Fractured Communities: Hydraulic Fracturing and the Law in New York State

September 24, 2013
ALBANY LAW REVIEW ANNUAL SYMPOSIUM

FRACUTRED COMMUNITIES:
HYDRAULIC FRACTURING AND THE LAW IN NEW YORK STATE

Tuesday, September 24, 2013
Dean Alexander Moot Courtroom

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ALBANY LAW REVIEW ANNUAL FALL SYMPOSIUM

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FEBRUARY 24, 2013

AGENDA

10:30am – 11:00am  Registration

11:00am – 12:30pm  Welcome – Michael White, Executive Editor for Symposium
Penelope (Penny) Andrews, President and Dean
Albany Law School

Panel Discussion Beyond the environmental issues—exploring community impacts, land use issues, and potential economic impacts associated with natural gas development.

Moderator: Tom Wilber, Journalist and Author, Under the Surface: Fracking, Fortunes, and the Fate of the Marcellus Shale

Prof. Elizabeth Burleson, Pace Law School, Fulbright Senior Specialist on Climate Change
Sorrell E. Negro, Robinson & Cole
Karen Moreau, Executive Director
New York State Petroleum Council
Elisabeth Radow, Chair
Hydraulic Fracturing Committee
League of Women Voters of New York

12:30pm – 1:30pm  Coffee, Tea, and Networking
1:30pm – 2:30pm
Introductions
Prof. Ray Brescia, Director, Government Law Center
Albany Law School

Debate: The legal and policy implications of the Third Department’s Town of Dryden and Middlefield decisions, and the future of natural gas extraction in New York State.

Moderator: Susan Arbetter, Host
“The Capitol Pressroom”

Thomas West, Managing Partner
The West Law Firm, PLLC and Counsel for
Norse Energy Corporation USA

Deborah Goldberg, Managing Attorney
Earthjustice and Counsel for the Town of Dryden
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SPEAKER BIOGRAPHIES

Susan Arbetter is an award-winning broadcast journalist who hosts and produces “The Capitol Pressroom” and “The Capitol Report.” Ms. Arbetter wrote and produced a television documentary, “Groundswell: Hydrofracking in New York State,” on the contradictory rights associated with hydraulic fracturing in New York. The documentary was nominated for a New York Emmy award. On her broadcasts, she has hosted leading experts, attorneys, environmentalists, and politicians who are actively involved with natural gas development in New York. Ms. Arbetter has received over 30 awards for electronic journalism, which includes the national Scripps-Howard Award for environmental journalism.

Elizabeth Burleson is a Pace Law Professor and Fulbright Senior Specialist on climate change. Professor Burleson has served as advisor to the United Nation’s Children’s Fund’s Senior Advisor for the Environment and to the New York Director of United Nations Environment Programme. She has written reports for the United Nations Educational, Scientific and Cultural Organization and United Nations Development Program. Professor Burleson is an expert contributor to the International Panel on Climate Change. She also has extensive experience serving as a member to various international climate negotiations. Professor Burleson has published over 50 articles in scholarly journals and books.

Deborah Goldberg is the counsel to the Town of Dryden, and managing attorney for Earthjustice. Ms. Goldberg successfully represented the Town of Dryden in the Third Department, arguing that local municipalities have the authority under Home Rule to ban hydraulic fracturing. She is also actively involved in legal advocacy and litigation related to climate change and environmental health. Prior to joining Earthjustice, she was in private practice working on cases involving environmental impact review, historic preservation, and hazardous waste issues. Ms. Goldberg served as lead counsel at the U.S. Supreme Court in New York v. United States, 505 U.S. 144 (1992) for the county interveners. She has also served as the Democracy Program Director of the Brennan Center for Justice at New York University School of Law.

Karen Moreau is the executive director of the New York State Petroleum Council (NYSPC), a division of the American Petroleum Institute. NYSPC represents the interests of New York’s oil and natural gas industry. Ms. Moreau has over 25 years of experience in municipal, land use, real property, and zoning law. She also founded and served as CEO to the Foundation for Land and Liberty, Inc., a non-profit public interest legal foundation which advocates for the rights of rural landowners. Ms. Moreau developed and filmed a documentary, “The Empire State Divide,” which promoted
natural gas development in New York State. She has also testified before state legislative hearings on hydraulic fracturing regulations, appeared on national television for Fox News, and wrote opinion columns for the New York Post advocating for natural gas development in New York.

Sorell E. Negro is an associate at Robinson & Cole in the firm’s LandLaw Section, where she focuses on land use, environmental, and real estate matters. Ms. Negro counsels clients on a wide range of land use issues, including zoning, land use permits, property rights, and impacts of proposed land use regulations. She has also presented on hydraulic fracturing and the Marcellus Shale throughout the country. Her topics of presentation include land use and real estate issues in the Marcellus Shale, regulatory issues and takings issues, and economic, housing, and planning issues. Ms. Negro has published various articles relating to natural gas development, which have appeared in Probate & Property, Zoning and Planning Law Report, and the Journal of Water Law.

Elisabeth Radow is a solo practitioner and chairwoman for the Committee on Energy, Agriculture and the Environment (formerly, the Hydraulic Fracturing Committee) of the League of Women Voters of New York State. Ms. Radow has represented diverse clients in transactional real estate, land use law, and environmental conservation compliance. Her research on hydraulic fracturing has been cited in The New York Times, and she authored a lead article on the topic for the New York State Bar Association. Ms. Radow has presented and lectured on various issues associated with hydraulic fracturing including shifts in property use and value, liability allocation and impacts on the secondary mortgage market. She has also testified before the New York State Senate’s hearing on energy options.

Thomas West is the counsel to Norse Energy Corporation USA, and founder and managing partner of The West Firm, PLLC. Mr. West has been recognized for his extensive practice in the oil and gas and environmental fields. He represents clients on issues involving legislation, compulsory integration, and civil litigation. Mr. West was a principal author of the spacing and compulsory integration legislation that was ultimately enacted into law in 2008. He also worked with the Department of Conservation (DEC) to prepare an environmental impact statement associated with natural gas drilling in the state. Mr. West also formulated oil and gas industry comments to the DEC relative to the environmental impact statement. Lastly, he serves as the Co-Chair of the Mining and Oil & Gas Exploration Committee and has spoken at conferences across the country addressing oil and gas development.

Tom Wilber is a journalist and author covering Marcellus Shale gas development. Mr. Wilber began covering Marcellus Shale development for the Binghamton newspaper, and ultimately published the critically acclaimed book—Under the Surface: Fracking, Fortunes, and the Fate of the Marcellus Shale. Mr. Wilber has interviewed a multitude of people associated with natural gas development to collect and organize relevant information about drilling practices, leasing of mineral rights, laws and regulations, and policy decisions in the Marcellus Shale. Currently, Mr. Wilber operates the Shale Gas Review blog and is reporting on the Environmental Protection Agency’s investigation of potential natural gas pollution in areas of Pennsylvania.
Revised Draft
Supplemental Generic Environmental Impact Statement
On The Oil, Gas and Solution Mining
Regulatory Program

Well Permit Issuance for Horizontal Drilling
and High-Volume Hydraulic Fracturing to
Develop the Marcellus Shale and Other
Low-Permeability Gas Reservoirs

Lead Agency:
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Action Location: Statewide

Comments Due By: December 12, 2011

Prepared By:
NYSDEC, with Assistance from Alpha Environmental, Inc., Ecology and Environment Engineering, P.C., ICF International, URS Corp, NTC Consultants and Sammons/Dutton LLC.

Date of Completion of dSGEIS: September 30, 2009

Date of Completion of Revised dSGEIS: September 7, 2011
REVISED DRAFT

Supplemental Generic Environmental Impact Statement

On The Oil, Gas and Solution Mining Regulatory Program

Well Permit Issuance for Horizontal Drilling
And High-Volume Hydraulic Fracturing to
Develop the Marcellus Shale and Other
Low-Permeability Gas Reservoirs

Prepared By:

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NEW YORK STATE ENERGY RESEARCH & DEVELOPMENT AUTHORITY*

NEW YORK STATE DEPARTMENT OF HEALTH
Bureau of Water Supply Protection
Bureau of Toxic Substance Assessment
Bureau of Environmental Radiation Protection

NYSDEC OFFICE OF CLIMATE CHANGE
NYSDEC DIVISION OF MATERIALS MANAGEMENT
NYSDEC DIVISION OF ENVIRONMENTAL PERMITS
NYSDEC DIVISION OF ENVIRONMENTAL REMEDIATION

* NYSERDA research assistance for September 2009 draft SGEIS contracted to Alpha Environmental Inc., ICF International, URS Corporation and NTC Consultants. NYSERDA research assistance for 2011 revised draft contracted to Alpha Geological Services, Inc., URS Corporation, NTC Consultants and Sammons/Dutton LLC.
Executive Summary

Revised Draft
Supplemental Generic Environmental Impact Statement
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EXECUTIVE SUMMARY

High-volume hydraulic fracturing is a well stimulation technique that has greatly increased the ability to extract natural gas from very tight rock. High-volume hydraulic fracturing, which is often used in conjunction with horizontal drilling and multi-well pad development, is an approach to extracting natural gas in New York that raises new, potentially significant, adverse impacts not studied in 1992 in the Department of Environmental Conservation’s (Department or DEC) previous Generic Environmental Impact Statement (1992 GEIS) on the Oil, Gas and Solution Mining Regulatory Program. Increased production of domestic natural gas resources from deep underground shale deposits in other parts of the country has dramatically altered future energy supply projections and has the promise of lowering costs for users and purchasers of this energy commodity.

High-volume hydraulic fracturing is distinct from other types of well completion that have been allowed in the State under the 1992 GEIS and Department permits due to the much larger volumes of water and additives used to conduct hydraulic fracturing operations. The use of high-volume hydraulic fracturing with horizontal well drilling technology provides for a number of wells to be drilled from a single well pad (multi-pad wells). Although horizontal drilling results in fewer well pads than traditional vertical well drilling, the pads are larger and the industrial activity taking place on the pads is more intense. Also, hydraulic fracturing requires chemical additives, some of which may pose hazards when highly concentrated. The extra water associated with such drilling may also result in significant adverse impacts relating to water supplies, wastewater treatment and disposal and truck traffic. Horizontal wells also generate greater volumes of drilling waste (cuttings). The industry projections of the level of drilling, as

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1 The Generic Environmental Impact Statement (1992 GEIS) on the Oil, Gas and Solution Mining Regulatory Program is posted on the Department’s website at http://www.dec.ny.gov/energy/45912.html. The 1992 GEIS includes an analysis of impacts from vertical gas drilling as well as hydraulic fracturing. Since 1992 the Department has used the 1992 GEIS as the basis of its State Environmental Quality Review Act (SEQRA) review for permit applications for gas drilling in New York State.
reflected in the intense development activity in neighboring Pennsylvania, has raised additional concerns relating to community character and socioeconomics.

**General Background**

In New York, the primary target for shale-gas development is currently the Marcellus Shale, with the deeper Utica Shale also identified as a potential resource. Additional low-permeability reservoirs may be considered by project sponsors for development by high-volume hydraulic fracturing. The Department has received applications for permits to drill horizontal wells to evaluate and develop the Marcellus Shale for natural gas production by high-volume hydraulic fracturing.

The Department has prepared this revised draft Supplemental Generic Environmental Impact Statement (draft SGEIS, dSGEIS, or draft Supplement) to satisfy the requirements of the State Environmental Quality Review Act (SEQRA) by studying the new technique and identifying potential new significant adverse impacts for these anticipated operations. Additionally, the Department prepared this draft SGEIS to satisfy the requirements of the SEQRA for the future enactment of revisions or additions to the Department’s regulations associated with high-volume hydraulic fracturing. In reviewing and processing permit applications for high-volume hydraulic fracturing in these deep, low-permeability formations, the Department would apply the requirements contained within regulations, along with the final SGEIS and the findings drawn from it, including criteria and conditions for future approvals, in conjunction with the 1992 GEIS.

The final SGEIS will apply statewide, except in areas that the Department proposes should be off-limits to surface drilling for natural gas using high-volume hydraulic fracturing technology. As explained below, these areas include the watersheds associated with unfiltered water supplied to the New York City and Syracuse areas pursuant to Filtration Avoidance Determinations issued by the U.S. Environmental Protection Agency (EPA), reforestation areas, wildlife management areas, and “primary” aquifers as defined by State regulations, and additional setback and buffer areas. Forest Preserve land in the Adirondacks and Catskills is already off-limits to natural gas development pursuant to the New York State Constitution.
SEORa Procedure to Date

The public process to develop the dSGEIS began with public scoping sessions in the autumn of 2008. Since then, engineers, geologists and other scientists and specialists in all of the Department's natural resources and environmental quality programs have collaborated to comprehensively analyze a vast amount of information about the proposed operations and the potential significant adverse impacts of these operations on the environment, identify mitigation measures that would prevent or minimize any significant adverse impacts, and identify criteria and conditions for future permit approvals and other regulatory action.

In September 2009, the Department issued a dSGEIS (2009 dSGEIS) for public review and comment. The extensive public comments revealed a significant concern with potential contamination of groundwater and surface drinking water supplies that could result from this new technology. Concerns raised included comments that the 2009 dSGEIS did not fully study the potential for gas migration from this new stimulation technique, or adequately consider impacts from disposal of solid and liquid wastes. Additionally, commenters stated the 2009 dSGEIS did not contain sufficient consideration of visual, noise, traffic, community character or socioeconomic impacts. Accordingly, in 2010 Governor Paterson ordered the Department to issue a revised dSGEIS on or about June 1, 2011. The Executive Order also provided that no permits authorizing high-volume hydraulic fracturing would be issued until the SGEIS was finalized.

Since the issuance of the 2009 draft SGEIS, the Department has gained a more detailed understanding of the potential impacts associated with horizontal drilling from: (i) the extensive public comments from environmental organizations, municipalities, industry groups and other members of the public; (ii) its review of reports and studies of proposed operations prepared by industry groups; (iii) extensive consultations with scientists in several bureaus within the New York State Department of Health (NYSDOH); (iv) the use of outside consulting firms to prepare analyses relating to socioeconomic impacts, as well as impacts on community character, visual, noise and traffic impacts; and, (v) its review of information and data from the Pennsylvania Department of Environmental Protection (PADEP) and the Susquehanna River Basin Commission (SRBC) about events, regulations, enforcement and other matters associated with
ongoing Marcellus Shale development in Pennsylvania. In June 2011, moreover, Commissioner Joseph Martens and Department staff visited a well pad in LeRoy, Pennsylvania, where contaminants had discharged from the well pad into an adjacent stream, and had further conversations with industry representatives and public officials about that event and high-volume hydraulic fracturing operations in Pennsylvania generally.

The Draft SGEIS

The draft SGEIS contains revised and additional analyses relating to high-volume hydraulic fracturing operations compared to the 2009 dSGEIS and the preliminary draft released earlier this year. The draft SGEIS, which is summarized below, supersedes those earlier versions and the expectation is that public comment will focus on the revisions made since the 2009 dSGEIS. For ease of comparison by the public, this document underscores revised or additional discussion from the 2009 draft, and indicates where text from the 2009 draft has been omitted.

Chapter 1 – Introduction

This chapter contains an introduction to the dSGEIS. The chapter summarizes the changes in high-volume hydraulic fracturing operations seen since the 2009 SGEIS, describes the methodology of this environmental review, and highlights enhanced mitigation and new precautionary measures incorporated into the document.

Chapter 2 – Description of Proposed Action

This chapter includes a discussion of the purpose, public need and benefit of proposed high-volume hydraulic fracturing operations, as well as the potential locations, projected activity levels and environmental setting for such operations. Information on the environmental setting focuses on topics determined during scoping to require attention in the SGEIS. The Department has determined, based on industry projections, that it may receive applications to drill approximately 1,700 - 2,500 horizontal and vertical wells for development of the Marcellus Shale by high-volume hydraulic fracturing during a “peak development” year. An average year may see 1,600 or more applications. Development of the Marcellus Shale in New York may occur over a 30-year period. Those peak and average levels of development are the assumptions
upon which the analyses contained in this dSGEIS are based. A consultant to the Department has completed a draft estimate of the potential economic and public benefits of proposed high-volume hydraulic fracturing development, including an analysis based on an average development scenario as well as a more conservative low potential development scenario. That analysis calculates for each scenario the total economic value to the proposed operations, potential state and local tax revenue, and projected total job creation.

Chapter 3 – Proposed SEQRA Review Process

This Chapter describes how the Department intends to use the 1992 GEIS and the final SGEIS in reviewing applications to conduct high-volume hydraulic fracturing operations in New York State. It describes the proposed Environmental Assessment Form (EAF) addendum requirements that would be used in connection with high-volume hydraulic fracturing applications, and also identifies those potential activities that would require site-specific SEQRA determinations of significance after the SGEIS is completed. Specifically, Chapter 3 states that site-specific environmental assessments and SEQRA determinations of significance would be required for the following types of high-volume hydraulic fracturing applications, regardless of the target formation, the number of wells drilled on the pad and whether the wells are vertical or horizontal:

1) Any proposed high-volume hydraulic fracturing where the top of the target fracture zone is shallower than 2,000 feet along a part of the proposed length of the wellbore;

2) Any proposed high-volume hydraulic fracturing where the top of the target fracture zone at any point along the entire proposed length of the wellbore is less than 1,000 feet below the base of a known fresh water supply;

3) Any proposed well pad within the boundaries of a principal aquifer, or outside but within 500 feet of the boundaries of a principal aquifer;

4) Any proposed well pad within 150 feet of a perennial or intermittent stream, storm drain, lake or pond;

5) A proposed surface water withdrawal that is found not to be consistent with the Department’s preferred passby flow methodology as described in Chapter 7; and
6) Any proposed well location determined by the New York City Department of Environmental Protection (NYCDEP) to be within 1,000 feet of its subsurface water supply infrastructure.

In all of the aforementioned circumstances a site-specific SEQRA assessment is required because such application is either beyond the scope of the analyses contained in this draft SGEIS or the Department has determined that proposed activities in these areas raise environmental issues that necessitate a site-specific review.

Chapter 3 also identifies the Department’s oil and gas well regulations, located at 6 NYCRR Part 550, and it discusses the existence of other regulations and mitigation measures described in this draft SGEIS related to high-volume hydraulic fracturing. For a number of these measures, the Department will propose revisions or additions to its regulations. This chapter discusses how proposed revisions and additions to regulations are part of the environmental review of this draft SGEIS and how the State Administrative Procedure Act process for rulemaking will consider additional impacts of these regulatory actions. These two processes will ensure full review of the proposed environmental controls for high-volume hydraulic fracturing.

Chapter 4 - Geology

Chapter 4 supplements the geology discussion in the 1992 GEIS (Chapter 5) with additional details about the Marcellus and Utica Shales, seismicity in New York State, naturally occurring radioactive materials (NORM) in the Marcellus Shale and naturally occurring methane in New York State. Chapter 4 does not contain significant revisions or additions from the 2009 dSGEIS.

Chapter 5 - Natural Gas Development Activities & High-Volume Hydraulic Fracturing

This Chapter comprehensively describes the activities associated with high-volume hydraulic fracturing and multi-well pad drilling, including the composition of hydraulic fracturing additives and flowback water characteristics. It is based on the most recent up-to-date description of proposed activities provided by industry and informed by high-volume hydraulic fracturing operations currently ongoing in Pennsylvania and elsewhere. In this Chapter, the average disturbance associated with a multi-well pad, access road and proportionate infrastructure during the drilling and fracturing stage is estimated at 7.4 acres, compared to the
average disturbance associated with a well pad for a single vertical well during the drilling and fracturing stage, which is estimated at 4.8 acres. As a result of required partial reclamation, the average well pad would generally be reduced to averages of about 5.5 acres and 4.5 acres, respectively, during the production phase.

This Chapter describes the process for constructing access roads, and observes that because most shale gas development would consist of several wells on a multi-well pad, more than one well would be serviced by a single access road instead of one well per access road as was typically the case when the 1992 GEIS was prepared. Therefore, in areas developed by horizontal drilling using multi-well pads, it is expected that fewer access roads as a function of the number of wells would be constructed. Industry estimates that 90% of the wells used to develop the Marcellus Shale would be horizontal wells located on multi-well pads. This method provides the most flexibility to avoid environmentally sensitive locations within the acreage to be developed.

With respect to overall land disturbance from a horizontal drilling, there would be a larger surface area used for an individual multi-well pad. This would be more than offset, however, by the fewer total number of well pads required within a given area and the need for only a single access road and gas gathering system to service multiple wells on a single pad. Overall, there clearly is a smaller total area of land disturbance associated with horizontal wells for shale gas development than that for vertical wells. For example, a spacing of 40 acres per well for vertical shale gas wells would result in, on average, 70 – 80 acres of disturbance for the well pads, access roads and utility corridors (4.8 acres per well) to develop an area of 640 acres. A single well pad with 6 to 8 horizontal shale gas wells could access all 640 acres with only 7 to 8 acres of total land disturbance.

Chapter 5 describes the constituents of drilling mud and the containment of drilling cuttings, through either a lined on-site reserve pit or in a closed-loop tank system. This Chapter also calculates the projected volume of cuttings and the potential for such cuttings to contain NORM.

This Chapter also discusses the hydraulic fracturing process, the composition of fracturing fluid, on-site storage and handling and transport of fracturing additives. The high-volume hydraulic fracturing process involves the controlled use of water and chemical additives, pumped under
pressure into the cased and cemented wellbore. To protect fresh water zones and isolate the
target hydrocarbon-bearing zone, hydraulic fracturing does not occur until after the well is cased
and cemented, and typically after the drilling rig and its associated equipment are removed from
the well pad. Chapter 5 explains that the Department would generally require at least three
strings of cemented casing in the well during fracturing operations. The outer string (i.e., surface
casing) would extend below fresh ground water and would have been cemented to the surface
before the well was drilled deeper. The intermediate casing string, also called protective string,
is installed between the surface and production strings. The innermost casing string (i.e.,
production casing) typically extends from the ground surface to the toe of the horizontal well.

The fluid used for high-volume hydraulic fracturing is typically comprised of more than 98%
fresh water and sand, with chemical additives comprising 2% or less of the fluid. The
Department has collected compositional information on many of the additives proposed for use
in fracturing shale formations in New York directly from chemical suppliers and service
companies and those additives are identified and discussed in detail in Chapter 5. It is estimated
that 2.4 million to 7.8 million gallons of water may be used for a multi-stage hydraulic fracturing
procedure in a typical 4,000-foot lateral wellbore. Water may be delivered by truck or pipeline
directly from the source to the well pad, or may be delivered by trucks or pipeline from
centralized water storage or staging facilities consisting of tanks or engineered impoundments.

After the hydraulic fracturing procedure is completed and pressure is released, the direction of
fluid flow reverses. The well is “cleaned up” by allowing water and excess proppant (typically
sand) to flow up through the wellbore to the surface. Both the process and the returned water are
commonly referred to as “flowback.” Chapter 5 discusses the volume, characteristics, recycling
and disposal of flowback water. The dSGEIS estimates flowback water volume to range from
216,000 gallons to 2.7 million gallons per well, based on a pumped fluid estimate of 2.4 million
to 7.8 million gallons.

Finally, Chapter 5 provides estimates of potential gas production from high-volume hydraulic
fracturing operations and also discusses waste disposal associated with high-volume hydraulic
fracturing operations, including disposal of cuttings, flowback and production brine.
Chapter 6 – Potential Environmental Impacts

This chapter identifies and evaluates the potential significant adverse impacts associated with high-volume hydraulic fracturing operations and, like other chapters, should be read as a supplement to the 1992 GEIS.

Water Resources Impacts

Potential significant adverse impacts on water resources exist with regard to water withdrawals for hydraulic fracturing; stormwater runoff; surface spills, leaks and pit or surface impoundment failures; groundwater impacts associated with well drilling and construction; waste disposal and New York City’s subsurface water supply infrastructure. During the public scoping process, additional concerns were raised relating to the potential degradation of New York City’s surface drinking water supply and potential groundwater contamination from the hydraulic fracturing procedure itself.

Water for hydraulic fracturing may be obtained by withdrawing it from surface water bodies away from the well site or through new or existing water-supply wells drilled into aquifers. Chapter 6 concludes that, without proper controls on the rate, timing and location of such water withdrawals, the cumulative impacts of such withdrawals could cause modifications to groundwater levels, surface water levels, and stream flow that could result in significant adverse impacts, including but not limited to impacts to the aquatic ecosystem, downstream river channel and riparian resources, wetlands, and aquifer supplies.

Using an industry estimate of a yearly peak activity in New York of 2,462 wells, the dSGEIS estimates that high-volume hydraulic fracturing would result in a calculated peak annual fresh water usage of 9 billion gallons. Total daily fresh water withdrawal in New York has been estimated at about 10.3 billion gallons. This equates to an annual total of about 3.8 trillion gallons. Based on this calculation, at peak activity high-volume hydraulic fracturing would result in increased demand for fresh water in New York of 0.24%. Thus, water usage for high-volume hydraulic fracturing represents a very small percentage of water usage throughout the state. Nevertheless, as noted, the cumulative impact of water withdrawals, if such withdrawals...
were temporally proximate and from the same water resource, could potentially be significant. The mitigation measures to ensure that such impacts are prevented are described in Chapter 7, summarized below.

Chapter 6 also describes the potential impacts on water resources from stormwater flow associated with the construction and operation of high-volume hydraulic fracturing well pads. All phases of natural gas well development, from initial land clearing for access roads, equipment staging areas and well pads, to drilling and fracturing operations, production and final reclamation, have the potential to cause water resource impacts during rain and snow melt events if stormwater is not properly managed. Proposed mitigation measures to prevent significant adverse impacts from stormwater runoff are described in Chapter 7.

The dSGEIS concludes that spills or releases in connection with high-volume hydraulic fracturing could have significant adverse impacts on water resources. The dSGEIS identifies a significant number of contaminants contained in fracturing additives, or otherwise associated with high-volume hydraulic fracturing operations. Spills or releases can occur as a result of tank ruptures, equipment or surface impoundment failures, overfills, vandalism, accidents (including vehicle collisions), ground fires, or improper operations. Spilled, leaked or released fluids could flow to a surface water body or infiltrate the ground, reaching subsurface soils and aquifers. Proposed mitigation measures to prevent significant adverse impacts from spills and releases are described in Chapter 7.

Chapter 6 also assesses the potential significant adverse impacts on groundwater resources from well drilling and construction associated with high-volume hydraulic fracturing. Those potential impacts include impacts from turbidity, fluids pumped into or flowing from rock formations penetrated by the well, and contamination from natural gas present in the rock formations penetrated by the well. The dSGEIS concludes that these potential impacts are not unique to horizontal wells or high-volume hydraulic fracturing and are described and fully assessed in the 1992 GEIS. Nevertheless, because of the concentrated nature of the activity on multi-well pads and the larger fluid volumes and pressures associated with high-volume hydraulic fracturing, enhanced procedures and mitigation measures are proposed and described in Chapter 7.
A supporting study for this dSGEIS concludes that it is highly unlikely that groundwater contamination would occur by fluids escaping from the wellbore for hydraulic fracturing. The 2009 dSGEIS further observes that regulatory officials from 15 states recently testified that groundwater contamination as a result of the hydraulic fracturing process in the tight formation itself has not occurred.

The dSGEIS explains that the potential migration of natural gas to a water well, which presents a safety hazard because of its combustible and asphyxiant nature, especially if the natural gas builds up in an enclosed space such as a well shed, house or garage, was fully addressed in the 1992 GEIS. Well construction associated with high-volume hydraulic fracturing presents no new significant adverse impacts with regard to potential gas migration. Gas migration is a result of poor well construction (i.e., casing and cement problems). As with all gas drilling, well construction practices mandated in New York are designed to prevent gas migration. Those practices would also minimize the risk of migration of other formation fluids such as oil or brine.

The dSGEIS acknowledges that migration of naturally-occurring methane from wetlands, landfills and shallow bedrock can also contaminate water supplies independently or in the absence of any nearby oil and gas activities. Section 4.7 of this dSGEIS explains how the natural occurrence of shallow methane in New York can affect water wells unrelated to natural gas development.

Chapters 5 and 6 contain analyses that demonstrate that no significant adverse impact to water resources is likely to occur due to underground vertical migration of fracturing fluids through the shale formations. The developable shale formations are vertically separated from potential freshwater aquifers by at least 1,000 feet of sandstones and shales of moderate to low permeability. In fact, most of the bedrock formations above the Marcellus Shale are other shales. That shales must be hydraulically fractured to produce fluids is evidence that these types of rock formations do not readily transmit fluids. The high salinity of native water in the Marcellus and other Devonian shales is evidence that fluid has been trapped in the pore spaces for hundreds of millions of years, implying that there is no mechanism for discharge of fluids to other formations.
Hydraulic fracturing is engineered to target the prospective hydrocarbon-producing zone. The induced fractures create a pathway to the intended wellbore, but do not create a discharge mechanism or pathway beyond the fractured zone where none existed before. The pressure differential that pushes fracturing fluid into the formation is diminished once the rock has fractured, and is reversed toward the wellbore during the flowback and production phases. Accordingly, there is no likelihood of significant adverse impacts from the underground migration of fracturing fluids.

No significant adverse impacts are identified with regard to the disposal of liquid wastes. Drilling and fracturing fluids, mud-drilled cuttings, pit liners, flowback water and produced brine, although classified as non-hazardous industrial waste, must be hauled under a New York State Part 364 waste transporter permit issued by the Department. Furthermore, as discussed in Chapter 7, any environmental risk posed by the improper discharge of liquid wastes would be addressed through the institution of a waste tracking procedure similar to that which is required for medical waste, even though the hazards are not equivalent. Another concern relates to potential spills as a result of trucking accidents. Information about traffic management related to high-volume hydraulic fracturing is discussed in Chapter 7.

The disposal of flowback water could cause a significant adverse impact if the wastewater was not properly treated prior to disposal. Residual fracturing chemicals and naturally-occurring constituents from the rock formation could be present in flowback water and could result in treatment, sludge disposal, and receiving-water impacts. Salts and dissolved solids may not be sufficiently treated by municipal biological treatment and/or other treatment technologies which are not designed to remove pollutants of this nature. Mitigation measures have been identified that would eliminate any potential significant adverse impact from flowback water or treatment of other liquid wastes associated with high-volume hydraulic fracturing.

The Department is not proposing to alter its 1992 GEIS Finding that proposed disposal wells require individual site-specific review under SEQRA. Therefore, the potential for significant adverse environmental impacts from any proposal to inject flowback water from high-volume hydraulic fracturing into a disposal well would be reviewed on a site-specific basis with
consideration to local geology (including faults and seismicity), hydrogeology, nearby wellbores or other potential conduits for fluid migration and other pertinent site-specific factors.

The 1992 GEIS summarized the potential impacts of flood damage relative to mud or reserve pits, brine and oil tanks, other fluid tanks, brush debris, erosion and topsoil, bulk supplies (including additives) and accidents. Those potential impacts are equally applicable to high-volume hydraulic fracturing operations. Severe flooding is described as one of the few ways that bulk supplies such as additives “might accidentally enter the environment in large quantities.” Mitigation measures to ensure that significant adverse impacts from floods do not occur in connection with high-volume hydraulic fracturing operations are identified and recommended in Chapter 7.

Gamma ray logs from deep wells drilled in New York over the past several decades show the Marcellus Shale to be higher in radioactivity than other bedrock formations including other potential reservoirs that could be developed by high-volume hydraulic fracturing. However, based on the analytical results from field-screening and gamma ray spectroscopy performed on samples of Marcellus Shale NORM levels in cuttings are not significant because the levels are similar to those naturally encountered in the surrounding environment. As explained in Chapter 5, the total volume of drill cuttings produced from drilling a horizontal well may be about 40% greater than that for a conventional, vertical well. For multi-well pads, cuttings volume would be multiplied by the number of wells on the pad. The potential water resources impact associated with the greater volume of drill cuttings from multiple horizontal well drilling operations would arise from the retention of cuttings during drilling, necessitating a larger reserve pit that may be present for a longer period of time, unless the cuttings are directed into tanks as part of a closed-loop tank system.

**Impacts on Ecosystems and Wildlife**

The dSGEIS has been revised to expand the analysis of the potential significant adverse impacts on ecosystems and wildlife from high-volume hydraulic fracturing operations. Four areas of concern related to high-volume hydraulic fracturing are: (1) fragmentation of habitat; (2)
potential transfer of invasive species; (3) impacts to endangered and threatened species; and (4) use of state-owned lands.

The dSGEIS concludes that high-volume hydraulic fracturing operations would have a significant impact on the environment because such operations have the potential to draw substantial development into New York, which would result in unavoidable impacts to habitats (fragmentation, loss of connectivity, degradation, etc.), species distributions and populations, and overall natural resource biodiversity. Habitat loss, conversion, and fragmentation (both short-term and long-term) would result from land grading and clearing, and the construction of well pads, roads, pipelines, and other infrastructure associated with gas drilling. Partial mitigation of such impacts is identified in Chapter 7.

The number of vehicle trips associated with high-volume hydraulic fracturing, particularly at multi-well sites, has been identified as an activity which presents the opportunity to transfer invasive terrestrial species. Surface water withdrawals also have the potential to transfer invasive aquatic species. The introduction of terrestrial and aquatic invasive species would have a significant adverse impact on the environment.

State-owned lands play a unique role in New York’s landscape because they are managed under public ownership to allow for sustainable use of natural resources, provide recreational opportunities for all New Yorkers, and provide important wildlife habitat and open space. Given the level of development expected for multi-pad horizontal drilling, the dSGEIS anticipates that there would be additional pressure for surface disturbance on State lands. Surface disturbance associated with gas extraction could have an impact on habitats on State lands, and recreational use of those lands, especially large contiguous forest patches that are valuable because they sustain wide-ranging forest species, and provide more habitat for forest interior species.

The area underlain by the Marcellus Shale includes both terrestrial and aquatic habitat for 18 animal species listed as endangered or threatened in New York State that are protected under the State Endangered Species Law (ECL 11-0535) and associated regulations (6 NYCRR Part 182). Endangered and threatened wildlife may be adversely impacted through project actions such as clearing, grading and road building that occur within the habitats that they occupy. Certain
species are unable to avoid direct impact due to their inherent poor mobility (e.g., Blanding’s
turtle, club shell mussel). Certain actions, such as clearing of vegetation or alteration of stream
beds, can also result in the loss of nesting and spawning areas.

Mitigation for potentially significant adverse impacts from potential transfer of invasive species
or from use of State lands, and mitigation for potential impacts to endangered and threatened
species is identified in Chapter 7.

*Impacts on Air Resources*

Chapter 6 of the dSGEIS provides a comprehensive list of federal and New York State
regulations that apply to potential air emissions and air quality impacts associated with the
drilling, completion (hydraulic fracturing and flowback) and production phases (processing,
transmission and storage). The revised Chapter includes a regulatory assessment of the various
air pollution sources and the air permitting process, as well as a supplemental analysis of impacts
not addressed in the 2009 dSGEIS. The review of potential air impacts and expanded analyses
accounts for information acquired subsequent to the initial review.

As part of the Department’s effort to address the potential air quality impacts of horizontal
drilling and hydraulic fracturing activities in the Marcellus Shale and other low-permeability gas
reservoirs, an air quality modeling analysis was undertaken by DEC’s Division of Air Resources
(DAR). The analysis identifies the emission sources involved in well drilling, completion and
production, and the analysis of source operations for purposes of assessing compliance with
applicable air quality standards.

Since September 2009 industry has provided information that: (1) simultaneous drilling and
completion operations at a single pad would not occur; (2) the maximum number of wells to be
drilled at a pad in a year would be four in a 12-month period; and (3) centralized flowback
impoundments, which are large volume, lined ponds that function as fluid collection points for
multiple wells, are not contemplated. Based on these operational restrictions, the Department
revised the limited modeling of 24 hour PM2.5 impacts and conducted supplemental air quality
modeling to assess standards compliance and air quality impacts. In addition, the Department
conducted supplemental modeling to account for the promulgation of new 1 hour SO₂ and NO₂
National Ambient Air Quality Standards (NAAQS) after September 2009. The results of this supplemental modeling indicate the need for the imposition of certain control measures to achieve the NO₂ and PM2.5 NAAQS. These measures, along with all other restrictions reflecting industry’s proposed operational restrictions and recommended mitigation measures based on the modeling results, are detailed in Section 7.5.3 of the dSGEIS as proposed operation conditions to be included in well permits. The Department also developed an air monitoring program to fully address potential for adverse air quality impacts beyond those analyzed in the dSGEIS, which are either not fully known at this time or not verifiable by the assessments to date. The air monitoring plan would help determine and distinguish both the background and drilling related concentrations of pertinent pollutants in the ambient air.

Air quality impact mitigation measures are further discussed in Chapter 7 of the dSGEIS, including a detailed discussion of pollution control techniques, various operational scenarios and equipment that can be used to achieve regulatory compliance, and mitigation measures for well pad operations. In addition, measures to reduce benzene emissions from glycol dehydrators and formaldehyde emissions from off-site compressor stations are provided.

*Greenhouse Gas Emission Impacts*

All operational phases of proposed well pad activities were considered, and resulting greenhouse gas (GHG) emissions determined in the dSGEIS. Emission estimates of carbon dioxide (CO₂) and methane (CH₄) are included as both short tons and as carbon dioxide equivalents (CO₂e) expressed in short tons for expected exploration and development of the Marcellus Shale and other low-permeability gas reservoirs using high-volume hydraulic fracturing. The Department not only quantified potential GHG emissions from activities, but also identified and characterized major sources of CO₂ and CH₄ during anticipated operations so that key contributors of GHGs with the most significant Global Warming Potential (GWP) could be addressed and mitigated, with particular emphasis placed on mitigating CH₄, with its greater GWP.
Socioeconomic Impacts

To assess the potential socioeconomic impacts of high-volume hydraulic fracturing, including the potential impacts on population, employment and housing, three representative regions were selected. The three regions were selected to evaluate how high-volume hydraulic fracturing might impact areas with different production potential, different land use patterns, and different levels of experience with natural gas well development. Region A consists of Broome, Chemung and Tioga County. Region B consists of Delaware, Otsego and Sullivan County, and Region C consists of Cattaraugus and Chautauqua County. Using a low and average rate of development based on industry estimates, high-volume hydraulic fracturing will have a significant positive economic effect where the activity takes place. At the maximum rate of well construction, total direct construction employment is predicted to range from 4,408 construction jobs under the low development scenario to 17,634 jobs under the average scenario. An additional 29,174 jobs are predicted to result indirectly from the introduction of high-volume hydraulic fracturing statewide.

There will also be positive impacts on income levels in the state as a result of high-volume hydraulic fracturing. When well construction reaches its maximum levels, total annual construction earnings are projected to range from $298.4 million under the low development scenario to nearly $1.2 billion under the average development scenario. Employee earnings from operational employment are expected to range from $121.2 million under the low development scenario to $484.8 million under the average development scenario in Year 30. Indirect employee earnings are anticipated to range from $202.3 million under the low development scenario to $809.2 million under the average development scenario in Year 30. The total direct and indirect impacts on employee earnings are projected to range from $621.9 million to $2.5 billion per year at peak production and construction levels in Year 30. Chapter 6 details how the potential job creation and employee earnings might be distributed across the three representative regions.

Chapter 6 also assesses the potential temporary and permanent population impacts on each of the three selected regions, finding that Region A will experience an estimated 1.4% increase in the
region’s total population the first decade after high-volume hydraulic fracturing in introduced. Region C is projected to be more modestly impacted by high-volume hydraulic fracturing.

While providing positive impacts in the areas of employment and income, high-volume hydraulic fracturing could cause adverse impacts on the availability of housing, especially temporary housing such as hotels and motels. In Region A, where the use of high-volume hydraulic fracturing is expected to be initially concentrated, there could be shortages of rental housing. High-volume hydraulic fracturing would also bring both positive and negative impacts on state and local government spending. Increased activity will result in large increases in local tax revenues and increases in the receipt of production royalties but would also result in an increased demand for local services, including emergency response services.

*Visual, Noise and Community Character Impacts*

The construction of well pads and wells associated with high-volume hydraulic fracturing will result in temporary, but adverse impacts relating to noise. In certain areas the construction activity would also result in temporary visual impacts. Mitigation measures to address such impacts are summarized in Chapter 7.

The cumulative impact of well construction activity and related truck traffic would cause impacts on the character of the rural communities where much of this activity would take place. Methods to control simultaneous development within a specific area are discussed in Chapter 7.

*Transportation Impacts*

The introduction of high-volume hydraulic fracturing has the potential to generate significant truck traffic during the construction and development phases of the well. These impacts would be temporary, but the cumulative impact of this truck traffic has the potential to result in significant adverse impacts on local roads and, to a lesser extent, state roads where truck traffic from this activity is concentrated. It is not feasible to conduct a detailed traffic assessment given that the precise location of well pads is unknown at this time. However, such traffic has the potential to damage roads. Chapter 7 discusses the potential mitigation measures to address such impacts, including the requirement that the applicant develop a Transportation Plan that sets...
forth proposed truck routes, surveys road conditions along those routes and requires local road use agreements to address any impacts on local roads.

Additional NORM Concerns

Based upon currently available information it is anticipated that flowback water would not contain levels of NORM of significance, whereas production brine could contain elevated NORM levels. Although the highest concentrations of NORM are in produced waters, it does not present a risk to workers because the external radiation levels are very low. However, the build-up of NORM in pipes and equipment (pipe scale and sludge) has the potential to cause a significant adverse impact because it could expose workers handling (cleaning or maintenance) the pipe to increased radiation levels. Also, wastes from the treatment of production waters may contain concentrated NORM and, if so, controls would be required to limit radiation exposure to workers handling this material as well as to ensure that this material is disposed of in accordance with applicable regulatory requirements.

Seismicity

There is a reasonable base of knowledge and experience related to seismicity induced by hydraulic fracturing. Information reviewed indicates that there is essentially no increased risk to the public, infrastructure, or natural resources from induced seismicity related to hydraulic fracturing. The microseisms created by hydraulic fracturing are too small to be felt, or to cause damage at the ground surface or to nearby wells. Accordingly, no significant adverse impacts from induced seismicity are expected to result from high-volume hydraulic fracturing operations.

Chapter 7 – Mitigation Measures

This Chapter describes the measures the Department has identified that, if implemented, would eliminate or mitigate potentially significant adverse impacts from high-volume hydraulic fracturing operations. A number of significant, new mitigation measures not contained in the 2009 dSGEIS have been identified as follows.
No High-Volume Hydraulic Fracturing Operations in the New York City and Syracuse Watersheds

In April 2010 the Department concluded that due to the unique issues presented by high-volume hydraulic fracturing operations within the drinking watersheds for the City of New York and Syracuse, the SGEIS would not apply to activities in those watersheds. Those areas present unique issues that primarily stem from the fact that they are unfiltered water supplies that depend on strict land use and development controls to ensure that water quality is protected.

The revised analysis of high-volume hydraulic fracturing operations in the revised dSGEIS concludes that the proposed high-volume hydraulic fracturing activity is not consistent with the preservation of these watersheds as an unfiltered drinking water supply. Even with all of the criteria and conditions identified in this dSGEIS, a risk remains that significant high-volume hydraulic fracturing activities in these areas could result in a degradation of drinking water supplies from accidents, surface spills, etc. Moreover, such large scale industrial activity in these areas, even without spills, could imperil EPA’s Filtration Avoidance Determinations and result in the affected municipalities incurring substantial costs to filter their drinking water supply. Accordingly, this dSGEIS supports a finding that site disturbance relating to high-volume hydraulic fracturing operations not be permitted in the Syracuse and New York City watersheds or in a protective 4,000 foot buffer area around those watersheds.

No High-Volume Hydraulic Fracturing Operations on Primary Aquifers

Although not subject to Filtration Avoidance Determinations, 18 other aquifers in the State of New York have been identified by the New York State Department of Health as highly productive aquifers presently utilized as sources of water supply by major municipal water supply systems and are designated as “primary aquifers.” Because these aquifers are the primary source of drinking water for many public drinking water supplies, the Department recommends in this dSGEIS that site disturbance relating to high-volume hydraulic fracturing operations should not be permitted there either or in a protective 500-foot buffer area around them. Horizontal extraction of gas resources underneath primary aquifers from well pads located outside this area would not significantly impact this valuable water resource.
No High-Volume Hydraulic Fracturing Operations on Certain State Lands

This dSGEIS supports a finding that site disturbance relating to high-volume hydraulic fracturing operations should not be permitted on certain State lands because it is inconsistent with the purposes for which those lands have been acquired. In addition, precluding site disturbance on certain State lands would partially mitigate the significant adverse impacts from habitat fragmentation on forest lands due to high-volume hydraulic fracturing activity. It would preclude the loss of such habitat in the protected State land areas which represent some of the largest contiguous forest patches where high-volume hydraulic fracturing activity could occur. Horizontal extraction of gas resources underneath State lands from well pads located outside this area would not significantly impact this valuable habitat on forested State lands.

No High-Volume Hydraulic Fracturing Operations on Principal Aquifers Without Site-Specific Environmental Review

Principal Aquifers are aquifers known to be highly productive or whose geology suggests abundant potential water supply, but which are not intensively used as sources of water supply by major municipal systems at the present time. In order to mitigate the risk of significant adverse impacts on these important water resources from the risk of surface discharges from high-volume hydraulic fracturing well pads, the dSGEIS proposes that for at least two years from issuance of the final SGEIS, applications for high-volume hydraulic fracturing operations at any surface location within the boundaries of principal aquifers, or outside but within 500 feet of the boundaries of principal aquifers, would require (1) site-specific SEQRA determinations of significance and (2) individual SPDES permits for storm water discharges. The dSGEIS proposes the Department re-evaluate the necessity of this restriction after two years of experience issuing permits in areas outside of the 500-foot boundary.

No High-Volume Hydraulic Fracturing Operations within 2,000 feet of Public Drinking Water Supplies

The dSGEIS seeks to mitigate the risk of significant adverse impacts on water resources from the risk of surface discharges from high-volume hydraulic fracturing well pads by proposing that high-volume hydraulic fracturing operations at any surface location within 2,000 feet of public water supply wells, river or stream intakes and reservoirs should not be permitted. The dSGEIS
proposes that the Department re-evaluate the necessity of this approach after three years of experience issuing permits in areas outside of this setback.

No High-Volume Hydraulic Fracturing Operations in Floodplains or Within 500 Feet of Private Water Wells

In order to address potential significant adverse impacts due to flooding, the dSGEIS supports a finding that the Department not issue permits for high-volume hydraulic fracturing operations at any well pad that is wholly or partially within a 100-year floodplain. In order to ensure that there are no impacts on drinking water supplies from high-volume hydraulic fracturing operations, the dSGEIS also supports a finding that no permits be issued for any well pad located within 500 feet of a private water well or domestic use spring, unless waived by the landowner.

Mandatory Disclosure of Hydraulic Fracturing Additives and Alternatives Analysis

The dSGEIS identifies by chemical name and Chemical Abstract Services (CAS) number, 322 chemicals proposed for use for high-volume hydraulic fracturing in New York. Chemical usage was reviewed by NYSDOH, which provided health hazard information that is presented in the document. In response to public concerns relating to the use of hydraulic fracturing additives and their potential impact on water resources, this dSGEIS adds a new requirement that operators evaluate the use of alternative hydraulic fracturing additive products that pose less potential risk to water resources. In addition, in the EAF addendum a project sponsor must disclose all additive products it proposes to use, and provide Material Safety Data Sheets for those products, so that the appropriate remedial measures can be imposed if a spill occurs. The Department will publicly disclose the identities of hydraulic fracturing fluid additive products and their Material Safety Data Sheets, provided that information which meets the confidential business information exception to the Department’s records access program will not be subject to public disclosure.

Enhanced Well Casing

In order to mitigate the risk of significant adverse impacts to water resources from the migration of gas or pollutants in connection with high-volume hydraulic fracturing operations, the dSGEIS adds a requirement for a third cemented “string” of well casing around the gas production wells
in most situations. This enhanced casing specification is designed to specifically address concerns over migration of gas into aquifers.

*Required Secondary Containment and Stormwater Controls*

In order to mitigate the risk of a significant adverse impact to water resources from spills of chemical additives, hydraulic fracturing fluid or liquid wastes associated with high-volume hydraulic fracturing, secondary containment, spill prevention and storm water pollution prevention are comprehensively addressed for all stages of well pad development. The dSGEIS supports the Department’s proposal for a new stormwater general permit for gas drilling operations that would address potential stormwater impacts associated with high-volume hydraulic fracturing operations.

*Conditions Related to Disposal of Wastewater and Solid Waste* 

As provided in the 2009 dSGEIS, to ensure that wastewater from high-volume hydraulic fracturing operation is properly disposed, the Department proposes to require that before any permit is issued the operator have Department-approved plans in place for disposing of flowback water and production brine. In addition, the Department proposes to require a tracking system, similar to what is in place for medical waste, for all liquid and solid wastes generated in connection with high-volume hydraulic fracturing operations.

The dSGEIS also proposes to expand its proposed requirement for closed-loop drilling in order to ensure that no significant adverse impacts related to the disposal of pyrite-rich Marcellus Shale cuttings on-site.

*Air Quality Control Measures and Mitigation for Greenhouse Gas Emissions*

The dSGEIS identifies additional mitigation measures designed to ensure that emissions associated with high-volume hydraulic fracturing operations do not result in the exceedance of any NAAQS. In addition, the Department has committed to implement local and regional level air quality monitoring at well pads and surrounding areas.
The dSGEIS also identifies mitigation measures that can be required through permit conditions and possibly new regulations to ensure that high-volume hydraulic fracturing do not result in significant adverse impacts relating to climate change. The dSGEIS proposes to require a greenhouse gas emission impacts mitigation plan (the Plan). The Plan must include: a list of best management practices for GHG emission sources for implementation at the permitted well site; a leak detection and repair program; use of EPA’s Natural Gas Star best management practices for any pertinent equipment; use of reduced emission completions that provide for the recovery of methane instead of flaring whenever a gas sales line and interconnecting gathering line are available; and a statement that the operator would provide the Department with a copy of the report filed with EPA to meet the GHG Reporting Rule.

*Mitigation for Loss of Habitat and Impacts on Wildlife*

In order to further mitigate significant adverse impacts on wildlife habitat caused by fragmentation of forest and grasslands on private land, the Department proposes to require that surface disturbance in contiguous forest patches of 150 acres or more and contiguous grassland patches of 30 acres or more within specified Forest and Grassland Focus areas, respectively, be contingent upon site-specific ecological assessments conducted by the permit applicant and implementation of best management practices identified through such assessments.

*Other Control Measures*

Other important existing and anticipated regulatory requirements and/or permit conditions that would be imposed to ensure that high-volume hydraulic fracturing operations do not cause significant impacts on the environment in New York include:

- Before a permit is issued, Department staff would review the proposed layout of the well site based on analysis of application materials and a site visit. Risky site plans would either not be approved or would be subject to enhanced site-specific construction requirements.

- The Department’s staff reviews the proposed casing and cementing plan for each well prior to permit issuance. Permits are not issued for improperly designed wells, and in

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the case of high-volume hydraulic fracturing, the as-built wellbore construction would be verified before the operation is allowed to proceed.

- The current dSGEIS proposes to require in most cases fully cemented intermediate casing, with the setting depths of both surface and intermediate casing determined by site-specific conditions.

- Fracturing equipment components would be pressure tested with fresh water, mud or brine prior to the introduction of chemical additives.

- The current dSGEIS requires pressure testing of blowout prevention equipment, the use of at least two mechanical barriers that can be tested, the use of specialized equipment designed for entering the wellbore when pressure is anticipated, and the on-site presence of a certified well control specialist.

- Flowback water stored on-site must use covered watertight tanks within secondary containment and the fluid contained in the tanks must be removed from the site within certain time periods.

- The Department has a robust permitting and approval process in place to address any proposals to discharge flowback water or production brine to wastewater treatment plants. The Department would require that before any permit is issued the operator have Department-approved plans in place for disposing of flowback water and production brine. Permission to treat such wastewater at a treatment plant in New York State would not be granted without a demonstrable showing that such wastewater can be properly treated at the plant. Additionally, the Department anticipates that operators would favor reusing flowback water for subsequent fracturing operations as they are now doing in Pennsylvania, so that disposal of flowback would be minimized.

- The Department would require that a Transportation Plan be developed and included with any permit application. That plan would include proposed truck routes and an assessment of road conditions along such routes. Any local road use agreement(s)
would have to be disclosed and the applicant would have to demonstrate that the roads to be used are sufficient to accommodate the proposed truck traffic.

- The Department would consult with local governments and, where appropriate, place limits on the number of wells and/or well pads that can be constructed in a specific area at a single time in order to mitigate potential adverse impacts on community character, tourism and other potential socioeconomic impacts that could result from a concentration of well construction activity in a short period of time within a confined area.

- The Department would also impose measures designed to reduce adverse noise or visual impacts from well construction.

Chapter 8 – Permit Process and Regulatory Coordination

This Chapter explains inter- and intra-agency coordination relative to the well permit process, including the role of local governments and a revised approach to local government notification and consideration of potential impacts of high-volume hydraulic fracturing operations on local land use laws and policies. Unlike the 2009 dSGEIS, the current draft Supplement supports a condition that local governments be given notice in writing of all high-volume hydraulic fracturing applications in the locality. A continuously updated database of local government officials and an electronic notification system would be developed for this purpose.

In addition, the EAF Addendum would require the project sponsor to identify whether the proposed location of the well pad, or any other activity under the jurisdiction of the Department, conflicts with local land use laws or regulations, plans or policies. The project sponsor would also be required to identify whether the well pad is located in an area where the affected community has adopted a comprehensive plan or other local land use plan and whether the proposed action is inconsistent with such plan(s). Where the project sponsor indicates that the location of the well pad, or any other activity under the jurisdiction of the Department, is either consistent with local land use laws, regulations, plans or policies, or is not covered by such local land use laws, regulations, plans or policies, no further review of local land use laws and policies would be required.
In cases where a project sponsor indicates that all or part of their proposed application is inconsistent with local land use laws, regulations, plans or policies, or where the potentially impacted local government advises the Department that it believes the application is inconsistent with such laws, regulations, plans or policies, the Department intends to request additional information in the permit application process to determine whether this inconsistency raises significant adverse environmental impacts that have not been addressed in the SGEIS.

Chapter 9 – Alternative Actions

Chapter 9 discusses the alternatives to well permit issuance that were reviewed and considered by the Department. Chapter 21 of the 1992 GEIS and the 1992 Findings Statement discussed a range of alternatives concerning oil and gas resource development in New York State that included both its prohibition and the removal of oil and gas industry regulation. Regulation as described by the GEIS was found to be the best alternative.

The dSGEIS considers a range of alternatives to the proposed approach for regulating and authorizing high-volume hydraulic fracturing operations in New York. As required by SFQRA, the dSGEIS considers the no action alternative. The Department finds that the no action alternative would not result in any of the significant adverse impacts identified herein, but would also not result in the significant economic and other benefits identified with natural gas drilling by this method. The Department believes that this alternative is not preferable because significant adverse impacts from high-volume hydraulic fracturing operations can be fully or partially mitigated.

The alternatives analysis also considers the use of a phased-permitting approach to developing the Marcellus Shale and other low permeability gas reservoirs, including consideration of limiting and/or restricting resource development in designated areas. As discussed above, the Department proposes to partially adopt this alternative by restricting resource development in the New York City and Syracuse watersheds (plus buffer), public water supplies, primary aquifers and certain state lands. In addition, restrictions and setbacks relating to development in other areas near public water supplies, principal aquifers and other resources as outlined above are recommended. The Department does not believe that resource development should be further
limited by imposing an annual limit on permits issued for high-volume hydraulic fracturing operations. The Department believes any such annual limit would be arbitrary. Rather, the Department proposes to limit permit issuance to match the Department resources that are made available to review and approve permit applications, and to adequately inspect well pads and enforce permit conditions and regulations. Although it is not possible to predict the number of permit applications that will be submitted in any given area, and therefore proscribe the level of activity that any one operator may undertake in those areas, the Department has the ability to respond and adjust to conditions in the field. If it is demonstrated, for example, that the measures in place to mitigate noise impacts do not adequately address the impact of high-volume hydraulic fracturing on a host community, the department retains the option through the permitting process to impose additional conditions on operations, such as phasing of drilling operations on adjacent well pads, to prevent or mitigate cumulative or simultaneous operations from impacting nearby residents.

The dSGEIS also contains a review and analysis of the development and use of “green” or non-chemical fracturing alternatives. The Department finds that the use of environmentally-friendly or “green chemicals” would proceed based on the characteristics of the Marcellus Shale play and other shale plays across the United States, as well as the potential environmental impacts of the development. While more research and approval criteria would be necessary to establish benchmarks for “green chemicals,” this dSGEIS adopts this alternative approach where feasible by requiring applicants to review and consider the use of alternative additive products that may pose less risk to the environment, including water resources, and to publicly disclose the chemicals that make up these additives. These requirements may be altered and/or expanded as the use of “green chemicals” begin to provide reasonable alternatives and the appropriate technology, criteria and processes are in place to evaluate and produce “green chemicals.”

Chapter 10 - Review of Selected Non-Routine Incidents in Pennsylvania

Chapter 10 discusses a number of widely publicized incidents involving high-volume hydraulic fracturing operations in Pennsylvania that have caused public concern about the safety and potential adverse impacts associated with high-volume hydraulic fracturing operations. The case
studies describe the events and their likely causes, and explains how protective measures currently in place or identified as proposed mitigation measures in this dSGEIS would further minimize the risk of such events occurring should high-volume hydraulic fracturing operations be permitted in New York.

Chapter 11 – Summary of Potential Impacts and Mitigation Measures

Chapter 11 highlights the mitigation measures implemented through the 1992 GEIS and summarizes the impacts and mitigation that are discussed in Chapters 6 and 7.

Next Steps

Following the public comment period for the revised draft SGEIS and the draft regulations, the Department will produce a final SGEIS. The final SGEIS will include summaries of the substantive comments received on both the 2009 draft SGEIS and the revised dSGEIS, along with the Department’s responses to such comments. The final SGEIS will also incorporate by reference all volumes of the 1992 GEIS.
State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: May 2, 2013

COOPERSTOWN HOLSTEIN CORPORATION, Appellant,

v

TOWN OF MIDDLEFIELD, Respondent.

MEMORANDUM AND ORDER

Calendar Date: March 21, 2013

Before: Peters, P.J., Stein, Spain and Garry, JJ.

Levene, Gouldin & Thompson, LLP, Binghamton (Scott R. Kurkoski of counsel), and The West Firm, PLLC, Albany (Thomas S. West of counsel), for appellant.

Whiteman, Osterman & Hanna, LLP, Albany (John J. Henry of counsel), for respondent and Town of Ulysses and others, amici curiae.

Cynthia Feathers, Glens Falls, for New York Farm Bureau, amicus curiae.


Levene, Gouldin & Thompson, LLP, Binghamton (Scott R. Kurkoski of counsel), for Business Council of New York State, Inc. and others, amici curiae.

Susan J. Kraham, Morningside Heights Legal Services, Inc., New York City, for Vicki Been and others, amici curiae.

Nancy S. Marks, Natural Resources Defense Council, New York City (Katherine Sinding of counsel), for Catskill Mountainkeeper and others, amici curiae.

Peters, P.J.

Appeal from a judgment of the Supreme Court (Cerio, J.), entered August 8, 2012 in Otsego County, which, among other things, granted defendant's cross motion for summary judgment dismissing the complaint and declared that defendant's zoning law was not preempted by the Oil, Gas and Solution Mining Law.

In June 2011, defendant enacted a new zoning law which, among other things, categorized all oil, gas and solution mining and drilling as prohibited land uses within the Town of Middlefield, Otsego County. Plaintiff, a corporation which owns oil and gas leases for parcels of real property located within the Town, commenced this action seeking a declaration that the zoning law was preempted by the Oil, Gas and Solution Mining Law (see ECL 23-0301 et seq. [hereinafter OGSML]). Following joinder of issue, plaintiff moved for summary judgment and defendant cross-moved for summary judgment dismissing the complaint. Additionally, various groups moved for, and were granted, leave to file amicus curiae briefs.1 Concluding that the zoning law was not preempted by the supersession clause of the OGSML (see ECL 23-0303 [2]), Supreme Court denied plaintiff's motion and granted defendant's cross motion. After plaintiff unsuccessfully moved to renew its motion based upon newly discovered legislative material (see CPLR 2221 [e]), a judgment was issued dismissing the complaint and declaring that the zoning law was valid and not preempted by the OGSML. Plaintiff appeals.

1 Several interested groups were also granted permission by this Court to file an amicus curiae brief on appeal (see 2012 NY Slip Op 91275[U] [2012]; 2012 NY Slip Op 90486[U] [2012]; 2012 NY Slip Op 89959[U] [2012]; 2012 NY Slip Op 89414[U] [2012]; see also Matter of Norse Energy Corp., USA v Town of Dryden, ___ AD3d ____, ___ n 4 [decided herewith]).
As in Matter of Norse Energy Corp. USA v Town of Dryden (___ AD3d ___ [decided herewith]), plaintiff here argues that the OGSML preempts a municipality's authority to enact local land use laws prohibiting oil, gas and solution mining or drilling activities within its borders. For the reasons set forth in Matter of Norse Energy Corp. USA v Town of Dryden (supra), we find plaintiff's claim to be without merit and affirm Supreme Court's judgment declaring that defendant's zoning law is valid.

Stein, Spain and Garry, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

[Signature]

Robert D. Mayberger
Clerk of the Court
In the Matter of NORSE ENERGY CORPORATION USA,

Appellant-Respondent,

v

TOWN OF DRYDEN et al.,

Respondents.

DRYDEN RESOURCES AWARENESS COALITION,

Proposed Intervenor-Respondent-Appellant.

Calendar Date: March 21, 2013

Before: Peters, P.J., Stein, Spain and Garry, JJ.

The West Firm, PLLC, Albany (Thomas S. West of counsel), for appellant-respondent.

Knauf Shaw, LLP, Rochester (Alan J. Knauf of counsel), for proposed intervenor-respondent-appellant.

Deborah Goldberg, Earthjustice, New York City, for Town of Dryden and another, respondents.

Cynthia Feathers, Glens Falls, for New York Farm Bureau, amicus curiae.

Levene, Gouldin & Thompson, LLP, Binghamton (Scott R. Kurkoski of counsel) for Business Council of New York State, Inc. and others, amici curiae.

Whiteman, Osterman & Hanna, LLP, Albany (John J. Henry of counsel), for Town of Ulysses and others, amici curiae.

Jordan A. Lesser, New York State Assembly, Albany, for Member of the Assembly Barbara Lifton, amicus curiae.

Susan J. Kraham, Morningside Heights Legal Services, Inc., New York City, for Vicki Been and others, amici curiae.

Nancy S. Marks, Natural Resources Defense Council, New York City (Katherine Sinding of counsel), for Catskill Mountainkeeper and others, amici curiae.


Peters, P.J.

Cross appeals from a judgment of the Supreme Court (Rumsey, J.), entered February 22, 2012 in Tompkins County, which, in a proceeding pursuant to CPLR article 78 and action for declaratory judgment, among other things, partially granted respondents' motion for summary judgment declaring that certain amendments to the Town of Dryden zoning ordinance are not preempted by the Oil, Gas and Solution Mining Law.

In August 2011, the zoning ordinance of respondent Town of Dryden (hereinafter the Town) was amended to ban all activities related to the exploration for, and the production or storage of, natural gas and petroleum. The amendment occurred in the midst
of growing local concern over the proposed use of high volume hydraulic fracturing, commonly known as "hydrofracking," to recover natural gas from underground shale deposits.¹

Petitioner's predecessor in interest, Anschutz Exploration Corporation, a driller and developer of oil and natural gas wells that owned leases covering approximately 22,200 acres of land in the Town of Dryden, Tompkins County, thereafter commenced this combined proceeding pursuant to CPLR article 78 and action for declaratory judgment seeking invalidation of the zoning amendment on the ground that it was preempted by the Oil, Gas and Solution Mining Law (see generally ECL 23-0301 et seq. [hereinafter OGSML]).² Following joinder of issue, respondents moved for summary judgment declaring that the OGSML does not preempt the zoning ordinance amendment. Anschutz opposed the motion and urged Supreme Court to grant summary judgment in its favor.

Subsequently, Dryden Resources Awareness Coalition (hereinafter DRAC), an association of approximately 71 residents and landowners in the Town formed "to educate and protect the Dryden community from the impacts and hazards associated with hydraulic fracturing," moved to intervene and defend the zoning ordinance. Both respondents and petitioner opposed DRAC's motion. Supreme Court denied DRAC's motion and granted summary judgment to respondents, concluding that, with the exception of a

¹ Hydrofracking involves a process by which a mixture of fresh water and chemical additives are pumped under high pressure into shale formations beneath the ground. This process is typically accomplished by drilling multiple horizontal wells out from a vertical well. Once in the shale, the mixture disturbs, among other things, deposits of methane gas and is then returned to the surface, where it is stored or transported in order to retrieve the methane. Currently, there is significant concern regarding the environmental effects of hydrofracking, particularly the risk of groundwater contamination.

² During the pendency of this appeal, Anschutz assigned its interest in certain oil and gas leases in the Town to petitioner, who was thereafter substituted in the proceeding by order of this Court (see CPLR 1018, 1021).
provision invalidating permits issued by other local or state agencies, the amendment to the zoning ordinance was not preempted by the OGSML. Respondent's statement with regard to the permit provision.

I. INTERVENTION

As a preliminary matter, we address Supreme Court's denial of DRAC's motion to intervene. As the court dismissed, as improper, that part of the petition/complaint seeking relief under CPLR article 78, DRAC was required to establish entitlement to intervention pursuant to CPLR article 10. "While the only requirement for obtaining an order permitting intervention via [CPLR 1003] is the existence of a common question of law or fact, the resolution of such a motion is nevertheless a matter of discretion" (Matter of Pier v Board of Assessment Review of Town of Niskayuna, 209 AD2d 788, 789 [1994] [citation omitted]; see Kripke v Benedictine Hosp., 255 AD2d 725, 728 [1998]).

Here, although members of DRAC submitted affidavits identifying effects that hydrofracking may have on their daily

lives, these claimed impacts were largely speculative and failed to demonstrate a substantial interest in the outcome of the action different from other residents of the Town. Further, as noted by Supreme Court, the Town is the preeminent party in defending the validity of the zoning ordinance amendment which it enacted (cf. Matter of Rent Stabilization Assn. of N.Y. City v New York State Div. of Hous. & Community Renewal, 252 AD2d 111, 115 [1998]). Under the circumstances, we find no abuse of discretion and, like Supreme Court, grant DRAC amicus curiae status and consider its arguments in that context (see Matter of Pace-O-Matic, Inc. v New York State Liq. Auth., 72 AD3d 1144, 1145 [2010]; Quality Aggregates v Century Concrete Corp., 213 AD2d 919, 920-921 [1995]).

II. PREEMPTION

We now turn to the question of whether OGSML preempts the amendment to the Town's zoning ordinance banning all activities related to the exploration for, and the production or storage of, natural gas and petroleum. The NY Constitution grants "every local government [the] power to adopt and amend local laws not inconsistent with the provisions of [the] constitution or any general law relating to its property, affairs or government" (NY Const, art IX, § 2 [c]; see Anonymous v City of Rochester, 13 NY3d 35, 51 [2009] [Graffeo, J., concurring]; People v De Jesus, 54 NY2d 465, 468 [1981]). To implement this express grant of authority to local governments, the Legislature enacted a series of statutes establishing a wide range of local powers (see generally Kamhi v Town of Yorktown, 74 NY2d 423, 428-429 [1989]). Among the powers delegated to local governments is the authority to regulate the use of land through the enactment of zoning laws (see Municipal Home Rule Law § 10 [1] [ii] [a] [11]; Statute of Local Government § 10 [6], [7]; Town Law § 261; Matter of Kamhi v Planning Bd. of Town of Yorktown, 59 NY2d 385, 389 [1983]; Riegert Apts. Corp. v Planning Bd. of Town of Clarkstown, 57 NY2d 206, 209 [1982]). As the Court of Appeals has emphasized, "[o]ne of the most significant functions of a local government is to foster productive land use within its borders by enacting zoning ordinances" (DJL Rest. Corp. v City of New York, 96 NY2d 91, 96 [2001]; see Little Joseph Realty v Town of Babylon, 41 NY2d 738, 745 [1977]; Udell v Haas, 21 NY2d 463, 469 [1968]; see also
The doctrine of preemption, however, "represents a fundamental limitation on home rule powers" (Albany Area Bldrs. Assn. v Town of Guilderland, 74 NY2d 372, 377 [1989]; accord Matter of Cohen v Board of Appeals of Vil. of Saddle Rock, 100 NY2d 395, 400 [2003]). The Legislature may expressly state its intent to preemp, or it may do so by implication (see Matter of Cohen v Board of Appeals of Vil. of Saddle Rock, 100 NY2d at 400; DJL Rest. Corp. v City of New York, 96 NY2d at 95). Where, as here, a statute contains an express preemption clause, its effect "turns on the proper construction of [the] statutory provision" (Matter of Frew Run Gravel Prods. v Town of Carroll, 71 NY2d 126, 131 [1987]). The primary consideration in matters of statutory interpretation "is to 'ascertain and give effect to the intention of the Legislature'" (Riley v County of Broome, 95 NY2d 455, 463 [2000], quoting McKinney's Cons Laws of NY, Book 1, Statutes § 92 [a]; see Roberts v Tishman Speyer Props., L.P., 13 NY3d 270, 286 [2009]). Such efforts begin with an examination of the statutory text itself (see Yatauro v Mangano, 17 NY3d 420, 426 [2011]; Majewski v Broadalbin–Perth Cent. School Dist., 91 NY2d 577, 583 [1998]).

A. EXPRESS PREEMPTION

The supersession clause in the OGSML provides that "[t]he provisions of [ECL article 23] shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the [RPTL]" (ECL 23-0303 [2]). Thus, the plain language of this provision prohibits municipalities from enacting laws or ordinances "relating to the regulation of the oil, gas and solution mining industries" (ECL 23-0303 [2] [emphasis added]). As the OGSML does not define the word "regulation," we must give this word its ordinary and natural meaning (see People v Quinto, 18 NY3d 409, 417 [2012]; Matter of Manhattan Pizza Hut v New York State Human Rights Appeal Bd., 51 NY2d 506, 511 [1980]). Regulation is commonly defined as "an authoritative rule dealing with details or procedure" (Merriam-Webster On-line Dictionary).
Dictionary, http://www.merriam-webster.com/dictionary/ regulation). The zoning ordinance at issue, however, does not seek to regulate the details or procedure of the oil, gas and solution mining industries. Rather, it simply establishes permissible and prohibited uses of land within the Town for the purpose of regulating land generally (see Matter of Frew Run Gravel Prods. v Town of Carroll, 71 NY2d at 131 [stating that "[t]he purpose of a municipal zoning ordinance in dividing a governmental area into districts and establishing uses to be permitted within the districts is to regulate land use generally"]). While the Town's exercise of its right to regulate land use through zoning will inevitably have an incidental effect upon the oil, gas and solution mining industries, we conclude that zoning ordinances are not the type of regulatory provision that the Legislature intended to be preempted by the OGSML (see DJL Restaurant Corp. v City of New York, 96 NY2d at 97; Matter of Gernatt Asphalt Prods. v Town of Sardinia, 87 NY2d 668, 681-682 [1996]; Matter of Hunt Bros. v Glennon, 81 NY2d 906, 908-910 [1993]; Matter of Frew Run Gravel Prods. v Town of Carroll, 71 NY2d at 131).

The legislative history of ECL 23-0303 (2), specifically, and the OGSML, generally, support this determination. The statutory scheme governing oil and gas was added to the former Conservation Law in 1963 (see L 1963, ch 959), with the Conservation Department\(^5\) being charged with its administration (see former Conservation Law § 72; see also Mem of Conservation Dept, Bill Jacket, L 1963, ch 959). The statute's official policy was:

"to foster, encourage and promote the development, production and utilization of natural resources of oil and gas . . . in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate

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\(^5\) The current Department of Environmental Conservation was established in 1970 (see L 1970, ch 140).
recovery of oil and gas may be had, and that the correlative rights of all owners and the rights of all persons including landowners and the general public may be fully protected" (former Conservation Law § 70; L 1963, ch 959).

"Waste" was defined in technical terms as, among other things, "the inefficient, excessive or improper use of, or the unnecessary dissipation of reservoir energy," or "the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations" (former Conservation Law § 71 [1]; L 1963, ch 959). Notably, the provisions of the enactment focus on matters that are regulatory in nature, such as well spacing, delineation of pools and procedures for obtaining permits. They do not address any traditional land use issues that would otherwise be the subject of a local municipality's zoning authority (see L 1963, ch 959).

Amendments to the ECL in 1978 modified the policy of the OGSML, replacing the phrase "to foster, encourage and promote the development, production and utilization of natural resources of oil and gas . . . in such a manner as will prevent waste" (L 1963, ch 959, § 1 [emphasis added]) with "to regulate the development, production and utilization of natural resources of oil and gas . . . in such a manner as will prevent waste" (L 1978, ch 396 [emphasis added]). Notably, the 1978 legislation simultaneously amended the state's energy policy to, among other things, "foster, encourage and promote the prudent development and wise use of all indigenous state energy resources including, but not limited to, on-shore oil and natural gas, off-shore oil and natural gas [and] natural gas from Devonian shale formations" (L 1978, ch 396, § 2 [emphasis added]; see Energy Law § 3-101 [5]). By these amendments, the Legislature clearly acknowledged that promotion and regulation were considered separate and distinct activities, as they transferred the promotion of energy to the Energy Office while continuing regulation of the oil, gas and solution mining industries within the Department of Environmental Conservation (hereinafter DEC).
In 1981, the preemption clause at issue here was enacted as part of an act that amended the Finance Law, the ECL, the RPTL, the Agriculture and Markets Law and the Tax Law (see L 1981, ch 846). Significantly, the purpose of the 1981 amendments to the ECL was "to promot[e] the development of oil and gas resources in New York and regulat[e] the activity of the industry" (L 1981, ch 846 [emphasis added]; see Sponsor's Mem, Bill Jacket, L 1981, ch 846, 1981 NY Legis Ann at 448). This purpose was to be achieved by, among other things, "establishing new fees to fund additional regulatory personnel for the industry and to provide a fund to pay for past and future problems which resulted [from] the industry's activities [and] establish[ing] a uniform method of real property taxation for oil and natural gas lands" (Sponsor's Mem, Bill Jacket, L 1981, ch 846, 1981 NY Legis Ann at 448). The sponsor's memorandum supporting the bill stated that the oil, gas and mining industry "will benefit from the expeditious handling of permits and improved regulation," observing that "the recent growth of drilling in the State has exceeded the capacity of [DEC] to effectively regulate and service the industry" (Sponsor's Mem, Bill Jacket, L 1981, ch 846, 1981 NY Legis Ann at 448). Explaining that DEC was unable to fulfill its "regulatory responsibilities" with its existing funding and powers (Governor's Approval Mem, Bill Jacket, L 1981, ch 846, 1981 NY Legis Ann at 448), the Governor's memorandum approving the 1981 bill confirms that the amendments would provide DEC with funding for its "updated regulatory program" as well as "additional enforcement powers necessary to enable it to provide for the efficient, equitable and environmentally safe development of the State's oil and gas resources" (Governor's Approval Mem, Bill Jacket, L 1981, ch 846, 1981 NY Legis Ann at 449).

From the legislative history of the OGSML and, in particular, the 1981 amendments, it is evident that the Legislature's intention was to insure uniform statewide standards and procedures with respect to the technical operational activities of the oil, gas and mining industries in an effort to

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6 Prior to that time, ECL 23-0303 consisted of only the language now contained in ECL 23-0303 (1) (see L 1981, ch 846 § 4; L 1972, ch 664, § 2).
increase efficiency while minimizing waste, and that the supersession provision was enacted to eliminate inconsistent local regulation that impeded that goal. We find nothing in the language, statutory scheme or legislative history of the statute indicating an intention to usurp the authority traditionally delegated to municipalities to establish permissible and prohibited uses of land within their jurisdictions. In the absence of a clear expression of legislative intent to preempt local control over land use, we decline to give the statute such a construction (see Matter of Gernatt Asphalt Prods. v Town of Sardinia, 87 NY2d at 682; Matter of Frew Run Gravel Prods. v Town of Carroll, 71 NY2d at 134). By construing ECL 23-0303 (2) as preempting only local legislation regulating the actual operation, process and details of the oil, gas and solution mining industries, "the statutes may be harmonized, thus avoiding any abridgment of [a] town's powers to regulate land use through zoning powers expressly delegated in the Statute of Local Governments . . . and [the] Town Law" (Matter of Frew Run Gravel Prods. v Town of Carroll, 71 NY2d at 134).

Decisional law interpreting a similar supersession provision contained in the Mined Land Reclamation Law (see ECL 23-2701 et seq. [hereinafter MLRL]) further supports our determination that the Legislature did not intend for the OGSML to preempt the zoning authority of municipalities. In Matter of Frew Run Gravel Prods. v Town of Carroll (71 NY2d at 133-134), the Court of Appeals held that the MLRL did not preempt a town's

Indeed, in other contexts, the Legislature has clearly evinced its intent to preempt local zoning authority within the express text of the statute. For example, in ECL 27-1107 – the same statute at issue here – the Legislature expressly prohibited local municipalities from requiring "any approval, consent, permit, certificate or other condition, including conformity with local zoning or land use laws and ordinances," concerning the operation of hazardous waste facilities (emphasis added).

Despite petitioner's assertions to the contrary, we fail to find any meaningful distinction between the language of the supersession provision of the OGSML and that of the MLRL.
zoning law which established a zoning district where sand and gravel operations were not a permitted use. At that time, the MLRL contained a supersession provision providing that:

"this title shall supersede all other state and local laws relating to the extractive mining industry; provided, however, that nothing in this title shall be construed to prevent any local government from enacting local zoning ordinances or other local laws which impose stricter mined land reclamation standards or requirements than those found herein" (ECL 23-2703 [former (2)])..

Construing the language "relating to the extractive mining industry" according to its plain meaning, the Court found that the zoning law was not preempted by the MLRL's supersession provision as it was related to "an entirely different subject matter and purpose: i.e., regulating the location, construction and use of buildings, structures, and the use of land in the Town" (Matter of Frew Run Gravel Prods. v Town of Carroll, 71 NY2d at 131 [internal quotation marks and citation omitted]). In limiting supersession to those laws "relating to the extractive mining industry," the Court concluded, the Legislature intended to preempt only "[l]ocal regulations dealing with the actual operation and process of mining" (id. at 133 [emphasis added]). The Court explained that local zoning ordinances affect the mining industry only in incidental ways and, notably, do not frustrate the MLRL's stated purpose "to foster a healthy, growing mining industry" (id. at 132 [internal quotation marks and citation omitted]). Here, too, the amendment to the Town's zoning ordinance — enacted pursuant to its constitutional and statutory authority to impose land use regulations — while incidentally impacting the oil, gas, and solution mining industries, does not conflict with the state's interest in establishing uniform procedures for the operational activities of
these industries.\textsuperscript{9}

Thus, based upon the plain meaning of the language contained in the supersession clause, the relevant legislative history and the purpose and policy of OGSML as a whole, and mindful of the interpretation accorded to MLRL's similar supersession provision, we find that ECL 23-0303 (2) does not serve to preempt a municipality's authority to enact a local zoning ordinance prohibiting oil, gas and solution mining or drilling within its borders.

\textbf{B. IMPLIED PREEMPTION}

Petitioner further argues that, even if the amendment to the Town's zoning ordinance is not expressly preempted by the OGSML, it is nevertheless invalid under principles of implied preemption. While the existence of an express preemption clause in a statute supports a reasonable inference that the Legislature did not intend to preempt other matters, it does not, as respondents suggest, entirely foreclose any possibility of

\textsuperscript{9} The Court of Appeals confirmed the distinction between zoning ordinances and local ordinances that dictate the manner and method of mining operations nearly a decade later in Matter of Gernatt Asphalt Prods. v Town of Sardinia (87 NY2d 668, 681-682 [1996]). In concluding that the MLRL did not preempt a town's authority to determine, by way of a zoning ordinance, that mining would no longer be a permitted use of land within the town, the Court expressly rejected the mining company's argument – similar to that asserted by petitioner here – that because the MLRL's policy is to "foster[] and promot[e] the mining industry in this State" (\textit{id.} at 681), a municipality is obligated to permit the extraction of those natural resources somewhere within its borders (\textit{id.} at 681-682). In so concluding, the Court explained that "[a] municipality is not obliged to permit the exploitation of any and all natural resources within the town as a permitted use if limiting that use is a reasonable exercise of its police powers to prevent damage to the rights of others and to promote the interests of the community as a whole" (\textit{id.} at 684).
implied preemption (see Freightliner Corp. v Myrick, 514 US 280, 287-288 [1995]; Drattel v Toyota Motor Corp., 92 NY2d 35, 48-49 [1998]; Matter of Office of Attorney Gen. of State of N.Y., 269 AD2d 1, 7 [2000]). Petitioner's implied preemption argument must fail, however, because the zoning amendment neither conflicts with the language nor the policy of the OGSML.

Under the doctrine of conflict preemption, a "local government . . . may not exercise its police power by adopting a local law inconsistent with constitutional or general law" (New York State Club Assn. v City of New York, 69 NY2d 211, 217 [1987], affd 487 US 1 [1988]; see DJL Rest. Corp. v City of New York, 96 NY2d at 95; Jancyn Mfg. Corp. v County of Suffolk, 71 NY2d 91, 97 [1987]). Citing to specific provisions of the OGSML that address well spacing, petitioner claims that the OGSML directs "where" drilling is to occur in order to ensure that wells are drilled and spaced in a manner that maximizes resource recovery and minimizes waste, and that this directive cannot be complied with if municipalities are permitted to enact zoning ordinances banning drilling within their jurisdictions. The provisions that petitioner points to, however, relate to the details and procedures of well spacing by drilling operators (see e.g., ECL 23-0101 [20] [c]; 23-0503 [2]) and do not address traditional land use considerations, such as proximity to nonindustrial districts, compatibility with neighboring land uses, and noise and air pollution. As we noted, the well-spacing provisions of the OGSML concern technical, operational aspects of drilling and are separate and distinct from a municipality's zoning authority, such that the two do not conflict, but rather, may harmoniously coexist; the zoning law will dictate in which, if any, districts drilling may occur, while the OGSML instructs operators as to the proper spacing of the units within those districts in order to prevent waste.

Nor are we persuaded that municipal zoning ordinances that effect a ban on drilling conflict with the policies of the OGSML. There is nothing in the statute or its legislative history suggesting, as petitioner does, that it is the policy of this state to "maximize recovery" of oil and gas resources at the expense of municipal land use decision making. While the statute seeks to avoid waste — that is, "the inefficient, excessive or
improper use of, or the unnecessary dissipation of reservoir energy" and the "the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations" (ECL 23-0101 [20] [b], [c]; former Conservation Law § 71 [1]; L 1963, ch 959) – this does not equate to an intention to require oil and gas drilling operations to occur in each and every location where such resource is present, regardless of the land uses existing in that locale. Indeed, the policy of the OGSML explicitly seeks to protect the rights of "all persons including landowners and the general public" – not just the owners of oil and gas properties, such as petitioner (former Conservation Law § 70; L 1963, ch 959), a goal which is realized when individual municipalities can determine whether drilling activities are appropriate for their respective communities. Accordingly, respondents' decision to amend the Town's zoning ordinance to prohibit the activity of hydrofracking does not conflict with the Legislature's intent to ensure that, where oil or gas drilling occurs, the operations are as efficient and effective as possible.

Thus, we hold that the OGSML does not preempt, either expressly or impliedly, a municipality's power to enact a local zoning ordinance banning all activities related to the exploration for, and the production or storage of, natural gas and petroleum within its borders.

Stein, Spain and Garry, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

[Signature]

Robert D. Mayberger
Clerk of the Court
ARTICLE I - ENACTMENT, TITLE AND PURPOSE

A. **Title:** This Local Law shall be known and may be cited as “The Town of Middlefield Zoning Law”.

B. **Enactment:** This Local Law is adopted pursuant to Article 16 of the Town Law of the State of New York, Chapter 62 of the Consolidated Laws, and Articles 2 and 3 of the Municipal Home Rule Law, Chapter 36-a of the Consolidated Laws.
4.25.11

C. **Purpose in View:** This Local Law is enacted to protect and promote public health, safety, comfort, convenience, economy, aesthetics and general welfare of the Town of Middlefield and its citizens and for the following additional purposes: the protection and enhancement of Middlefield's physical and visual environment; to lessen congestion in the streets; to secure safety from fire, flood, and other dangers; to promote health and general welfare; to prevent overcrowding of land; to avoid undue concentration of population; to protect the environment, to protect surface and ground water resources, to sustain the viability of farmland, and to facilitate adequate provision of transportation, water, sewerage, schools, parks and other public requirements. This Local Law is made with reasonable consideration of the character of the various districts, and their unique suitability for particular uses, with a view to conserving the value of land and buildings and encouraging the most appropriate use of land throughout the Town of Middlefield.

D. **Application of Regulations:** Except as hereinafter provided, no building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified and to comply with "The Rules and Regulations for the Protection from Contamination of the Public Water Supply of the Village of Cooperstown, County of Otsego", and also in compliance with New York State Department of Environmental Conservation Law, Section 8-0113 State Environmental Quality Review Act.

**ARTICLE II - DEFINITIONS**

A. **Meaning of Words:** Except where specifically defined by this article, all words used in this Local Law shall carry their customary meanings. Words used in the present tense include the future, and plural includes the singular; the word "person" includes a corporation as well as an individual; the word "lot" includes the word "plots" or "parcels"; the term "shall" is always mandatory; and the word "used" or "occupied" as applied to any land or building shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied".

B. **Definitions:**

1. **Accessory Use:** A use customarily incidental and subordinate to the principal use of a building and located on the same lot with such principal use of a building.

2. **Building:** Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattel.

3. **Center Line of Road:** A line midway between and parallel to two property lines along any public highway right-of-way. Whenever such property lines cannot be determined, such line shall be considered as being midway between and parallel to the paved or improved surface of the road.

4. **Dock:** A structure for accessing water, extending from the shoreline onto a body of water, no greater in width than 10 feet as situated above the land, uncovered, and extending onto the shore (over dry land) the shortest possible distance for safe usage or 15 feet, whichever is less.

5. **Driveway:** A private access way originating at the edge of a road and continuing to access two or fewer lots.

6. **Dwelling:** A building designed or used primarily as the living quarters of one or two families.
4.25.11

7. **Gas, Oil, or Solution Drilling or Mining:** The process of exploration and drilling through wells or subsurface excavations for oil or gas, and extraction, production, transportation, purchase, processing, and storage of oil or gas, including, but not limited to the following:

   i. A new well and the surrounding well site, built and operated to produce oil or gas, including auxiliary equipment required for production (separators, dehydrators, pumping units, tank batteries, tanks, metering stations, and other related equipment);

   ii. Any equipment involved in the re-working of an existing well;

   iii. A water or fluid injection station(s) including associated facilities;

   iv. A storage or construction staging yard associated with an oil or gas facility;

   v. Gas pipes, water lines, or other gathering systems and components including but not limited to drip station, vent station, chemical injection station, valve boxes.

8. **Heavy Industry:** A use characteristically employing some of, but not limited to the following: smokestacks, tanks, distillation or reaction columns, chemical processing or storage equipment, scrubbing towers, waste-treatment or storage lagoons, reserve pits, derricks or rigs, whether temporary or permanent. Heavy industry has the potential for large-scale environmental pollution when equipment malfunction or human error occurs. Examples of heavy industry include, but are not limited to: chemical manufacturing, drilling of oil and gas wells, oil refineries, natural gas processing plants and compressor stations, petroleum and coal processing, coal mining, steel manufacturing. Generic examples of uses not included in the definition of "heavy industry" are such uses as: milk processing plants, dairy farms, garment factories, woodworking and cabinet shops, auto repair shops, wineries and breweries, warehouses, equipment repair and maintenance structures, office and communications buildings, helipads, parking lots, and parking garages and water wells serving otherwise allowed uses of the property. Agriculture and surface gravel and sand mining facilities shall not be considered heavy industry.

9. **Home Occupation:** An occupation or profession which:

   a. Is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit, and

   b. Is carried on by a member of the family residing in the dwelling unit, and

   c. Is clearly incidental and secondary to the use of the dwelling unit for residential purposes, and

   d. Conforms to the following additional conditions:

   1) the occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto;

   2) not more than one (1) person outside the family shall be employed in the Home Occupation;

   3) there shall be no exterior display, no exterior sign (except as permitted in this Local Law), no exterior storage of materials and no other exterior indication of the Home Occupation or variation from the residential character of the principal building;

   4) no offensive, noxious, or injurious noise, vibration, smoke, dust, odors, heat or glare shall be produced;

   5) no articles produced elsewhere may be sold except those incorporated in products being manufactured on the premises or those which are incidental to the services offered.
4.25.11

In particular, a Home Occupation includes, but is not limited to the following:
- Art Studio
- Barber Shops and Beauty Parlors
- Dressmaking
- Professional office of a physician, dentist, lawyer, engineer, architect, accountant, or real estate dealer within a dwelling occupied by the same
- Renting of not more than two (2) rooms for occupancy by not more than two (2) persons per room, which home occupation can only be conducted in a principal building.

However, a Home Occupation shall not be interpreted to include the following:
- Kennels
- Restaurants
- Funeral Homes and Mortuaries

10. **Junk Yards:** A lot, land or structure thereof used for the collection, sale or storage of wastepaper, rags, scrap metal or discarded material, or for the collection, dismantling, storage or salvation of machinery or vehicles, or for the sale of the parts thereof, not to include more than two (2) unlicensed vehicles. Refer to Article VI, Section B.

11. **Lake shore:** The boundary formed by the water’s edge. For purposes of Otsego Lake, water’s edge is 1,194.5 feet above sea level.

12. **Lot:** A parcel of land separately depicted as a unit for taxing purposes on the Town Real Property Assessment Map in the Otsego County Real Property Tax Office. A non-conforming lot, contiguous to one or more lot held in common ownership with the non-conforming lot, shall be disregarded and considered as a portion of the one or more contiguous lots in common ownership. Each lot created by a subdivision, as approved by the Town Board and depicted on a filed map, shall be considered a separate lot, regardless of its depiction on the Town Real Property Assessment Map, and regardless of common ownership with a contiguous parcel.

13. **Mobile Home:** A self-contained movable living unit, fourteen (14) feet or less in width, capable of transportation on its own wheels on a public highway, and complying with the State Building Code for mobile homes. The removal of wheels or anchoring of a mobile home to a permanent foundation shall not remove it from this definition. Prefabricated or modular homes over fourteen (14) feet in width are not considered to be mobile homes.

14. **Planned Development District (PDD):** A residential business, commercial, manufacturing, recreational and park area or combinations thereof created in a manner which will permit flexible and imaginative design concepts. Such a planning tool shall be held in single ownership to ensure that the entire district is developed in accordance with a single approved plan.

15. **Principal Building:** A dwelling; or a building of principal commercial use (i.e., a commercial use not defined as a home occupation).

16. **Road:** A vehicular access way either currently designated as a Town, County or State Road, or any private platted access way, built to town requirements.

17. **Structure:** Anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground.
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18. **Telecommunications Facility:** Said term is defined for purposes of this Law by the definition of said term contained in the Telecommunications Facilities Act of the Town of Middlefield, as enacted November 12, 2002, as Local Law #1 of the year 2002, as the same may be amended from time to time.

19. **Temporary Uses:** Any use that will attract more than five (5) vehicles at a given location at the same time, such as vegetable stands, flower stands, etc.

20. **Trailer:** A movable living unit intended for temporary travel or vacation uses with or without kitchen or sanitary facilities. Self-propelled recreational motor homes are included in the definition of trailers.

21. **Yard, Front:** An open, unoccupied space on the same lot with the building, between the front line of the building and the street or highway center line, extending the full width of the lot.

22. **Yard, Rear:** An open, unoccupied space, except for accessory buildings, on the same lot with the building, between the rear line of the building and the rear lot line and extending the full width of the lot.

23. **Yard, Side:** An open, unoccupied space on the same lot with the building, situated between the building and side lot line and extending from the front yard to the rear yard.

**ARTICLE III - DISTRICTS**

A. **Establishment of Districts and Map:** For the purpose described in Article 1, Section C of this Local Law, the Town of Middlefield is hereby divided into the following districts:

   1. R-80 Residence-Agriculture District
   2. R-HD Residential Hamlet District
   3. PDD Planned Development District
   4. FPD Flood Protection District

B. **Boundaries of Zoning Districts:** The boundaries of the zoning districts are shown on the official Town Zoning Map, which is made a part of the Local Law and is available for inspection at the Town of Middlefield Office Building. The zoning map may, from time to time, be amended in the same manner as any amendment of this Local Law.

C. **Interpretation of District Boundaries:** Where uncertainty exists with respect to the boundaries of any of the aforementioned districts as shown on the official Town Zoning Map, the following rules of interpretation shall be used:

   1. Where district boundaries are indicated as approximately following the center lines of roads or highways, railroads, public utility easement, water courses, town boundaries, property lines or lot lines, said boundaries shall be construed to be coincident with such lines or projections thereof.

   2. Where district boundaries are indicated as being approximately parallel to any of the features described in Article 111, Section C, paragraph 1, said boundaries shall be construed as being parallel thereto and at such distances as are indicated on the official Town Zoning Map or shall be determined by the use of the scale.
3. Wherever any feature described in Article 111, Section C, paragraph 1 is depicted on the official Town Zoning Map but such depiction varies from the actual location observed in the field and indicated by a physical feature, monument or mark, such physical feature, monument or mark shall be considered as being the reference point in determining a district boundary.

ARTICLE IV - DISTRICT REGULATIONS

A. Residential/Agricultural District (R-80): The following regulations shall apply in all R-80 districts:

1. Permitted uses:
   a. One-family dwellings.
   b. Two-family dwellings.
   c. Mobile homes.
   d. Farms and agricultural uses, including temporary stands for the sale of agriculture products, provided safe, adequate parking is available.
   e. Public and quasi-public uses, places of worship, schools, parks and playgrounds, government facilities and public utility facilities.
   f. Forest management areas.
   g. Accessory uses to any permitted use.
   h. Home occupations.

2. Uses and temporary uses permitted upon issuance of a special permit:
   a. Places of outdoor public assembly or amusement.
   b. Apartment dwellings for the exclusive occupancy of persons employed by a permitted agricultural use on the same lot, or on adjoining lots in the same ownership, as the land in active agricultural use. The number of such apartment dwelling units permitted shall not exceed one (1) for every two (2) acres of land in active agricultural use, not to exceed a total of three (3).
   c. Use of a trailer shall be subject to all state regulations pertaining thereto, and use of more than one (1) trailer per lot of land shall require a special permit. Commercial use of trailers shall not be permitted.
   d. Telecommunication Facilities, as defined in the Town of Middlefield’s Telecommunications Act.

3. Lot Area, Yard and Height Regulations
   a. Minimum lot area: Three (3) acres, with the following exception: Where all other requirements of this Local Law are satisfied, one (1) lot of less than three (3) acres but not less than one (1) acre may be subdivided from any pre-existing parcel of ten (10) or more contiguous acres.
   b. Minimum continuous frontage on a public highway: 200 feet.
   c. Minimum depth of lot: 200 feet.
   d. Minimum front yard setback: 50 feet; providing that it is compatible with the existing pattern of development.
   e. Minimum side yard width: 25 feet.
   f. Minimum rear yard depth: 50 feet.
   g. Maximum building height: 35 feet.
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4. Special regulations

   a. A building permit shall be required for any new construction. See Article VII, Section B.
   b. Any new residential construction will require an appropriate sewer system approved by the Codes and Zoning Enforcement Officer. A percolation test may be required.
   c. No dry well, tile field or other method of sub-surface disposal shall be located within ten (10) feet of any lot boundary line.

B. Residential Hamlet District (R-HD): The following regulations shall apply to all R-HD Districts:

1. Permitted uses:
   a. One-family dwellings.
   b. Two-family dwellings.
   c. Accessory uses.
   d. Retail sale of merchandise wholly within a building.
   e. Barber shops, beauty parlors, shoe repair shops.
   f. Business and professional offices.
   g. Banks, insurance, real estate, savings and loan offices.
   h. Public offices, public services and public utility facilities.
   i. Public or private schools.
   j. Mixed occupancy structures containing dwelling units and commercial uses.
   k. Churches and places of worship.
   l. Home occupations

2. Uses permitted upon issuance of a special permit:

   a. Small appliance repair shops.
   b. Retail sale involving outdoor storage or display of items to be sold.
   c. Retail sale of gasoline for automotive use.
   d. Automobile, truck and farm machinery sales and service facilities.
   e. Funeral homes.
   f. Mobil homes.
   g. Telecommunication Facilities, as defined in the Town of Middlefield’s Telecommunications Act.

3. Lot area, yard and height regulations:

   a. Minimum lot area: 12,500 square feet.
   b. Minimum frontage on a public street: 100 feet.
   c. Minimum front yard setback: 35 feet.
   d. Minimum side yard width: 20 feet.
   e. Minimum rear yard depth: 30 feet.
   f. Maximum building height: 35 feet.

4. Special regulations:

   a. A Building Permit shall be required for any new construction. See Article VII, Section B.
   b. Any new residential construction will require an appropriate sewer system approved by the Codes and Zoning Enforcement Officer. A percolation test may be required.
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c. No dry well, tile field or other method of sub-surface disposal shall be located within ten (10) feet of any lot boundary line.

5. Subdivision regulations: Any division of land into two (2) or more parcels is covered in a separate publication titled "Town of Middlefield Subdivision Regulations".

C. Planned Development District: The following regulations shall apply to all PDD Districts

1. Purpose: The regulations hereinafter set forth in this section are intended to provide a means for the development of residential, business, commercial, manufacturing, recreational and park areas or combinations thereof in a manner which will permit flexible and imaginative design concepts to be utilized and by means of adequate supervision and control by the Planning Board and the Town Board, to insure that the spirit and intent of the zoning Local Law will be preserved. The intent of this section is not to prohibit the normal growth of the Town, but it does intend to establish guide-lines for development. So far as is practicable within the overall scheme of a planned development district, the requirements of R-80, RHD and FPD of this Local law should be considered as a guide in determining reasonable requirements for comparable uses within a planned development district. Nothing is intended to limit the areas within the Town in which a planned development district may be created. The Zoning Enforcement Officer shall enforce this section with that intent in mind.

a. Permitted uses:

1) Any use, or combination of uses, otherwise permitted by this Local Law. Combination of uses shall be permitted only upon demonstration of compatibility in the form of screening, buffer strips, and performance standards specified by site plan review.

b. Minimum bulk requirements for a PDD District: Lot area, yard and height regulations:

1) minimum district area - 10 acres;
2) minimum frontage on a public street - 100 feet;
3) minimum front yard setback - 75 feet;
4) minimum setback from lot lines other than front lot line - 40 feet;
5) maximum building height - 35 feet.

c. Special regulations:

1) all lands within a proposed PDD shall be held in single ownership or other form that assures development of the entire district in accordance with a single approved plan;
2) all lands within a proposed PDD shall be shown upon a site plan which meets the requirements of this Local Law and which:

   a) shows how various types of uses will be screened from one another upon the site;
   b) shows the relationship of proposed development to all adjacent development.

2. The General Planned Development District process: The planned development process consists of two separate reviews. One is the change of the zoning district. The second is the review of the specific site plans for the development. These two processes should be undertaken
simultaneously. Any change to a Planned Development District (PDD) shall be based on a specific development proposal. Although the designation for all planned development will be PDD, each district shall reflect the type of use which was the basis for the zone change.

3. Procedures for the Establishment of a Planned Development District:

a. Pre-application Conference: Before submission of a preliminary application for approval as a Planned Development District, the developer is encouraged to meet with the Town Planning Board to determine the feasibility and suitability of the application before entering into any binding commitments of incurring substantial expenses of site plan preparation. In particular, the Town Planning Board shall consider:

1) the need for the proposed land use in the proposed location;
2) the existing character of the neighborhood.

b. Application Procedure: Application for the establishment of any Planned Development District shall be made to the Town Board and the Town Planning Board simultaneously, to the Town Board for the zoning change and to the Planning Board for site plan review. In applying to the two boards, the applicant must show:

1) a petition for the zone change;
2) proof of full legal and beneficial ownership of the property, or proof of an option of contractual right to purchase the property;
3) a completed Environmental Assessment Form (EAF) to comply with the provisions of the State Environmental Quality Review process (SEQR);
4) a mapped preliminary development plan of the property in question. Such a plan shall conform to the site plan review requirements of the Local Law;
5) demonstrate that alternative design concepts have been explored;
6) a written description of the proposal including the major planning assumptions and objectives, the probable effect on adjoining properties and the effect on the overall Town development, including effects on adjacent municipalities which in turn effect the Town of Middlefield;
7) a written description of the probable impacts on the natural systems of the Town;
8) a written description of the probable fiscal impacts including summary of new costs and revenues to the Town due to the development;
9) a concise description of the proposed PDD together with stamped envelopes, addressed to adjoining property owners so as to notify them of the proposed PDD.

c. Review Criteria: In considering the application for the creation of a Planned Development District, the Planning Board may require changes in the preliminary plans and specify such additional requirements as are deemed reasonably necessary to protect the established or permitted uses in the vicinity and to promote and protect the orderly growth and sound development of the community. In reaching its decision on the proposed development and changes, if any, in the preliminary plans the Planning Board shall consider all the requirements under site plan review.

The Planning Board may consult with Local and County officials and its designated private consultants, in addition to representatives of Federal and State agencies including, but not limited to, the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation.
The Planning Board shall refer the plan to the County Planning Department for advisory review, and a report in accordance with Section 239-m of the General Municipal Law, where the proposed action is within a distance of 500 feet from the boundary of any city, village or town, or from the boundary of any existing or proposed County or State park or other recreational area, or from the right-of-way of existing or proposed County or State parkway, thruway, expressway, road or highway, or from the existing or proposed right-of-way of any stream or drainage channel owned by the County or for which the County has established channel lines, or from the existing or proposed boundary of any County or State-owned land on which a public building or institution is situated.

d. Planning Board and Town Board Review: The Planning Board shall review the site plan and make a recommendation to the Town Board for approval, disapproval, or approval with conditions or changes. The Town Board, however, will give the approval for all site plans in the Town. At the same time the Planning Board is reviewing the site plan, the Town Board shall be reviewing the application for the zone change, it shall hold a public hearing on the zone change and render its decision within forty-five (45) days after the close of the public hearing. If the Town Board decides to hold a public hearing on the site plan, it shall be done jointly with the hearing for the zone change. In this manner, a decision on the site plan and the zone change will occur at the same time.

In the event that an applicant has submitted a partial application, and has been requested to provide additional information or clarification, they shall have 180 days to provide said information or the application shall be deemed as void. Should an applicant require a longer time period for engineering studies or similar information gathering, the Planning Board may, if requested, grant an extension to the one hundred eighty (180) days.

e. Final Action: Establishment of a Planned Development District is a rezoning action that will be subject to the State Environmental Quality Review process (SEQR). The Town Board shall be the lead agency on both the zoning change and the site plan as it is the entity granting approval or disapproval for both of these actions. If it is determined that an environmental impact statement will be prepared for the proposal in question, all items and deadlines are delayed until a draft environmental impact statement has been filed. An application is not complete, and therefore, the review clock does not start until a determination of no significant action has been made or until a draft environmental impact statement is complete. When the draft environmental impact statement is completed, the time frame for review begins.

The decision of the Town Board on the zoning change and on the site plan review shall be in the form of a written resolution which shall include findings of fact and shall set forth the reasons for granting or denying tentative approval specifying with particularity in what respects the proposal contained in the application would or would not be in the public’s interest including, but not limited to, findings of fact and conclusions on the following:

1) in what respect the plan is or is not consistent with the statement of purpose set forth in Article IV, Section C, paragraph 1;

2) the extent to which the proposal departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk use, and the reasons why such departures are or are not deemed to be in the public interest;

3) the nature and extent of the common open space in the planned development district, the reliability of the proposals for maintenance and conservation of such open space and the
adequacy or inadequacy of the amount and function of the open space in terms of the densities of residential uses and the types thereof where residential uses are proposed;

4) the plat of the proposal and the manner in which such plat does or does not make adequate provision for public services, control over vehicular traffic and the amenities of light and air, and visual enjoyment;

5) the relationship, beneficial or adverse, of the proposed planned unit development district upon the neighborhood in which it is proposed to be established;

6) in the case of a plan which proposes development over a period of years, the sufficiency of the terms and conditions proposed to protect the interests of the public and the residents of the district in the integrity of the plan;

7) the Town Board may require as a condition to final approval, the posting of a bond to assure the completion of all requirements of the Board including the dedication, maintenance and completion of all streets, easements and open space or recreational areas, creation or extension of special districts or improvement areas, construction of storm and sanitary sewers, landscaping and such other improvements.

f. No building permit shall be granted for the construction of any building or structure other than as approved by the Town Board and no improvement shall be constructed at variance with the proposal as finally approved except upon submission and approval of the Town Board.

g. The resolution required for approval of a PDD shall be filed with the Town Clerk and shall be available during regular hours for inspection by any interested person.

h. In the event that construction has not commenced within two (2) years from the date that the zoning amendment and site plan were approved, the Planning Board may so notify the Town Board and the Town Board may, on its own motion, institute a zoning map amendment to return the Planned Development District to its former classification.

D. Site Plan Review: This article of the Middlefield Zoning Local Law is enacted under the authority of Section 274-a of the Town Law of the State of New York to protect the health, safety, convenience and general welfare of the inhabitants of the Town. This section regulates the development of structures and sites in a manner which considers the following concerns and, where necessary, requires modification of development proposals to eliminate or minimize potential problems and nuisances.

The principal areas of concern are:

1. The balancing of landowners' rights to use their land with the corresponding rights of abutting and neighboring landowners to live without undue disturbances.

2. The convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas or roads.

3. The adequacy of waste disposal methods and protection from pollution of surface or groundwater.
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4. The protection of historic and natural environmental features on the site under review and in adjacent areas.

E. Developments Requiring Site Plan Review: Those development projects requiring site plan review are listed in each section of the zoning Local Law. Unless specifically exempted from site plan review, no permit for the construction, exterior alteration, relocation, occupancy, or change in use of any building shall be issued; no existing use shall be established or expanded in floor area except in conformity with a site plan approved by the Town Board. The introduction of new materials or processes not previously associated with an existing use is also subject to site plan review.

1. Procedure

a. Prior to the submission of a formal site plan, a pre-submission conference shall be held wherein the applicant shall meet in person with the Zoning Enforcement Officer to discuss the proposed site plan so that the necessary subsequent steps may be undertaken with a clear understanding of the Town's requirements in matters relating to the development of the site.

b. Within six (6) months following the pre-submission conference, five (5) copies of the site plan and any related information shall be submitted to the Zoning Enforcement Officer, accompanied by a fee in accordance with the schedule of fees of the Town of Middlefield, payable to the Town Clerk. If the application is not submitted within this six-month period, another pre-submission conference may be required. An Environmental Assessment Form, as required by the State Environmental Quality Review Act, shall also be submitted with the application.

c. The Zoning Enforcement Officer shall certify on each site plan or amendment whether or not the application is complete in accordance with Section 706, Submission Requirements, and whether the plan meets the requirements of all zoning Local Law provisions other than those of this article, such as setbacks, number of parking spaces, etc. The Zoning Enforcement Officer shall act to certify the application or return it to the applicant for completion or revision within ten (10) days of submission by the applicant.

d. Following certification of a complete application, the Zoning Enforcement Officer shall forward the application to the Planning Board no later than ten (10) days prior to its next meeting.

e. The Planning Board shall review the site plan for the Town Board and make a recommendation to the Town Board for approval, disapproval or approval with modifications. The Planning Board may at its discretion request permission from the Town Board to conduct public hearings, and may do so with consent of the Town Board. The Town Board may, at its discretion, hold a public hearing on the application. Said hearing shall be held within forty-five (45) days of submission of a complete application to the Planning Board of said application. The Town Board shall give notice of the hearing in a newspaper of general circulation in the Town at least ten (10) days prior to the hearing. In addition, the applicant shall give notice in writing by certified mail to all property owners of the land immediately adjacent to, extending five hundred feet (500') theretofrom, and directly opposite thereto, extending five hundred feet (500') from the street frontage of the land in said application. The applicant shall mail these notices at least ten (10) days in advance of the hearing and furnish the Town Board with post office receipts as proof of notification.

f. The Town Board, as part of its review process, shall make a determination of significance of the proposed site plan according to SEQR. The Town Board may take the Planning Board's
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recommendation on this matter. The time limitations of paragraph 8 of this section shall not apply until the conclusion of the SEQR process.

g. Whenever any site plan involves real property in an area described in Section 239-m of the General Municipal Law, said special use permit shall be referred to the County Planning Board, which Board shall report its recommendations to the Town Board. Failure of the County Planning Board to report within thirty (30) days may be construed to be approval. The concurring vote of a majority plus one of the Town Board shall be necessary to override County Planning Board recommendations of approval with modifications or disapproval. In the event that the County Planning Board recommends modifications or disapproval of a referred matter and the Town Board acts to the contrary, the Town Board shall file a report on its final action with the County Planning Board within seven (7) days after final action.

h. The Town Board shall, within forty-five (45) days of the public hearing, if one is held, or within forty-five (45) days of the date of the meeting at which the site plan was submitted, either:

   i. Approve the site plan if the Board finds that the plan meets the requirements of this Local Law and any other applicable rules and regulations; or

   ii. Condition approval of the site plan upon the applicant making certain changes or modifications to the plan, said conditions to be set forth in writing by the Board; or

   iii. Disapprove the site plan, the reasons for such action to be set forth in writing by the Board.

Failure to act within the required time shall be deemed approval. Should the Town Board need an additional thirty (30) days to consider the application, then it may do so with consent of the applicant. Said agreement shall be recorded in the minutes.

   i. Review of amendments to an approved site plan shall be acted upon in the same manner as the review of an original plan.

2. Enforcement

   a. The Planning Board may require the posting of a bond or other similar performance guarantee to ensure compliance with the plan and stated conditions of approval. The Zoning Enforcement officer may suspend any permit or license when work is not performed as required.

   b. The Planning Board may adopt additional detailed design guidelines and performance standards, as it deems necessary by majority vote of the Planning Board. Such standards and guidelines shall not become effective until the Town Board holds a public hearing on them (advertised at least seven (7) days in advance of said hearing in a newspaper of general circulation in the Town) and approves them.
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3. Submission Requirements

a. The site plan shall include the following data, details, and supporting plans. The number of pages submitted will depend on the proposal's size and complexity. All of the requirements must be met in each plan, except in accordance with 2. of this section.

b. The Zoning Enforcement Officer may waive any of the requirements of section 706, C. and D., or part thereof, prior to the submission of a formal site plan, when such requirements are not material to the project under review. The Planning Board may overrule any waivers so granted and require compliance with these requirements before accepting a site plan submission.

c. Site Plans shall be prepared by a surveyor, registered professional engineer, architect, or landscape architect at a scale of one inch (1") equals twenty feet (20') or less, on standard 24"x36" sheets, with continuation on 8 1/2"x11" sheets as necessary for written information.

d. Items required for submission include

   i. Name of the project, boundaries, location maps showing site's location in the town, date, north arrow and scale of the plan.

   ii. Name and address of the owner of record, developer, and seal of the engineer, architect or landscape architect.

   iii. Name and addresses of all owners of record of abutting parcels and those within five hundred feet (500') of the property line.

   iv. All existing lot lines, easements, and rights-of-way. Include area in acres or square feet, abutting land uses, and the location and use of structures within five hundred feet (500') of the site.

   v. The location and use of all existing and proposed buildings and structures within the development. Include all dimensions of height and floor area, and show all exterior entrances, and all anticipated future additions and alterations.

   vi. The location of all present and proposed public and private ways, roads, parking area, driveways, sidewalks, ramps, curbs, fences, paths, landscaping, and walls. Location, type, and screening details for all waste disposal containers shall also be shown.

   vii. The location, height, intensity and bulk type (e.g., fluorescent, sodium incandescent) of all external lighting fixtures. The direction of illumination and methods to eliminate glare onto adjoining properties must also be shown. Demonstration that light sources are directed downward.

   viii. The location of all present and proposed utility systems including:

      a) the projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hours traffic level;

      b) the projected traffic flow pattern including vehicular movements at all major intersections likely to be affected by the proposed use of the site;

      c) the impact of this traffic upon existing abutting public and private ways in relation to existing road capacities. Existing and proposed daily and peak hour traffic levels as well as road capacity levels shall also be given.

      d) the impact of increase in pedestrians to the vicinity and services that they would require.
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ix. For new construction or alterations to any existing building, a table containing the following information must be included:

a) area of building to be used for a particular use such as retail operation, office, storage, etc.;
b) maximum number of employees;
c) maximum seating capacity, where applicable;
d) number of parking spaces existing and required for the intended use.

x. Elevation plans at a scale of $\frac{1}{4}'' = 1'$ for all exterior facades of the proposed structure(s) and/or existing façade(s), plus addition(s) showing design features and indicating the type and color of materials to be used.

xi. An Environmental Assessment Form (either a short, or long form, depending upon the nature of the proposal) shall be submitted with the site plan to insure compliance with the New York State Environmental Quality Review Act (6 NYCCR 617), to identify the potential environmental, social, and economic impacts of the project.

4. Standards for Review

a. The Planning Board shall review the site plan and supporting documents, taking into consideration the reasonable fulfillment of the objectives listed below. Pursuant to section 705, paragraph C., detailed design guidelines and performance standards may be adopted by the Planning Board to guide decisions with respect to these objectives, and to help ensure consistency in the review of all applications.

i. Legal. Conformance with the provisions of the Local Laws and Ordinances of the Town, the Town Law of New York State, and all applicable rules and regulations of State and Federal agencies.

ii. Traffic. Convenience and safety of both vehicular and pedestrian movement within the site and in relationship to adjoining ways, properties, school districts and municipalities (e.g., Village of Cooperstown).

iii. Parking. Provisions for off-street loading and unloading of vehicles incidental to the normal operation of the establishment, adequate parking, adequate lighting, and internal traffic.

v. Public Services. Reasonable demands placed on public services and infrastructure.

vi. Pollution Control. Adequacy of methods of sewage and refuse disposal and the protection from pollution of both surface waters and groundwater. This includes minimizing soil erosion both during and after construction.

vii. Nuisances. Protection of abutting properties and town amenities from any undue disturbances caused by excessive or unreasonable noise, smoke, vapors, fumes, dust, odors, glare, lighting, stormwater runoff, etc.
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viii. **Existing Vegetation.** Minimizing the area over which existing vegetation is to be removed. Where tree removal is required, special attention shall be given to planting of replacement trees.

ix. **Amenities.** The applicant's efforts to integrate the proposed development into existing landscape through design features, such as vegetative buffers, roadside plantings, and the retention of open space and agricultural land.

x. **Town Character.** The building setbacks, area and location of parking, architectural compatibility, signage, and landscaping of the development, and how these features harmonize with the surrounding landscape and the natural landscape. Among required elements for review would be those listed under Article IV Section C. 3. B. of this Local Law.

F. **Flood Protection District (FPD):** The following regulations shall apply in all FPD districts in addition to the regulations of the underlying zoning districts:

1. All buildings and structures shall be designed and anchored to prevent flotation, collapse or lateral movement; shall use construction materials and utility equipment that are resistant to flood damage; and shall use construction methods and practices that will minimize flood damage.

2. All public utility systems and facilities serving any building or structure shall be located, elevated or constructed to minimize or eliminate flood damage and adequate on-site drainage shall be provided to reduce exposure to flood hazard.

3. No floor level, including a basement floor in a residential structure, shall be constructed below the water surface elevation level of a 100-year flood.

4. In a non-residential structure, no floor level, including a basement floor, shall be constructed below the water surface elevation level of a 100-year flood, except that floor area, together with attendant utility and sanitary facilities may be constructed below this level if flood-proofed as specified herein.

5. Within a floodway designated by the Federal Insurance Administrator, no use, including landfill or structure, shall be permitted within any flood plain having special flood hazard, unless or until the person owning or developing such use or structure shall demonstrate that the proposed use or structure, when combined with all other existing uses approved by the Town Planning Board under this section, will not increase the water surface elevation of a 100-year flood more than one foot at any one point.

6. Flood proofing measures as required in this section may include the following where appropriate:
   a. Anchorage to resist flotation and lateral movement.
   b. Reinforcement of walls to resist water pressures.
   c. Installation of watertight doors, bulkheads and shutters.
   d. Use of paints, membranes or mortars to reduce seepage of water through walls.
   e. Addition of mass or weight to resist flotation.
   f. Installation of pumps to lower water levels in structures.
   g. Construction of water supply and waste treatment systems so as to prevent the entrance of flood waters.
   h. Pumping facilities to relieve hydrostatic water pressure on external walls and basement floors.
   i. Elimination of gravity flow drains.
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j. Construction to resist rupture or collapse caused by water pressure or floating debris.

k. Elevation of structures to or above the necessary flood protection elevation.

G. Otsego Lake/Susquehanna River Shoreline Protection Area: No building or structure (excepting docks or erosion controls, which shall require review and approval by the Planning Board) shall be erected within 100 feet of the shoreline of Otsego Lake or the Susquehanna River. No existing building or structure within 100 feet of the shoreline of Otsego Lake or the Susquehanna River shall be modified in such a way as to increase the size of the footprint defined by its exterior foundation walls. No building or structure within 100 feet of Otsego Lake or the Susquehanna River may be destroyed and reconstructed so long as it does not exceed its original footprint and as long as its reconstruction does not increase the existing nonconformity with this Local Law in any regard. No building or structure within five hundred (500) feet of the shoreline shall be erected or existing building altered unless and until a site plan showing such proposed development is approved by the Town Planning Board and a building permit therefor issued. No new construction within one hundred (100) feet of Otsego Lake or the Susquehanna River shall be greater than 25 feet in height. There shall be no point discharges into Otsego Lake or the Susquehanna River nor into any waterway flowing into Otsego Lake or the Susquehanna River. Also, not more than thirty percent (30%) of the trees six (6) inches or more in diameter at breast height within 500 feet of the shoreline may be cut over any 10-year period. No cutting of any vegetation may take place within twenty (20) feet of the shoreline except that up to thirty percent (30%) of the shore front may be cleared of vegetation on any individual lot. These standards do not prevent removal of dead, dying, diseased, or rotten trees or vegetation, or other vegetation presenting safety or health hazards.

ARTICLE V - GENERAL REGULATIONS APPLYING TO ALL DISTRICTS

A. Prohibited Uses: Heavy industry and all oil, gas or solution mining and drilling are prohibited uses. Uses not specifically permitted under Article IV of this Local Law are prohibited, except that the Planning Board may find that a use is sufficiently similar to a permitted use as to be included within the definition of that use.

B. Principal Buildings per Lot: There shall only be one (1) principal building per lot, except that where a sufficiently large parcel exists, up to three principal buildings may be established, provided each structure has in identifiable land area which satisfies the lot area and yard requirements of the district regulations applying to the district in which they are located.

C. Exceptions to Lot Area, Height, and Yard Regulations:

1. Substandard Lots: Any lot recorded prior to October 30, 1975, whose area, or frontage on a public street is less than that specified in this Local Law, may be considered as complying with such requirement and no variance shall be required provided that:

   a. Such lot does not adjoin another undersized lot in common ownership.
   b. Such lot has a minimum area sufficient to provide for proper operation of a well and septic tank system if such are required, and
   c. Minimum required side yard widths, or rear yard depths required for such lots shall be reduced to not less than one half those required in the district.

2. Height Exceptions: The height regulations within the district regulations shall not apply to the following types of structures:
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a. Church spires, domes, belfries, towers or cupolas not used for human habitation.
b. Chimneys, sky lights, bulkheads and fire walls, stair- wells, mechanical and elevator penthouses.
c. Water tanks, grain storage, barn silos.
d. Ornamental or decorative roof structures, other than signs.
e. Antenna towers, siren towers, utility poles or towers.

3. Required Front Yard Setback: Whenever a lot lies within a developed area where structures are located closer to a public highway than permitted under the applicable district regulations, the required front yard setback may be considered as being the average front yard setback of such structure, subject to the following conditions:

   a. There must be a minimum of four (4) existing structures located along the same side of the highway and within 300 feet of the lot being considered for exemption from part of the front yard setback requirements.
   b. It shall be demonstrated that a reduction of the required front yard setback will not adversely affect access to adjacent properties, increase hazards to public safety, or be incompatible with the existing pattern of development.
   c. It shall be demonstrated that compliance with the required front yard setback will cause an unreasonable restriction upon the development of said lot.

4. All sewer and water facilities shall meet standards set by the New York State Health Department and/or Department of Environmental Conservation as required by State law.

D. Yards on Corner Lots: On a corner lot, any lot line or yard abutting a street shall be considered a front yard, and the minimum front yard setback required by the district regulation shall be provided. The owner of such corner lot shall decide which of the remaining yards shall be the rear and side yards.

E. Parking and Loading Areas:

1. For all uses and structures, off-street parking shall be required in accordance with the following standards:

   a. Residential uses - two (2) parking spaces for every dwelling unit.
   b. Tourist homes, hotels, motels, hospitals, and nursing homes - one (1) parking space for every guest room or patient bed.
   c. Retail Sales - one (1) parking space for every two hundred (200) square feet of floor area.
   d. Wholesale trade, manufacturing, warehouse or storage facility - one (1) parking space for every one thousand (1,000) square feet of floor area.
   e. Theaters, restaurants, eating and drinking places, churches and places of worship, and places of public assembly - one (1) parking space for every four (4) seats, or, in the absence of fixed seating, one (1) space for every sixty (60) square feet of floor area exclusive of kitchens, stage, dance floor, waiting areas, or storage areas.
   f. Offices, businesses and professional offices - one (1) parking space for each three hundred (300) square feet of floor area.
   g. Unspecified uses - one (1) parking space for every two hundred (200) square feet of building area, or one (1) parking space for every one thousand (1,000) square feet of site area, whichever is greater, or as specified by the Planning Board during site plan review based upon the greatest number of employees and customers using the structure at any single time.
2. Required Loading: Off-street loading spaces shall be provided for all non-residential uses at a rate of one space for every receiving door or loading dock intended for use to load or unload cargo to or from a truck.

3. Required Paving: Parking and loading spaces, driveways and aisles serving or located in a parking area containing eight (8) or fewer spaces shall be paved with at least a suitable base of compacted gravel. All other parking or loading space, driveway or aisle shall be paved to at least the standards of a Local street. Whenever a driveway, aisle or loading space is intended for use by heavy trucks or equipment, such facilities shall be constructed to a standard sufficient to withstand damage from such use.

4. Size: All required parking spaces shall be at least ten (10) feet in width and twenty (20) feet in depth. All required loading space shall be at least ten (10) feet in width and fifty-five (55) feet in depth.

5. Location: The location of any entrance or exit of a driveway, aisle, parking or loading area, where it enters a public right-of-way, shall be subject to approval by the Town, County or State Highway Superintendent, and a permit for same shall be obtained from him prior to construction.

6. Roads: All new roads shall be built to Town standards, including Donovan standards and ASSHTO standards as guidelines for elements of road design. Guidelines for road grades shall accept no grade of greater than 13%, and no grades of 10% or greater over a distance of more than one hundred (100) feet, due to prevailing harsh winter conditions of the region. Otherwise, guidelines for road grade shall be derived from ASSHTO standards for Local Urban Streets. All new private roads created for subdivisions shall have landowners agreements providing for joint ownership and maintenance by owners of subdivision lots.

F. Temporary Uses:

1. Temporary uses may be allowed in any district upon issuance of a permit therefor by the Town Board. Under no circumstances shall any of the activities and/or uses prohibited by this Local Law be construed to be "temporary uses" as such is defined in Article II of the Town of Middlefield Zoning Law. Said permit shall specify the location and type of use, signs to advertise such use, the hours of operation, and the dates between which such temporary use shall be permitted. Such temporary use permits shall not be issued to allow a use for over thirty (30) days or seasonal use, and shall only be issued under the following conditions:

   a. An application for a temporary use permit is made by the owner of the property on which such use is to be located.
   b. A sketch of the proposed layout of such temporary use including the approximate location of any buildings, structures, trailers, tents, enclosures, parking areas and signs shall be submitted for review with the permit application, and the use of the site shall be restricted to that which is shown on the application and sketch.
   c. Adequate water and sewerage disposal facilities shall be provided to accommodate the need of the number of persons involved in the temporary use. Sufficient information on the number of persons and duration of use shall be provided to the Town Board who may request the advice and assistance of the New York State Department of Health in determining the number and type of such facilities that may be required.
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2. As a condition to granting a permit for a temporary use, the Town Board may require that a bond be provided by the owner or operator of such use, sufficient to clean and restore the site to a condition at least equal in quality to that which existed before the temporary was established, should the owner or operator thereof fail to do so. Such cleaning and restoration may include removal of litter, garbage, or other solid waste; replacement or stabilization of top soil; removal of debris, equipment or other moveable property; and replacement of ground cover vegetation.

G. Signs:

1. In all districts, the following types of signs are specifically prohibited:
   
a. Signs so located as to restrict vision and impair safety of employees, customers, pedestrians or motorists.
   
b. Lighting devices or internally lit signs so placed or directed as to cause the illumination therefrom to produce a glare or reflection onto a public street or sidewalk, that constitutes a hazard or nuisance.
   
c. Signs illuminated by or containing flashing, intermittent, rotating or moving lights or devices.
   
d. Signs or sign structures exceeding eighteen (18) feet in height.
   
e. Signs exceeding a total area of thirty-two (32) square feet.
   
f. Commercial signs cannot be erected on residential property that advertise business(es) not conducted on that property, unless sign area is three (3) square feet or less, and combined height of sign and pole is six (6) feet or less.

2. All signs shall be erected or supported to withstand a wind of seventy (70) miles per hour. Signs or lights which constitute a hazard to public safety by reason of their location or physical condition may be removed by order of the Town Supervisor if the hazard persists. The person to whom the permit for such sign or light was issued shall be notified prior to such removal.

ARTICLE VI - GENERAL REGULATIONS APPLYING TO SPECIFIC USES

A. Storage of Flammable Liquids: Whenever any flammable liquid is stored in above ground tanks or other containers with a total capacity of greater than five hundred fifty (550) gallons, such tanks or containers shall be located within earthen dikes having a capacity not less than twice the capacity of the tanks or containers surrounded. The edge of such dikes shall be located at least one hundred (100) feet from any property line.

B. Junk Yards: All junk yards, wrecking yards or places for collection of waste materials or inoperable equipment shall conform to the following requirements:

1. The development of junk yards as of September 12, 1991, is prohibited.

2. All established, licensed yards used for such collection or storage shall be enclosed by a screen fence, designed to obstruct view from outside, which is at least eight (8) feet in height entirely surrounding the yard.

3. Materials stored and collected shall not be stacked or piled to a height greater than the closest screen fence.
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4. Materials shall not be collected or stored on a hillside of greater than ten percent (10%) slope, on a flood plain or adjacent to any stream bed.

5. Each year it will be necessary to apply for and obtain a license to operate a junkyard.

C. Mobile Homes and Mobile Home Parks:

1. All mobile homes shall be provided with an adequate water supply and method of sewage disposal, as determined by the standards of the New York State of Health and Environmental Conservation, and the Town subdivision regulations.

2. All mobile homes shall be anchored and located on foundations as follows:

   a. Mobile homes containing less than five hundred (500) square feet of floor area shall be anchored by means of at least four (4) frame ties and at least two (2) over-the-top ties, each tie to be securely anchored to the ground sufficient to withstand a 4,800 pound force without failure.

   b. Mobile homes containing five hundred (500) or more square feet of floor area shall be anchored by means of at least five (5) frame ties and at least three (3) over-the-top ties, each tie to be securely anchored to the ground to withstand a 4,800 pound force without failure.

   c. Ties shall consist of at least 1.25 inch by 0.035 inch galvanized steel strapping or 7/32 inch 7x7 or 1/4 inch 7x19 galvanized steel cable. Frame ties shall connect the steel beam supporting the structure to the anchors. Over-the-top ties shall be anchored on both sides of the unit.

   d. Whenever a mobile home has been constructed with concealed tie-down straps or connections, such straps or connections may be used. However, they must be of the same number and strength as otherwise required by this section.

   e. All mobile homes not located in a mobile home park must be located on their own identifiable building lot with appropriate setbacks.

3. No mobile home park shall be created or enlarged or licensed unless in conformance with this Local Law, including conformance with all requirements of the zoning district specified by this Local Law within which proposed mobile home park would be located. Such license shall be issued for a period of three years, and shall be renewable for an unlimited number of additional three-year periods. No license shall be issued until the Planning Board has approved a plan therefor showing compliance with the following regulations and no license shall be renewed unless the provisions and conditions of such approved site plan are continuously satisfied:

   a. All mobile home sites shall be accessible from a service roadway not less than twenty (20) feet in width.

   b. All mobile home sites shall be provided with permanent anchors sufficient to anchor a mobile home as provided under Article VI, Section C, paragraph 2, and any mobile home placed on that site shall be so anchored.

   c. All mobile home sites shall be so located as to provide a minimum distance of at least twenty (20) feet between a mobile home located thereon and any part of any adjacent mobile home or service road way.

   d. Off-street parking shall be provided adjacent to every mobile home for use of the residents thereof. Said parking to be provided in an amount, and subject to the restrictions and exemptions applicable to one family dwellings.

   e. Every mobile home park shall provide a pond, tank or other suitable water storage of a capacity of at least 30,000 gallons plus 2,000 gallons for every mobile home in excess of 20. Said facility to be provided with a dry hydrant of suitable construction approved by the
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Otsego County Fire Coordinator. Such hydrant shall be located within ten feet of and be readily accessible from a service roadway. No mobile home shall be located more than 1,500 feet from a fire hydrant provided under this section.

f. Every mobile home park shall be provided with its own sewer, water, and electrical service, and any occupied mobile home located thereon be connected to such utilities.

D. Non-conforming Structures and Uses:

1. Subject to the following conditions, any lawfully erected building or structure existing at the time of enactment of this Local Law may be continued although such building or structure does not conform to the provisions of this Local Law.

a. A non-conforming building may not be enlarged, extended or altered except in conformance with this Local Law, except that repairs shall be permitted where such repairs are necessitated by fire, wind, flood or other causes, except that additions may be added in such a way that the final structure encroaches no closer to the road than the existing non-conforming use and all other setbacks and parking requirements are met.

b. Any building or structure under construction at the time of enactment of this Local Law may be completed.

c. Any permitted use may occupy a non-conforming building or portion thereof. Where the design or construction of a non-conforming building is such that it is unsuitable for any conforming use, the Board of Appeals may issue a special permit to allow the establishment or re-establishment of a non-conforming use in such structure provided such use is contained wholly within an enclosed structure and meets the performance standards of this Local Law.

2. Subject to the following condition, any lawfully established use of any land, building or structure existing at the time of enactment of this Local Law may be continued, although such use does not conform to the provision of this Local Law.

a. once changed to a conforming use, no building or land shall revert to non-conforming use.

3. When a use, building or structure becomes non-conforming as a result of amendment to this Local Law or of the zoning district map made a part thereof, such use shall be subject to the regulations and restrictions applicable to a non-conforming use.

E. Camps, Theme Parks and Amusement Parks

1. No camp, day camp, sports camp, theme park or amusement park shall be permitted in the Town of Middlefield which provides for use by more than seventy (70) participants at one time. Multiple adjoining camps with any ownership or shareholders or management in common shall be considered a single park.

F. Telecommunications Facilities Act: On the 12th day of November, 2002, the Town of Middlefield adopted a telecommunications law known as the “Town of Middlefield Telecommunications Facility Act”, being Local Law No. 1 for 2002. The law provides detailed regulations for construction of Telecommunication Facilities, as defined therein. Erection of said Telecommunication Facilities requires site plan review and special use permit by the Town Board, pursuant to the rules and standards in said Telecommunication Facilities Act. The Telecommunications Facilities Act may have more stringent or different standards for approval of Telecommunication Facilities than found in
the Zoning Law. The standards set forth in the Telecommunications Facilities Act take precedent over those in this Zoning Law.

ARTICLE VII - ADMINISTRATION AND ENFORCEMENT

A. Administrative and Enforcement Officer:

1. This Local Law shall be enforced by the Zoning Enforcement Officer who shall be appointed by the Town Board. The Town Board shall fix the salary or compensation of such officer and provide for the payment thereof.

2. The Town Clerk is hereby given the following duties and authority:

   a. To accept all applications required by this Local Law and to transmit such applications to the chairpersons of the Planning Board or Zoning Board of Appeals.
   b. Where specifically authorized by this Local Law, to issue permits.
   c. To serve as Deputy Zoning Enforcement Officer and to have the same duties and authority as that official in his absence.
   d. To provide, upon request, copies of the Town Zoning Local Law and Map and any forms, rules and regulations used in administering this Local Law.

3. The Zoning Enforcement Officer is hereby given the following duties and authority:

   a. To enter upon, examine or inspect any land, building or structure for the purposes of administering or enforcing this Local Law.
   b. To receive complaints of violations of this Local Law or to make complaints based upon his own examination, inspection or knowledge.
   c. To act upon any and all complaints and to serve a written notice of violation upon the owner or occupant of the premises where there appears to exist a violation of any provision of this Local Law.
   d. To perform any other administrative or enforcement duties specified in this Local Law, including, but not limited to, the issuance of permits, licenses or certificates, accepting or reviewing of applications, plans or plats and carrying out any lawful order of the Town Board or Zoning Board of Appeals.

B. Permits, Certificates and Licenses:

1. Building permits: A building permit shall be required for any activity that involves:

   a. The creation of a new dwelling unit, or
   b. The enlargement by one hundred (100) or more square feet of the usable floor area of an existing dwelling, or
   c. The enlargement by two hundred (200) or more square feet of the usable floor area of an outbuilding, or
   d. The creation of a new building or structure having a floor area greater than one hundred fifty (150) square feet.
2. Building Permit Applications: Every building permit application shall include the following:

a. The location, size, dimensions and zoning district of the lot or lots on which the work is to be performed.
b. A sketch or drawing showing the location of the proposed building or structure, including dimensions to all property lines, and to the nearest building within one hundred (100) feet of the proposed building or structure.
c. A statement or drawing describing the proposed structure including its height, floor area, use and any information necessary to determine off-street parking and loading area requirements.
d. A statement or drawing showing all proposed parking and loading areas, driveways, anchors or tie downs, or required landscaped buffer areas.
e. Any other statements or drawings necessary to determine that the proposed work will comply with the various provisions of this Local Law.

3. Certificate of Occupancy: No building or structure shall be occupied except after a certificate of occupancy has been issued therefor by the appropriate Agency or Zoning Enforcement Officer subject to the following conditions:

a. The use conforms to all applicable provisions of this Local Law, and
b. The building or structure to be occupied conforms to that proposed on any approved building permit application or site plan, together with any recorded conditions made in the approval of such permit or plan and any applicable provisions of Article X of this Local Law; or
c. The use, or building or structure to be occupied by the use, does not conform to all the applicable provisions of this Local Law but is a bona fide non-conforming use as defined and regulated under Article VI, Section D of this Local Law.

4. No mobile home park shall be erected, established or occupied except after issuance of a mobile home park license by the Zoning Enforcement Officer.

5. The Zoning Enforcement Officer shall issue, issue subject to conditions, or refuse to issue any requested permit, certificate, or license within ten (10) days of his receipt of the application therefor, except where such application involves review by the Town Board, Board of Appeals or Planning Board under the provisions of this Local Law. Where such review is required, the Zoning Enforcement Officer shall notify the applicant of such fact and of any necessary applications, statements, plans, or other documentation required for such review, within ten (10) days of receipt of the original applications. The Zoning Enforcement Officer shall notify the applicant of meetings at which his application will be acted upon by any Reviewing Board, and said officer shall take such action as may be directed by such Board within ten (10) days of such direction.

C. Penalties for Violation:

1. Violation of this Local Law is an offense punishable by a fine not exceeding five thousand dollars ($5000) or imprisonment for a period not to exceed six (6) months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this Local Law shall be deemed misdemeanors and, for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each week’s continued violation shall constitute a separate additional violation.
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2. Where any building or structure is erected, constructed, converted, altered, used or maintained, or land is used in violation of this Local Law, the Codes or Zoning Enforcement Officer, in addition to other remedies, may institute any appropriate action or proceedings to prevent erection, construction, conversion, alteration, use, maintenance or occupancy; and upon the failure or refusal of the Codes or Zoning Enforcement Officer to institute any such appropriate action or proceeding for a period of ten (10) days after a written request by a resident taxpayer of the Town so to proceed, any three taxpayers of the Town residing in the district where such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as the Codes or Zoning Enforcement Officer is authorized to do. Such action may require reversal of the action that was in violation of this Local Law.

3. A complaint of violation of this Local Law may be made by any resident, property owner or Town official, including the Codes or Zoning Enforcement Officer.

4. Upon receipt of a complaint of violation, the Codes or Zoning Enforcement Officer shall investigate to determine the presence of a violation, and upon finding of violation shall serve notice upon the owner or occupant thereof. Said notice shall include the items listed under Article VII, Section C, paragraph 3 together with any observation made by the Zoning Enforcement Officer on the basis of his investigation. Such notice shall also specify what action is required by the owner or occupant of the property, and the date by which such action shall be taken. The term violation, as used in Article VII, Section C, paragraph 1, shall exist only after the date of required action, specified in the notice to the owner or occupant, passes without such specified action having taken place.

5. Notices required by this section shall be issued by the Codes or Zoning Enforcement Officer either by personal service to the owner or occupant, or by certified mail to the address of same shown on the tax rolls of the Town or contained in the statement of complaint.

D. Fees: The application for any permit, certificate, license or any review by the Town Planning Board or Zoning Board of Appeals shall be accompanied by a fee, an amount specified from time to time by resolution of the Town Board. All permits will be issued for a period of one (1) year, renewable for two (2) successive years at no cost.

ARTICLE VIII - BOARD OF APPEALS

A. Establishment, Membership and Meetings:

1. A Town Board of Appeals is hereby created, said Board of Appeals to consist of five (5) members appointed for terms of five (5) years, except that the members of the board when first appointed shall serve for terms as specified under Section 267 (1) of the Town Law. The Chairman and members of the Board of Appeals shall be appointed by resolution of the Town Board, which shall also have the power to remove any member for cause after a public hearing.

2. All meetings of the Town Board of Appeals shall be open to the public and said Board shall keep minutes of its proceedings, showing the vote of each member upon every question. Every rule, regulation, amendment of, repeal thereof, and every order, requirement, decision or determination of the Board shall immediately be filed in the Office of the Town Clerk and shall be a public record.
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B. Powers and Duties:

1. Appeals: The Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Enforcement Officer. The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirements, decision or determination of the Zoning Enforcement Officer. Such appeal may be taken by any person aggrieved, or by any officer or board of the Town, by filing with the Zoning Enforcement Officer and the Board of Appeals a notice of appeal, specifying the grounds thereof. The Zoning Enforcement Officer shall forthwith transmit to the Board all papers constituting the record of the action being appealed. An appeal stays all proceedings in furtherance of the action being appealed unless the Zoning Enforcement Officer certifies to the Board that, by reason of facts stated in such certificate, a stay would cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by a court of record. The Board may reverse or affirm wholly or partially, or may modify the order, requirement, decision or determination being appealed and make such order, requirement, decision or determination as, in its opinion, ought to be made.

2. Variances: The Board may vary the requirements of these regulations upon finding the following:

   a. That strict application of these regulations would impose an unreasonable hardship upon the applicant. Such hardship shall not be the result of any action by the applicant, and failure to realize financial gain from the use or sale of property shall not be considered an unreasonable hardship in the absence of other hardship.
   
   b. That the requested variance is consistent with the intent of the comprehensive plan and will not result in creation of a hardship upon neighboring property owners. Variance of the use regulations of the zoning district regulations is hereby declared not to be consistent with said plan.
   
   c. That the requested variance will not adversely affect public safety or welfare.
   
   d. That the requested variance is for the relief of unique circumstances, and that the hardship being relieved is not shared by all properties alike in the immediate vicinity of the property and the zoning district.
   
   e. That the variance requested is the minimum necessary to grant relief. In granting a variance, the Board in its resolution shall specify its findings, and the fact that all of the conditions specified in Article VIII, Section B, paragraph 2 are satisfied. When a variance is sought to the yard, setback or lot area requirements of the district regulations, a finding that strict application of these regulations would result in practical difficulty in the use of the land, may be substituted for the finding of hardship.

3. Special Permits: The Board of Appeals shall have the authority to issue special permits, as provided in the district regulations of this Local Law, upon finding the following:

   a. That the proposed use is authorized under the zoning district regulations as a permitted use subject to issuance of a special permit therefor.
   
   b. That the proposed use will not have an adverse impact upon the area in which it is to be located.
   
   c. That the proposed use complies with all applicable provisions of this Local Law, or will so comply prior to the issuance of a certificate of occupancy.
   
   d. That the proposed use is consistent with the comprehensive plan of the Town.
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e. That the proposed use will not cause excessive traffic, will not detract from the property value of any adjacent property, and can be adequately served by existing or proposed public facilities or utilities.

4. Application: Applications for appeals, variances or special permits shall be made to the Zoning Enforcement Officer for transmittal to the Board, and shall contain the following:

a. The name, address and phone number of the applicant.

b. The location and zoning district of the property for which a variance or special permit is sought, or in reference to which an appeal is made.

c. The existing use of said property including a description of any existing buildings.

d. Citation to the provision of this Local Law for which a variance is sought, or under which a special permit is sought or a description of the circumstances resulting in the appeal.

e. Justification of the request for variance or special permit or a description of the circumstances resulting in the appeal.

f. A statement of the relief sought.

g. An Environmental Assessment Form (short form).

5. In the exercise of its powers and duties, the Board of Appeals, through its chairman, or in his absence, its acting chairman, may compel the attendance of witnesses and may administer oaths prior to taking the testimony of any witness.

6. In addition to the findings required before the granting of any variance or special permit under this section, the Board of Appeals may consider any other evidence necessary to show compliance to the intent and purpose of this Local Law.

7. The Board, in granting any appeal, variance or special permit, may attach such conditions to said approval as in its determination are necessary to achieve the intent and purpose of this Local Law.

C. Procedures and Referral:

1. All applications for action by the Town Zoning Board of Appeals shall be made to the Zoning Enforcement Officer on such forms as he may prescribe. Such application for appeal under Article VIII, Section B, paragraph 1 above shall be made within thirty (30) days of the action being appealed.

2. The Zoning Enforcement Officer shall transmit a copy of the application, together with any accompanying documents to the Board of Appeals, who shall schedule a hearing thereon. Public notice of said hearing shall be given by publication in the official paper: of a notice of such hearing at least five (5) days prior to the date thereof, and the Board shall, at least five (5) days before such hearing, mail notices thereof to the adjoining properties, and to any regional state park commission having jurisdiction over any state park or parkway within five hundred (500) feet of said property. Where any variance or special permit application affects any real property lying within five hundred (500) feet from the boundary of any existing or proposed County or State park or other recreation area, or from the right-of-way of any existing or proposed County or State parkway, thruway, expressway, road or highway, or from the existing or proposed right-of-way of any stream or drainage channel owned by the County or for which the County has established channel lines, or from the existing or proposed boundary of any County or State-owned land on which a public building or institution is situated, the Board of Appeals shall notify the Otsego County Planning Board of said application and submit copies of the application and any supporting documents thereto. No action shall be taken upon any matter referred to the
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Otsego County Planning Board until said Board shall have made a recommendation thereon to the Board of Appeals, or thirty (30) days shall have elapsed since the date of referral.

3. The hearing of an appeal or application shall take place within sixty (60) days of the filing of the appeal or application.

4. Upon a motion initiated by any member and adopted by the unanimous vote of the members present, but not less than a majority of all the members, the Board of Appeals shall review, at a rehearing, any order, decision or determination of the Board not previously reviewed. Upon such rehearing, and provided it shall appear that the rights vested prior thereto in persons acting in good faith in reliance upon the order, decision or determination reviewed will not be prejudiced thereby, the Board may, upon concurring vote of all the members present, reverse, modify or annul its original order, decision or determination.

5. The Board of Appeals shall reach a decision on any application or appeal within forty-five (45) days of the final hearing thereon. Such decisions shall be promptly filed in the office of the Town Clerk and shall be a public record. Within seven (7) days of such decision, notice thereof shall be transmitted to the Otsego County Planning Board whenever such decision relates to an application referred to said County Planning Board.

D. Judicial Review

1. Any person or persons jointly aggrieved by any decision of the Board of Appeals or any officer, department, board or bureau of the Town, may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceeding shall be instituted within thirty (30) days after the filing of a decision in the office of the Town Clerk. The court may take evidence or appoint a referee to take evidence as it may direct and report the same with his findings of facts and conclusions of law if it shall appear that testimony is necessary for the proper disposition of the matter. The court, at a special term, shall itself dispose of the case on its merits, determining all questions which may be presented for determination.

2. Costs shall not be allowed against the Board of Appeals unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

3. All issues in any proceeding under this section shall have preference over other civil actions and proceedings.

4. If, upon the hearing at a special term of the Supreme Court, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with its findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determinations of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

ARTICLE IX - MISCELLANEOUS PROVISIONS

A. Amendments:

1. These regulations or the boundaries shown on the Zoning district map, may be amended, supplemented, changed, modified or repealed by Local Law adopted by the Town Board. In case,
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however, of a protest against such change, signed by the owners of 20% or more, either of the area of land included in such proposed change, or of that immediately adjacent extending one hundred (100) feet there-from or of that directly opposite thereto, extending one hundred (100) feet from the street frontage of such opposite land, such amendment shall not become effective except by vote of at least three-fourths of the members of the Town Board.

2. No amendment, supplement, change or modification of these regulations or the boundaries shown on the Zoning District Map shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard.

3. At least ten (10) days notice of such public hearing shall be published in a paper of general circulation within the Town and a written notice of any proposed change or amendment affecting property within the protectively zoned area of a housing project authorized under the public housing law, as such area is shown on the official Zoning Map of the Town, or within five hundred (500) feet of the boundaries of any city, village, town, County, State park or parkways, shall be given, in the case of a housing project to the housing authority erecting or owning the project and to the government providing financial aid or assistance thereto, in the case of any State park commission, in the case of a city, village or town to the clerk of such city, village or town, and in the case of a County, to the clerk of legislative board of said County, at least ten (10) days prior to the date of such public hearing. Such city, village, town or County shall have the right to appear and to be heard at such public hearing with respect to any such proposed change or amendment, but shall not have the right to review by a court.

4. Any zoning regulation or amendment thereof, which would change the district classification or of the regulations applying to real property lying within the distance of five hundred (500) feet from the boundary of any city, village or town, or from the boundary of any existing or proposed County or State park or other recreation areas, or from the right-of-way of any existing or proposed County or State parkway, thruway, expressway, road or highway, or from the existing or proposed right-of-way of any stream or drainage channel owned by the County or for which the County has established channel lines or from the existing or proposed boundary or any County or State-owned land on which a public building or institution is situated, shall, before the Town Board takes final action on such matters, be referred to the Otsego County Planning Board. Within seven (7) days of final action by the Town Board on any recommendations by said County Planning Board, the Town Board shall file a report of the final action it has taken with said County Planning Board. If the County Planning Board disapproves any such proposal, or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members thereof and after adopting a resolution fully setting forth the reasons for such contrary action.

B. Referrals to Town Planning Board:

1. All proposed amendments to this Local Law shall be referred to the Town Planning Board upon its consideration of the Town Comprehensive Plan. The Town Planning Board shall report its recommendations on such referral to the Town Board within thirty (30) days of such referral.

2. Any application for variance or special permit shall be referred to the Town Planning Board whenever said application relates to any site plan under review by said Board. The Town Planning Board may recommend action thereon to the Zoning Board of Appeals based upon its review of such site plan, and may make an approval of such site plan conditional upon approval by the Zoning Board of Appeals of all related variance or special permits.
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C. **Interpretation and Conflict with Other Law:** In their interpretation and application, the provisions of this Local Law shall be held to be minimum requirements, adopted for the promotion of public health, morals, safety or general welfare. Whenever the requirements of this Local Law are at variance with the requirements of any other lawfully adopted rules, regulations or Local Law, the most restrictive, or that imposing the higher standards, shall govern.
Section 5. Zoning Map.

The Zoning Map for the Town of Middlefield, dated March 8, 2010, and signed by the Board on June 14, 2011, is hereby adopted and declared to be the Zoning District Map of the Town of Middlefield, and an appurtenant part of the Town of Middlefield Zoning Law.

Section 6. Severability.

If any article, section, sub-section, provision, regulation, limitation, restriction, sentence, clause, phrase, or word in this local law is declared for any reason to be illegal, unconstitutional, or invalid by any court of competent jurisdiction, such decision shall not affect or impair the validity of said local law as a whole, or any other article, section, sub-section, provision, regulation, limitation, restriction, sentence, clause, phrase, word, or remaining portion of said local law. The Town Board hereby declares that it would have adopted this local law and each article, section, sub-section, provision, regulation, limitation, restriction, sentence, clause, phrase, and work thereof, irrespective of the fact that any one or more of the articles, sections, sub-sections, provisions, regulations, limitations, restrictions, sentences, clauses, phrases, or words may be declared illegal, unconstitutional, or invalid.

Section 7. Repeal.

All ordinances, local laws and parts thereof inconsistent with this local law are hereby repealed.

Section 8. Effective Date.

This local law shall take effect immediately upon filing in the office of the New York Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.