

**RECEIVED**

**OCT 10 2023**

**TOWN OF MOREAU  
BUILDING DEPARTMENT**

**Ann R. Purdue  
11 Macory Way  
Gansevoort, New York 12831  
arpurdue@verizon.net**

October 6, 2023

Zoning Board of Appeals  
Town of Moreau  
351 Reynolds Road  
Moreau, NY 12828

RE: Appeal from the Determination of the Zoning Administrator Pursuant to Town Code  
Section 149-78

Gentlemen:

I file this appeal from the determination of the Zoning Administrator dated August 1, 2023, a copy of which is attached as Attachment 1. Prior to filing this appeal, I requested both the Zoning Administrator and the Town Attorney address the substance of my concerns regarding this determination. Neither has done so. When I asked to discuss the matter at our Planning Board meeting on September 18th, the Zoning Administrator indicated that my only recourse is to seek your review of the determination.

The Zoning Administrator issued the determination at the request of attorneys for Saratoga Biochar Solutions, LLC. I appeal from the determination because of its ramifications for the Planning Board's ongoing oversight of the Saratoga Biochar project as well as other projects that are subject to the Planning Board's site plan review and approval.

Although this appeal relates to more than the Saratoga Biochar project, the information required with respect to that project pursuant to Town Code Section 149-78 is set forth on Attachment 2. Below is a further discussion of the specific provision of Chapter 149 at issue, the interpretation that is claimed, and the reasons the interpretation is believed to be erroneous.

**The Issue: Town Code Section 149-44.1**

At issue is the interpretation of Town Code Section 149-44.1. That Section provides as follows:

**§ 149-44.1 Final approval expiration.  
[Added 6-14-2022 by L.L. No. 3-2022]**

A. Final approval shall expire one year after the date of approval of the site plan if actual construction has not begun. "Actual construction" is hereby defined as the placing of

construction materials in their permanent position, fastened in a permanent manner, except that where a basement or cellar is being excavated, such excavation shall be deemed to be actual construction; where demolition or removal of an existing structure has been substantially begun preparatory to rebuilding, such demolition and removal shall be deemed to be actual construction.

B. The Planning Board may, in its sole discretion, grant the applicant an extension of time, provided that the following conditions are met: the applicant submits a written request for such extension and submits such other application materials as may be deemed necessary by the Planning Board; any fee required pursuant to the fee schedule adopted by the Town Board has been paid; the plans have been reviewed by the Town and such other agencies as it deems appropriate; and due consideration of the application has been made by the Planning Board. Application materials shall be for the purpose of determining whether any change in the condition of the site or its environs has occurred or whether the applicable law has been changed. Application materials must include copies of the plans and reports previously approved with the initial application and any other materials which the Planning Board deems necessary.

#### **Background: Final Site Plan Approval of the Project by the Planning Board**

The Planning Board passed a resolution approving the final site plan of the Saratoga Biochar project on August 25, 2022. The resolution contained numerous provisions, including conditions that need to be fulfilled before the applicant may commence construction as well conditions that need to be met to continue operations following construction. A copy of the resolution is attached as Attachment 3.

The Planning Board states, in the recitals of the resolution, its clear intent to grant final site plan approval pursuant to Town Code Section 149-43. Following is the relevant language (*emphasis added*):

WHEREAS, based on the extensive review performed over the course of twelve months by the Planning Board, including nine public meetings, of which two were public hearings and one was a special public meeting with NYSDEC, the Planning Board has determined that ***the site plan for the project conforms to all requirements of Section 149- 40, 149-42 and 149-43 of the Town of Moreau Code*** and all requirements under SEQR have been met; and

WHEREAS, the Planning Board has identified a number of conditions to approval that must be met by the Applicant prior to any application or issuance of a building permit and certain conditions that must be satisfied thereafter; and

WHEREAS, the Planning Board hereby ***submits this resolution and report on final site plan pursuant to Section 149-43 of the Moreau Town Code***;

Accordingly, the Planning Board intended and did in fact grant final site plan approval on August 25, 2022. At its meeting on October 17, 2022, the Planning Board further adopted a resolution authorizing execution of final site plan mylars by the Planning Board Chair and another Planning Board member.

To date, the applicant has failed to provide final site plan mylars for execution.

### **Discussion: The Determination of the Zoning Administrator**

Notwithstanding the plain and clear language of the Town Code and the final site plan approval resolution, the Zoning Administrator asserts that the one-year period within which a project applicant must commence actual construction does not begin to run until a number of events occur – issuance of permits and execution of site plan mylars.

In his determination, the Zoning Administrator states that Town Code Section 149-44.1 only applies to “final, conditional site plan approvals.” He states further that the Saratoga Biochar final site plan approval is conditional and approval does not “technically” become final until the NYSDEC issues Air State Facility and Solid Waste Management Facility permits for the project.

However, this determination is absolutely without any basis, neglects the clear meaning of the Town Code, and defeats its intended purpose.

- The term “conditional” does not appear in this provision of the Town Code and there is no reason whatsoever to infer it. The Zoning Administrator interjects the term without any support.
  - Virtually all, if not all, final site plan approvals contain one or more conditions that need to be satisfied before construction is commenced. These conditions include building permits and permits from various other agencies, such as NYS Departments of Health, Transportation and Environmental Conservation. Yet, all the same, such approvals have always been deemed “final site plan approvals.”
- The Zoning Administrator further relies on Town Code Section 149-38 (10) and 149-41 (A)-(C) in support of his contention that the Planning Board’s final site plan approval is “conditional.” However, these provisions relate to approval of preliminary site plans. In particular, Section 149-41 (C) provides that, if the Planning Board determines that a preliminary site plan does not satisfy conditions for final approval, it may grant conditional approval of the preliminary site plan. Under these circumstances, the applicant is required “always” to submit a final site

plan application, accompanied by the final site plan and related documents, for the review and approval of the Planning Board.

- Further, as noted earlier, the Planning Board's resolution clearly indicates that it is "final site plan approval pursuant to Town Code Section 149-43."
- The Zoning Administrator's interpretation defeats the clear intent and purpose of Town Code Section 149-44.1.
  - As stated in subsection (B), upon failure of an applicant to commence construction within one year of final site plan approval, the applicant may apply to the Planning Board for an extension of the time required to commence construction. The obvious intent of the Code is to allow the Planning Board to consider whether its approval should stand "as is" in view of changes since the date of its approval. That intent is apparent in the language of subsection (b): "Application materials shall be for the purpose of determining whether any change in the condition of the site or its environs has occurred or whether the applicable law has been changed."
  - An applicant may encounter delays in obtaining permits for many reasons, including its own failure to pursue the required permits or satisfaction of other conditions to construction. In that case, the Zoning Administrator's interpretation would allow a limitless deferral of the one-year time period for commencement of construction. The project might not come up for reconsideration by the Planning Board for years. The Zoning Administrator's suggestion that the approval becomes null and void if the permits are never obtained does not cure the defects in his interpretation. The Planning Board is denied its opportunity to timely reconsider the project.
  - The Zoning Administrator's assertion that the one-year time period to commence construction does not begin until the Planning Board Chair and another board member sign final site plan mylars is similarly defective. Submission of mylars is entirely within the control of the applicant. Once submitted, these mylars are routinely and timely signed.
- Lastly, the Zoning Administrator's interpretation muddies other provisions of the Town Code which require action on final site plan applications by the Planning Board within prescribed time periods. For example, final site plan approval is deemed given if the Planning Board fails to timely act on the completed applications pursuant to Sections 149-40 (C) or 149-43 (A). It is entirely unclear how these provisions work if the Zoning Administrator's interpretation stands. If

the approval contains conditions, has the Planning Board failed to grant final site plan approval within the prescribed time limits?

In the end, the Zoning Administrator's interpretation wrongly usurps the authority of the Planning Board to determine for itself whether to extend the construction commencement date pursuant to the Town Code.

**Conclusion**

Based on the foregoing, I request that the Zoning Board of Appeals reject the Zoning Administrator's interpretation and determine that the one-year time period for commencement of actual construction pursuant to Town Code Section 149-44.1 begins as of the actual date of the Planning Board's adoption of its resolution approving final site plans pursuant to Section 149-43.

In the case of the Saratoga Biochar project, the date of final site plan approval was August 25, 2022, meaning that its approval expired on August 25, 2023.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Ann R. Purdue".

Ann R. Purdue

**Attachment 1**

**Determination of Zoning Administrator Dated August 1, 2023**



# Town of Moreau

## Building and Zoning Dept.

Town Office Complex  
351 Reynolds Road  
Moreau, NY 12828-9261  
Phone: (518) 792-4762 ~ Fax: (518) 792-4615

**Matt Dreimiller**  
Building Inspector

**Jim Martin**  
Zoning Administrator

August 1, 2023

Robert L. Lippman, Esq.  
Lemery, Greisler, LLC  
60 Railroad Place, Suite 502  
Saratoga Springs, NY 12866

**Re: BioChar Solutions, LLC – Inquiry Relating to the Status of Approval**

Dear Attorney Lippman:

I am in receipt of your letter dated July 25, 2023, with respect to the Saratoga Biochar Solutions, LLC ("SBS") project. Please be advised that we have reviewed the project and the Town Code, specifically Section 149-44.1. As you are aware, Section 149-44.1(A), effective June 14, 2022, provides:

A. Final approval shall expire one year after the date of approval of the site plan if actual construction has not begun. "Actual construction" is hereby defined as the placing of construction materials in their permanent position, fastened in a permanent manner, except that where a basement or cellar is being excavated, such excavation shall be deemed to be actual construction; where demolition or removal of an existing structure has been substantially begun preparatory to rebuilding, such demolition and removal shall be deemed to be actual construction.

Section §149-44.1 applies solely to final, unconditional site plan approvals. Here, it is our opinion that the approval is a conditional approval, and therefore technically does not become final until such time as SBS obtains both the Air State Facility and Solid Waste Management Facility Permits from NYSDEC. Specifically, Condition "1" of the approval states "[p]roof of a NYSDEC Solid Waste Facility Permit shall be required prior to commencement of construction of the project . . ." Condition "2" states "[p]roof of a NYSDEC Air State Facility Permit shall be required as a condition to commencement of construction of the project." The permits have yet to be issued as SBS continues to move through Permit Regulations, including numerous public participation meetings required by DEC, as well as the fairly new Climate Leadership and Community Protection Act ("CLCPA"). In the event SBS does not obtain either or both permits, the approval becomes null and void. As such, it is not final until SBS obtains the permits and the one-year time period under section 149-44.1 is not applicable until these two pre-construction requirements are met.

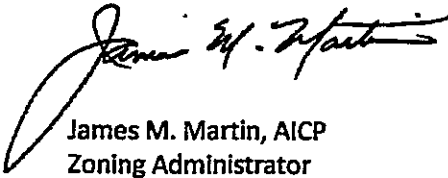
Further, the site plan approval with conditions contains "other items deemed appropriate by the Planning Board" under § 149-38(10), rendering the approval not yet final under § 149-41(A)(B) and (C).

Finally, no mylars have been signed by the Chair of the Planning Board. As such, It is not deemed to be final.

Based on the above, we are of the opinion that Section 149-44.1 is not applicable and the site plan approval with conditions does not expire on August 25, 2023.

I trust this letter answers your question and presents the Town's position clearly. If you need further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Martin". The signature is fluid and cursive, with a large loop at the beginning and a horizontal line at the end.

James M. Martin, AICP  
Zoning Administrator

Cc: Moreau Planning Board Members – via email  
Karia Buettner, Planning Board Counsel – via email



**Attachment 2  
Saratoga Biochar Solutions, LLC  
Project Specifics**

**Address and Name of Owner:**

Moreau Industrial Park, LLC  
269 Ballard Road, Wilton, NY 12831

**Name and Address of Applicant:**

Saratoga Biochar Solutions, LLC  
26 Congress Park #3460  
Saratoga Spring, NY 12833

**Property Zoning Classification:**

General Manufacturing and Industrial (M-1)

**Location:**

Moreau Industrial Park  
Lots 50.-4-16 and 50.-4-22

**Attachment 3**

**Resolution  
Town of Moreau Planning Board  
Final Site Plan Approval  
Saratoga Biochar Solutions LLC  
August 25, 2022**

**RESOLUTION  
TOWN OF MOREAU PLANNING BOARD**

**SUBJECT: SARATOGA BIOCHAR SOLUTIONS, LLC SITE PLAN APPLICATION  
APPROVAL**

WHEREAS, Saratoga Biochar Solutions, LLC (hereinafter "Applicant") has made an application to the Town of Moreau Planning Board (hereinafter "Planning Board") for site plan approval pursuant to Article VI Site Plan of the Town of Moreau Code, for a carbon fertilizer manufacturing facility to be located at 2-6 Electric Drive, tax map numbers 50.-4-16 and 50.-4-22, within the Moreau Industrial Park, the development area comprising 5.89+/- acres, zoned M-1 General Manufacturing and Industrial (hereinafter the "proposed Project"); and

WHEREAS, on May 7, 2021, Town of Morea Zoning Administrator James Martin rendered a determination that the proposed Project is a use permitted upon Site Plan approval by the Planning Board; and

WHEREAS, on July 6, 2021, Applicant submitted its application for Site Plan review for the proposed Project; and

WHEREAS, Applicant first appeared before the Planning Board on August 2, 2021, at which time the Planning Board reviewed the preliminary site plan, actively engaging in discussion with the Applicant, asking questions including, but not limited to, traffic, noise, air emissions, odor, water and sewer; and

WHEREAS, on August 2, 2021, the Planning Board reviewed Part 1 of the Full Environmental Assessment Form ("FEAF"), dated July 1, 2021, identified the proposed Project as an Unlisted Action under the State Environmental Quality Review Act ("SEQRA") and declared itself Lead Agency for the coordinated review; and

WHEREAS, on November 22, 2021, the proposed Project was again before the Planning Board, at which time the Planning Board discussed, among other issues and concerns, traffic patterns, with an eye towards emergency access; the size and locations of the buildings; the NYSDEC process for permits and the Applicant's progress in that area as well as the follow through once the permits are issued; the progression in SEQRA in that none of the interested or involved agencies objected to coordinated review with the Planning Board acting as Lead Agency and, other than NYSDEC and NYSDOT, from whom permits are required, none had any concerns with the FEAF; and

WHEREAS, at its meeting on November 22, 2021, pursuant to Section 149-40 of the Moreau Town Code, the Planning Board determined that the public should have a right to weigh in on the proposed Project, and as such, set the public hearing for December 13, 2021; and

WHEREAS, the Public Hearing was properly noticed to residents within five (500) feet of the proposed Project, was published in The Post Star, was posted on the Town's official website and in the Town Municipal Complex; and

WHEREAS, at its meeting on December 13, 2021, the Planning Board reviewed Part 2 of the FEAF, and upon identifying concerns regarding the impact on air and odor, tabled continued review until such time as further information could be obtained;

WHEREAS, on December 13, 2021, a resolution was adopted to retain an independent expert and directed the Zoning Administrator to create a scope of work; and

WHEREAS, the Public Hearing was opened and closed on December 13, 2021; and

WHEREAS, as a result of information raised in public comment as well as concerns raised by the Planning Board regarding environmental questions from its

December 13, 2021, meeting, on January 12, 2022, the Planning Board held a properly noticed special meeting with scientists and individuals from NYSDEC and the Applicant; and

WHEREAS, having been satisfied with the information provided by NYSDEC during the January 12, 2022, special meeting, and reviewing all information in the record, on March 7, 2022, the Planning Board reviewed revised site plan documents intended to address deficiencies in the Applicant's prior submittals, Parts 1, 2 and 3 of the revised FEAF dated February 22, 2022, taking a hard look and identifying five (5) areas of moderate concern, to wit:

- (1) The action may also emit one or more greenhouse gases at or about the following levels: More than 1000 tons/year of carbon dioxide (CO<sub>2</sub>) (Q.6[a][i]);
- (2) The proposed action may require a state air registration, or may produce an emissions rate of total contaminants that may exceed 5 lbs. per hour, or may include a heat source capable of producing more than 10 million BTUs per hour (Q.6[c]);
- (3) The proposed action may reach 50% of any of the thresholds in 6(a) – (c) (Q.6[d]);
- (4) The proposed action may result in the combustion or thermal treatment of more than 1 ton of refuse per hour (Q.6[e]);
- (5) The proposed action may result in routine odors for more than one hour per day (Q.15[c]); and

WHEREAS, after identifying the above (1) – (5) as moderate to large concerns, the Planning Board ascertained that the concerns could be mitigated as follows;

- (1) With respect to concerns raised for Question 6, impacts on air are mitigated by NYSDEC issuance of Air Emission permit and periodic third-party monitoring;
- (2) With respect to concerns raised for Question 15, impacts on noise, odor and light are mitigated by building enclosure, scrubbing and being under negative air pressure and bio filters; and

WHEREAS, after taking a hard look at the above, identifying the moderate to large concerns and the mitigation efforts that can be taken, on March 7, 2022, the Planning Board adopted a resolution finding no significant environmental impact and issued a negative declaration under SEQRA; and

WHEREAS, given the amount of discussion and new information provided between December 13, 2022 and March 7, 2022, the Planning Board, sua sponte, decided to engage the public and scheduled another public hearing for April 18, 2022; and

WHEREAS, the second Public Hearing was properly noticed to residents within five (500) feet of the proposed Project, was published in The Post Star, was posted on the Town's official website and in the Town Municipal Complex; and

WHEREAS, the second Public Hearing was moved from April 18, 2022, to May 12, 2022, due to an unexpected lack of a quorum; and

WHEREAS, the public was properly notified of the change from April 18, 2022 to May 12, 2022; and

WHEREAS, the second Public Hearing was held on May 12, 2022, as a special meeting, with the proposed Project as the sole item on the agenda; and

WHEREAS, at the second Public Hearing, twenty-three (23) members of the public voiced their opinions and comments regarding the proposed Project; and

WHEREAS, after verifying that all members of the public present had been permitted to speak, the Planning Board closed the second Public Hearing; and

WHEREAS, after the closing of the second Public Hearing, the Planning Board engaged in discussion regarding the public comments received in writing and at the second Public Hearing; and

WHEREAS, during the course of the discussions, a motion was made to reopen the environmental review process under SEQRA, which motion was defeated by a vote of four to two; and

WHEREAS, during the course of the discussion, a resolution was adopted to retain an independent expert to assist the Board in its review of the proposed Project;; and

WHEREAS, on May 12, 2022, the Zoning Administrator requested that the Planning Board provide specific direction by May 27, 2022, regarding a potential Request for Proposal for an independent/third-party review of the proposed Project; and

WHEREAS, on June 6, 2022, the Planning Board meticulously reviewed a draft RFP prepared by Member Ann Purdue, and agreed to permit the Zoning Administrator to revise the draft RFP; and

WHEREAS, on June 20, 2022, the Planning Board again discussed the proposed Project, including the necessity, if any, of an independent/third-party review, the current stage of the proposed Project under the Moreau Town Code, and the specifics of a determination on the proposed Project; and

WHEREAS, on June 20, 2022, the Planning Board directed the attorney for the Planning Board to draft a resolution approving the Site Plan application with certain conditions, such resolution to be reviewed at the meeting on July 18, 2022, and

WHEREAS, on July 18, 2022, pursuant to Section 149-43, the Planning Board advised the applicant, in writing, of its need for an additional forty-five (45) days to consider the application; and

WHEREAS, based on the extensive review performed over the course of twelve months by the Planning Board, including nine public meetings, of which two were public hearings and one was a special public meeting with NYSDEC, the Planning Board has determined that the site plan for the project conforms to all requirements of Section 149-40, 149-42 and 149-43 of the Town of Moreau Code and all requirements under SEQR have been met; and

WHEREAS, the Planning Board has identified a number of conditions to approval that must be met by the Applicant prior to any application or issuance of a building permit and certain conditions that must be satisfied thereafter; and

WHEREAS, the Planning Board hereby submits this resolution and report on final site plan pursuant to Section 149-43 of the Moreau Town Code;

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board does hereby grant site plan approval to the Applicant for the proposed Project as applied for and as depicted in the site plan application materials for the Subject Property, conditioned upon compliance with the following, all of which must be identified as "Notes" on the Final Site Plan prior to signature by the Planning Board Chair and one member and reviewed by the Zoning Administrator and Attorney for the Town:

1. Proof of a NYSDEC Solid Waste Management Facility Permit shall be required prior to commencement of construction of the project and shall be maintained in effect for the duration of its operations. Applicant shall provide the Planning Board with prompt written notice of all violations and compliance proceedings and at least 30



days prior written notice of its submittal of applications for renewals or modifications of this permit. If such modifications may allow increased levels of contaminants from the processes or the emissions or wastewater of the project, the site plan for the project shall be subject to renewed site plan review and approval by the Planning Board as a condition to proceeding with such modifications.

2. Proof of a NYSDEC Air State Facility Permit shall be required as a condition to commencement of construction of the project. Such Permit shall be maintained in effect for the duration of its operations. Applicant shall provide the Planning Board with prompt written notice of all violations and at least 30 days prior written notice of compliance proceedings and its submittal of applications for renewals or modifications of this permit. If such modifications might allow the introduction of new or increased levels of contaminants from the processes or the emissions or wastewater of the project, the site plan for the project shall be subject to renewed site plan review and approval by the Planning Board as a condition to proceeding with such modifications.

A continuous stack emission monitoring system will be installed and operated to test for the regulated contaminants stated presently in the Air Facility Permit or any future contaminants as determined by NYSDEC and the results made public monthly. Any findings above permitted levels shall be reported by SBS and the Town to NYSDEC..

3. Noise - All noise levels from the proposed Project will be compliant with Chapter 100, Noise, of the Moreau Town Code. The applicant shall conduct continuous noise testing at the outer property boundaries. The noise report will be made public monthly.

4. Odor –

a. All material shall be handled within the enclosed building, with air handling under negative pressure. Applicant shall install, operate and maintain state of

the art odor quality monitoring equipment that will continuously monitor the emissions from the project.

SBS will be required to replace its operating equipment with equal to or better, new equipment when such equipment no longer functions properly or is no longer supported by, or defined as "end of life," by its manufacturer.

A report detailing the effectiveness (maintenance, outages, pressures within the structure) of the buildings air handling system will be made public monthly by the applicant.. All biosolids materials shall be handled within the enclosed building, with air handling under negative pressure. All air emissions from the process employed in the project must pass through the air treatment system. The facility may only operate (receive biosolids feedstock and process same into carbon fertilizer) with its air treatment system operating as presented to and permitted by NYS DEC (solid waste management and air facility permits).

b. Prior to Project construction, SBS will provide an analysis of the existing Ambient Air Quality within the Moreau Industrial Park and at the property limits, completed by a qualified environmental engineer. Particulate Matter (PM) and Volatile Organic Compound (VOC) data will be analyzed and provided to the Town of Moreau Code Enforcement and publicly available on the SBS website with a link on the Town website.

Once the Project becomes operational,<sup>1</sup> any complaints regarding odor must follow the following process:

- i. Complainant must file their concern to the NYSDEC Odor Hotline (800)457-7362, the SBS Hotline, and the Town Building Department.

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<sup>1</sup> Operational is assumed at time of Certificate of Occupancy issued by the Town of Moreau Building Department.

- ii. SBS must notify the Town Code Enforcement of the Complaint within 24 hours (business day) via email, 48 hours weekend/holiday.
- iii. Within 7 business days of the initial complaint, SBS must provide the Building Department with a monitoring plan to assess the complaint. Monitoring locations and durations should be provided in the plan. SBS is not expected to access private property but will measure at the property line of the Moreau Industrial Park and nearest public receptor to location of complaint.<sup>2</sup>

If NYSDEC is conducting on-the-spot air quality inspections, this must also be indicated to the Town.
- iv. The Monitoring Plan will be reviewed by the Town Code Enforcement Officer or designated third-party, which may be an outside consultant. In the event an outside consultant is engaged, an escrow account shall be created and funded solely by SBS. The Town shall provide its review of the Monitoring Plan within 7 business days of receipt.
- v. Upon receipt of approval of the Monitoring Plan, SBS shall implement the Plan immediately, but no later than three (3) business days.
- vi. SBS must provide the findings and analysis of the Monitoring Plan to the Town within 14-business days following the conclusion of the monitoring. The findings and analysis will be reviewed by the Town Code Enforcement Officer or designated third-party, which may be an outside consultant. In the event an outside consultant is engaged, an escrow account shall be created and funded solely by SBS. The Town shall provide its comments on the findings and analysis within 7 business days.

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<sup>2</sup> Public receptor is a location that has open public access and monitoring equipment can be placed safely.

- vii. In the event conditions are found to have a degradation of the Ambient Air Quality and/or an exceedance level for VOCs and PMs, SBS is required to immediately cease operations and shall not recommence operations until it has developed and is prepared to implement a remediation plan satisfactory to the Town Code Enforcement Officer or designated third-party.
- viii. There shall be open communication between NYSDEC, the Town, and SBS regarding any investigation and findings.

5. Biosolid feed stock composition – The sources are from area treatment plants and the composition of the material will be monitored by applicant on a regular basis as determined by applicant but in no event less than quarterly to ensure composition is consistent with the terms of the Solid Waste Handling Permit, with reports provided to the Town upon request. The feedstock makeup will be regularly monitored to confirm stability of composition over time, with reports to be made public at least quarterly. No hazardous waste or radioactive materials will be allowed or stored on the project site at any time

6. Transportation–

a. Truck traffic shall be limited to the hours of 6:00 AM – 6:00 PM Monday through Saturday. Arrivals and departures of trucks shall be scheduled to avoid backups on any public roadway or the entrance to the Industrial Park. No parking or idling of trucks shall be allowed on any public roadways for staging deliveries or departures or any other purpose.

b. Biosolid waste may be transported to the proposed Project only through the transportation contract of the Applicant. Any modification to the transportation contract must be provided to the Zoning Administrator or Code Enforcement Officer.

Biosolids waste may be transported to the proposed Project only through the transportation contracts of the Applicant, or the Applicant itself. The applicant has identified Casella Organics as its exclusively contracted biosolids feedstock provider for the first phase of the facility, delivering approximately 75,000 tons per year of biosolids from publicly operated and state permitted WWTP's. The applicant must alert the town in advance prior to making any arrangements for biosolids deliveries with other haulers, subject to the Town's approval following review of any such hauler's NYS operating permits.

c. The route will follow the designated route as determined from the GEIS adopted for the formation of the Moreau Industrial Park. Failure to use designated routes may result in a code violation unless notification is provided and such use is due to external circumstances unrelated to applicant.

d. The Applicant is limited to no more than 50 truck trips per day.

e. Trucks transporting material must meet state licensing and permitting requirements and will be regularly checked by SBS for operational safety.

f. Trucks entering and depositing biosolid feedstock are required do so within a completely enclosed facility. No unloading of feedstock occurs until the entry bay doors are completely closed. No idling outside the facility is permitted.

7. Applicant shall give prompt written notice of all non-odor complaints of which is has notice to the Moreau Building Department. A record of all complaints shall be made available to the public on a quarterly basis.

8. All requirements set forth in the letter dated June 6, 2022, from Michael Mooney, Town Water Superintendent shall be satisfied before the issuance of a building permit. A record of water use and wastewater discharge shall be made available to the

public on a quarterly basis. Notations of water usage and wastewater generation shall be added to the final site plan set.

9. All fees associated with the project shall be paid prior to issuance of a building permit.

10. There shall be a mandatory pre-construction meeting with attendees as determined by the Zoning Administrator and Building Department.

11. The draft Emergency Response Plan and training schedule will be provided to the Town at the pre-construction meeting with a final Plan provided to the Town prior to the issuance of a Certificate of Occupancy.

12. The wood chipper utilized by the Applicant shall be limited to an electric drive, and shall be run only between the hours of 7am and 3pm, Monday through Friday, no weekends or holidays.

13. Proof of approval from DEC on the final biochar fertilizer product shall be provided to the Town.

14. There shall be signage posted around the property indicating the contact information for NYSDEC, the Town Building Department, and SBS Hotline. The signs shall be located on property boundaries facing residential properties, shall be visible from the public road, and at the entrance to the facility. The Applicant shall update the information on the signs when necessary.

15. Construction of phases 2 and 3 will be preceded by a meeting with the Planning Board to address any outstanding issues with the project. No phase shall proceed if the Planning Board determines that:

a. Applicant is not otherwise in full compliance with the terms of this Resolution;

or

b. there are other circumstances, including but not limited to, negative impacts on the community from phase 1 or anticipated for phases 2 or 3, that warrant cessation of further construction of the project.

16. Compliance with Laws –If the NYS DEC, EPA or Town of Moreau adopts regulations following the issuance of permits or other approvals that might otherwise exempt the Applicant from compliance with such regulations (for example, by reason of exemptions allowed for pre-existing uses), Applicant agrees that it shall conform its facility and operations to comply with the adopted regulations within 30 days of the effective date of the regulations. If Applicant needs additional time to comply, Applicant may request that the Planning Board grant additional time. The Planning Board may deny or grant such request and may impose conditions or restrictions on Applicant's operation of the project pending compliance by the Applicant, as the Planning Board deems appropriate in the interests of the community. The Applicant shall cease operations in the event that it fails to comply by the applicable deadline established by the Planning Board.

By decision of the Town of Moreau Planning Board on August 25, 2022.