

At a Regular Meeting of the
Town Board of the Town of
Schoharie held on
March __, 2016 at ___ p.m.

RESOLUTION OF THE
TOWN BOARD FOR THE
TOWN OF SCHOHARIE
**Resolution authorizing
The Town Board to
Execute Stipulation of Settlement**

WHEREAS, Cobleskill Stone Products, Inc. ("CSP") is the owner of a parcel of real property located on Eastern Avenue in the Town of Schoharie, County of Schoharie, State of New York, known as the Schoharie Quarry ("CSP Site"); and

WHEREAS, the CSP Site contains reserves of mineable limestone and CSP has made an application to modify its New York State Department of Environmental Conservation ("NYSDEC") Mined Land Reclamation Permit under ECL Article 23, Title 27 to include a portion of its existing holdings that are not included within the currently approved and permitted life of mine (the "Modification Area"); and

WHEREAS, CSP has also to the applied to the NYSDEC for various air permits under ECL Article 19 and a SPDES Permit under ECL Article 17 to quarry limestone in the Modification Area; and

WHEREAS, the above-referenced NYSDEC applications are the subject of an administrative proceeding entitled "Matter of Application of Cobleskill Stone Products, Inc.," NYSDEC Application No. 4-4342-00001/000019 (hereinafter "NYSDEC Proceeding"); and

WHEREAS, the Town and other Intervenors were granted party status in the NYSDEC Proceeding in accordance with a ruling on issues and party status by Administrative Law Judge

Kevin J. Casutto, dated July 23, 2008 ("Issues Ruling"), which has been appealed to the Commissioner of the NYSDEC who has not yet ruled on the appeal; and

WHEREAS, the Town's opposition to the NYSDEC permit application and related environmental review are as set forth in their Petitions for Party Status, the Issues Ruling, the Appeal and the transcripts of the Legislative Public Hearing, and Issues Conference Hearing, all of which are a matter of public record in the NYSDEC Proceeding; and

WHEREAS, on or about August, 2005, the Town enacted Local Law No. 2 of 2005 entitled: "The Zoning Law of the Town of Schoharie" (hereinafter referred to as "2005 Zoning Law"). That law, among other thing, did not permit mining in the Modification Area; and

WHEREAS, CSP challenged the 2005 Zoning Law in a combined action-proceeding by Verified Petition and Complaint dated October 2005, and Amended Verified Petition and Complaint dated August 10, 2009, which sought relief annulling and setting aside the 2005 Zoning Law and declaring that CSP had acquired vested rights to quarry the Modification Area as a pre-existing nonconforming use under the 2005 Zoning Law and any subsequently enacted prohibitory zoning law amendment; and

WHEREAS, 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; and

WHEREAS, during the pendency of the Litigation and the NYSDEC Proceeding, the Appellate Division, Third Department, issued a Decision dated March 5, 2015, which provided that CSP was entitled to a hearing on whether CSP had obtained vested rights to mine the Modification Area despite the prohibitions in the 2005 or any subsequently enacted prohibitory

zoning law. The scheduled trial has been adjourned by the Supreme Court, Schoharie County so the parties could explore the a potential settlement; and

WHEREAS, on or around April 10, 2014, CSP filed plans with NYSDEC to downsize the project by providing a buffer of 600 feet from Warner Hill Road and the downsized plans are now under review by NYSDEC; and

WHEREAS, in December 2015 the Town of Schoharie adopted a Zoning Law for the Town (the “2015 Zoning Law”); and

WHEREAS, mining is now prohibited on the CSP Site in the Town of Schoharie by zoning or local law; and

WHEREAS, the Town of Schoharie has expended in excess of \$500,000 since 2005 on legal and engineering fees related to the litigation, NYSDEC Permit Proceeding and Zoning Readoption; and

WHEREAS, the Town is facing spending well in excess of \$100,000 on defending the 2015 Zoning Law, litigating the current proceeding and participating in the NYSDEC permit proceeding; and

WHEREAS, the Town Board and CSP desire to settle the Litigation and resolve the issue raised between them as to the NYSDEC Proceeding, the 2015 Zoning Law and the CSP Permit Application; and

WHEREAS, a proposed Stipulation of Settlement, [“Stipulation of Settlement”] has been prepared whereby the Town would agree CSP has a vested nonconforming use right to use the CSP Site and its existing Life of Mine as well as the Modification Area for mining notwithstanding the Town’s current 2015 Zoning Law or a future zoning/land use law.

WHEREAS, the Town would further agree not to oppose in any way the above-

referenced permit applications, including but not necessarily limited to, a Mined Land Reclamation Permit, SPDES or other permits relating to stormwater plans, a water withdrawal permit or any other permits required by NYSDEC. In addition, the Town would withdraw from and not participate in the NYSDEC Proceeding and enter into a Stipulation of Discontinuance to resolve the Litigation.

WHEREAS, in consideration of the Town's agreement to settle the Litigation and resolve the issue raised between them as to the NYSDEC Proceeding, the 2015 Zoning Law and the CSP Permit Application, CSP has indicated it will agree to the following improvements with respect to its existing quarry operation (which are described in more detail in the Stipulation of Settlement):

- The open sides of the primary crusher building will be closed in (the southern and western sides are presently open) and the building walls insulated with 2" foamboard or 2" of sprayfoam to reduce noise and dust. This work would occur by or before April 1, 2017.
- The crusher and screening portion of the secondary crusher building walls would be insulated with 2" foamboard or 2" of sprayfoam by or before April 1, 2017.
- CSP would relocate the primary crusher into the interior of the quarry consistent with the timing and approval from NYSDEC as to depletion of reserves and reclamation of the existing areas, but not later than 30 years from the effective date of the Stipulation of Settlement.
- CSP would relocate the secondary crusher (plant) into the interior of the quarry, the earlier of 30 years from the date of the Stipulation of Settlement or when CSP moves mining to the Modification Area.

- Hours of operation would be imposed where none now exist.

WHEREAS, in consideration of the Town's agreement to settle the Litigation and resolve the issue raised between them as to the NYSDEC Proceeding, the 2015 Zoning Law and the CSP Permit Application, CSP has indicated it will agree to the following additional terms (which are described in more detail in a proposed Stipulation of Settlement):

- Reduce the size of the proposed quarry area in the Modification Area as shown in CSP's April 2014 submission to NYSDEC.
- CSP will pursue approval for the relocation of Rickard Hill Road, provided Schoharie County approval will agree to the relocation.
- CSP will pursue all necessary approvals, provided that the Town will agree that no further approvals from the Town, its agencies, boards, officers or representatives are necessary to quarry the Modification Area as a pre-existing nonconforming use under the 2005 and 2015 Zoning Laws.
- CSP would agree that no mining activities would take place within the 600 foot buffer area adjacent to the Modification Area and that it would not disturb or permit the disturbance of the vegetative cover within the 600 foot buffer.
- CSP would agree to pave the unpaved section of Eastern Ave (within the Town) by a specified date, at its sole cost and expense.
- CSP would agree to mitigate impacts to private water supplies impacted by its operations in accordance with all applicable provisions of any NYSDEC permit issued for the Modification Area.
- CSP would agree not pursue a challenge to the 2015 Zoning Law and or take any

action to support any effort to challenge the 2015 Zoning Law, provided however that CSP may commence an Article 78 and or Declaratory Judgment proceeding challenging the enactment and/or substance of the 2015 Zoning Law with the understanding that said proceeding would be considered immediately stayed for four months or pending final resolution of any challenge to the final Stipulation of Settlement, whichever is longer.

WHEREAS, the Settlement requires that certain provisions and restrictions such as those regarding hours of operation, noise and dust mitigation be incorporated into any issued Mined Land Reclamation Permit, or other permits issued by NYSDEC, as special conditions, and incorporated into any future amended or modified permits pertaining to the CSP Site and Modification Area.

WHEREAS, CSP would also offer to donate a portion of its lands to the Village of Schoharie to expand Lasell Park for \$1.00. The lands to be donated would consist of the area adjacent to the park formed by extending the existing boundary line of the Park/CSP lands in a southwesterly direction to its intersection with Warner Hill Road. The land on the northwest side of the boundary line extension would be conveyed to the Village. In the event that the Village refuses to accept the donation, the lands would be donated to the Town of Schoharie for \$1.00.

**NOW THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE
TOWN BOARD OF SCHOHARIE, SCHOHARIE COUNTY, NEW YORK:**

THAT, the Town Board has determined that it is in the best interest of the Town to compromise and settle the Litigation, any and all claims and issues raised by the Town in the NYSDEC Proceeding as set forth in their Petitions for Party Status, the Issues Ruling, the Appeal and the transcripts of the Legislative Public Hearing, and Issues Conference Hearing, all of

which are a matter of public record in the NYSDEC Proceeding, and any related disputes arising from CSP's permit applications and the Town Board's adoption of the 2005 and 2015 Zoning Laws, under the general terms described above which are described in more detail in the proposed Stipulation of Settlement so as to limit the expenses that will be incurred if the Litigation continues and the Town continues its participation in the NYSDEC Proceeding.

IT IS FURTHER RESOLVED, that the Town Board authorizes _____ to execute the Stipulation of Settlement between the Town of Schoharie and Town Board of the Town of Schoharie and Cobleskill Stone Products, Inc.

IT IS FURTHER RESOLVED, that the Town Board finds that, after due deliberation and consideration, the terms of Stipulation of Settlement are just, reasonable and to the interest of the town.

IT IS FURTHER RESOLVED, that the Town Board authorizes the Town's Special Counsel to apply to the Court to approve the Stipulation of Settlement, prepare any documents necessary for the Town Board in furtherance of this resolution to resolve the Litigation and to take whatever steps are necessary to end the Town's participation in the NYSDEC Proceeding.

Town Board Member

so moved; Town Board Member

Seconded, and the Town Board voted as follows:

Town Board Member Tavenner	_____
Town Board Member Brisley	_____
Town Board Member Schultz	_____
Town Board Member Guernsey	_____
Supervisor _____	RECUSED

STATE OF NEW YORK }

COUNTY OF SCHOHARIE }
TOWN OF SCHOHARIE }

I have compared the preceding copy with the original Resolution on file in this office adopted by the Town Board of Schoharie at a meeting held March __, 2016, and I DO HEREBY CERTIFY the same to be a correct transcript therefrom and of the whole of the original. I further certify the vote thereon was as follows:

MEMBERS PRESENT	MEMBERS ABSENT	VOTE
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Witness my hand and the seal of the Town of Schoharie, this _____ day of _____, 2016.

PAMELA FOLAND, TOWN CLERK
TOWN OF SCHOHARIE