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October 11, 2023

Ms. Julie Hargrave  
Policy and Planning Manager  
Central Pine Barrens Joint Planning & Policy Commission  
624 Old Riverhead Road  
Westhampton Beach, NY 11978

**Re: SEQRA Lead Agency Coordination: 1-436-00057/00003  
4 Old Country Road LLC (formerly Westhampton Mining Aggregates)  
76 North Summit Boulevard, Westhampton  
Central Pine Barrens Core Preservation Area**

Dear Ms. Hargrave:

As you are aware, our office represents applicant 4 Old Country Road LLC (the "Applicant") regarding its Part 360 permit application concerning the above referenced property. As requested in your email dated October 2, 2023, this letter provides additional details concerning the activities proposed for the project which constitute environmental restoration pursuant to NY CLS ECL § 57-0107(13)(c).

The property was left in need of environmental restoration by the prior owners, who are in no way related to our client, the Applicant. The property presently contains a 40' deep pit and various aggregate stockpiles associated with prior site operations. The base of the pit is within several feet of the groundwater table, and the bottom and walls of the pit are unvegetated. Additionally, the current grade does not naturally flow with the surrounding property elevations. The site does not currently offer substantial habitat or native plant species, is not protective of groundwater and surface waters, and does not enhance the health, safety or welfare of the people of the state. In sum, the site is not currently protective of the region's significant natural, agricultural, historical, cultural and recreational resources for current and future Long Island residents. Implementing the activities authorized under the above-referenced application will enable the property to be restored consistent with applicable New York State Department of Environmental Conservation ("NYSDEC") regulations and guidance.

While a full description of the proposed project can be found in Applicant's Part 360 application, the following is a summary of each of the proposed activities on-site:

1. Segregation and off-site removal of impacted materials;

2. Off-site removal of aggregates not suitable for beneficial use pursuant to applicable laws and regulations;
3. Processing, screening, and regrading of existing stockpiled aggregate;
4. Regrading of pit slopes for stabilization and to reduce erosion;
5. Utilization of approved imported fill materials for regrading of base elevation to reduce potential groundwater impacts, including development of restorative buffer to filter precipitation and neutralize pH and DO concentrations in precipitation and runoff;
6. Installation of a 6" topsoil layer on finished grade to support vegetative growth and habitat restoration. The top two feet of backfilled materials will consist of qualified general fill (F-2) to ensure rooting of native plants and vegetation; and
7. Introduction of native plantings to aide in erosion resistance and habitat creation.

"Environmental restoration" indisputably includes both the investigation and remediation of contamination detected on a site in addition to the restoration of the property to its previous or an improved condition. Here, in fact, the existing 2022 Consent Order with the NYSDEC, addressing the environmental remediation and restoration of the site, expressly authorizes and requires the segregation and removal of impacted materials and the processing and regrading of the existing aggregates. Accordingly, these activities (Nos. 1 and 3 above) necessarily constitute remedial and environmental restoration activities pursuant to the NYSDEC's prior determinations.<sup>1</sup>

Moreover, all of the above activities will assist in the recovery of the ecosystem which has been degraded, damaged, or destroyed by the site's prior use and operations. Specifically, the segregation and off-site removal of contaminated materials (No. 1); processing, screening, and regrading of existing stockpiled aggregate (No. 3); and off-site removal of aggregates not permissible for re-use (No. 2) are necessary for the full delineation and removal of impacted or contaminated substances on-site. The regrading of the pit slopes (No. 4) and regrading of the pit base elevation (No. 5) will establish a restorative buffer to both prevent the further migration of contamination both on- and off-site, reduce erosion, and assist in the filtering and treatment of precipitation and runoff. As such, all of these activities constitute necessary remedial activities intended to directly address the contamination presently on-site.

The remaining activities identified above, including the installation of a 6" topsoil layer (No. 6) and introduction of native plantings (No. 7) are necessary for the full environmental restoration of the site to its prior condition. These activities will allow for the flourishing of natural vegetation on-site and establish a new habitat for local and migratory species.

Critically, as described above, all of the activities identified herein result in invaluable benefits to the environment; will enhance the health, safety or welfare of the people of the state;

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<sup>1</sup> The remaining items identified above will be encompassed by the Part 360 permit currently sought by the Applicant.

and will be protective of the region's significant natural, agricultural, historical, cultural and recreational resources for current and future Long Island residents. None of these activities are intended for or solely provide commercial or economic benefits to the Applicant, and, in fact, no aggregates will be exported from the site with the exception of impacted materials or aggregates deemed unsuitable for beneficial reuse pursuant to applicable laws and regulations.

As a result, we believe these activities clearly constitute "environmental restoration" rather than "development" pursuant to NY CLS ECL § 57-0107(13)(c). However, we are willing to discuss this proposed project with the Commission to determine if there are specific elements of the remediation which could be amended in order to address any of the Commission's concerns and alleviate the need for a hardship waiver.

We welcome the opportunity to discuss the proposed activities further with you and Commission staff at your earliest convenience.

Best regards,

CONNELL FOLEY LLP

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