation calculations estimate a daily total of 102 trips.

There is currently only one access to the site from Applebutter Road. Another driveway is proposed with the submitted plan to the east of the original driveway, which opens onto Applebutter Road. The addition of the proposed second driveway would improve this emergency vehicle access, which would 'promote safe and secure community design and emergency management' (of Policy 5.1). The addition of a second access point would also allow emergency response to access the site if the primary entrance point was obstructed. As the proposed expansion will not substantially increase the number of vehicles entering and leaving the location, the additional driveway could be utilized strictly for emergency access.

It should be taken into consideration that Freemansburg Bridge, which spans the Lehigh River, is currently in the development stage of a bridge preservation improvement project as listed in the Long-Range Transportation Plan of *Future LV: The Regional Plan*.

### **Township Comprehensive Plan**

Additionally, the proposed development conflicts with the Township's recently updated comprehensive plan, *Our Resources, Our Valley Multi-Municipal Comprehensive Planning in Pennsylvania's Saucon Valley* (pages 1-12). The Plan identifies the Township's natural resources, along with its other cultural and historic assets, as significant components of the region's future economic development. The proposal further conflicts with the Plan's stated goals to:

- 'Balance development and conservation initiatives in order to maintain the ambiance and quality of Saucon Valley's distinct cultural landscapes: small town, suburban and rural';
- 'Enhance the continuity, visibility and inter-connectivity of the Valley's cultural, natural and historical resources'.

### **Stormwater Review**

The project site is located within both the Saucon Creek and Fry's Run watershed. This watershed has a fully implemented Act 167 Stormwater Management Ordinance. Comments related to our review of the project's stormwater management plan are included as attachment 1.

Municipalities, when considering subdivision/land developments, should reasonably attempt to be consistent with *FutureLV: The Regional Plan*, as required by the Pennsylvania Municipalities Planning Code (MPC) [Article 1§105, Article III§303, §304 & §306(a), Article VI§603(j)]. The LVPC review does not include an in-depth examination of plans relative to subdivision design standards or ordinance requirements since these items are covered in the municipal review.

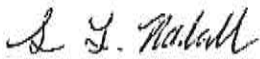
The LVPC has copied appropriate representatives from all adjacent municipalities in order to further 'coordinate land use decisions across municipal boundaries' (of Policy 1.4).

Feel free to call me if you have any questions about this review.

Sincerely,



Jillian Seitz  
Senior Community Planner



Susan Rockwell  
Senior Environmental Planner



Bambi Griffin Rivera  
Senior Community and Regional Planner



Evan Gardi  
Transportation Planner

cc: Bethlehem Landfill Company, Applicant;  
Martin & Martin, Inc. Joseph McDowell, PE, Project Engineer/Surveyor;  
Brien Kocher, Township Engineer;  
Denjam Khadka, LVPC Senior Civil/Environmental Engineer;  
Geoffrey A. Reese, PE, LVPC Master Planner and Engineer  
Cathy Hartranft, Hellertown Borough Manger;  
Darlene Heller, City of Bethlehem Planning Director;  
Trisha Lang, Upper Saucon Township Planning Director;  
Amanda Jensen, Bethlehem Township Planning Director  
Mikal Sabatine, Williams Township Manager;  
Jonathan Itterly, Freemansburg Borough Manager

## ATTACHMENT 1

### Act 167 Drainage Plan Review

October 13, 2023

Re: Bethlehem Landfill – Phase V Expansion  
Plans Dated September 11, 2023  
Lower Saucon Township  
Northampton County

The proposed storm drainage concept presented in the plans and storm drainage calculations dated September 11 2023 has been reviewed for consistency with the *Saucon Creek Watershed Act 167 Storm Water Management Ordinance*, April 1991 and the *Delaware River Sub-Basin 2 and Lehigh River Sub-Basin 5 (Fry's Run) Act 167 Storm Water Management Ordinance*, February 1999. Checklists of the Act 167 review items for both watersheds are attached for your information. As indicated on the checklists, each item of the Drainage Plan has been reviewed for consistency with the Act 167 Ordinances. A brief narrative of the review findings is as follows:

The proposed development is located within drainage districts 188, 189 and 196 of the Saucon Creek Watershed and districts 50, 51 and 52 of the Lehigh River Sub-Basin 5 Watershed as delineated in each Act 167 Plan. As such, the runoff control criteria for district 188 are a 30% Release Rate for the 2-year storm and a 50% Release Rate for the 10-, 25- and 100-year return period storms. The runoff control criterion for districts 189 and 196 is a 100% Release Rate. The runoff control criteria for district 50 are a 30% Release Rate for the 2-year storm and a 100% Release Rate for the 10-, 25- and 100-year return period storms. District 51 is Conditional No Detention I, and district 52 is Conditional No Detention II. Based on review of the plans and calculations, the following deficiencies are noted. Downstream capacity for the flows from the basin 7 and basin 8 spillways should be demonstrated. The outfall from Basin 7 creates a new concentrated discharge point. The pre-development boundaries between drainage areas 4 and 6 and between drainage areas 6 and 2 do not seem justified by the contours. The post-development boundary between drainage areas 8B and 12B does not seem justified by the contours. The plans should demonstrate where the meadow and open space cover will be located in drainage areas 9, 10 and 12. The pre-development time of concentration for drainage area 11 does not seem to begin at the high point of the drainage area. The path does not break out areas of different slope within the concentrated flow. The pre-development time of concentration path for drainage area 12 does not break out areas of different slope within the concentrated flow. The post-development time of concentration paths are not shown on the drainage area map for drainage area 8B and 12B. The web soil survey identifies UfB as hydrologic soils group B not C as used in the calculations. A minimum detention basin outlet orifice of 3 inches should be provided. The outlet control structure data for basins 2 and 6 are not included in the calculations or on the plans. The calculations provided do not include freeboard calculations. Basins 7 and 8 appear to not meet the 100-yr requirement for 0.5 feet from the water surface to the spillway invert. Basin 8 has flow out of the spillway for the 100-year routed storm and therefore does not meet the freeboard requirement. Therefore, the Drainage Plan has been found to be inconsistent with the Act 167 requirements.

Note that only those details of the Drainage Plan included on the checklists have been covered by this review. Therefore, notable portions of the Drainage Plan not reviewed include any aspect of the post-construction storm water management plan concerning water quality, the details and design of any proposed water quality

BMPs, the Erosion and Sedimentation Control Plan and the details of the runoff collection system (piping). These items are reviewed by the municipal engineer and/or others, as applicable.

Once the outlined issues have been addressed, the revised plans and calculations will need to be resubmitted to our office. Please call with any questions regarding these comments.

Sincerely yours,

A handwritten signature in cursive script that reads "Geoffrey A. Reese".

Geoffrey A. Reese, PE  
Master Planner and Engineer

A handwritten signature in cursive script that reads "Denjam Khadka".

Denjam Khadka  
Senior Civil/Environmental Engineer

Attachment

LVPC ACT 167 REVIEW CHECKLIST

Development Name: Bethlehem Landfill – Phase V Expansion Watershed: Saucon Creek  
 Municipality: Lower Saucon Township Reviewer: Denjam Khadka and Geoffrey A. Reese, PE  
 Date: October 13, 2023 Checked by: \_\_\_\_\_

Ordinance Reference	Item	Consistency w/Ordinance Yes No N/A	Comment
---------------------	------	---------------------------------------	---------

301.A-G.	General storm water management requirements	/ X /	See Attachment 1 for details.
H.	Consideration of volume controls	/ X /	Consideration preferred, not required.

302.A,B. Applicable Storm Water Management Provisions

Subarea(s)	188	189	196
Criteria	30%/50% RR	100% RR	100% RR

Criteria Key: RR = release rate; PND = provisional no detention

303.A.	Design consistency with applicable management provisions from 302.A. and B.	/ X /	See Attachment 1 for details.
B.	Mapping of Storm Water Management District Boundaries	X / /	See Attachment 1 for details.
C.	Downstream capacity analysis	/ X /	See Attachment 1 for details.
D.	Multiple discharge points within a single subarea.	/ / X	See Attachment 1 for details.
E,F.	Multiple discharge points within multiple subareas.	/ X /	
G.	Documentation of "no harm" downstream.	/ / X	
H.	Regional or subregional detention analysis	/ / X	
I.	Capacity improvements analysis	/ / X	
304.A.	Computation method (rational or soil-cover-complex)	X / /	Soil-cover-complex method used.
B.	Verification of detention design by routing	X / /	
C.	Check rational method detention volume vs. TR55	/ / X	
C.	Minimum detention pond freeboard specifications	/ X /	See Attachment 1 for details.
D.	Soil-cover-complex method design rainfall	X / /	
E.	Rainfall intensities for rational method	/ / X	
F.	Curve Numbers for soil-cover-complex method	/ X /	See Attachment 1 for details.
G.	Runoff coefficients for the rational method	/ / X	
H.	Manning equation to calculate watercourse capacity	X / /	
403.	Drainage Plan Contents	/ X /	See Attachment 1 for details.

LVPC ACT 167 REVIEW CHECKLIST

Development Name: Bethlehem Landfill - Phase V Expansion Watershed: Fry's Run and Lehigh River Sub-Basin 5  
 Municipality: Lower Saucon Township Reviewer: Denjam Knadka and Geoffrey A. Reese, PE  
 Date: October 13, 2023 Checked by: \_\_\_\_\_

Ordinance Reference	Item	Consistency w/Ordinance		Comment
		Yes	No N/A	

301.A-G.	General storm water management requirements	/	X /	See Attachment 1 for details.
H.	Consideration of volume controls	/	X /	Consideration preferred, not required.

302.A.B. Applicable Storm Water Management Provisions

Subarea(s)	50	51	52
30%/100% RR		CND I	CND II
Criteria			

Criteria Key: RR = release rate; CND I = conditional no detention I; CND II = conditional no detention II

303.A.	Design consistency with applicable management provisions from 302.A. and B.	/	X /	See Attachment 1 for details.
B.	Mapping of Storm Water Management District Boundaries	X /	/	See Attachment 1 for details.
C.	Downstream capacity analysis	/	X /	See Attachment 1 for details.
D.	Multiple discharge points within a single subarea.	/	X /	See Attachment 1 for details.
E.F.	Multiple discharge points within multiple subareas.	/	X /	See Attachment 1 for details.
J.	Documentation of no increase in peak or volume	/	X /	
L.	Documentation of "no harm" downstream.	/	X /	
M.	Regional or subregional detention analysis	/	X /	
N.	Capacity improvements analysis	/	X /	

304.A.	Computation method (rational or soil-cover-complex)	X /	/	Soil-cover-complex method used.
B.	Verification of detention design by routing	X /	/	See Attachment 1 for details.
C.	Minimum detention pond freeboard specifications	/	X /	See Attachment 1 for details.
D.	Minimum size orifice or greater proposed	/	X /	See Attachment 1 for details.
E.	Soil-cover-complex method design rainfall	X /	/	See Attachment 1 for details.
F.	Rainfall intensities for rational method	X /	/	See Attachment 1 for details.
G.	Curve Numbers for soil-cover-complex method	/	X /	
H.	Runoff coefficients for the rational method	X /	/	
I.	Volume control storage volume	/	X /	
J.	Common time of concentration	/	X /	
K.	Manning equation to calculate watercourse capacity	X /	/	

403. Drainage Plan Contents ..... / X /

**BETHLEHEM LANDFILL COMPANY – PHASE V PRELIMINARY LAND DEVELOPMENT & LOT  
CONSOLIDATION PLAN  
TAX MAP PARCELS P7-5-33-0719, AND OTHERS  
FOR THE DECEMBER 6, 2023 LOWER SAUCON TOWNSHIP COUNCIL MEETING**

Date of Application:	September 11, 2023
90 – Day MPC Deadline:	December 27, 2023
Plan Date:	September 11, 2023
LSPC Approval Recommendation:	October 26, 2023
LVPC Review Letter:	October 13, 2023
Plan Prepared by:	Martin and Martin, Inc.

**Project Background:**

The Applicant proposes a lot consolidation/subdivision and lateral expansion land development at the existing Bethlehem Landfill Company property located at 2335 Applebutter Road. The proposed consolidation includes merging Parcels B, C, D, & E (Sheet 2) with the “existing” (approved with the Northern Realignment plans) 421.47 acre landfill property. Parcel A is proposed to be subdivided from the landfill property and added to the landfill owned parcel to the west (DBY 2002-1-023852). This results in a 503.46 acre parcel containing the existing and the proposed expansion to the landfill.

The proposed waste disposal expansion area will be located beyond the current PaDEP Permit Boundary and consists of 86 acres of new disposal footprint and 27.28 acres of disposal footprint atop previously permitted lined disposal area. This project will require DEP approval for the expansion. The proposed landfill expansion will have a total disturbance of 171 acres, with approximately 27 acres of disturbance proposed within the existing approved landfill disposal footprint. The waste stream anticipated for the proposed facility will be similar to those currently accepted. The landfill is served with both public water and sanitary sewer services.

According to the Zoning Map, the landfill property is located in the Light Industrial (LI), Light Manufacturing (LM) and Rural Agricultural (RA) Districts, with a portion of the property located in the Carbonate Geology (CG) Overlay District. All proposed landfill activities are within the Light Industrial (LI) District.

**Action Needed:**

The Applicant is requesting conditional Preliminary Lot Consolidation and Land Development approval.

**Staff Recommendation  
for Consideration:**

- A. Preliminary Lot Consolidation and Land Development approval, subject to the following conditions:
1. The Applicant shall address the review comments contained in the letter dated October 19, 2023 from Hanover Engineering Associates, Inc. to the satisfaction of the Township Council.
  2. The Applicant shall comply with the Lehigh Valley Planning Commission stormwater management review letter, dated October 13, 2023.



3. The following Note shall be added to Sheet 11 of 29 of the Phase V Preliminary Land Development and Lot Consolidation Plan:

"The only required improvement associated with the proposed Phase V Expansion project is the proposed landscaping depicted on Sheet 11 of 29 of the Phase V Preliminary Land Development and Lot Consolidation Plan ("Preliminary Land Development Plan"). That landscaping shall be installed in accordance with the following schedule:

- The landscaping proposed along the eastern boundaries of Cell 5-B, Cell 5-C, and Basin #7 as depicted on Sheet 11 of 29 of the Preliminary Land Development Plan dated September 11, 2023 shall be installed within one (1) year of PADEP approval of the Form 37 Certification for the construction of Cell 5-B or Cell 5C, whichever is later.
  - The landscaping proposed north of the two proposed leachate storage tanks as depicted on Sheet 11 of 29 of the Preliminary Land Development Plan dated September 11, 2023 shall be installed within one (1) year of PADEP approval of the Form 37 Certification for the construction of said tanks.
  - The landscaping proposed along the southern boundary of Cell 5-J as depicted on Sheet 11 of 29 of the Preliminary Land Development Plan dated September 11, 2023 shall be installed within one (1) year of PADEP approval of the Form 37 Certification for the construction of Cell 5-J.
  - The landscaping proposed along the west/northwest boundary of Cell 5-I as depicted on Sheet 11 of 29 of the Preliminary Land Development Plan dated September 11, 2023 shall be installed within one (1) year of PADEP approval of the Form 37 Certification for the construction of Cell 5-I."
4. Any granted waivers, deferrals, and variances, with any conditions, shall be denoted on the Plan in a manner satisfactory to the Township Solicitor.
  5. The Applicant shall comply with the regulations of all municipal and governmental agencies having jurisdiction.
  6. The Applicant shall comply with the provisions of the Amended and Restated Host Community Agreement.
  7. The Applicant shall provide four (4) paper prints of the Preliminary Land Development and Lot Consolidation and the Post Construction Stormwater Management Plan that are consistent with the Conditions of the approval.
  8. The Applicant shall provide two (2) flash drives of the Preliminary Land Development and Lot Consolidation and the Post Construction Stormwater Management Plan that are consistent with the Conditions of the approval, in both a functional AutoCAD format (e.g. .dwg) as well as a static image format (e.g. .jpeg or .pdf).
  9. The Applicant shall pay any outstanding escrow balance due to the Township for review of the Plans and preparation of legal documents.
  10. The Applicant shall satisfy all these conditions within five (5) years of the date of the conditional approval unless an extension is granted by the Township Council.

- B. The granting of the following Subdivision and Land Development Ordinance (SALDO), and Stormwater Management Ordinance (SMO) waivers:

1. SALDO Section 145-30 – A waiver regarding certificate of insurance naming the Township and Township Engineer.
2. SALDO Section 145-33.B.(1) – A waiver regarding for the plan layout, the horizontal scale shall be a minimum of one inch equals 100 feet for lots greater than one (1) acre.
3. SALDO Section 145-33.C.(1) – A waiver regarding the location of all existing features within 500 feet of any part of the land to be developed.
4. SALDO Section 145-33.C.(2) – A waiver regarding the location of all existing contour lines on or within 500 feet of any part of the land to be developed shall be identified on the Plan.
5. SALDO Section 145-33.C.(3) – A waiver regarding to show approximate age of existing buildings except to show ultimate use or removal of existing residential buildings.
6. SALDO Section 145-33.F.(1)(a) and Appendix B-7 – A waiver regarding the Township standard notices for drainage facilities and easements shall be listed on the Plan.
7. SALDO Sections 145-41.B.(4) and 145-45.B.(3), (4) and (9) – A waiver regarding when existing roads (Applebutter Road, Skyline Drive and Riverside Drive) adjacent to the property being developed do not meet the construction standards (right-of-way width, curbing, and sidewalk) of this chapter and its Appendix A, then in that case, the Developer shall provide those Improvements.
8. SALDO Section 145-45.G.(2)(a) – A waiver regarding the minimum width of the access roads shall be 24 feet for two-way traffic and 16 feet for one-way traffic.
9. SALDO Section 145-46.B.(3) – A waiver regarding storm drainage easements
10. SMO Section 137-18.E. – A waiver regarding the minimum circular orifice diameter for controlling discharge rates from detention facilities shall be three inches.
11. SMO Section 137-18.G – A waiver regarding An access ramp of 10 to 1, 10 feet wide, shall be provided to allow maintenance equipment to reach the detention basins floor.
12. SMO Section 137-18.H – A waiver regarding A fence, with locking gate, shall be provided around the basins, and the fence shall be at least three (3) feet from the inside edge of the berm (or top of slope) and five (5) feet from the outside top of the berm.
13. SMO Section 137-18.K – A waiver regarding the detention basins' outside slope of a berm shall not be steeper than a ratio of 3:1, horizontal to vertical.
14. SMO Section 137-18.L – A waiver is regarding the detention basins shall meet the maximum depth, interior slope, drawdown times, and fencing requirements of this Section.
15. SMO Section 137-18.N – A waiver regarding the minimum slope of the bottom of the detention basins shall be 1% towards the outlet structure.
16. SMO Section 137-19.F.(2) – A waiver regarding slopes for swale banks shall not be steeper than one (1) vertical to three (3) horizontal.
17. SMO Section 137-19.G.(8) – A waiver regarding Inlet and manhole castings and concrete construction shall be equivalent to Pennsylvania Department of Transportation Design Standards.
18. SMO Section 137-19.G.(10) – A waiver regarding Concrete end walls or wing walls in accordance with PennDOT standards and with 30-inch concrete footings shall be provided. Additionally, flared end sections are not permitted on open-ended pipes.
19. SMO Section 137-19.G.(14) – A waiver regarding fixed pipe conveyance of stormwater must be to the same destination as stormwater would be conveyed overland if the fixed pipe conveyance system were to fail.
20. SMO Section 137-23.M – A waiver regarding no ground may be proposed or altered to exceed a slope steeper than one (1) vertical for three (3) horizontal.
21. SMO Section 137-26.D and E, -34, -36, -37, and -38 – A waiver regarding The BMP operations and management plan.

22. SMO Section 137-37.B and C – A waiver regarding Easement shall be provided around any proposed stormwater management facilities.
23. SMO Appendix I – A waiver regarding The Storm Drainage Maintenance and Easement Notes shall be provided on the Plans.

The Township recognizes that the Applicant is in the process of obtaining other permits for the proposed Phase V Expansion, including but not limited to a Major Permit Modification of the facility's Solid Waste Permit from PADEP, which may result in changes/revisions to the site layout and/or site development details depicted on the Preliminary Land Development and Lot Consolidation Plan approved herein. In the event such changes/revisions are necessary, a new Preliminary Land Development application and approval shall not be required, provided that:

- The plan submitted for Final Land Development Plan approval does not propose any of the following: a disposal footprint that is any larger than the disposal footprint depicted in the Preliminary Land Development and Lot Consolidation Plan dated September 11, 2023; a peak elevation higher than 725 feet; points of access to the site from public roadways that are new or different from those depicted in the Preliminary Land Development and Lot Consolidation Plan dated September 11, 2023; changes to the days or hours of operation or the volume or type of waste permitted to be accepted under the facility's current PADEP Solid Waste Permit; or other changes that represent an entirely new planning concept that significantly changes the nature of the proposed facility as depicted on the Preliminary Land Development and Lot Consolidation Plan dated September 11, 2023.
- The Plan submitted for Final Land Development and Lot Consolidation Plan approval meets all applicable Lower Saucon Township ordinance provisions in effect as of the date of this Preliminary Land Development and Lot Consolidation Plan approval.

With the granting of this approval, Council has determined that the existing features at the property are an acceptable substitute for the perimeter earthen berm required per Section 180-109.F(3)(a) of the Zoning Ordinance, because the existing established vegetation provides more effective screening/buffering than an earthen berm would, and construction of such a berm would require the removal of that existing established vegetation. This determination requested of Council is authorized by Section 180-109.F(3)(a).

Applicant's Approval of Conditions

We hereby represent and certify that we are the Owners and Applicants of the Phase V Preliminary Land Development and Lot Consolidation Plan described herein. We have read the above list of conditions for the approval being considered for this application and we hereby accept and approve these conditions for granting the approval in accordance with Article V of the Pennsylvania Municipalities Planning Code.

12/13/2023  
Date

  
Signature

Astor A. Lawson  
Print Name



THOMAS COMMITTA ASSOCIATES, INC.  
Town Planners & Landscape Architects

## MEMORANDUM

TO: Lower Saucon Township Officials, Staff, and Consultants

FROM: Thomas J. Comitta, AICP, CNU-A, RLA  
Erin L Gross, ACIP, RLA

DATE: December 5, 2023

SUBJECT: **BETHLEHEM LANDFILL COMPANY – PHASE V PRELIMINARY LAND DEVELOPMENT & LOT CONSOLIDATION PLANS, DATED 9-11-2023**

Please note the following Comments pertaining to the Preliminary Land Development & Lot Consolidation Plans, dated 9-11-2023, for the Bethlehem Landfill Company Phase V.

### 1. Zoning Ordinance

#### 1.1. Section 180-3. Purpose

The Purpose indicates: "It is the intent, purpose and scope of this chapter to protect and promote the safety, health, morals, and welfare of the residents of Lower Saucon Township by:

- A. Encouraging appropriate land uses.
- B. Controlling the density of development to prevent overcrowding of the land.
- C. Providing reasonable guidelines for development within and adjacent to environmentally sensitive areas.
- D. Providing reasonable requirements for infrastructure improvements to support development.
- E. Preserving the value of real property.
- F. Protecting the quality of environmentally sensitive areas, both within and adjacent to developments.
- G. Controlling development to reduce the probability of fire, panic, flood and other dangers.
- H. Facilitating implementations of the policies, proposals and objectives of the Comprehensive Plan for Lower Saucon Township."

The proposed Bethlehem Landfill expansion does not comply with the Purposes recited above in Section 180-3. Purpose.

#### 1.2. Section 180-95.Environmental Protection Standards

The Existing Natural Resources Delineation Plan (Sheet 8) outlines the Resource Protection. However, the amount of Land in Resource does not correspond to the amount of Resource Total in the tables for Steep Slopes, Woodlands, and Riparian Buffers/ Waters of the Commonwealth. In addition, the amount of Land in Resource in the Resource Protection table does not correspond to the total amount of the resources outlined on the Woodland Natural Resource Delineation Plan (Sheet 9) or the Steep Slope Natural Resource Delineation Plan (Sheet 10).

**Exhibit "D"**



THOMAS COMMITTA ASSOCIATES, INC.  
Town Planners & Landscape Architects

**BETHLEHEM LANDFILL COMPANY – PHASE V PRELIMINARY LAND DEVELOPMENT & LOT CONSOLIDATION PLANS, DATED 9-11-2023**

December 5, 2023

For example, The Resource Protection table indicates 146.85 acres of Environmental Sensitive Woodland Land in Resource. However, the Woodlands table indicates 226.97 acres. In addition, the Resource Protection table indicates 0.10 acres of Steep Slopes >25%, 0.55 acres of Steep Slopes (15% to 25%), and 0.22 acres of Steep Slopes (8% to 15%) in Land Resource. However, the Steep Slope table indicates 68.8 acres of Steep Slopes greater than 25%, 95.6 acres of Steep Slopes 15% to 25% and 80.8 acres of Steep Slopes 8% to 15% in Resource Total Area. Further, the Resource Protection table indicates 6.64 acres of Waters of Commonwealth Land In Resource. However, the Riparian Buffers/Waters of the Commonwealth table indicates 7.17 acres of Stream Protection Easement Resource Total Area and 7.89 acres of Riparian Buffers Resource Total Area.

As outlined above, the Plan does not demonstrate consistent information and data.

1.3. Section 180-96. Neighborhood Protection.

The Cover Sheet (Sheet 1) indicates that the proposed development will comply with the Requirements of Section 180-96 pertaining to the general performance standards regarding neighborhood protection, so far as these standards are within the limitations of normal landfill operations procedures.

Section 180-96 indicates that no building, structure or land use within the Township shall be used or occupied in any manner that creates any dangerous, injurious, noxious or otherwise objectionable condition.....in such manner or in such amount as to affect adversely the reasonable use or value of the surrounding area of the adjoining premise or be dangerous to public health or safety.

The proposed landfill should not be exempt from the Neighborhood Protection standards if the "normal landfill operations and procedures" are outside of the limitations. Adhering to these standards is paramount to ensuring the health, safety and quality of life of the community. This is one of the most critical provisions about which the Applicant needs to demonstrate compliance as it substantially affects surrounding properties. The Plan fails to demonstrate compliance with these provisions.

1.4. Section 180-96.C. Glare.

Since lighting is proposed, a Lighting Plan is needed. The Plan fails to provide a Lighting Plan in order to demonstrate: no direct glare; the footcandles; and no deliberate induced sky-reflected glare.

1.5. Section 180-98.B.(4)(b) Driveways.

Regardless of frontage, a development may be restricted to a single entrance/exit driveway. Two (2) driveways are proposed onto Applebutter Road. The Applicant should provide clarification on the usage of the second driveway from the southeast portion of the site onto Applebutter Road.



THOMAS COMMITTA ASSOCIATES, INC.  
Town Planners & Landscape Architects

**BETHLEHEM LANDFILL COMPANY – PHASE V PRELIMINARY LAND DEVELOPMENT & LOT CONSOLIDATION PLANS, DATED 9-11-2023**

December 5, 2023

- 1.6. Section 180-109.F.(2)(a). Industrial Uses. Additional requirements. Site Plan requirements. Section 180-109.F.(2)(a) requires a project narrative to be expanded to provide additional information. The project narrative included in Supporting Documentation Volume 1 of 2, dated 9-11-2023 does not address all of the items outlined in Section 180-109.F.(2)(a).

For example, the Project Narrative does not provide information pertaining to §180-109.F.(2)(a)[3] pertaining to noise levels; §180-109.F.(2)(a)[5] pertaining to the location and proximity (or surrounding uses) to the facility; §180-109.F.(2)(a)[7] pertaining to wind direction and effects to surrounding neighborhoods; §180-109.F.(2)(a)[11] pertaining to the ultimate use and ownership of the site after completion of extraction or disposal; and §180-109.F.(2)(a)[12] pertaining to existing ground cover and restoration ground cover.

- 1.7. Section 180-109.F.(3)Industrial Uses. Additional requirements. Landscaping and screening.
- a. Section 180-109.F.(3)(a)[1] indicates: "An earthen berm shall be placed no closer than 50 feet to all adjacent uses around the perimeter of a surface mine, landfill, waste disposal facility, waste transfer facility or recycling facility". The Plan fails to provide the required earthen berm.
  - b. Section 180-109.F.(3)(a)[1] also indicates: "...no landfill or waste disposal facility activities shall be conducted within 100 feet of a bank of any stream". Two (2) existing streams are located within the Phase V Expansion limit of disposal and are proposed to be eliminated. The Plan fails to demonstrate compliance with this provision.

While these provisions are within the landscaping and screening subsection, the failure to comply with the berm requirements, and the failure to protect the two (2) existing streams are critical flaws in the Plan.

**2. Subdivision and Land Development Ordinance**

- 2.1. Section 145-33.E.(7) Lighting and Landscaping Plan  
Since lighting is proposed, a Lighting Plan is needed. The Plan fails to provide a Lighting Plan per section 145-33.E.(7).
- 2.2. Section 145-52. Landscaping  
Section 145-52.A.(1) requires existing healthy trees eight inches or greater in diameter, measured at a height of 4 ½ feet above original grade shall be preserved wherever possible.

The Existing Conditions Plan (Sheet 6) does not identify trees eight inches or greater, or the woodlands depicted on the Woodland Natural Resources Delineation Plan (Sheet 9). Therefore, the Plan fails to demonstrate the number of trees eight inches or greater proposed to be removed.



THOMAS COMITTA ASSOCIATES, INC.  
Town Planners & Landscape Architects

**BETHLEHEM LANDFILL COMPANY – PHASE V PRELIMINARY LAND DEVELOPMENT & LOT CONSOLIDATION PLANS, DATED 9-11-2023**

December 5, 2023

**3. Waiver Requests**

- 3.1. The Applicant is requesting a Waiver from Sections 145-33.C.(1) and 145.34.C.(3) regarding identification of existing features within 500 feet of the property. We do not believe this is an appropriate Waiver, as there are many significant features within 500 feet of the property that should be identified in order to understand the impact of the proposed development to the surrounding area.

**4. PA Code**

- 4.1. Section 105.20a. of PA Code requires compensatory plantings to be provided to replace affected wetlands. The Applicant has not yet demonstrated compliance.
- 4.2. Section 273.202(a)(12) (Areas where municipal waste landfills are prohibited) of the PA Code indicates: "*Perennial stream. Within 100 feet of a perennial stream unless storage, processing and disposal will not occur within that distance and no adverse hydrologic or water quality impacts will result.*".

The Plan proposes to destroy the existing streams and wetlands and, therefore, fails to demonstrate compliance.

**5. Comprehensive Plan & Regional Planning**

- 5.1. The proposed development conflicts with the Lower Saucon Township Comprehensive Plan (*Our Resources, Our Valley Multi-Municipal Comprehensive Planning in Pennsylvania's Saucon Valley*). On pages 1 through 12 the Plan identifies the Township's natural resources, along with its other cultural and historic assets as significant components of the region's future economic development.

The proposed development also conflicts with the Comprehensive Plan's goals to: Balance development and conservation initiatives in order to maintain the ambiance and quality of Saucon Valley's district cultural landscapes: small town, suburban and rural; and Enhance the continuity, visibility, and inter-connectivity of the Valley's cultural, natural and historic resources.

- 5.2. The proposed development also conflicts with the Lower Saucon Township Comprehensive Plan relative to the recommendations as they relate to Map 2: Future Land Use and Housing Plan, to Map 3: Local Greenway Corridors, and to Map 4: Regionally Significant Nature Resources Areas:
  - A. a "Rural Residential" designation on Map 2 (for most of the area where the Bethlehem Landfill proposes to expand) whose purpose is "to protect the areas generally known for their historic open space and resource qualities" (shown in green);



THOMAS COMITTA ASSOCIATES, INC.  
Town Planners & Landscape Architects

**BETHLEHEM LANDFILL COMPANY – PHASE V PRELIMINARY LAND DEVELOPMENT & LOT CONSOLIDATION PLANS, DATED 9-11-2023**

December 5, 2023

- B. an “Open Space” designation on Map 2 whose “purpose an typical land use activity (is) land generally geared toward larger – scale natural resource conservation and/or recreation” (shown in green);
  - C. “Local Greenway Corridors” designation on Map 3, for Bull Run (shown in green); and
  - D. “Regionally Significant Natural Resource Areas” designation on Map 4, for Bull Run (shown in green).
- 5.3. The proposed development conflicts with the Lehigh Valley Planning Commission *FutureLV: The Regional Plan*, as most of the area proposed for expansion of the landfill to the northeast is within a Character-Defining area of the General Land Use Plan, which represents the natural and scenic character of the Lehigh Valley. This Character-Defining Area is recommended for parks and open space, woodland, agriculture, and low- intensity, limited scale development that preserves natural and scenic resources. In addition, the Natural Resources Plan identifies a portion of the site with a high overall conservation priority, and conflicts with Goal 3.2.

**6. Other**

- 6.1. Based on the above comments, we strongly urge the Township to deny Plan approval. The Plans do not comply with the Ordinances for over a dozen reasons. The Applicant should not be given Plan approval with so many issues as described herein.

Please call if there are any questions.



## JOINT DEFENSE AND JOINT PRIVILEGE AGREEMENT

THIS JOINT DEFENSE AND JOINT PRIVILEGE AGREEMENT (“Agreement”), effective as of August 14, 2023 is entered into between and among the Township of Lower Saucon, Pennsylvania (“Township”) and Bethlehem Landfill Company (formerly known as IESI Bethlehem Landfill Corporation)(“BLC”). Each of these entities is hereinafter referred to individually as a “Party” and collectively as “Parties” to this Agreement.

WHEREAS, Bruce Petrie, Ginger Petrie, Andrew G. Krasnansky, Tina-Louise Krasnansky, Robert Duane Blasko, Elizabeth A. Blasko, Robert McKellin and Cynthia McKellan (collectively “DJ/Equity Action Plaintiffs”) have filed a Declaratory Judgment/Equity Complaint (“DJ/Equity Action”) in the Northampton County Court of Common Pleas, Docket No. C0048CV2023-6089, against the Township and BLC. The Township’s and BLC’s interests are aligned in their defense of the DJ/Equity Action;

WHEREAS, Bruce Petrie, Ginger Petrie, Lawrence Opthof, Margaret Opthof, Robert McKellin, Cynthia McKellin, and Catherine Michelle Snyder (collectively “PVC Appellants”) have challenged the validity of Lower Saucon Township Ordinance No. 2023-05 (the “Ordinance”) by filing a Land Use Appeal (“PVC Matter”) in the Northampton County Court of Common Pleas, Docket No. C0048CV2023-7174, against the Township, a case in which BLC has an interest and is an Intervenor by right. The Township’s and BLC’s interests are aligned in their defense of the Ordinance in the PVC Matter;

WHEREAS, Bruce Petrie, Ginger Petrie, Andrew Krasnansky, Tina-Louise Krasnansky, Robert Duane Blasko, Elizabeth A. Blasko, Robert McKellin, Cynthia McKellin, Kyle Lee Cambiotti, Russell L. Sutton, and Colleen D. Sutton (collectively, “SVC Appellants”) have challenged the validity of the Ordinance by filing a Substantive Validity Challenge (“SVC Matter”) with the Lower Saucon Township Zoning Hearing Board, against the Township, a case in which BLC has an interest and is an Intervenor by right. The Township’s and BLC’s interests are aligned in their defense of the Ordinance in the SVC Matter;

WHEREAS, the Parties are mutually of the opinion that it is in the common interest of the Parties to exchange information and cooperate in a joint effort directed at defending against: 1) the claims made by the DJ/Equity Action Plaintiffs in the DJ/Equity Action; 2) the challenges made by the PVC Appellants in the PVC Matter; and 3) the challenges made by the SVC Appellants in the SVC Matter.

WHEREAS, it is the purpose of this Agreement to ensure that the exchanges and disclosures of materials contemplated herein do not diminish in any way the confidentiality of the materials and do not constitute a waiver of any privilege or immunity otherwise available; and

WHEREAS, the undersigned represent that they are fully authorized to enter into and perform in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties, intending to be legally bound, agree as follows:

1. Each Party affirms that the joint activities undertaken by the Parties and/or their respective counsel as part of or in preparation for litigation or negotiations in connection with the DJ/Equity Action, the PVC Matter, and SVC Matter, and any related matters thereto, have required and will require the exchange and receipt of information, documents, and materials protected by the attorney-client privilege, the work-product doctrine, the joint defense doctrine, the common interest doctrine, and/or other privileges and/or protections.

2. All communications, including but not limited to email, text messages, voicemail, oral conversations, memoranda, or correspondence, between counsel of the Parties and between counsel of a Party and a Party represented by another counsel, as part of or in preparation for litigation or negotiations in connection with the DJ/Equity Action, the PVC Matter, and the SVC Matter, and any related matters thereto (hereinafter collectively referred to as "Privileged Communications"), are subject to and protected by the attorney-client privilege, the work-product doctrine, the joint defense doctrine, the common interest doctrine, and/or other privileges and/or protections.

3. Each Party and their respective counsel agree that all information, documents, and materials received from or exchanged with any Party and/or their respective counsel that were protected by the attorney-client privilege, the work-product doctrine, the joint defense doctrine, the common interest doctrine, and/or any other applicable privileges, immunities, and/or protections prior to the referenced receipt from and/or exchange with any Party and/or their counsel, and all information, documents, and materials derived therefrom (hereinafter collectively referred to as "Privileged Materials"), will be received, exchanged, and maintained in confidence for the purpose of securing legal advice and representation and will be subject to the attorney-client privilege, the work-product doctrine, the joint defense doctrine, the common interest doctrine, and/or any other applicable privileges, immunities, and/or protections.

4. Each Party and their respective counsel who receives or exchanges Privileged Materials and/or Privileged Communications pursuant to Paragraphs 2 and 3 agrees to assert the attorney-client privilege, the work-product doctrine, the joint defense doctrine, the common interest doctrine, and/or any other applicable privileges, immunities, and/or protections in response to any attempt by any person, entity, governmental agency, court, or quasi-judicial body, not authorized by this Agreement, to obtain or receive Privileged Materials and/or Privileged Communications and shall promptly notify all other undersigned counsel and their named clients of any such attempt so that, individually or collectively, they may seek protective orders or other appropriate relief.

5. The Parties agree that any Party may withdraw from this Agreement by giving express written notification to all Parties, in which case this Agreement shall no longer be operative as to future communications between the Parties, but shall continue to protect all previously exchanged Privileged Materials.

6. If the terms of this Agreement or any portion of any provision of this Agreement are declared null and void or unenforceable by any Court or tribunal having jurisdiction, then such provision or such portion of such provision shall be considered to be separate and apart from the remainder of this Agreement, which shall remain in force and effect.

7. This Agreement may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts taken together, shall constitute but one and the same Agreement.

8. This Agreement may not be modified, altered, amended or otherwise changed except by a writing duly executed by the Parties.

9. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Pennsylvania without regard to its principles of conflicts of law.

10. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered, and this Agreement shall be deemed to be effective, as of August 14, 2023.



Maryanne Starr Garber  
Amanda Wetzel  
Buchanan Ingersoll & Rooney  
Two Liberty Place  
50 S. 16<sup>th</sup> Street, Suite 3200  
Philadelphia, PA 19102-2555

Attorneys for Bethlehem Landfill Company

Date: September 20, 2023 \_\_\_\_\_



B. Lincoln Treadwell, Jr.  
3700 Old Philadelphia Pike  
Bethlehem, PA 18015

Solicitor  
Township of Lower Saucon, Pennsylvania

Date: September 20, 2023

## AMENDED AND RESTATED HOST COMMUNITY AGREEMENT

This Amended and Restated Host Community Agreement (this "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2023 by and between Bethlehem Landfill Company (f/k/a IESI PA Bethlehem Landfill Corporation, f/k/a Eastern Waste of Bethlehem, Inc.) ("BLC"), and Lower Saucon Township ("Township") (individually, a "Party" and collectively, the "Parties"), hereby amending, restating, replacing and superseding the 1998 Host Community Agreement (as hereinafter defined), except as noted in Section 8.B of this Agreement, as of the Effective Date (as defined in Section 8.A).

WHEREAS, BLC is a Delaware Corporation with a place of business located at 2335 Applebutter Road, Bethlehem, Pennsylvania 18015;

WHEREAS, the Township is a Township of the Second Class, located in the County of Northampton, in the Commonwealth of Pennsylvania, with its principal place of business located at 3700 Old Philadelphia Pike, Bethlehem, Pennsylvania, 18015;

WHEREAS, BLC is the operator of Bethlehem Landfill (the "Landfill"), a municipal waste disposal facility located within the Township boundaries at 2335 Applebutter Road, Bethlehem, Pennsylvania 18015;

WHEREAS, BLC operates the Landfill pursuant to Solid Waste Permit No. 100020 (the "Solid Waste Permit"), issued by the Pennsylvania Department of Environmental Protection (the "PADEP") and pursuant to the provisions of the Pennsylvania Solid Waste Management Act, 35 P.S. § 6018.101, et seq. (the "Solid Waste Management Act"), and implementing regulations, 25 Pa. Code Chapters 271 through 285 (the "Implementing Regulations");

WHEREAS, the Landfill as permitted by PADEP as of the Effective Date of this Agreement is hereinafter referred to as the "Existing Landfill";

WHEREAS, the Solid Waste Permit in effect as of the Effective Date of this Agreement is hereinafter referred to as the "Existing Solid Waste Permit";

WHEREAS, BLC (as successor in interest by merger to IESI PA Bethlehem Landfill Corporation, a successor in interest by merger to Eastern Waste of Bethlehem, Inc.), the Township, and the City of Bethlehem (the "City") are parties to a Host Community Agreement dated April 17, 1998 ("1998 Original Agreement"), which was amended on September 6, 2001 ("2001 Amendment") (together, the "1998 Host Community Agreement"), incorporated herein (without attachments) as "Attachment 1";

WHEREAS, BLC is contemplating an expansion of the limits of the Existing Landfill onto property it owns that is contiguous to and primarily east and north/east of (with a small portion west of) the Existing Landfill and is located within the Township (the "Phase V Expansion"), said Phase V Expansion conceptually depicted on the plan entitled "Conceptual Plan Bethlehem Landfill Phase V Expansion," dated August 2023, prepared by Martin & Martin ("Phase V Conceptual Plan"), which is incorporated herein as "Attachment 2;"

WHEREAS, a major modification of the Solid Waste Permit, issued by PADEP, will be required for the Phase V Expansion ("Phase V Major Permit Modification"), which BLC will be applying for in the future;

WHEREAS, although the final disposal footprint of the Phase V Expansion may vary in size or configuration from that depicted on the Phase V Conceptual Plan based on further investigation and regulatory requirements, BLC will not seek approval of a disposal footprint that is any larger than the proposed disposal footprint depicted on the Phase V Conceptual Plan in its application for the Phase V Major Permit Modification;

WHEREAS, BLC and the Township have negotiated a variety of host municipal benefits, as set forth herein, tied to the execution of this Agreement and to the issuance of a Phase V Major Permit Modification;

WHEREAS, the Parties desire to enter into this Agreement to amend, restate, replace and supersede the 1998 Host Community Agreement in its entirety, except with respect to certain rights and obligations of the City contained in the 1998 Host Community Agreement which shall survive and remain unaffected by this Agreement as noted in Section 8.B herein, as of the Effective Date;

WHEREAS, the City has consented to the execution of this Agreement by the Parties as reflected Paragraph 23 of the September 26, 2022 Lease Agreement between the City and BLC, attached hereto as "Attachment 3"; and

WHEREAS, the Parties enter into this Agreement pursuant to the Second Class Township Code, 53 P.S. §§ 65101-68701; the Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. §§ 4000.101-4000.1904 ("Act 101"), and the laws of the Commonwealth governing townships of the Second Class.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree to amend, restate, replace and supersede the 1998 Host Community Agreement in its entirety, except as noted in Section 8.B herein, as of the Effective Date as follows:

#### Section 1. INCORPORATION

The "Whereas" clauses above are true and correct and are incorporated herein by reference as if fully set forth and form an integral part of this Agreement.

#### Section 2. HOST FEES/FINANCIAL BENEFITS

- A. As of the Effective Date of this Agreement and unless and until BLC's receipt of a final, unappealable Phase V Major Permit Modification, BLC shall pay to the Township a host municipality benefit fee of \$6.90 per ton for all municipal waste and wastewater treatment sludge disposed at the Landfill ("Municipal Waste Host Fee"), and a host municipality benefit fee of \$9.97 per ton for all residual waste disposed at the Landfill ("Residual Waste Host Fee") (collectively, "Host Fees").

- B. Unless and until BLC's receipt of a final, unappealable Phase V Major Permit Modification, the Host Fees set forth in Section 2.A herein shall be escalated annually, on a calendar year basis, at the rate of 4.0% per year, with the first adjustment occurring on January 1 following the Effective Date of this Agreement.
- C. In the event that BLC receives a final, unappealable Phase V Major Permit Modification, then upon such receipt BLC shall pay a Municipal Waste Host Fee of Eleven Dollars (\$11.00) per ton and a Residual Waste Host Fee of Thirteen Dollars and Seventy Five Cents (\$13.75) per ton, with no escalation.
- D. Host Fees shall not be applicable to any material defined as waste under the Implementing Regulations that either: 1) PADEP approves the Landfill to use as alternative daily cover; or 2) that PADEP approves the Landfill to use for construction purposes at the Landfill.
- E. The Host Fees provided for in this Section 2 shall be paid in accordance with Section 1302 of Act 101 (governing the form and timing of host municipality benefit fee payments).
- F. The Township acknowledges and agrees that (i) the Township has been paid in full all amounts due under the 1998 Host Community Agreement as of the Effective Date (except for amounts due pursuant to the current quarterly period not due as of the Effective Date) and releases BLC and its parents, predecessors, affiliates, subsidiaries, successors – whether by merger, de facto merger, asset purchase, stock purchase, continuity of enterprise, substantial continuity of enterprise or otherwise – assigns, lessees, sub lessees and lessors from any such claims, demands, damages, actions, causes of action or suits arising from, relating or pertaining to such amounts pursuant to Act 101 for periods prior to the Effective Date, and (ii) the Host Fees provided for in this Section 2 are in full satisfaction of any claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever that the Township may have against BLC for host municipality benefit fees for waste disposed at the Landfill pursuant to Act 101. Upon each payment by BLC of the amount due pursuant to Section 2.A, Section 2.B, and Section 2.C, the Township releases BLC and its parents, predecessors, affiliates, subsidiaries, successors – whether by merger, de facto merger, asset purchase, stock purchase, continuity of enterprise, substantial continuity of enterprise or otherwise – assigns, lessees, sub lessees and lessors from any such claims, demands, damages, actions, causes of action or suits arising from, relating or pertaining to such host municipality benefit fees pursuant to Act 101 for periods through the date of such payment.
- G. BLC shall continue to be exempt from the three percent (3%) gross revenue tax under Township Ordinance 83-1 and any future gross revenue and/or similar tax, fee, or assessment established by the Township through Township ordinance against the Landfill facility or operation. This exemption shall relieve BLC of the 3% tax on gross revenues from all revenue earned by disposing of or recycling

waste at the Landfill and transporting waste to the Landfill for disposal. The foregoing shall not relieve BLC from paying any applicable real estate tax or transfer tax. The parties acknowledge that this exemption shall not relieve BLC from any valid, applicable gross revenue tax and/or any valid, applicable tax, fee, or assessment asserted by the Township relating to any other business conducted by BLC at the Landfill property. The parties further agree that: (i) BLC shall continue to pay the Township a fee equal to 3% of any gross proceeds received from sales of methane gas generated at the Landfill for as long as methane gas is generated at the Landfill; and (ii) that if BLC applies for and obtains a permit from the PADEP for operation of a transfer station at the Landfill, BLC shall pay to the Township 3% of gross revenue generated through operation of such transfer station. The Township acknowledges that BLC will not be charging its consolidated group or generating gross revenue for waste transported to any such transfer station by its consolidated group. The Township further acknowledges that BLC is concerned that payment of 3% of gross revenue for transfer of waste may be excessive, and the Township agrees to meet with BLC to negotiate in good faith a lower fee which may be more economically appropriate at the time. BLC agrees at such time to consider, in good faith, any reasonable operational or environmental issue that may result from the operation of a transfer station. The parties acknowledge that the preceding sentence does not apply to any transfer of waste due to the temporary unavailability of the Landfill to BLC or similar emergency situations. All 3% gross revenue fees owed by BLC to the Township shall be paid monthly.

### Section 3. **ADDITIONAL BENEFITS**

- A. Spring and Fall Clean-Up. So long as BLC is receiving waste for disposal in either the Existing Landfill or the Phase V Expansion, BLC shall accept waste that can be lawfully disposed of in the Landfill for Spring and Fall Clean-Up generated from and delivered by residents residing in the Township (as such residents reasonably verify to BLC) at no cost to such residents on one Saturday in the Spring and one Saturday in the Fall each calendar year, the dates to be mutually agreed upon by BLC and the Township and during normal working hours of the Landfill.
  
- B. Township Rates. BLC shall make the Landfill available to the Township at a gate rate not exceeding the lowest rate then being charged any other municipality delivering similar quantities of waste to the Landfill without a contract. If the Township establishes controls over its haulers assuring that only the municipal solid waste from the Township is delivered to the Landfill, BLC shall make the Landfill available to the Township at a gate rate not exceeding the lowest rate being charged to other municipalities delivering similar quantities of waste under contracts of similar time duration with the Landfill. BLC agrees to provide capacity at the Landfill for the disposal of residential and commercial municipal solid waste generated within the Township during the term of this Agreement.



C. Township Right to Lease Certain Closed Areas of Landfill.

- 1) The Parties agree that the Township has a right to lease certain closed areas of the Landfill in accordance with the provisions of this Section 3.C., so long as:
  - i. the use pursuant to such lease does not interfere with or disrupt in any way BLC's operations and/or its obligations under the Solid Waste Permit, including but not limited to its closure and post-closure obligations, and/or its obligations under any other or any local, state, or federal statute, regulation, permit or approval;
  - ii. the use will not penetrate or compromise the landfill capping material or otherwise threaten the integrity of the landfill cap or any other landfill infrastructure, or cause the landfill to be out of compliance with the Solid Waste Permit, including but not limited to its closure and post-closure obligations, and/or its obligations under any other or any local, state, or federal statute, regulation, permit or approval; and
  - iii. all required local, state, and federal permits and approvals for the use pursuant to such lease are obtained, including but not limited to a Major Permit Modification to the Solid Waste Permit, at the Township's sole cost.
- 2) Within ninety (90) days after receipt by BLC of a final, unappealable Phase V Major Permit Modification, BLC shall confirm to the Township, in writing (the "Existing Landfill Lease Notice") in accordance with the notice provisions of Section 9.N herein, the Township's exclusive right, option and privilege to lease some or all of the areas within the Existing Landfill that are identified as within the "Existing Landfill Leasable Property Boundary" on the Plan entitled "Leasable Area Plan," which is incorporated herein at "Attachment 4," (the "Existing Landfill Leasable Property") and which have at that time been certified and approved by PADEP as closed pursuant to a PADEP-approved Form 37 Certification for closure.
- 3) At any time within the three hundred sixty five (365) day period immediately following the date the Township receives the Existing Landfill Lease Notice from BLC, unless otherwise extended by the Parties in writing, the Township shall submit to BLC a proposed Lease Term Sheet, in accordance with the notice provisions of Section 9.N herein, which shall include:
  - i. the specific portion(s) of the Existing Landfill Leasable Property the Township would like to lease (the "Existing Landfill Leased Premises");

- ii. the use which the Township proposes to put the Existing Landfill Lease Premises (the "Use");
  - iii. the improvements to be made by the Township to the Existing Landfill Leased Premises to allow for the Use and the non-exclusive easements, if any, reasonably necessary to construct, operate and maintain such improvements;
  - iv. the material and economic terms of the lease – including: nominal fixed rent (which the Parties herein agree shall be \$10.00 per year); Township to pay for operating costs and property expenses (i.e., an allocable share of property taxes, insurance premiums and maintenance costs) and permitting/approval costs; respective maintenance obligations; and Township compliance with all local, state and federal permits and approvals, including the Solid Waste Permit, applicable to the Existing Landfill Leased Premises;
  - v. rights reserved to BLC – specifically as relates to BLC's continued operations and obligations under the Solid Waste Permit, including but not limited to its closure and post-closure obligations, and BLC's obligations under any other or any local, state, or federal statute, regulation, permit or approval; and
  - vi. the desired term of the lease.
- 4) The Township's failure to timely deliver a proposed Lease Term Sheet to BLC responsive to the Existing Landfill Lease Notice shall constitute a waiver of the Township's lease rights at that time. If the Township does present the proposed Lease Term Sheet to BLC as described above, the Parties shall thereafter negotiate in good faith to enter into a lease prepared by BLC (the "Existing Landfill Lease") for the Use of the Existing Landfill Leased Premises, for a mutually agreeable term, non-assignable by the Township, and subject to other commercially reasonable conditions as required by BLC (with the Parties acknowledging that they have agreed to a fixed rate of \$10.00 per year, per Section 3.C.3.iv herein). The Township, at its cost, will propose conceptual design documents for improvements to the Existing Landfill Leased Premises, to be approved by BLC, and incorporated into the Existing Landfill Lease as an exhibit or by reference. If the Parties do not reach agreement on the terms of the Existing Landfill Lease within sixty (60) days after the Township's delivery to BLC of a proposed Lease Term Sheet, then either Party may terminate negotiation and neither party will have liability to the other in connection with the Existing Landfill Lease.
- 5) The Parties further agree that within ninety (90) days after BLC has permanently ceased disposing of waste in the Phase V Expansion and all disposal areas within the Phase V Expansion have been certified and approved by PADEP as closed pursuant to a PADEP-approved Form 37 Certification for closure, BLC shall confirm to the Township, in writing (the "Phase V Lease Notice") in accordance with the notice provisions of

Section 9.N herein, the Township's exclusive right, option and privilege to lease some or all of the areas within the Phase V Expansion that are identified as within the "Phase V Leasable Property Boundary" on the plan entitled "Leasable Area Plan" at "Attachment 4" (the "Phase V Leasable Property").

- 6) At any time within the three hundred sixty five (365) day period immediately following the date the Township receives the Phase V Lease Notice from BLC, unless otherwise extended by the Parties in writing, the Township shall submit to BLC a proposed Lease Term Sheet pertaining to the Phase V Leasable Property, in accordance with the notice provisions of Section 9.N herein, which shall include all information set forth above in Section 3.C(3)(i) to 3.C(3)(vi), thereby identifying the "Phase V Leased Premises."
- 7) The Township's failure to timely deliver a proposed Lease Term Sheet to BLC responsive to the Phase V Lease Notice shall constitute a waiver of the Township's lease rights at that time. If the Township does present the proposed Lease Term Sheet to BLC as described in Section 3.C(6) above, the Parties shall thereafter negotiate in good faith to enter into a lease prepared by BLC (the "Phase V Lease") for the Use of the Phase V Leased Premises, for a mutually agreeable term, non-assignable by the Township, and subject to other commercially reasonable conditions as required by BLC (with the Parties acknowledging that they have agreed to a fixed rate of \$10.00 per year, per Section 3.C.3.iv herein). The Township, at its cost, will propose conceptual design documents for improvements to the Phase V Leased Premises, to be approved by BLC, and incorporated into the Phase V Lease as an exhibit or by reference. If the Parties do not reach agreement on the terms of the Phase V Lease within sixty (60) days after the Township's delivery to BLC of a proposed Lease Term Sheet, then either Party may terminate negotiation and neither party will have liability to the other in connection with the Phase V Lease.

**Section 4. PROPERTY VALUE PROTECTION PROGRAM.** BLC will provide a Property Value Protection Program as set forth in "Attachment 5" of this Agreement (the "Program") to protect the owners of certain properties located within the vicinity of the Phase V Expansion depicted in Schedule 1 of "Attachment 5" (on the plan entitled "Potential Eligible Properties Plan") upon which residential dwellings are located ("Eligible Properties" under the Program) against possible loss of the value of those properties due to the Phase V Expansion. Fifty percent (50%) of any payments made by BLC to Eligible Property Owners (as that term is defined by the Program) under the Program, excluding any payment made by BLC to purchase the Eligible Property ("BLC PVP Payment") shall be deducted from Host Fees owed by BLC to the Township pursuant to Section 2 of this Agreement for the quarter in which the BLC PVP Payment was made.

**Section 5. LANDFILL OPERATIONS AND RELATED MATTERS**

- A. Compliance with Solid Waste Permit. BLC shall operate the Landfill in substantial compliance with the Solid Waste Permit and PADEP rules and regulations and valid Township ordinances which are not preempted or otherwise meet the criteria for preemption.
- B. Waste Permitted.
- 1) The Landfill may accept municipal and residual waste from any point of origin, in-state or out-of-state, in accordance with state, federal, or Constitutional law, provided that the Landfill may only accept the types of waste not prohibited from being disposed of at the Landfill by state or federal regulations.
  - 2) BLC shall provide to the Township with a copy of all documentation submitted to PADEP for each residual waste being considered for disposal at the Landfill. The Township shall have fifteen (15) days for the Township Manager or his/her designee to provide BLC any written comments from the Township on said documentation.
- C. Days/Hours of Operation. The days and hours of waste acceptance and operation at the Landfill are provided by the Solid Waste Permit. BLC shall not apply for any modification to the Solid Waste Permit to change the hours of waste acceptance or operation permitted under the Existing Solid Waste Permit, unless the Township otherwise agrees in writing.
- D. Prohibition Against Waste Transported by Rail. BLC shall not be permitted to accept waste for disposal at the Landfill that is transported directly to the Landfill by rail.
- E. Daily Volume Limits. BLC shall not apply for any modification to the Solid Waste Permit to increase the average daily volume or maximum daily volume beyond the volumes permitted under the Existing Solid Waste Permit, unless the Township otherwise agrees in writing.
- F. Blasting. BLC will retain only qualified and licensed individuals to perform blasting activities at the Landfill. All blasting activities will be reviewed and approved by a professional engineer. BLC shall notify the Township at least forty eight (48) hours in advance of any blasting activities scheduled to occur at the Landfill.
- G. Applebutter Road Sewer Line.
- 1) The parties acknowledge that BLC is the owner of the eight (8) inch sewer line on Applebutter Road providing sewer service for discharges of wastewater from the Landfill extending from the Landfill to the City of Bethlehem publicly owned treatment plant (the "Sewer Line"). BLC shall

continue to maintain and be responsible for any and all costs of maintenance of the Sewer Line incurred after the Effective Date of this Agreement, for as long as the Landfill is discharging flow into the Sewer Line. When the Landfill is no longer discharging flow into the Sewer Line, BLC will convey at no cost its rights to the Sewer Line to the Township or its authority, and the Township agrees to accept such conveyance provided BLC has maintained the Sewer Line in reasonably good condition given its age and use and subject to normal wear and tear. Prior to such conveyance, the Township shall not assess against BLC, nor be entitled to receive from BLC, any costs or fees associated with the Landfill's discharge to the sewerage system serving the Landfill, and BLC shall not be considered a customer of the Township with respect to any discharge from the Landfill facility to that sewerage system. After such conveyance, any discharge to the Sewer Line from the Landfill property shall be subject to the rules and regulations of the Township and/or its authority for discharges of wastewater into the City of Bethlehem's wastewater collection system.

- 2) The parties agree that the Township may approve the use of the Sewer Line by Township property owners, other than BLC, subject to the following conditions: (i) the Township has the right to approve the discharge of no more than a total of 182,520 gallons per day of flow into the Sewer Line; (ii) the Township shall not approve any use of the Sewer Line by any property owner which does not comply with the rules and regulations of the Township and its authority for discharges of wastewater into the City's wastewater collection system; (iii) the Township shall not approve the discharge of storm water into the Sewer Line; (iv) the Township shall not approve any hookup to the Sewer Line, which fails to meter either the sewage discharge (where the hookup involves a property using groundwater for drinking or other purposes) or the public water supply serving the associated use; (v) any use approved by the Township shall be charged or allocated against or deducted from the contracted sewage "reserved capacity" between the City and the Township; (vi) prior to the approval of any hookup to the Sewer Line, the Township shall provide written notice to BLC of the potential hookup so that BLC may inspect the location of any connection to the Sewer Line, after which BLC has the right to disapprove, for engineering reasons, the location of any connection to the Sewer Line; and (vii) none of the costs associated with any extension of or tapping into the Sewer Line, or any damage to the Sewer Line resulting therefrom, will be the responsibility of BLC. If BLC reasonably determines that the discharge needs of the Landfill require more than 547,560 gpd, the Township agrees to reduce the 182,520 gpd flow capacity allotted to the Township herein to accommodate the reasonable needs of the Landfill, to the extent the Township has not already approved the use of the capacity to Township property owners pursuant to this Section 5.G.2. BLC agrees not to charge the Township, its

authority, or the Township's customers for the wastewater conveyed through the Sewer Line pursuant to this Section 5.G.2.

- H. Water Customer. BLC, its successors and assigns, shall be a water customer of the Township or its authority and shall comply with the rates, rules, and regulations of the Township or its authority. All private fire hydrants serving the Landfill shall be maintained with meters to measure water usage. BLC shall continue to maintain the present hydrants without waiver of the right to add more hydrants.
- I. Emergency Water Supply. BLC shall maintain responsibility for and the cost for the PADEP-approved plan for providing emergency water supplies to replace domestic or agricultural private water supplies that are demonstrated, to the satisfaction of PADEP, to require replacement as a result of the pumping down of the groundwater by the existing groundwater abatement system at the Landfill. The cost of any emergency water supplies and installation of any related permanent water supply extensions shall be borne by BLC. The Parties acknowledge that pursuant to Paragraph 12 of the 1998 Original Agreement, which continues in full force and effect after the Effective Date of this Agreement, the City is required to make available to BLC replacement water in sufficient quantity and quality to satisfy BLC's obligations under this Section 5.I.
- J. Residential Well Contamination. In the event that the Landfill is found by the PADEP and/or any court of competent jurisdiction to be the cause of residential well contamination, BLC shall pay the entire cost of extensions to the public water system required to serve Township residents affected by such contamination for any extension constructed after the Effective Date of this Agreement for residents that are not served by public water. The Township shall take all steps necessary and appropriate to approve any such extensions and to make available potable water of sufficient quantity and quality to satisfy the obligations of this Section 5.J. The Parties acknowledge that pursuant to Paragraph 17 of the 1998 Original Agreement, which continues in full force and effect after the Effective Date of this Agreement, the City is also obligated to take all steps necessary and appropriate to approve any such extensions and to make available potable water of sufficient quantity and quality to satisfy BLC's obligations under this Section 5.J.
- K. Water Supply Testing for Contiguous Landowners. BLC acknowledges its obligations under Section 4000.1103 (entitled "Water supply testing for contiguous landowners") of Act 101, which include an obligation to have quarterly sampling and analysis conducted of private water supplies used by owners of properties contiguous to a municipal waste landfill at the expense of the landfill operator, upon written request of the property owner.
- L. Police Protection. The Township agrees that the prime responsibility for police protection to the Landfill shall continue to be the Township's. The Parties acknowledge that pursuant to Paragraph 31 of the 1998 Original Agreement,

which continues in full force and effect after the Effective Date of this Agreement, the City bears prime responsibility for fire protection to the Landfill.

- M. Landfill Committee. BLC and the Township shall continue to participate in the Lower Saucon Township Landfill Committee ("Landfill Committee") to monitor and review the operation of the Landfill. The Landfill Committee shall consist of two BLC representatives and two residents from the Township. The Landfill Committee shall meet quarterly, and shall have the discretion to set its own meeting schedules and administrative procedures as the Landfill Committee deems necessary. The Landfill Committee shall be authorized and requested to periodically monitor the Landfill operation and provide reports on the Landfill operation to BLC and to the Township. The Landfill Committee also shall be required and empowered to receive, review and report on Landfill related complaints. The Landfill Committee shall be advisory only, and shall have not legal authority to bind either BLC or the Township. The Landfill Committee meetings shall be held within the Township and open to the Township, and/or its designees and residents to attend. BLC will provide reasonable, escorted access to the Landfill and property owned by BLC to the members of the Landfill Committee and to the Township and/or its designees. BLC shall provide in electronic format a quarterly report to the Landfill Committee in advance of each quarterly Landfill Committee meeting that is substantially similar in form and substance to the quarterly reports provided in electronic format by BLC to the Landfill Committee as of the Effective Date of this Agreement, an example of which is attached hereto at "Attachment 6".
- N. Solid Waste Incinerators. BLC agrees that no Solid Waste Incinerator, or other type of waste-to-energy facility that utilizes the burning of Solid Waste, shall be permitted at the Landfill unless and until a revised Host Community Agreement is executed by the Parties.
- O. By the tenth (10<sup>th</sup>) business day of July each calendar year, BLC shall send the Township a stand-alone copy of the Municipal Waste Landfill Annual Operation Form for the Landfill that is included in the annual report submitted by BLC to PADEP pursuant to 25 Pa. Code § 273.313 (a full copy of which is provided to the Township), which, among other things, reports the "Estimated Remaining Life" of the Landfill in years.

## **Section 6. FUTURE EXPANSION OF THE LANDFILL**

- A. The Township recognizes that BLC intends to expand the Landfill as depicted on the Phase V Conceptual Plan, and the Parties acknowledge that the Phase V Expansion and the issuance of the Phase V Permit Modification are fundamental and integral to this Agreement and that it is in the best interest of both Parties that the Phase V Permit Modification is obtained.

- B. The Township, including all Council members, officers, employees, and representatives acting on behalf of the Township, shall not oppose the Phase V Expansion and BLC's efforts to obtain all necessary permits, licenses, authorizations and approvals that are required for the Phase V Expansion; provided the Phase V Expansion is: (i) designed in compliance with the Solid Waste Management Act and Implementing Regulations ("Condition 1"); and (ii) designed in compliance with applicable, valid Township ordinances that are not preempted or otherwise meet the criteria for preemption ("Condition 2"), and that the Landfill is being operated in material compliance with all applicable PADEP rules and regulations and the Solid Waste Permit ("Condition 3").
- C. Nothing in Section 6.B above binds the right of any Township Council member, officer, employee, or representative from acting exclusively on their own individual behalf; while acting exclusively on their own individual behalf, they make take all actions legally available to oppose the Phase V Expansion.
- D. The Township, including all Council members, officers, employees, and representatives acting on behalf of the Township, may oppose the Phase V Expansion if BLC does not meet the terms of Conditions 1, 2, or 3 of Section 6.B, above.
- E. If the Township, including all Council members, officers, employees, and representatives acting on behalf of the Township, in good faith and pursuant to Section 6.D above opposes, including by an appeal to or intervention before an agency or court of competent jurisdiction, the Phase V Expansion and is unsuccessful in such opposition, the Township shall not be subject to damages, provided that prior to initiating any such opposition, the Township has obtained and provided to BLC:
- 1) where the basis for the opposition is that BLC has not met the terms of Conditions 1 and/or 3 above, unqualified written opinions from both the Township Engineer and an independent professional engineering firm which professional engineering firm has, in the preceding six (6) months, performed substantive services on at least one landfill in Pennsylvania, which opinions detail the basis for the conclusion that BLC has not met the terms of Conditions 1 and/or 3 above; or
  - 2) where the basis for the opposition is that BLC has not met the terms of Condition 2 above, unqualified, written opinions from both the Township Solicitor and a law firm with at least 25 attorneys and experience in zoning matters, which opinions detail the basis for the conclusion that BLC has not met the terms of Condition 2 above.
- F. Nothing in this Section 6 waives any rights the Township may have to request the PADEP to conduct a public hearing on the Phase V Expansion, or to offer to the PADEP during the application review period any engineering design comments on the Phase V Expansion, any comments on the compliance history of BLC



regarding the operation of the Landfill, and/or any comments relating to a release or a significant threat of a release of hazardous substances to the environment by BLC at or from the Landfill in violation of PADEP rules and regulations.

- G. The Parties hereto acknowledge and agree that the Phase V Expansion shall be subject to the land development approval provisions of the Township's Subdivision and Land Development Ordinance as well as all applicable provisions of the Township's Zoning Ordinance.

#### **Section 7. BREACH**

- A. Upon the occurrence of a breach, the non-breaching party shall provide written notice of the breach to the breaching party in accordance with the notice provisions of Section 9.N of this Agreement. Upon receipt of such written notice, the breaching party shall have thirty (30) days in which to cure such breach(es). In the event that a breach cannot reasonably be cured or remedied within such thirty (30) day period, the breach shall not give rise to the remedies for breach set forth in Section 7.B herein for a reasonable additional time period not to extend more than one hundred twenty (120) days after receipt of such written notice by the breaching party, so long as the breaching party has in good faith commenced curing or remedying such breach(es) within the thirty (30) day period and thereafter diligently acted to complete the cure.
- B. Upon or after a breaching party's failure to cure a default as provided for in Section 7.A herein, the non-breaching party may bring an action to enforce this Agreement in accordance with Section 9.F herein and seek any and all relief available at law or in equity.

#### **Section 8. EFFECTIVE DATE AND TERM OF AGREEMENT**

- A. This Agreement shall become effective upon execution by the Parties and adoption of any required Township resolutions ("Effective Date").
- B. Upon the Effective Date of this Agreement, the 1998 Host Community Agreement shall be deemed amended, restated, replaced and superseded by the terms of this Agreement, except that the rights and obligations of the City under Paragraphs 12, 17, 27, 29, 31 and 44 of the 1998 Original Agreement are not affected by this Agreement and shall continue in full force and effect after the Effective Date of this Agreement.
- C. This Agreement shall terminate upon one of the following, whichever is later: when disposal of waste permanently ceases in the Existing Landfill or, if waste is received for disposal in Phase V Expansion, when disposal of waste permanently ceases in the Phase V Expansion.
- D. Notwithstanding anything to the contrary set forth in this Agreement, BLC may at any time terminate this Agreement if BLC determines that the continued

operation of the Landfill is no longer economically viable or in the best interests of BLC.

- E. Following the termination of this Agreement pursuant to this Section 8.C or 8.D, neither Party shall have any further obligation under this Agreement; except for any liabilities or obligations accruing to a Party prior to such termination of this Agreement and Sections 2.A, 2.B, 2.G (only with respect to the Township's right to 3% of any gross proceeds received from sales of methane gas generated at the Landfill, which shall survive for as long as the Landfill is generating methane gas), 9.C, 9.D, 9.F, 9.G, 9.I, and 9.K, which shall survive the termination or expiration of this Agreement.

#### Section 9. MISCELLANEOUS

- A. To the extent not defined herein, all words, terms, phrases, etc., used in this Agreement that relate to solid waste or municipal waste disposal facilities and that are defined in Act 101, the Solid Waste Management Act, or the Implementing Regulations, shall have the respective meanings as defined in such statutes and regulations as of the Effective Date of this Agreement.
- B. This Agreement shall constitute a covenant running with the land, until such time as the same is released or modified by written agreement of the Parties, so that the terms, conditions, and other commitments must be met by BLC and any future owner or operator of the Landfill. The Parties agree that this Agreement shall be recorded in the Recorder of Deeds Office for Northampton County, at the expense of BLC.
- C. BLC hereby agrees to hold harmless, indemnify and defend the Township from and against any damage, liability, loss or deficiency (including reasonable attorneys fees and other costs and expenses incident to any claim, suit, action or proceeding), arising out of or resulting from any failure of BLC to duly perform or observe any term, provision, covenant or condition of this Agreement on the part of BLC, and any negligence, carelessness, action or inaction on the part of BLC arising from or in connection with BLC's duties under this Agreement.
- D. The Township hereby releases BLC and its parents, predecessors, affiliates, subsidiaries, successors – whether by merger, de facto merger, asset purchase, stock purchase, continuity of enterprise, substantial continuity of enterprise or otherwise – assigns, lessees, sub lessees and lessors from any and all known, or reasonably capable of being known, claims, demands, damages, actions, causes of action or suits or any kind or nature whatsoever arising from, relating or pertaining to compliance with the 1998 Host Community Agreement.
- E. BLC will use commercially reasonable efforts, including the payment of reasonable costs, not to exceed \$1,000.00, to cause its third party liability insurance carriers, including environmental liability carriers, to name the Township as an additional named insured on existing policies of insurance which

relate to the Landfill. The Landfill shall notify the Township of any changes in insurance coverage within forty five (45) days of the change.

- F. Any litigation hereunder between the Parties shall be filed and prosecuted in either the Court of Common Pleas of Northampton County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania, and this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions).
- G. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective parents, predecessors, affiliates, subsidiaries, successors – whether by merger, de facto merger, asset purchase, stock purchase, continuity of enterprise, substantial continuity of enterprise or otherwise – assigns, lessees, sub lessees and lessors.
- H. Neither Party shall assign or otherwise transfer all or any portion of its rights or obligations under this Agreement without prior written consent of the other Party, which consent shall not be unreasonably conditioned, withheld or delayed, except BLC may assign this Agreement without consent to any affiliate of BLC, an entity which acquires all or substantially all of the assets of BLC, or a successor in a merger or acquisition. Further, upon written approval by BLC, said approval to not be unreasonably withheld, the Township may sub-lease any portion of the Existing Landfill Leased Premises or the Phase V Leased Premises, provided that any use permitted under said sub-lease complies with Section 3.C.1(i)-(iii) of this Agreement and the terms of the Existing Landfill Lease or the Phase V Landfill Lease, whichever is applicable.
- I. The Parties agree that this Agreement does not and is not intended to create rights of any kind in any person or entity not a Party to this Agreement. If any term or provision of this Agreement should be held invalid or unenforceable, the Parties shall endeavor to replace such invalid terms or provisions by valid terms and provisions that correspond to the best of their original economic and general intentions. The invalidity or unenforceability of any term or provision of this Agreement shall not be deemed to render the other terms or provisions of this Agreement invalid or unenforceable.
- J. This Agreement represents the entire understanding of the Parties with respect to the matters contained herein. No other terms, representations, statements, covenants or conditions, oral or otherwise of any kind whatsoever, other than those set forth in writing and in this Agreement, shall be binding upon or enforceable against the Parties.
- K. Neither Party shall be liable for its failure to perform under the terms of this Agreement due to contingencies beyond its reasonable control, including but not limited to, strikes, riots, war, fire, acts of God, changes in any applicable law, whether valid or invalid, of the United States of America or any other

governmental body or instrumentality thereof whether now existing or hereafter created.

- L. No changes, additions, modifications or amendments of this Agreement shall be effective unless they are set out in writing and signed by the Parties. This Agreement may be signed in counterparts.
- M. The section headings in this Agreement are for reference purposes only and shall not control or affect the construction or interpretation of this Agreement in any respect.
- N. All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given if: 1) delivered in person; 2) mailed first class, postage prepaid, certified or registered mail, return receipt requested; or 3) delivered by a commercial overnight courier that guarantees next day delivery and provides a receipt, as follows:

If to the Township:

Township Manager  
Lower Saucon Township  
3700 Old Philadelphia Pike  
Bethlehem, PA 18015

with a copy to:

Township Council  
Lower Saucon Township  
3700 Old Philadelphia Pike  
Bethlehem, PA 18015  
ATTN: Council President

If to BLC:

General Manager  
Bethlehem Landfill  
2335 Applebutter Rd.  
Bethlehem, PA 18015

with a copy to:

General Counsel  
Waste Connections  
3 Waterway Square Place  
Suite 110  
The Woodlands, TX 77380

The addresses of the Parties and counsel in this Agreement shall remain in effect until another address is given to the other Party in accordance with these notice provisions.

- O. The Parties hereto have the full right, power and authority and all necessary approvals to execute this Agreement and to execute and deliver any and all documents required herein, to undertake and accomplish the terms of this Agreement, and to take all action to execute this Agreement and all documents and instruments necessary or proper or desirable to effectuate the purposes of this Agreement.
- P. This Agreement and any other documents executed and delivered by and on behalf of the Parties are each legal, valid and binding obligations of the Parties enforceable against them in accordance with their respective terms.
- Q. Attached hereto at "Attachment 7" is a resolution of Township Council authorizing the Township to enter into this Agreement and signifying the authority of Township Council to enter into this Agreement on behalf of the Township.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first written above.

LOWER SAUCON TOWNSHIP

BETHLEHEM LANDFILL COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Attachment 1**

**1998 Host Community Agreement**