

A LOCAL LAW IMPOSING AN EIGHT-MONTH MORATORIUM ON THE PROCESSING OF APPLICATIONS FOR, AND THE ISSUANCE OF ANY APPROVALS OR PERMITS FOR, CERTAIN NON-RESIDENTIAL LAND USES IN THE TOWN OF SCHOHARIE

Be it enacted by the Town Board of the Town of Schoharie as follows:

Section 1. Title

This Local Law shall be referred to as the “Local Law Imposing an Eight Month Moratorium on the Processing of Applications for, and the Issuance of any Approvals or Permits for, Certain Non-Residential Land Uses in the Town of Schoharie”.

Section 2. Purpose and Intent

Pursuant to the statutory and common law powers vested in the Town of Schoharie (the “Town”) to regulate and control land uses and to protect the health, safety and welfare of its residents, the Town Board of the Town hereby declares a temporary eight (8) month moratorium on the processing or approval of applications for building permits, special use permits, special permits, variances, site plan approval or subdivision approval related to the undertaking, establishment, placement, development, excavation, enlargement, construction or erection of the following in the Town: 1) Free Standing Signs above a specified maximum height and maximum square footage; 2) Telecommunications Towers; 3) Resource Extraction and Mining Operations; 4) Public Utilities/Facilities; 5) Wind Energy Facilities; 6) Land Application Facilities, Natural Gas and/or Petroleum Extraction Activities, Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes Disposal/Storage Facility, Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes Dump, Natural Gas Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage; and 6) activities undertaken in the Barton Hill Natural Resource Protection Area that are inconsistent with the rules and regulations previously established in coordination with the Schoharie County Health Department for protection of the Barton Hill Watershed attached hereto as Schedule A.

In 2005, after a lengthy period of drafting, review and deliberation, the Town adopted a comprehensive land use law (the “2005 Land Use Law”) to regulate the location, design, construction, alteration, occupancy, and use of structures and the use of all land located within the municipal boundaries of the Town (outside of the Village of Schoharie). The 2005 Land Use Law was designed to further the policies of the Town as set forth in the Town and Village of Schoharie Comprehensive Plan which was adopted in or about 1997. Its intent, among other things, was to regulate land uses in a manner that appropriately balanced the preservation of the unique character and beauty of the Town while at the same time fostering economic opportunities.

By Decision and Order dated February 19, 2014, the Hon. Eugene P. Devine, J.S.C., County of Schoharie, annulled and set aside the 2005 Land Use Law, after finding the Town did

not strictly adhere to the procedural requirements of the New York State Environmental Quality Review Act (SEQRA) when the law was adopted. As a result, the 2005 Land Use Law, and the post-adoption amendments thereto, including Local Law No. 2 of 2009 relating to Wind Energy Facilities and Local Law No. 3 of 2012 relating to Land Application Facilities, Natural Gas and/or Petroleum Extraction Activities, Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes Disposal/Storage Facility, Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes Dump, Natural Gas Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage, are null and void.

Through the annulment of the 2005 Land Use Law, the Town's Amended Zoning Ordinance of 1975 (the "1975 Zoning Ordinance") is now in effect. The 1975 Zoning Ordinance was adopted over thirty (35) years ago and does not contemplate, address or regulate many new technologies and land uses that have become prevalent in the region and greater State. In the same respect, use regulations included in the 1975 Zoning Ordinance are out of date and do not provide adequate safeguards to ensure certain non-residential uses are located and undertaken in a manner that will not result in a material adverse impact on the Town's built and natural environment.

The Town Board desires to effectuate its Comprehensive Plan and address, in a careful manner, the undertaking, establishment, siting, placement, construction, enlargement and erection of the non-residential land uses and activities within the scope of this Local Law on a comprehensive Town-wide basis, rather than on an ad hoc basis, and to adopt a new land use law that includes provisions to specifically regulate the same.

The Town Board finds if development of the specified non-residential uses in the Town proceed under the 1975 Zoning Ordinance it will lessen the ability of the Town to plan for its orderly development and protect the public health, safety and general welfare of the Town's citizens. Thus, the Town Board further finds and determines that it needs a period of time covered by the moratorium imposed herein in order to carefully review and complete the re-enactment of a new land use law with supplemental regulations for specified non-residential uses, schedule and hold the required public hearing, perform the appropriate environmental reviews, comply with applicable provisions of law, adopt the local law(s), and file the same with the Secretary of State of the State of New York.

The Town Board finds that pursuant to 6 NYCRR 617.5(c)(30) the adoption of a moratorium on land development or construction is a Type II action under the New York State Environmental Quality Review Act ("SEQRA") which has been determined not to have a significant impact on the environment or is otherwise precluded from environmental review under Environmental Conservation Law, article 8 and is therefore not subject to review under 6 NYCRR Part 617 or Environmental Conservation Law article 8.

Section 3. Authority

This moratorium is enacted by the Town Board pursuant to its authority to adopt local laws under Article IX of the New York State Constitution and Municipal Home Rule Law Section 10.

Section 4. Scope of Controls

- A. For a period of eight (8) months from the effective date of this Local Law, no board, officer or agency of the Town shall accept, process, consider or approve applications for building permits, special use permits, special permits, variances, site plan approval or subdivision approval related to the undertaking, establishment, placement, development, excavation, enlargement, construction or erection of the following:
- (i) free standing signs that exceed twelve (12) feet maximum in height and thirty-two (32) square feet maximum area;
 - (ii) Telecommunications Towers;
 - (iii) Resource Extraction and Mining operations, excepting private resource extraction up to 1,000 tons or seven hundred and fifty (750) cubic yards of materials (whichever is less) extracted over a continuous twelve (12) month period;
 - (iv) Public Utilities/Facilities, excepting any permits or approvals necessary to repair or perform routine maintenance on any existing Public Utility/Facility;
 - (v) Wind Energy Facilities;
 - (vi) Land Application Facilities, Natural Gas and/or Petroleum Extraction Activities, Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes Disposal/Storage Facility, Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes Dump, Natural Gas Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage; and
 - (vii) Activities undertaken in the Barton Hill Natural Resource Protection Area that are inconsistent with the rules and regulations previously established in coordination with the Schoharie County Health Department for protection of the Barton Hill Watershed attached hereto as Schedule A.
- B. The review or processing of any pending applications for building permits, special use permits, special permits, variances, site plan approval or subdivision approval

related to the undertaking, establishment, placement, development, excavation, enlargement, construction or erection of the uses, activities and operations set forth in Section 4(A)(i) – (vii) of the Local Law shall be suspended for the duration of this moratorium.

- C. This moratorium shall not apply to Certificates of Occupancy for any and all construction pursuant to building permits issued prior to the effective date of this local law or the issuance of any building permit for the renovation or repair of any lawfully existing structure otherwise covered by this local law.
- D. The Town Board reserves the right to direct the Town Building Inspector/Code Enforcement Officer to revoke or rescind any building permits or certificates of occupancy issued in violation of this Local Law.
- E. For purposes of this local law, the following terms shall mean:

Barton Hill Natural Resource Protection Area – the areas included in the Barton Hill Overlay District under the 2005 Land Use Law.

Telecommunication Towers – Structures used for transmitting and receiving radio, microwave or similar electromagnetic signals, and/or any exterior apparatus designed for telephonic, radio, or television communication through the sending and/or receiving of electromagnetic waves, not including antennas and satellite dishes designed for ordinary home or farm use. This prohibition shall not include the collocation of antennas or other transmitting or receiving equipment and base station equipment on existing towers or other tall structures.

Mining/Resource Extraction – Any activity requiring a State Mined Land Reclamation Law Permit or an Amendment to an existing State Mined Land Reclamation Law Permit under the Environmental Conservation Law. This term shall also include the extraction of overburden and minerals from the earth, the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings, and waste at the mine location. “Mining” shall not include the excavation, removal and disposition of minerals from approved construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities.

Public Utilities/Facilities – An installation or facility used, owned, operated and/or maintained by a public utility or municipal governmental agency to supply electric, gas, water, cable television, telephone or other utility services. Included are such facilities as electric unit substations, high-voltage transmission lines, pump stations, water towers, and telephone substations. Utility distribution facilities serving customers directly are considered customary accessory uses, not “utility facilities”.

Free-Standing Sign – A self-supported sign not attached to any building wall or fence, but in a fixed location. This does not include portable signs.

Height – The vertical distance measured from ground level to the highest point on the tower or other structure, even if the highest point is on an antenna.

Wind Energy Facility – See Schedule B.

Land Application Facilities - See Schedule C.

Natural Gas and/or Petroleum Extraction Activities - See Schedule C.

Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes Disposal/Storage Facility – See Schedule C.

Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes Dump – See Schedule C.

Natural Gas Compression Facility – See Schedule C.

Natural Gas Processing Facility – See Schedule C.

Underground Injection – See Schedule C.

Underground Natural Gas Storage - See Schedule C.

Section 5. Hardship

- A. Should any owner of property affected by this Local Law suffer an unnecessary hardship in the way of carrying out the strict letter of this Local Law, then the owner of said property may apply to the Town Board of the Town in writing for a variance from strict compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law, unnecessary hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special use permit, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by this Local Law.

- B. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking a variance from this Local Law, the Town Board shall, within thirty (30) days of receipt of said application, schedule a Public Hearing on said application upon five (5) days' written notice in the official newspaper of the Town. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within fifteen (15) days of the close of said Public Hearing, render its decision either granting or denying the application for a variance from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall grant a variance of the application of this Local Law to a particular property, then the Town Board shall grant a variance of the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

Section 6. Term

The moratorium imposed by this Local Law shall be in effect for a period of eight (8) months from the effective date of this Local Law.

Section 7. Penalties

Any person, firm or corporation that shall undertake, establish, place, develop, excavate, enlarge, construct or erect anything regulated within the "Scope of Controls" listed in Section 4 above in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall:

- A. Be guilty if an offense, punishable by a fine not exceeding two hundred and fifty dollars (\$250.00) or imprisonment for a period not to exceed 15 days, or both. Each day's continued violation shall constitute a separate offense, and
- B. Be subject to appropriate action or proceedings by the proper authorities of the Town to enjoin, correct, or abate any violation(s).

Section 8. Validity

The invalidity of any provision of this Local Law shall not affect the validity of any other provisions of this Local Law that can be given effect without such invalid provision.

Section 9. Suspension and Supersession of Other Laws

All local laws in conflict with the provisions of this Local Law area hereby superseded and suspended for a period of eight (8) months from the effective date of this Local law. This Local Law also supersedes, amends, and takes precedence over any inconsistent provisions of

FINAL FOR ADOPTION – LOCAL LAW NO. 3 OF 2014

New York Town Law under the Town's Municipal Home Rule powers, pursuant to Municipal Home Rule Law §10(1)(ii)(d)(3), §10(1)(ii)(a)(14), and §22.

In particular, this Local Law supersedes any inconsistent provisions of New York Town Law §267, §267-a, §267-b, §274-a, §274-b, §276 and §277 for the purpose of vesting the Town Board of the Town of Schoharie with the authority to accept, hear, process and determine applications for variances from this Local Law.

Section 10. Effective Date

This Local Law shall take effect immediately when it is filed in the Officer of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

Schedule A

Barton Hill Natural Resource Protection Overlay

Section 1. Application The rules and regulations set forth in this section shall apply to the springs and aquifer which comprise the ground water source of public water supply of the Village of Schoharie and known as the Young, Dugan and Truax springs, and to any other sources which may be developed in the future to serve as ground water sources of the water supply of the Village of Schoharie.

Section 2. Definitions

- (1) Accidental Spill shall mean any intentional or unintentional action or omission resulting in an unpermitted releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of petroleum, petroleum products, septage, or toxic chemicals or substances on the watershed lands or into the waters which might flow or drain into waters of the aquifer.
- (2) Aquifer shall mean the saturated and unsaturated subsurface geologic formations which are now or may subsequently be developed for use as public water supply sources for the Village of Schoharie.
- (3) Aquifer recharge area shall mean the land area where precipitation, snow, and rain percolates directly through the ground to an aquifer, and shall consist of known sinkholes, rock outcrops, caves, fissures, crevices and similar exposures in geologic formations and any tributary to the aquifer subsequently identified and recognized by the Town of Schoharie.
- (4) Best management practices shall mean those methods and practices which are developed and adopted or promulgated by regulatory agencies including the New York State Department of Environmental Conservation, New York State Department of Health and Schoharie County Department of Health.
- (5) Chloride salt shall mean the solid compounds or the solutions of potassium chloride (commonly used as fertilizer), calcium chloride (commonly used for winter road maintenance) or sodium chloride (commonly used for winter road maintenance and water softener regeneration).
- (6) Composting toilet or dry toilet shall mean any receptacle for human excreta and/or kitchen waste which is a self-contained unit requiring periodic removal of composted, accumulated or stored material.
- (7) Fertilizers (artificial) shall mean any commercially produced mixture generally containing phosphorus, nitrogen, and potassium which is applied to the ground to increase nutrients to plants.
- (8) Ground water shall mean any water beneath the land surface that is under atmospheric pressure and that enters wells and springs serving as sources of water supply for the Village of Schoharie.
- (9) Herbicide shall mean any substance used to destroy or inhibit plant growth.
- (10) Human excreta shall mean human feces and urine.
- (11) Junkyard shall mean a lot, land or structure or part thereof, used for the collecting, storage or sale of waste paper, rags, scrap metals, used or salvaged building or other discarded material, or the collecting, dismantling, storage and deposit, whether in connection with another business or not, where two (2) or more unlicensed, old or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways and are not currently registered by the State of New York or any other State for operation on public highways, or are in such condition as to cost more to repair and place in operating condition than its reasonable market value prior to such repair; and are being held, whether for the purposes of resale of the vehicle or used parts or materials therefrom or not. Such term shall include any place of storage or deposit for any purpose of used parts or waste materials from motor

vehicles which, taken together equal in bulk two (2) or more such vehicles.

- (12) Land application of wastewater shall mean the distribution of municipal, industrial agricultural or residential wastewater by spray irrigation, injection or direct flow, over the land surface with or without and underdrain system and point discharge(s).
- (13) Linear distance shall mean the shortest horizontal distance from the nearest point of the structure or object to the (i) extension of the centerline of the wells, (ii) nearest edge of any spring, (iii) edge, margin and steep bank forming the ordinary high water line of a water course, and (iv) nearest edge of a sinkhole, crevice, fissure, cave, exposed bedrock or similar exposure tributary to the aquifer.
- (14) Manure shall mean animal feces and urine.
- (15) Pesticide shall mean any substance used to destroy or inhibit pests such as rodents and insects.
- (16) Point source discharge shall mean discharge of pollutants resulting from facilities, systems and activities which operate under a permit issued by the appropriate state or local agency.
- (17) Pollutant shall mean dredge, spoil, solid waste, incinerator residue, sewage, garbage, refuse, rubbish, sewage sludge, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial and municipal waste, manure, animal waste and agricultural waste.
- (18) Radiation shall mean ionizing radiation, that is, any alpha particle, beta particle, gamma ray, x-ray, neutron, high speed electron, high speed proton and any other atomic particle producing ionization, but shall not mean any sound or radio wave, or visible, infrared, or ultraviolet light.
- (19) Radioactive material shall mean any material in any form that emits radiation spontaneously.
- (20) Refuse shall mean all putrescible and nonputrescible solid wastes including garbage, manure, rubbish, ashes, incinerator residue, street cleanings, dead animals, offal and solid commercial and industrial wastes.
- (21) Refuse disposal area shall mean land used for the depositing of refuse from a single family, a member of which is the owner, occupant or lessee of said land, or any part of a farm on which only agricultural associated animal wastes resulting from the operation of such farm are deposited.
- (22) Reservoir shall mean any natural or artificial lake or pond which is tributary to or serves as a source of the public water supply of the Village of Schoharie.
- (23) Septage shall mean that residue removed from onsite sewage or wastewater disposal system.
- (24) Sewage or wastewater shall mean any liquid or solid waste matter from a domestic, commercial, or industrial establishment which is normally carried off in sewers and waste pipes.
- (25) Sewage treatment system shall mean any system used for disposing of sewage and includes treatment works.
- (26) Sewage system cleaner or additive shall mean any solid or liquid material intended or used primarily for the purpose of cleaning, treating, or unclogging any part of a sewage system or any solid or liquid material intended or used primarily for the purpose of continuously or automatically deodorizing or disinfection of any part of a sewage system including but not limited to solid cakes or devices placed in plumbing fixtures.
- (27) Sludge shall mean the solid residue resulting from municipal or industrial process or wastewater or water treatment which also produces a liquid stream of effluent.
- (28) Spring resurgence protection area shall mean the area within a circle which has a radius of 250 feet from the spring, spring basin, intake or well for the Village of Schoharie.
- (29) Toxic chemical or substance shall mean any organic or inorganic substance including but not limited to petroleum derivatives, any metallic elements including the transition series, and any hazardous wastes which pose a substantial present or potential threat of producing injury or disease upon exposure, ingestion, inhalation, or assimilation by a living organism.

- (30) Treatment works shall mean any treatment plant, sewer, disposal field, lagoon, pumping station, septic system, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills or other works not specifically mentioned in this paragraph, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage.
- (31) Watercourse shall mean a visible path through which surface water travels on a regular basis. It includes springs, streams, ponds and wetlands. Drainage areas which contain water only during and immediately after a rainstorm, and roadside ditches shall not be considered a watercourse.
- (32) Watershed shall mean the area where water flows into the ground water supply of the Village of Schoharie.
- (33) Watershed tributary to aquifer recharge area (or watershed) shall mean that land area delineated in the overlay map which is the tributary surface from which the aquifer is replenished by run-off to the aquifer recharge area. The boundaries of the overlay are defined as follows: From a point beginning at the intersection of the town lines of Schoharie, Wright (Schoharie County) and Duanesburg (Schenectady County), proceeding southerly along the boundary line of the towns of Schoharie and Wright to a point on that town borderline 500 feet north of State Rout 443 and then proceeding west along a line 500 feet parallel to State Route 443 until a point intersecting the lands of the Niagara Mohawk Power Corporation, and proceeding north along the eastern boundary of said lands to the intersection of said line with State Route 30; continuing along the southern border of State Route 30 to the intersection of State Route 30 and I-88, proceeding east along the southern boundary of I-88 to the Town lines of Schoharie and Duanesburg (Schenectady County), following said town line east to the point of beginning.
- (34) Water supply shall mean the public water supply of the Village of Schoharie.
- (35) Well shall mean any present and future excavation used as a source of public water supply which derives water from the interstices of the rocks or soils which it penetrates including bored wells, drilled wells, and driven wells and excluding ditches or tunnels that lead ground water to the surface by gravity.

Section 3. General Prohibitions No person, including state agencies or political subdivisions having jurisdiction, shall perform any act or grant any permit or approval which may result in the contravention of the standards for raw water quality as contained in Part 170 Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (10NYCRR Part 170).

Section 4. Specific Prohibitions The following specific prohibitions are applicable to the watershed tributary to the aquifer recharge area, or watershed:

4.1 On-Site Subsurface Sewage Treatment:

- (a) All on-site subsurface sewage treatment systems serving single-family residences or facilities with flows of less than 1,000 gallons per day shall be designed, installed and maintained in accordance with the Schoharie County Sanitary Code and the standards promulgated in the Schoharie County Sanitary Code. The applicable standards and permit requirements of the New York State Department of Environmental Conservation shall apply to systems which flows equal to or in excess of 1,000 gallons per day or those which contain industrial wastewater.
- (b) A permit is required prior to the installation of any new subsurface sewage treatment systems where none existed prior to the adoption of this regulation or where a building has a change in character (e.g., residential to commercial use). This permit must be obtained from the

appropriate state or local agency having jurisdiction. Conditions for a permit shall include a percolation test, approved design, inspection of the installation prior to backfilling, and the issuance of a Certificate of Approval.

- (c) No portion of the new subsurface sewage treatment system shall be constructed or placed within 250 feet linear distance of the aquifer recharge area. No subsurface sewage treatment system shall be constructed or installed unless there is at least five feet of acceptable overburden between the bottom of the seepage unit and creviced or fissured rock. Acceptable fill material may be placed in accordance with generally accepted standards to achieve this separation.
- (d) Where rapid percolation is indicated, such as rock fissures, the use of subsurface disposal systems may be prohibited.
- (e) The use of sewage system cleaners or additives is prohibited.

4.2 Point Source Discharge: Point source discharges to the tributary streams are prohibited unless tertiary treatment or equivalent is provided for domestic wastewaters. A permit is required prior to the installation of a point source discharge from the state or local agency having jurisdiction.

4.3 Storm Sewer Outlets: No new storm sewer outlets shall discharge within 100 feet of the aquifer recharge area.

4.4 Snow Disposal: The dumping of snow removed from streets, roads and parking areas directly into streams or within 250 feet of the aquifer recharge area is prohibited.

4.5 Refuse Disposal Areas and Junkyards:

- (a) No refuse shall be deposited on or beneath the surface of the ground within a 250 foot linear distance of the aquifer recharge area.
- (b) Refuse or solid waste disposal facilities shall be prohibited.
- (c) No junkyards shall be located within 250 feet linear distance of the aquifer recharge area. New junkyards are prohibited.

4.6 Animal Wastes:

- (a) No concentration of animal wastes from an agricultural operation including but not limited to manure piles, feedlots, barnyards, and yarding areas, shall be located with 250 feet linear distance from the aquifer recharge area.
- (b) Drainage from barnyards, feedlots, yarding areas or manure piles shall not be discharged directly to watercourses or to the aquifer recharge area. Such drainage shall be dispersed over the surface of the ground at a minimum distance of 250 linear feet from any watercourse or from the aquifer recharge area.
- (c) Provisions shall be made for satisfactory disposal of milk house waste either by surface or subsurface irrigation that prevents any discharge to any watercourse or the aquifer recharge area. Such facilities shall be located at least 100 feet linear distance from any watercourse or aquifer recharge area. No subsurface irrigation is allowed unless there is at least five feet of overburden above bedrock.
- (d) Manure shall not be spread on frozen ground if there is any likelihood that surface run-off will be carried into streams or the aquifer. Burial of manure, excluding normal tilling practices, is prohibited.

4.7 Septage and Sludge Disposal: The disposal of septage, sludge or human excreta into any watercourse, on the surface of the ground or by underground burial is prohibited.

4.8 Industrial Sludges and Toxic Chemicals:

- (a) No industrial sludges and toxic chemicals shall be stored except under permit by the New York State Department of Environmental Conservation.
- (b) Disposal of industrial sludges and toxic chemicals is the responsibility of the owner or operator of the storage facility.
- (c) Industrial sludges and toxic chemicals shall not be buried in the soil, spread upon the surface of the ground, allowed to enter ground waters, or discharged to watercourses.
- (d) Transportation of toxic chemicals is prohibited except under permit of New York State Department of Transportation and in conformity with the requirements of Article 2, Section 14-f of the Transportation Law and all regulations adopted pursuant to that statute.

4.9 Radioactive Material: Disposal of radioactive material is prohibited.

4.10 Fertilizer Use:

- (a) Open storage of artificial fertilizers for commercial use is prohibited.
- (b) Agricultural use of fertilizers shall be in conformance with best management practices as developed by the New York State Soil and Water Conservation Committee and implemented by the preparation and use of farm plans as required by the Soil and Water Conservation District Law, Article 2, Section 9, subdivision 7a.
- (c) Fertilizer use for non-farm and non-residential application shall be in accordance with best management practices as developed under item 4.10 (b) above.
- (d) The injection of liquid fertilizer into the ground shall be in accordance with best management practices as developed under item 4.10 (b) above.

4.11 Pesticide and Herbicide Use:

- (a) All pesticide and herbicide storage, use and application shall be under permit as provided in New York State Environmental Conservation Law, Article 33.
- (b) Disposal of container or unused pesticides and herbicides is prohibited except in accordance with the permit issued indicated under item 4.11 (a) above.
- (c) Use of streams or watercourses for make-up or washing of equipment is prohibited.

4.12 Accidental Spills:

- (a) Oil spills shall be reported and cleaned up immediately pursuant to the navigation Law, Article 12, Sections 170 through 197.
- (b) Spills of any other materials stored in bulk shall be reported as required by New York State Environmental Conservation Law, Article 17, Section 1743. Clean-up of spills is the responsibility of the carrier.
- (c) The Schoharie County Department of Health, the Town Board of Schoharie and the Board of Trustees of the Village of Schoharie shall be advised of any accidental spills immediately.
- (d) Storage of petroleum products or any other contaminating material is prohibited unless measures have been taken to insure that leakage will not occur.

4.13 Stockpiles: Storage of chloride salts and sand/salt mixtures is prohibited within a five hundred (500) linear foot distance of a watercourse or the aquifer recharge area except in weather-proof buildings or water-tight vessels.

4.14 Deicing Salt Application: Deicing salt use is permitted if restricted to the minimum amount needed for public safety in accordance with best management practices developed by the New York State Department of Transportation.

4.15 Cemeteries: No interment of a human body shall be made within a linear distance of two hundred fifty (250) feet of a watercourse or the aquifer recharge area.

4.16 Sediment Generation:

- (a) Farm tillage practices shall be in conformance with best management practices as developed by the New York State Soil and Water Conservation Committee and implemented by the preparation and use of farm plans as required by Soil and Water Conservation District Law, Article 2, Section 9, subdivision 7a.
- (b) All farms shall have an operational farm plan pursuant to item (a) in place within one year of the adoption of these regulations.
- (c) Soil erosion and sediment production by stream and road bank erosion shall be evaluated by the Schoharie County Soil and Water Conservation District and appropriate remedial action taken where needed.
- (d) All land disturbing activity including general construction, highway construction, access road construction and maintenance is prohibited except where remedial measures have been put in place to minimize erosion and sediment production, and to prevent the exposure of bedrock.

Section 5. Specific Prohibitions Within the Aquifer Recharge Area Except to the extent that more stringent standards or regulations are set forth in this Subdivision all regulations applicable to the watershed shall apply to the aquifer recharge area.

5.1 Subsurface Treatment Systems: The construction and installation of subsurface sewage treatment systems is prohibited.

5.2 Snow Disposal: The stockpiling or dumping of snow removed from streets, roads and parking areas on the ground surface within the aquifer recharge area is prohibited.

5.3 Refuse Disposal Areas and Junkyards: The establishment of refuse disposal areas or junkyards is prohibited.

5.4 Animal Wastes: The disposal of farm animal waste is prohibited.

5.5 Fertilizer Use: The use of artificial fertilizer is prohibited.

5.6 Pesticide and Herbicide Use: The use of pesticides or herbicides is prohibited.

5.7 Underground Storage Tanks and Pipelines:

- (a) The construction, placement or replacement of underground tanks, containers or pipelines for petroleum products or any other pollutant is prohibited.
- (b) All persons owning property containing such underground storage tanks or containers shall notify the Town of Schoharie Code Enforcement Officer of their existence and location.

5.8 Stockpiles: Storage of chloride salt is prohibited.

5.9 Cemeteries: The establishment of new cemeteries is prohibited.

5.10 Land Application of Sewage: Land application of sewage or wastewater is prohibited.

5.11 Underground Injection: Underground injection of any pollutant including, but not limited to sewage wastewater is prohibited.

5.12 Stormwater Run-Off Recharge Basins: Use of recharge basins is prohibited.

5.13 Land Application of Septage and Sludge: Land application of septage and sludge is prohibited.

5.14 Wastewater Lagoons and Pits: Use of wastewater lagoons and pits for temporary storage of sewage is prohibited.

5.15 Excavations: Excavations or cut-ins which expose groundwater permanently or during maximum elevation of the water table, or which significantly reduce the thickness of soil cover and thereby ease the entrance of contaminants into the groundwater are prohibited.

5.16 Mining: The establishment of sand and gravel or limestone mining operations is prohibited.

5.17 Public Utility Transmission: The construction of new overhead transmission lines, liquefied natural gas lines or other pipelines for materials that may impair water quality is prohibited.

5.18 Oil and Gas Wells: The construction of oil and gas wells is prohibited.

5.19 Improperly Constructed or Abandoned Wells: All water supply wells and abandoned wells shall meet the requirements of 10NYCRR Appendix 5-A entitled "Recommended Standards for Water Works", 10NYCRR Appendix 5-B entitled "Rural Water Supply" and the state and local agency having jurisdiction.

5.20 Industrial Sludges and Toxic Chemicals: The establishment of industrial sludge and toxic chemical storage, and disposal facilities is prohibited.

Section 6. Spring Resurgence Protection Area All systems, facilities, and activities are prohibited except for collection, treatment, control and transmission of water. The area shall not be used for any other purpose than water supply.

Section 8. Inspection The Town Board of Schoharie or any person or persons that it designates may make regular and thorough inspections of the land within the Barton Hill Overlay District to ascertain whether the rules and regulations set forth in this section are being complied with. It shall be the duty of the aforesaid Town Board to cause copies of any rules and regulations violated to be served upon the persons violating the same together with notices of such violations. If such persons served do not immediately comply with the rules and regulations, the Town Board shall notify the State Commissioner of Health of such violations and may enforce compliance pursuant to Section 7 of this Local Law.

Schedule B

WIND ENERGY FACILITY - Any wind turbine, small wind turbine or wind measurement tower or combinations of these, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

WIND ENERGY FACILITY PERMIT - A permit pursuant to this law granting the holder the right to construct, maintain and operate a Wind Energy Facility.

WIND MEASUREMENT TOWER - A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

WIND TURBINE - A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of more than 100 kW and which is intended to produce power for distribution on the utility grid.

WIND TURBINE (SMALL) - A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended primarily to reduce consumption of utility power at that location.

Schedule C

Injection Well: A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and less than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days."

Natural Gas: Methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

Natural Gas And/Or Petroleum Extraction Activities: The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes: Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste,"

"hazardous," or "toxic," and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated by agricultural use.

Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes

Disposal/Storage Facility: Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump: Land upon which Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

Natural Gas Compression Facility: Those facilities or combination of facilities that move natural gas or petroleum from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

Natural Gas Processing Facility: Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooling and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams."

"Subsurface: Below the surface of the earth, or of a body of water, as the context may require."

"Underground Injection: Subsurface emplacement of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes by or into an Injection Well.

Underground Natural Gas Storage: Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines."