

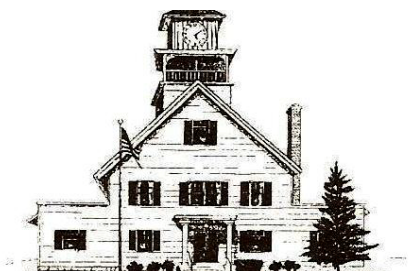
**TOWN OF YORK STEERING COMMITTEE  
ON HIGH VOLUME HYDRAULIC FRACTURING  
FINAL CONCLUSIONS AND RECOMMENDATIONS TO THE TOWN BOARD**



May 2013



**Clark Patterson Lee**  
DESIGN PROFESSIONALS



**TOWN OF YORK**



**Town of York Steering Committee  
Final Conclusions and Recommendations to the Town Board**

The following document constitutes the final conclusions of the Town Steering Committee that was set up in October of 2012 to review and research high volume hydraulic fracturing for oil and natural gas drilling operations, and their potential environmental impacts to the community. This document presents the results of this process and provides recommendations to the Town Board of York for consideration.

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## TOWN OF YORK

### ACKNOWLEDGMENTS

**The Hydraulic Fracturing Review Steering Committee included the time, input and support from the following volunteer committee members:**

Jack Ellis, Committee Chairman  
Henry (Steell) Fuller  
Bill Doolittle  
Frank Rose, Jr.  
Lynn Parnell  
Larry Smith  
Carl Peter  
Heather Grant (*resigned November 2012*)

**Technical support for the Committee was provided by:**

Norm Gardner, Clark Patterson Lee  
Justin Steinbach, Clark Patterson Lee  
James Campbell, Kruk & Campbell, P.C. (Town Attorney)  
Andrew Emborsky, Kruk & Campbell, P.C. (Town Attorney)

# **Town of York**

## **High Volume Hydraulic Fracturing Oil and Natural Gas Drilling**

### **Steering Committee Review**

#### **Overview**

The Town of York has had gas drilling operations in the Town for several decades. These gas wells utilized traditional vertical drilling methods to tap the more traditional coarser grained sandstone rock formations present beneath the Town. However, technological advancements in horizontal drilling techniques have allowed energy companies to utilize high-volume hydraulic fracturing (HVHF) and horizontal drilling methods, also referred to as “hydro-fracking”, to extract natural gas from the previously unproductive, low permeability shale formations (Marcellus Shale, Utica Shale) that also exist beneath the Town. The method utilizes significant quantities of fresh water injected into the shale rock to hydraulically fracture the shale and create a permeable gas reservoir that is then capable of yielding economically beneficial quantities of natural gas from the shale. The fresh water is returned to the surface in the form of “frack water” which then needs to be disposed of as a wastewater. The process involves the management of several million gallons of water during the drilling process.

HVHF natural gas drilling methods are currently permitted and common in Pennsylvania. However, communities within the significant HVHF operations area have identified several potential environmental impacts associated with this type of drilling. Learning from their neighbors to the south, the New York State will not permit HVHF drilling operations until the results of an Environmental Impact Statement process is completed by the Department of Environmental Conservation (NYSDEC) and Department of Health (NYSDOH). NYSDEC permitting rules and regulations will likely address the methods and requirements the HVHF drillers will be required to comply with regarding potential environmental impacts of the well siting and drilling process. NYSDEC regulations will likely also address “larger-scale” concerns and compliance with other State rules and regulations. The focus of this Committee is specific to the potential “local” impacts to the specific to the Town of York.

#### **Process Summary**

The Town of York has identified that HVHF drilling is a possibility within its borders. When the Town updated their Comprehensive Plan in 2006, there was no mention of HVHF gas drilling, as it was not occurring in New York. With the lack of any specific language or direction regarding HVHF gas drilling in the Comprehensive Plan, the Town needed to take a thorough look at HVHF drilling activities if they were to be permitted within New York and provide specific recommendations to the Town Board on a proposed course of action to address these potential local issues, while adhering to the general intent of the Comprehensive Plan, which includes:

- Supporting agriculture and farming in the Town as the dominant use.
- Conserve environmentally sensitive areas, with particular attention to steep sloped, wetlands, floodplains, woodlands and other critical features.

- Regulate access onto major highways through access management and standards.
- Attract new industrial employers with particular attention to the [former] Empire Zone [the area of the former Salt Mine].

At its October 11, 2012 Town Board meeting, the Town of York approved organizing a Steering Committee to review/research HVHF drilling operations and the potential impacts it may have specific to the Town environment. The committee was charged with researching HVHF methods and review local impacts of this specific drilling technique has had on other communities, and if appropriate, develop an appropriate course of action to address local concerns, while balancing compliance with proposed State regulations. The makeup of the Steering Committee included Town staff, Town Board members, Town Engineer and local residents from various backgrounds.

The primary goal of the Steering Committee was to research HVHF gas drilling, review potential local impacts this type of drilling may have, and identify options available to the Town under its police power/municipal home rule powers to minimize impacts to its residents, community, and local environment. The Steering Committee developed a mission statement to help guide the group with its intent, goals and eventual recommendations/actions:

*“To protect the common interest of the Town of York as it pertains to natural gas development, specifically the practice of high-volume hydraulic fracturing, by studying the topic in great lengths and identifying appropriate actions to take to maintain the continued rural character of the community, protect community values, and ensure a safe environment for all.”*

The Steering Committee met from October 18, 2012 through April 2013. Meetings were open to the public to attend. Meeting minutes are included in Appendix A. During the meetings, the Committee reviewed various information related to HVHF drilling and identified potential environmental impacts relative to potential impacts specific to the Town of York. Representatives from neighboring Towns were invited to meetings to provide additional input. The Committee as a whole also took part in a field trip to tour existing drilling sites in Pennsylvania to review firsthand HVHF drilling operations within a local community. Some of the Committee members also took an earlier tour of a drilling site sponsored by Livingston County and brought that experience to the table as well. The Committee also took note of the various public comments that were presented to the Town Board regarding HVHF drilling from January 8, 2012 to the present.

Clark Patterson Lee (CPL), the Town’s Engineer, developed mapping of the Town identifying specific features relevant to the town’s physical and environmental setting. These maps allowed the Committee to conduct a more in-depth review of the physical setting of the Town in relation to the proposed NYSDEC regulations concerning siting of potential HVHF wells. These maps are provided in Appendix B. One of the features identified in the mapping that is unique to the Town of York is the Akzo Salt Mine, which encompasses approximately 7,000

acres of land across several communities – over 2,500 acres is located in the southeast corner of the Town of York. In 1994, a portion of the mine collapsed, resulting in land subsidence, sinkholes, local water well degradation, flooding of the mine by surface waters and principal aquifers, and the eventual closure of the mine, leaving a combination of local economic and environmental impacts on the Town. Although the specific process by which the resource is extracted and the footprint is different, the general process is the same – extraction through mechanical means by opening up areas underground. The salt mine event provides additional local impetus for reviewing and revising its local land use laws to protect specific, local assets that would not otherwise be addressed by a statewide agency.

In addition to those potential environmental impacts addressed by NYSDEC's proposed regulations, the Committee identified other potential areas of concern that may impact the Town of York on a specific, "local" scale. The Committee then assessed the ability of, and mechanisms for, the Town developing its own rules and regulations to further protect the safety and environment within its borders.

## **Conclusions**

The Committee has taken a hard look at the issues and potential impacts associated with HVHF natural gas drilling should it occur in the Town of York. Based on careful study and consideration of the issue in respect to present and future needs and the general outlook of the community, the consensus of the Committee was to not pursue banning HVHF drilling within the Town, but to enact policies and regulations to the best of the Town's ability to protect the health, safety, environment and welfare of its residents. Based upon its research, the Committee has identified several potential impacts of HVHF drilling operations that could be regulated within the Town's ability (i.e. home rule authority). The information contained within this study will be included by reference into the Town's most recent Comprehensive Plan to guide future decision and policy making and ensure consistency with the goals and direction of the community.

The committee feels that although the State of New York has not yet made a final decision on hydrofracturing activities and litigation is still taking place on court cases relevant to this topic, there are some avenues that can be pursued to add further protect the Town.

### **General Policy**

The policy of the Town of York is to allow HVHF drilling activities in the community, provided that the Town's primary industry, agriculture, and is maintained and protected to the greatest extent possible and certain identifiable local interests beyond those identified and regulated by the State and County are protected.

### **Road Use Agreement**

The Town of York has over 54 miles of local roads within its jurisdiction. State and County roadways are not within the Town's jurisdiction however, the Town can impose regulations on how its local roads are utilized. The Committee identified the potential for significant impacts

to its local roads as a result of heavy truck traffic that accompanies HVHF drilling. The Committee has identified developing a local road use agreement requirement when activities exceed certain thresholds on weight and trip frequency. Several road use agreements were reviewed from other jurisdictions that served as the framework for the agreement, including the draft agreement from Livingston County and a model agreement from the Cornell Local Roads Program. The proposed road use agreement is presented in Appendix C.

### **Existing Zoning Requirements**

The Town currently has an existing zoning code that addresses several of the potential impacts of HVHF drilling. Specifically, zoning districts uses, lot size, setbacks, noise and other performance standards were identified. Currently, sections of the code partially address HVHF drilling impacts; however, the Code requires amendments / revisions to specifically addresses impacts that could occur as a result of HVHF drilling activities or secondary impacts in the Town. Revisions to the Code need to be balanced with existing operations and permitted uses in the Town (e.g., dairy farming activities).

Specifically, the committee recommends zoning revisions that regulate temporary housing (commonly referred to as “man camps” in the industry), increases penalties for violations, clarifies third-party inspections and plan review reimbursable expenses, adds additional protection to agricultural operations for outdoor lighting and clarifies interpretation of permitted uses. The proposed amendments / revisions to the zoning code are included in Appendix D.

### **Aquifer Overlay District**

One critical environmental feature that was identified by the Committee was the presence of a NYSDEC-defined “Principal Aquifer” that is located within the Town. Although the State’s proposed regulations protect only “Primary Aquifers”, many residents and businesses in the Town rely on this Principal aquifer for their potable water supply. The Town has learned from past events, specifically the Salt Mine collapse, that this aquifer is a critical and vulnerable resource to the Town and impacts to it have caused significant financial impacts as a result of numerous residents losing their private water supply through contamination or loss of water. The Town responded by extending its public water service to areas that would otherwise rely in private water. AS a result, the Committee has recommended an overlay district be developed that protects this critical resource by regulating certain uses and activities in its bounds. The draft language for this overlay district in included in Appendix E.

In addition, it is recommended that the Town develop a new section of its existing zoning code that provides specific criteria and regulations with respect to land use and local impacts associated with oil & gas drilling operations, Section 618 (Oil and Gas Drilling Facilities). This section of the Code would be patterned / formatted after Section 617 that specifically addresses wind energy facilities.

In summary, the following areas of the existing Town Code were identified as needing to be further reviewed and revised /amended for clarity and completeness.



1. Section 201 (Definitions)
2. Section 400 (Agricultural District) / Section 408 (Industrial District) Permitted Uses
3. Section 508 (Accessory Buildings)
4. Section 509 (Dumping of Waste Material)
5. Section 510 (Outdoor Storage of Materials and Equipment)
6. Section 512 (Temporary Uses and Structures)
7. Section 514 (Protection of Environmentally Sensitive Areas)
8. Section 516 (Performance Standards)
9. Section 518 (Outdoor Lighting Regulations)
10. Section 519 (Off-site Parking and Loading)
11. Section 520 (Landscaping, Screening & Buffering)
12. Section 521 (Excavations and Fill)
13. Section 802 (Certificates and Permits)

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**Appendix A**  
**Steering Committee Meeting Minutes**



**Steering Committee- Zoning Review for Hydrofracking**  
October 18, 2012

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**Present:** Committee Members- Jack Ellis, Larry Smith, Lynn Parnell, Steel Fuller, Heather Grant, Frank Rose Jr. Others- Supervisor Jerry Deming, Attorney Andy Emborsky, Davies Nagel, Pat Gardner, Renee Lyness, Fred Mangreno

Mr. Deming commenced the meeting at 7:10 pm- explained that this would be the first organizational meeting for the Steering Committee to review the Town zoning in regards to hydrofracking. Need to work toward a common goal of what is best for our community.

**Intro:**

Mr. Emborsky explained that the charge of the committee is to determine what if anything the Town should do with regard to restricting and/or banning fracking. It is important for the committee members to familiarize selves with the comprehensive plan. He explained that we cannot regulate the gas industry but we do have the ability to ban and zone- we should consider both restrictions because once the state allows permits for fracking, we lose all ability to ban or restrict within our own Town. He stated that we are limited in what we can do with the restrictions and basically can only say where the fracking may occur in our Town boundaries. Mr. Emborsky suggested that all committee members need to thoroughly review the comp. plan, zoning and state regulations- once this is done we can engage in discussion of what steps we need to take.

Mr. Ellis asked if we come to a resolution as a committee- what happens next, does it go to a vote?

Mr. Emborsky said yes, it would be a public referendum. After a vote, attorneys will hash out the info and formulate a final draft. He stated that no one is sure what the state is going to do in regards to fracking or what the time frame will be. Now is the time to act- critical because if committee says yes to a ban then we can put it in place before too late.

Mr. Deming clarified that once someone applies for a permit if NYS allows, the Town loses all ability to place a ban on fracking.

Mr. Smith said he hears that there are approx. 40-50 wells in the town- how many owners does this actually represent?

Mr. Deming stated that 95% of the gas wells in York are located in the Northern end of Town.

**Questions/ Issues to consider:**

Mr. Smith stated that it seems very difficult to tax this industry- a majority of the community does not receive benefit from fracking when it enters into a region- mostly just landowners.

Mr. Deming proceeded to list other questions/issues he would like the committee to think about...

1. NY State says drilling cannot happen within 1,000 feet of gathering place- is that enough?
2. What about a road use agreement being developed by the County?
3. What about drilling near the salt mine- bad idea?
4. Where will the waste go if fracking comes to York?
5. What is the water source to be used?
6. Noise level- will our existing noise ordinance cover issues with fracking noise pollution
7. What about the lighting?
8. What would the hours of operation be?
9. Will there be temporary housing put up?
10. How does it affect traffic in the hamlets?
11. Storage areas?
12. What would a fracking permit cost? Taxing issues
13. Aquifers- keeping them safe
14. All water wells existing now should be tested before any permit given
15. Vibration
16. Emissions
17. Storm water

Mr. Ellis said that the DEC would watch over the industry. Mr. Deming said they just don't have the manpower to control all of it. Mr. Ellis has worked with DEC on other situations where they had to disturb ground.

Mr. Deming also brought up the liability issue- would a land-owner be liable if problems arise due to fracking for which they were leasing their land. Mr. Emborsky was not sure about this issue. He said it would be a sticky scenario but if York manages to update the zoning and put clauses in that landowner and company are both responsible, we could use this but it might also be struck down. That is why this committee is working now- to formulate answers to all of these issues.

Mr. Smith stated that the current York zoning has a very specific wind energy section. Mr. Rose agreed that this might be a good guideline to use when drafting zoning for fracking.

#### **Committee Organization:**

Chairman will be Jack Ellis- all in favor. Also Heather Grant will be secretary- all in favor. All committee members filled out information- name and email. Committee decided to meet every week on Wednesday evening at 7:00 pm at the Town Hall through the end of November. Dates for upcoming meetings: 10/24, 10/31, 11/7, 11/14, 11/28. Mr. Deming requested to have a written report submitted to the Town Board once a month- first report will be due 11/20- one member of the committee should be present at Town Board meeting.

#### **Tasks to complete for next meeting:**

- Mr. Ellis recommended that everyone review the current zoning of the Town of York- especially the wind energy section.

- Mr. Ellis will contact the Supervisor of the Town of Avon to gain further input.
- Mr. Emborsky stated that he will try to be at all of our regular meetings.
- Mr. Deming stated that he would be able to contact engineers if we needed their input as well. Mr. Deming will also look into scheduling a tour to visit a fracking facility and community soon.
- Mr. Fuller or Ellis will try to obtain a map of the salt mine with an overlay to see exactly what the extent of it is.
- Everyone on committee should make a list of ideas to review; study the current wind zoning;
- Mr. Smith will look into ag. District information

Meeting adjourned at 8:45 pm.

Respectfully submitted,

Heather Grant, Secretary Steering Committee





## **Steering Committee Meeting- 10/24/12**

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Committee members present- Steell Fuller, Larry Smith, Heather Grant, Jack Ellis, Lynn Parnell, Frank Rose Jr.

Others: Jerry Deming, Mike Froome from Avon Steering Committee, Norm Gardner and Rick Henry of Clark Patterson Engineering, Clara Mulligan, Fred Mingrino, Dave Nagel, Phillip Mulligan, Lee Gratwick, Pat Gardner, Rene Lyness, Carl Peter

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**Jack called meeting to order 7:05 pm.** Mike Froome and Clara Mulligan from Avon attending to share ideas and issues they have been dealing with on their committee in Avon. Clark Patterson group present to explain how they can help us with writing of zoning.

### **Review of Avon's experience:**

Mr. Froome spoke about what Avon has been working on in regards to fracking zoning issues- they have a moratorium. Midway through the research right now. Lenape's attorney/ consultant is Mr. Love attends all of Avon's committee meetings.

Mr. Smith asked if they looked at a total ban as starting point- no, moratorium was passed on a split vote. Ban was not really an option but could be a possible outcome after moratorium. Mr. Smith wondered if they found a checklist to help with this type of zoning- Mr. Froome stated no they have not found that but he said two lawyers out of Ithaca named Slottje have written zoning, bans and moratorium which have been held up in court. Mr. Froome says most horrible thing would be is to do nothing and expect DEC to regulate and protect us- Mr. Holko argues to their committee you cannot regulate how gas drilling takes place- can only regulate **if** it takes place...

Mr. Rose asked Mr. Froome what have been the top issues discussed- no single issue dominates- just really asking is large industry something the town wants to support? Avon will be conducting a community poll- they don't want to just go on heresay.

### **Tax issues:**

Mr. Smith wondered if there are any tax benefits- how can Towns benefit- Avon is in discussion on this...had speaker in to tell them how town will benefit taxwise but not until gas actually flows. Mr. Gardner says wind companies are paying big dollars to Wyoming County- we could do same type of thing here with fracking. Get the money up front before the fracking happens. Not necessarily a "tax".

**Creating zoning:**

Mr. Deming asked Mr. Gardner and Mr. Henry to attend this evening to see if they could help us with development of fracking code.

Mr. Smith said we might be able to follow the wind energy code when creating fracking zoning. Will need to look at permits for road use- if we were to control road usage- how do we regulate this? Mr. Froome said need to be careful with zoning of this when writing- gas company will look at every part to see where they can crack it- Mr. Rose said we should review the windmill code as starting point and go through each section making notes.

Mr. Smith asked if any leases in Avon- yes- doesn't cover vertical or horizontal- doesn't matter- if they have a lease they have access to your rights- Mr. Smith wondered about regulating horizontal wells- compulsory integration exists- Mr. Froome says you can go online and search the SGIS by DEC- DEC only watching ONE part of trucking- need to coordinate with many other agencies- they are incredibly understaffed- ¾ existing wells are inspected- how will they inspect new ones? There is an entire chapter on zoning and regulation of fracking.....impacts to local governments

**Road Usage:**

Mr. Gardner said look at how much you could charge to run a road- also place mandatory issues in place such as upgrade of road. Mr. Deming wondered if we could restrict them to using only State roads. Mr. Ellis asked about Storm Water Plans- Mr. Gardner said they are upgrading these in regards to gas drilling. Mr. Ellis has a lot of literature on this topic.

Mr. Fuller is worried about road usage- Mr. Deming asked how do you control or enforce any road regulations...

**Comprehensive Plan:**

Need to focus on what we want to determine is right for our community. Mr. Ellis said he heard fracking will not happen here. Mr. Holko has made a big point of protecting his interests- hints that fracking is coming. Ms. Grant suggested that if you read over the comprehensive plan for Town of York- fracking just does not fit in with this plan.

SGIS has list of areas that cannot be fracked- need to review this and find out where in Town of York high volume fracking can occur and see what we can do to protect ourselves from this...

**Floodplains and mine:**

Floodplain questions- NYS GIS has digitized maps we can obtain- a lot of things that are environmentally prohibitive of fracking... we should look this over to see what we really need to focus on.

Mr. Gardner says this is the first step we need to take- find out what is already protected in the town and develop this further. Questions on salt mine issues- how can we keep fracking away from this?

**Liability issues:**

Question if something does go wrong with fracking procedures- near salt mine- Lenape doesn't have resources— Mr. Gardner says there are opportunities to get bonding and funds up front to cover these things....

**Fracking tour:**

Mr. Deming asked Chesapeake Energy about tour- said they are open- it is in Towanda PA- also Vera Scroggins from Brackney, PA- shows other side of tour- have over 1000 wells in her county- gives 3-5 hour tours- 5 different gas companies working there- mostly subcontracted- now just picked up and left for Ohio- can still see a lot of what is going on

Committee would like to schedule tour to Brackney, PA- looking at Saturdays- Avon committee may join us on tour- scheduling for Nov. 1<sup>st</sup>.

**Tasks:**

Mr. Ellis- need ideas and wording to create actual mission for this committee- Need to come up with mission statement to keep us on track!!

Clark Patterson will come to Nov. 7 meeting; Avon's committee meetings are first and third Thurs. of month...

Tour date set for Nov. 1<sup>st</sup>; come up with ideas for wording of mission; would like to hear about ag district info- Mr. Smith will look into this- Mike Saviola will be coming from Ag and Markets to explain ag district info and trucking; look at overlaying maps to help us develop code; research insurance and liabilities...

**Closed meeting at 9:20 pm**

Respectfully submitted,

Heather Grant, Secretary



## **Steering Committee Minutes- 11/7/2012**

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Call to order

Attendance- 4 visitors, committee, 2 from Clark Patterson

Read, discussed and acknowledged last meeting minutes

Steering committee mission/ goal- Jack presented ideas

FYI- shared info and literature

Old Business

PA trip status- waiting until next meeting on 11/14

Overlay maps of Town (Clark Patterson)- discussion followed

Actual land parcels already zoned for gas development- discussion

### **New Business-**

Zoning Category separate item or special use

Actual zoning wording (authors)- Clark Patterson

Infrastructure uses allowed/or (water, sewer, roads, right of ways, etc.) sample of Steuben Cty

Setbacks (existing bldgs, roads, creeks, bordering props)- discussion held

Set Actual meeting dates (schedule) along with time limits- (7-9)- Jerry

Hand outs from Clark Patterson-

Process Chart; County Highway Terms/ Condition sample; Gas and Oil Exploration (sample from Town of Perinton)

Open Discussion

Meeting adjourned 8:50 pm



## **Steering Committee Minutes- 11/14/2012**

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Attendance- Jack Ellis, Larry Smith, Lynn Parnell, Steell Fuller, Carl Peter, Bill Doolittle, Clark Patterson rep, Frank Rose, Jerry Deming- Norm and 3 guests

Meeting called to order 7:05

Reviewed minutes from 11/7/12 meeting

Discussion over concern of regulating this industry before DEC makes final regulations- reviewed example of Binghamton City lawsuit

Old Business:

Set date for PA visit- November 29<sup>th</sup>- leave here around 7:30 am

Clark Patterson is working on salt mine map- working on getting it overlaid on town map- takes over much of SE corner of town- Justin will be adding aquifers to map... town has several "principal aquifers" which are not regulated by DEC- map should be ready by Nov. 28<sup>th</sup>

Discussion on regulations regarding gathering places

Discussion on keeping open mind with regard to what is best for Town

New Business:

Lenape has 42 active wells- pays \$3900 for all per year

Mr. Smith explains his plan for road care- give us \$5 million before starting drilling- Clark Patterson explained rights for our road usage- pre and post condition surveys- identify specifics of volume for trucking so not regulating farm trucks

Committee agrees we need to focus on creating zoning to protect Town while allowing high volume hydrofracking to come to York.

Mechanisms: assessments based on type of gas well- also road usage permits etc...

Map will help us to identify potential well sites-

Need to break down issues with categories- setbacks, lot sizes, roads, monitors of industry, water safety, noise, view sheds, farms, frontage, assessment values determined, protection of ag industry,

Should invite dairy farmers to meeting in December- once we have map with overlay, gone to PA to research

Jerry needs to know by Monday who will be going on the PA trip

Meeting adjourned 8:50





**Steering Committee meeting minutes 11-28-2012****Attendance:**

Committee: J. Ellis, S. Fuller, B. Doolittle, L. Smith, L. Parnell, J. Deming

Clark Patterson Lee: N. Gardner, J. Steinbach

York Zoning: C. Peter

Meeting called to order approx. 7:15 pm

Read/reviewed/discussed meeting minutes from last meeting held 11-14-2012

**Old business:**

1. Pa. Trip – scheduled for Thursday 11-29-2012, leaving at 7 am from Town Hall parking lot. 20 people signed up to go. Ideas and comments from participants at next meeting.
2. Discussions/comments about Avon's lawsuit bought on by Lenape in the amount of \$50 million dollars.

**New Business:**

1. Clark Patterson Lee representatives presented several overlay maps of the town of York addressing virtually every aspect of authorized zoning within town boundaries. Such overlays include aquafir locations, Akzo location, flood plains, town/county/state highways (54 miles of town roads), the 7 hamlets that make up the town of York, Ag lands (31,398 acres), existing Lenape's wells, etc. Lengthly discussions followed. This presentation made all members present aware of all criteria which addresses any questions on how to address proper zoning criteria of which time did not allow us to continue with our original meeting agenda which consisted of 10 items with input to Clark Patterson. Next meeting these items will be discussed. Please bring any/all ideas.

## List of ideas:

Designated road use

SWPPP plan

Lot size requirements

Set backs

Inspections

Water services

Sewer services

Fees

Noise limitations

Time limits

2. Need to come up with another list of items to address at next meeting to "keep the ball rolling"
3. Need new member to replace Heather Grant – Jerry Deming (town board) to appoint.

4. Acknowledged the 11-28-12 literature titled "LNG Exports Reveal Industry's True Motive: Profits" from the Planning Board (Dave Nagel). My comment is that everyone has his/her own opinion on these issues and I do not believe this represents the community as a whole. Isn't it great we live in a society where we can express our concerns and make comments, but to use "global warming" as an excuse is your concern – not mine.....Jack Ellis

Meeting adjourned at 9pm.....J Ellis recording secretary

## **Steering Committee Minutes 12/5/2012**

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### Attendance –

Committee - S. Fuller, B. Doolittle, L. Smith, L. Parnell, J. Deming

Clark Patterson – N. Gardner, J Steinbach

York Zoning – C. Peter

Absent – F. Rose, J. Ellis

Meeting called to order approx. 7:05pm

### Old Business –

#### PA trip list of attendees –

Jerry Deming	York Town Supervisor
Christine Harris	York Town Clerk
Lynn Parnell	York Town Board / Steering Committee
David Deuel	York Town Board
George Worden	York Highway Supt.
Larry Smith	York Steering Committee
Gerald Ayers	York Zoning Board of Appeals
Bill Doolittle	York Steering Committee
Frank Rose Jr.	York Town Board / Steering Committee
Henry “Steele” Fuller	York Steering Committee
Norman Gates	York Town Board
Andrew Emborsky	York Town Attorney
Davies Nagel	York Planning Board
Norm Gardner	Clark Patterson Lee Engineer
Sharon Knight	Avon Town Clerk
Clara Mulligan	Avon Steering Committee
Mike & Emily Froome	Avon Steering Committee

A short discussion and comments period about PA trip after this point we went directly to working on our list of items of major concern:

#### Item#1 Designated Road Use –

- Engineer review of road before and after process
- Zone some roads not all – can’t spot zone, the town can only control local roads not county & state roads
- May have to update roads before anything begins to establish condition and a contract with town and contractor stating the before and after condition should be required
- Local road use ordinance should be travel volume specific
- Roads must be signed as to local, weight limits, etc.

- Pre-condition survey needs to meet weight limits on all local, county roads – it will be the burden of the drilling contractor for the pre and post condition surveys

Item #2 – SWPPP plan

- DEC control extremely conservative must be taken seriously
- Gas companies do not want problems and publicity
- Weekly inspections for less than 5 acres more than weekly over 5 acres

Item #3 – Lot size requirements

- Minimum 5 acres??

Item #4 – Set Backs

- set of new requirements came out last Thursday, public comment open till Jan 12
- distance from ag water supply – well pad 500ft set back, land owner can waive regulation, local law should not allow this waiver as the neighbor wells might be affected
- primary aquifer 500ft set back we do not have any in the Town of York, we do have principal aquifers which are not regulated by DEC – some research needs to be done, do we want to go above and beyond DEC regs and add principal aquifers with a 500ft set back
- inhabited dwelling 500 ft set back from edge of well pad – this is waivable do we want to change to 1000 ft of construction activity, storage associated, does this include road construction – need legal counsel if challenged
- place of assembly - land use code - 500ft this includes the school do we want to change this to 1000ft , a mile or what - local law can be more restrictive
- lighting - will be like daylight 24 hours a day, this is only a temporary situation as drilling lasts 2-3 months
- flood plain - did not change - public water supply and well supply that serves 25 people or more such as a trailer park 2000ft set back from the edge of well pad and a 500 ft set back on domestic wells, springs for human or animal use, this is waivable by the landowner

Additional comments and questions – can we limit to 1 drilling site at a time allowed in the Town - NO

If you have an existing well - will they need a permit to do horizontal hydro fracking of that well – they will still need to go through the permit process

Might have to go to shared services with county as to zoning, law enforcement

Meeting with area farmers will be scheduled after the 1<sup>st</sup> of the year.

December 12, 2012 meeting is cancelled; this will allow Clark Patterson Lee to put together everything that was discussed into their proposed outline.

The Town Board will be discussing the replacement of Heather Grant at their next meeting, Dec 13, 2012.

Next meeting December 19, 2012 7pm.

Meeting adjourned 9:30pm

Submitted – L Parnell



Steering Committee meeting minutes 12-19-2012

Attendance: Committee – J. Ellis, S. Fuller, B. Doolittle, L. Smith, L. Parnell, F. Rose

York Zoning – C. Peter

Clark Patterson Lee – N. Gardner, J. Steinbach

Meeting called to order at approx. 7 pm

Acknowledged handout literature from D. Nagel

To start meeting chairman re-emphasized our mission statement – “to protect the common interest of the Town of York as it pertains to natural gas development, specifically the practice of high volume hydraulic fracturing, by studying the topic in great lengths and identifying appropriate actions to take to maintain the continued rural character of the community, protect community values, and ensure a safe environment for all”

Reviewed/discussed in great lengths handout from Clark Patterson Lee “draft” addressing overview, our process summary, conclusions, road use, inspections, and existing zoning requirements along with several sections of existing town code that need further review.

Consensus of the committee with on going discussions and ideas generated, will need to have legal recommendations to properly implement actual zoning, this way we will be within Town’s legal authority along with DEC “yet to be published” guidelines of which will dictate everything except road uses and tax assessments.

Future meetings agenda’s and dates –

Jan 2 – need feedback from all on the Process Summary draft that was handed out at this meeting along with legal representation to implement same.

Jan 16 – continue to finalize the Process Summary with input from Town Attorney

Feb 6 – Clark Patterson Lee final draft of the Process Summary along with final draft of code revisions.

Feb 13 – Clark Patterson Lee final documents for committee review/approvals. This will be what is presented to Town board.

Received 12-5-2012 meeting minutes at end of this meeting

Meeting adjourned approx. 8:30 pm.....submitted – Jack Ellis





Steering Committee meeting minutes Jan. 2, 2013

Attendance: Committee – J. Ellis, S. Fuller, B. Doolittle, F. Rose, L. Parnell, L. Smith

York Zoning – C. Peter

Clark Patterson Lee – N. Gardner

Meeting called to order at approx.. 7pm

Acknowledged handout from D. Nagel

Last meeting minutes (12-19-2012) were read with request from N. Gardner to make a correction DEC “yet to be published” guidelines to read instead DEC rules and regulations.

This meeting agenda was to get any feedback from the Process Summary draft along with legal representation from the Town Attorney which canceled late in the day. With the meeting agenda being changed, several items were brought up and discussed:

1. Clark Patterson Lee to review existing ordinances – for example, waste removal (frack water), regulated but not in local zoning but by local law
2. Road use – again, need legal representation, status of State and County agreements not known.
3. Under Process Summary (top of 2<sup>nd</sup> page) “attract new industrial employers with particular attention to the existing Empire Zone” , change to industrial zone, there is no “Empire Zone”.
4. On the PA trip – discussion held if we should comment on what was actually seen to help decide if another course of action is required.
5. Permit fees
6. Update on Town of Avon’s lawsuit – nothing known
7. Tax assessments – State guidelines ?
8. Salt mine maps
9. Inspections – by qualified eng. Firm, not local zoning

Again, with meeting agenda changed, consensus of the Committee decided to adjourn and meet on Jan. 16<sup>th</sup> to assist to finalize the Process Summary with input from Town Attorney. Clark Patterson Lee to contact attorney with proposed draft prior to meeting date in case changes are required to help with the Final Draft of the code revisions. If anyone (committee) thinks of any items of importance, contact either myself or N. Gardner or Clark Patterson Lee by phone or e-mail.

Meeting adjourned approx. 8pm.....submitted – J. Ellis



Steering committee meeting minutes.....Jan. 16,2013

Attendance: Committee – J. Ellis, S. Fuller, B. Doolittle, L. Smith, F. Rose Jr., J. Deming, L. Parnell

Clark Patterson Lee – N. Gardner, J. Steinbach

Town Attorney – A. Embobky

Acknowledged handout literature from D. Nagel

Meeting called to order at approx. 7 pm

Last meeting minutes of Jan 2<sup>nd</sup> were read with no objections to any wording/comment.

This meeting agenda was to discuss any items that deemed necessary that need clarification on legal rulings along with sound legal advice on just how far we should address in our local zoning ordinances as to not “regulate” the drilling industry. Lengthly discussions followed, especially set back limits but again that will be addressed in State DEC rulings , but maybe they could be amended. More or less rulings like these cannot be properly addressed until state standards are passed as to not start a legal hazzle which equals lawsuits. Road uses were also discussed and again Attorney working on it.

Clark Patterson Lee addressing/reviewing our local law addressing town generated waste and several questions arise, does fracking water fall into this category where town might have to address this issue.

With Clark Patterson Lee working with town Attorney hopefully on Feb. 6<sup>th</sup> they can present a draft to review/comment/revisions/ammendments/etc. to address our Zoning program that can be written and presented properly and legally.

Next meeting Feb. 6,2013 to start the final Process Summary review.

Meeting adjourned approx. 8 pm.....submitted J. Ellis



Steering committee meeting minutes.....Feb. 6, 2013

Attendance: Committee- J Ellis, S Fuller, B Doolittle, F Rose jr, J Deming, L Parnell, L Smith

York Zoning- C Peter

Clark Patterson Lee- N Gardner, J Steinbach

Town Attorney- J Campbell

Meeting called to order approx. 7 pm

Request from D Nagel about receiving the proposed Draft that was tonite's meeting agenda. Consensus was that until items that haven't even been reviewed by the committee should not be handed out - in time when presented to the public then is the proper time to address/make comment , in other words.....let the committee do its job first with no interference.

This meeting agenda was to review/discuss Clark Patterson Lee Draft document of the proposed zoning ammendments as a start to the finalization process of local zoning ordinances that address horizontal hydraulic fracking within the town of York.

Chairman turned meeting over to Clark Patterson Lee to start the review process to explain on how they arrived/produced said draft. Majority of draft was items already addressed in our local zoning plan from "windmill" requirements. Again the intent of this draft is to not regulate the gas drilling process, but to put controls in place to protect the Town prior to any start-up activities. Town Attorney gave a good talk on how this could start lawsuits, regulatory issues, etc. Assurances were made that these should not be scare tactics but to make all aware of these circumstances. Input from all discussed from total ban, to moratorium, to actual zoning. Review of Avon's pending lawsuit also discussed. Chairman commented to all present.....this committee accepted the path to allow fracking with zoning to assist said process and we should stay that path and not get sidetracked of which this writer feels we have. We are here to represent everyone (pro/con) in the Town.

Because this proposed draft was not reviewed completely at this time due to discussions ongoing, final consensus of everyone to "digest" said draft, make comments written down and sent to Town Clerk by Wed 2-13-2013 to be sent to Clark Patterson Lee to implement changes, additions, comments, wording, etc. and then on to attorney for review. Committee to come back Wed 2-27-2013 for actual complete review of Draft presented by Clark Patterson Lee.

Meeting adjourned approx. 9pm.....submitted J Ellis



Steering committee meeting minutes.....Feb. 27, 2013

Attendance: Committee – J. Ellis, S. Fuller, L. Smith, L. Parnell, B. Doolittle

Clark Patterson Lee – N. Gardner

Town Attorney – J. Campbell

York Zoning – C. Peter

Meeting called to order at approx. 7pm

Last meeting minutes (Feb 6<sup>th</sup>) were read with no objections, comments, corrections, etc. – stand as approved.

This meeting agenda was to review/discuss Clark Patterson Lee document “draft” addressing comments/ideas from the committee about proposed zoning amendments as defined by sections to our proposed zoning ordinance that will be presented to the town board for further review along with legal comments from our town attorney.

Chairman turned meeting over to Clark Patterson Lee (N. Gardner) to start this review/comment process addressing all sections of the proposed ordinance. Lengthly discussions followed with good comments from all. Hopefully this comment period will assist Clark Patterson Lee for a final draft of said ordinance that can be brought up at the public meeting along with review/understanding to the town board that might assist in their decision making process.

While Clark Patterson Lee is working on this draft addressing zoning ordinances, the committee should start reviewing the “Restoration, preservation, repair road use agreement” (sample Steuben co. agreement that was handed out), and send on comments, suggestions, ideas, and any other items of importance that address this to either myself or to Clark Patterson Lee directly so that they have a proposed comment/review process that will benefit the discussions once presented. This will give us plenty of time to start this review/comment time frame. Note, this is one important item that we (as the Town) can control. Try to have comments/ideas back to Clark Patterson Lee or myself by March 6/7.

Next meeting scheduled March 13<sup>th</sup> and April 3<sup>rd</sup> for discussions/review/comments/etc. on this road use agreement.

Meeting adjourned at 9:18pm.....Jack Ellis





Steering Committee meeting minutes.....March 13, 2013

Attendance: Committee – J Ellis, S Fuller, B Doolittle, L Parnell, F Rose  
Clark Patterson Lee – N Gardner, J Steinbach  
Town of York – G Worden (highway supt), C Peter (zoning)

Last meeting minutes (Feb 27<sup>th</sup>) were read with no objections, corrections, comments, etc. – stand as approved.

This meeting agenda was to review/discuss Clark Patterson Lee document “draft” addressing our town road use and repair agreement patterned somewhat after sample from Steuben County’s agreement along with input from all committee members.

Chairman turned meeting over to N Gardner (Clark Patterson Lee) to start this draft review along with comments addressing same. One comment was questionable on designated haul routes at start of agreement transporting heavy construction equipment and hauling heavy construction materials which affects everyone, not just drilling equipment and materials. This needs to be clarified, Clark Patterson Lee researching same. Complete draft was explained identifying road classes, town/county/state roads within Town of York in case maybe designated routes impact all three routes and different agreements/classifications need more/less than others (need to be consistent with each other). Road map of Town handed out identifying all roads within Town to assist discussions (routes, classification, etc). Other discussions involved monitoring/enforcement of designated routes. Balance of this meeting was reviewing balance of said draft.

Prior to next meeting, all committee members are urged to again review/digest this road use agreement draft and make comments/suggestions/ideas/etc. to Clark Patterson Lee or myself (no later than 3-22) to assist Clark Patterson Lee on final draft that possibility be presented to the Town Board for review. Also, at next meeting final draft of zoning requirements will be handed out for review.

Next meeting scheduled for April 3, 2013

Meeting adjourned at 8:15 pm.....Jack Ellis



Steering Committee Meeting minutes.....April 4, 2013

Attendance: Committee – J. Ellis, S. Fuller, L. Smith, L. Parnell, B. Doolittle  
Clark Patterson Lee – N. Gardner, J. Steinbach

Last meeting minutes (March 13, 2013) were read with no objections, comments, corrections, etc. – stand as read.

This meeting agenda was to review/discuss Clark Patterson Lee "Draft" addressing our proposed road use agreement. After review, Clark Patterson Lee explained and read DEC's application requirement which states a transportation plan indicating the planned route for delivery of water to the site for hydraulic fracturing, the proposed route for transport of flowback water requiring tracking by means of the department's drilling and production waste form, all other truck trips associated with hydraulic fracturing at the site, and a number of truck trips associated with same. Further, the transportation plan must include a copy of any road use agreement between the owner or operator and any municipalities. This concludes all concerns associated with this agreement.

The other matter discussed thoroughly was everyone's concern about the Town principal aquifer and how to protect same. Clark Patterson Lee presented another "draft" named "Principal Aquifer Overlay" with associated maps showing same along with purpose, relation to other districts, applicability, prohibited uses, site developments requirements, etc. Lengthy discussions followed so everyone could understand how this to be an effective tool that not only protects the Town and its residents, but also our environment. Clark Patterson Lee has asked everyone to really think about all 12 prohibited uses and how they would impact the Town, its residents, future development, farming operations, etc. Please share any ideas, additions, subtractions, wording, etc. that be beneficial to this draft and relay to either myself or to Clark Patterson Lee prior to next meeting.

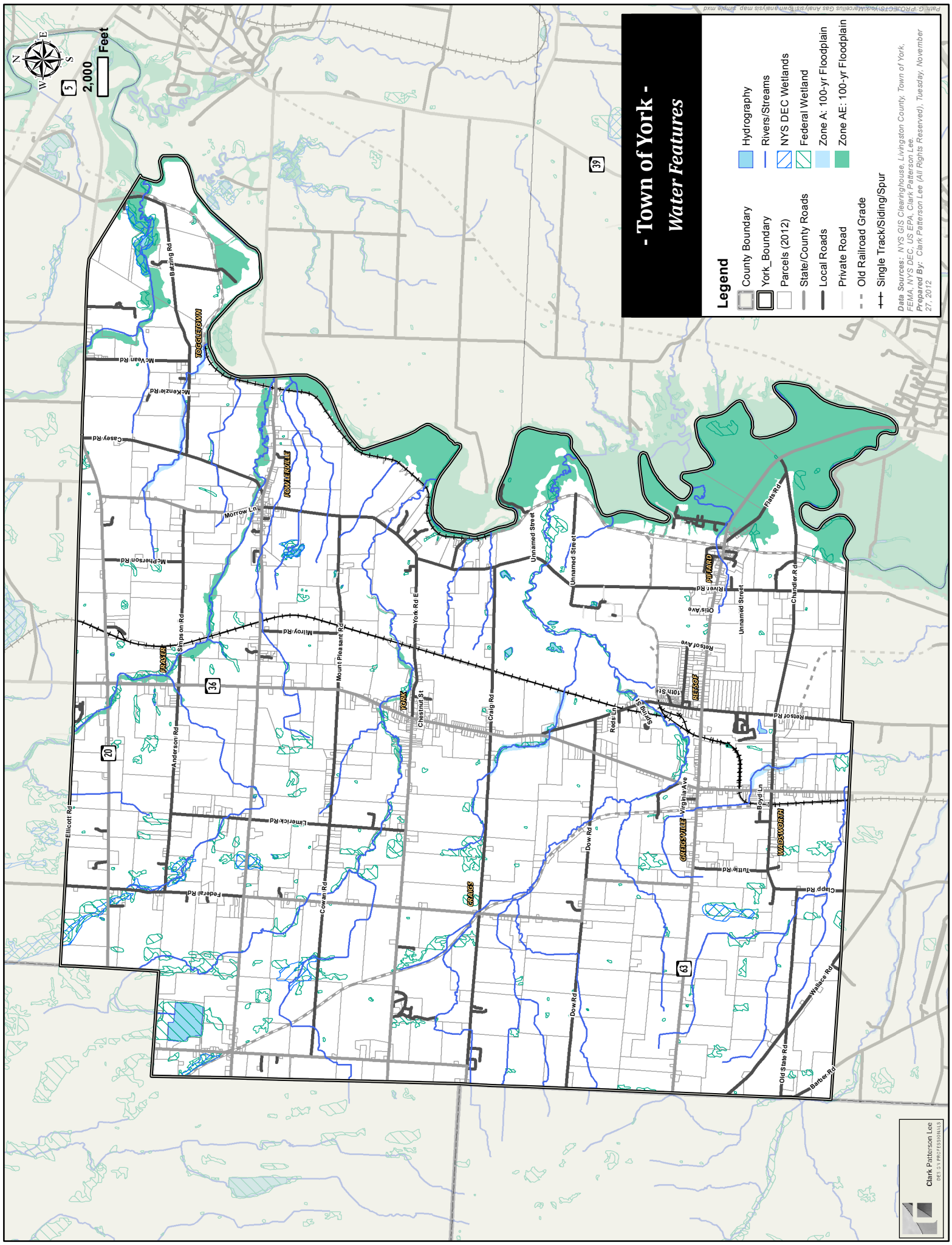
Our next meeting is scheduled for Wed. April 24, 2013 to hopefully finalize our "package" so that Clark Patterson Lee can present same to the Town Board for review on May 9, 2013.

Meeting adjourned at 8:40 pm.....Jack Ellis



**Appendix B**  
**Environmental Maps**





# - Town of York - Water Features

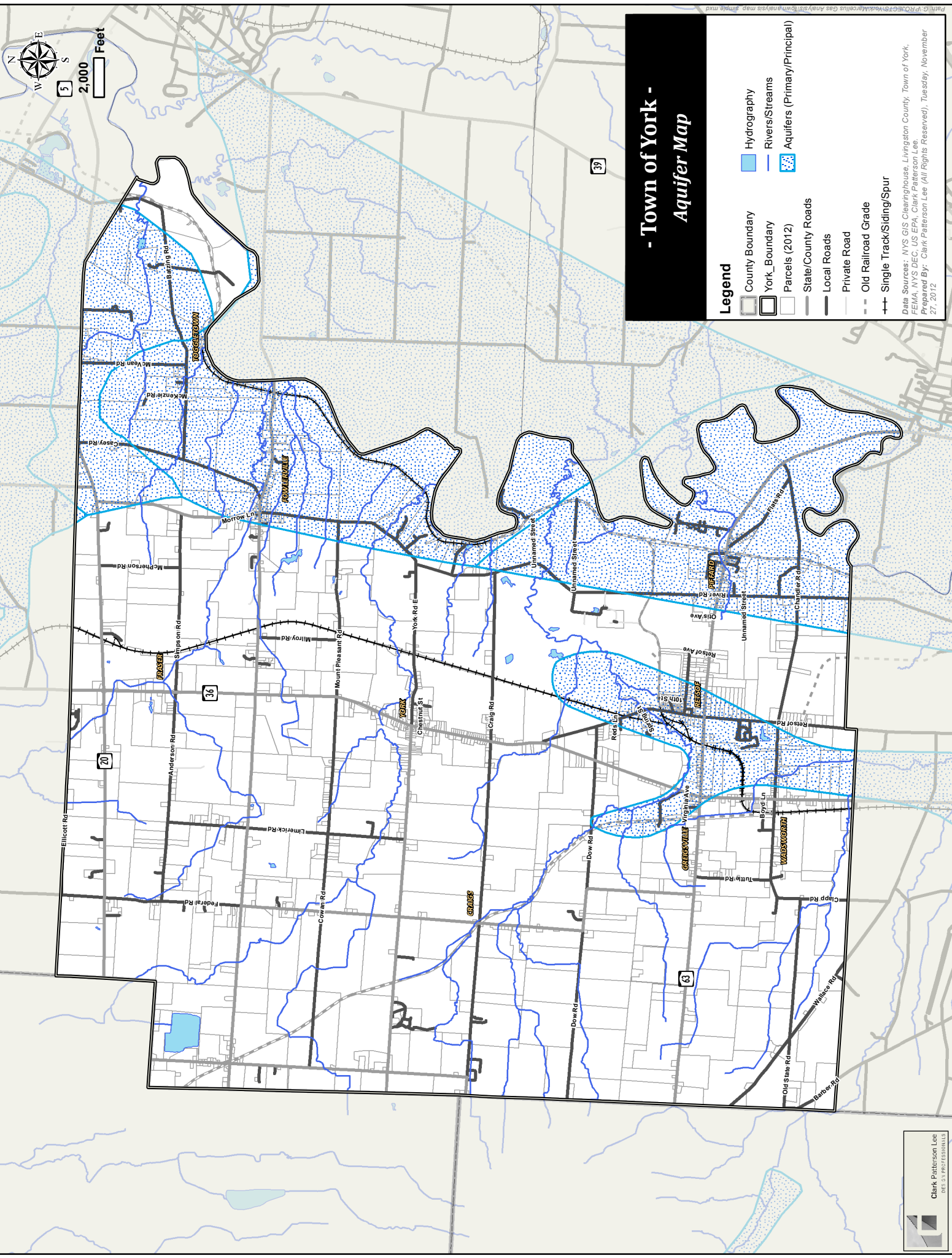
## Legend

- County Boundary
- York\_Boundary
- Parcels (2012)
- State/County Roads
- Local Roads
- Private Road
- Old Railroad Grade
- Single Track/Single/Spur
- Hydrography
- Rivers/Streams
- NYS DEC Wetlands
- Federal Wetland
- Zone A: 100-yr Floodplain
- Zone AE: 100-yr Floodplain

Data Sources: NYS GIS Clearinghouse, Livingston County, Town of York, FEMA, NYS DEC, US EPA, Clark, Patterson Lee.  
Prepared By: Clark Patterson Lee (All Rights Reserved), Tuesday, November 27, 2012





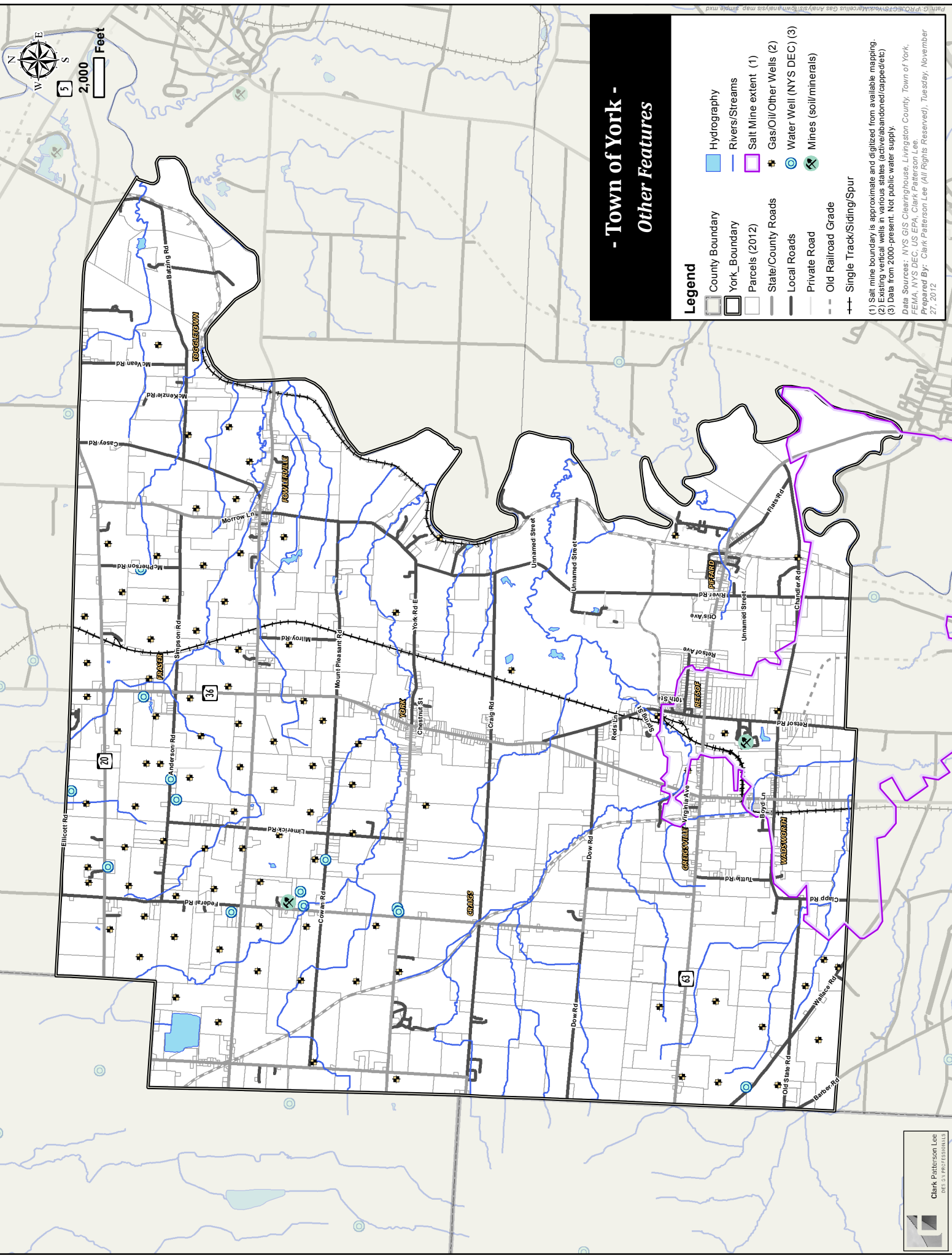


# - Town of York - Aquifer Map

- Legend**
- County Boundary
  - York\_Boundary
  - Parcels (2012)
  - State/County Roads
  - Local Roads
  - Private Road
  - Old Railroad Grade
  - Single Track/Siding/Spur
  - Hydrography
  - Rivers/Streams
  - Aquifers (Primary/Principal)

Data Sources: NYS GIS Clearinghouse, Livingston County, Town of York, FEMA, NYS DEC, US EPA, Clark, Patterson Lee  
 Prepared By: Clark Patterson Lee (All Rights Reserved), Tuesday, November 27, 2012



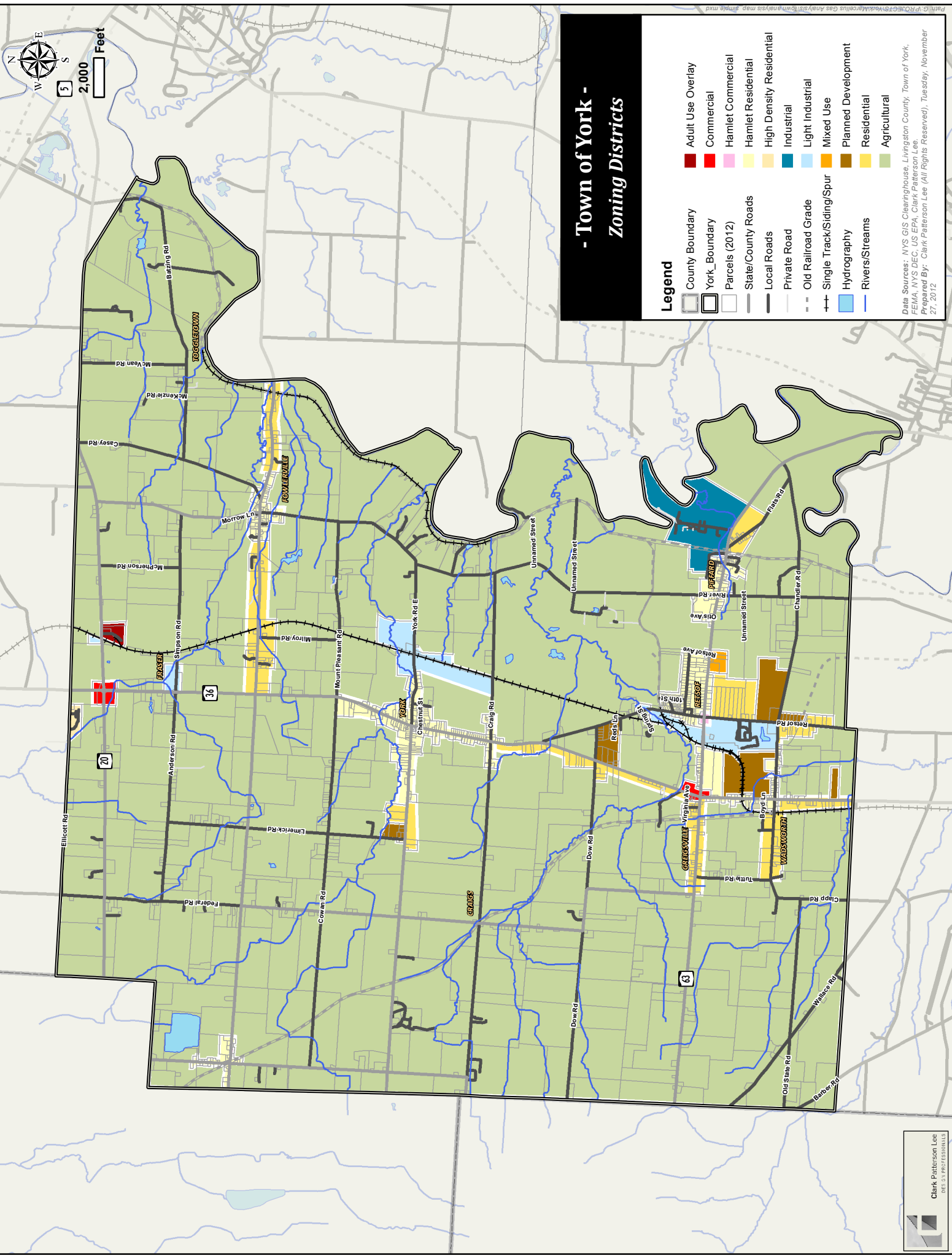


# - Town of York - Other Features

- Legend**
- County Boundary
  - York\_Boundary
  - Parcels (2012)
  - State/County Roads
  - Local Roads
  - Private Road
  - Old Railroad Grade
  - Single Track/Siding/Spur
  - Hydrography
  - Rivers/Streams
  - Salt Mine extent (1)
  - Gas/Oil/Other Wells (2)
  - Water Well (NYS DEC) (3)
  - Mines (soil/minerals)

(1) Salt mine boundary is approximate and digitized from available mapping.  
 (2) Existing vertical wells in various states (active/abandoned/capped/etc)  
 (3) Data from 2000-present. Not public water supply.  
 Data Sources: NYS GIS Clearinghouse, Livingston County, Town of York, FEMA, NYS DEC, US EPA, Clark, Patterson Lee.  
 Prepared By: Clerk Patterson Lee (All Rights Reserved), Tuesday, November 27, 2012





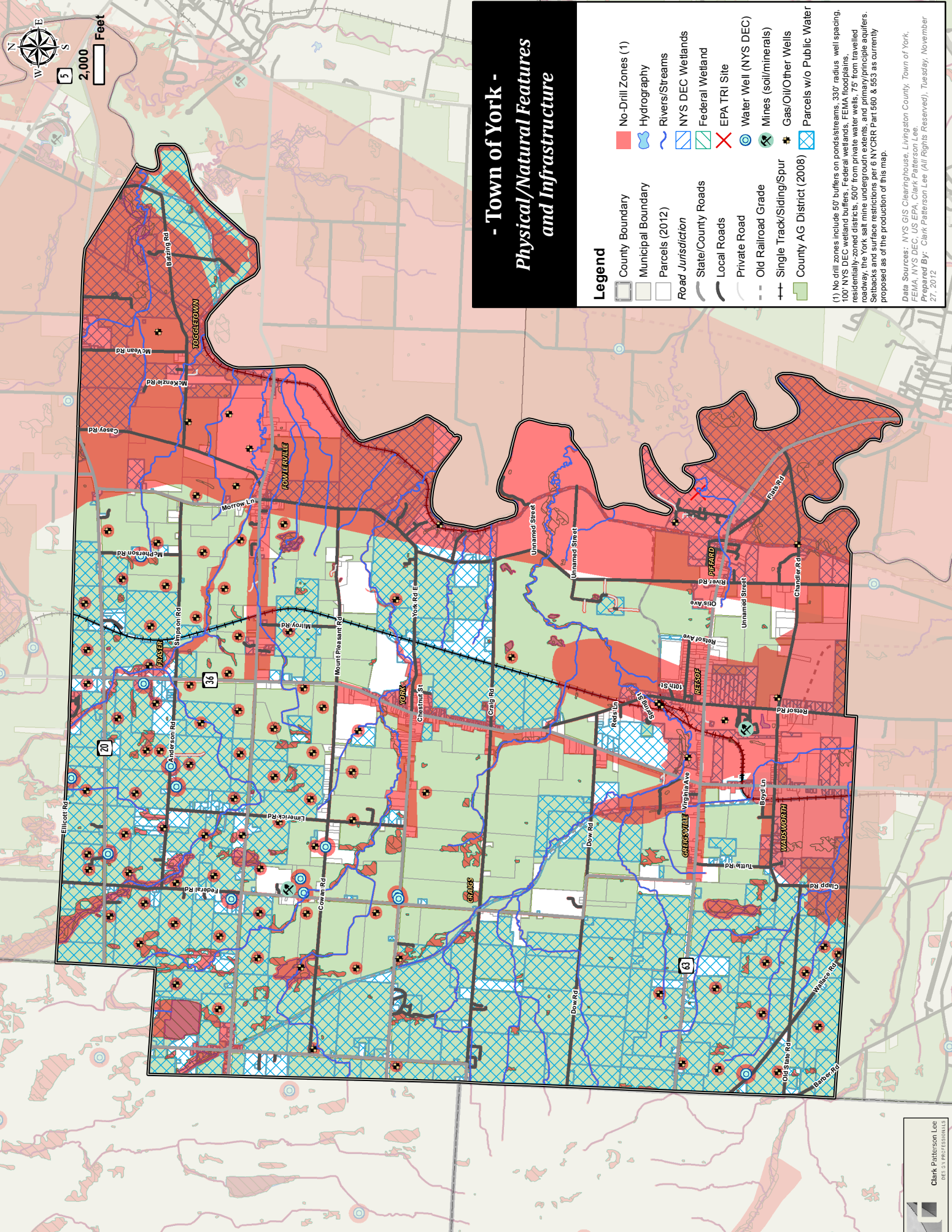
# - Town of York - Zoning Districts

- Legend**
- County Boundary
  - York\_Boundary
  - Parcels (2012)
  - State/County Roads
  - Local Roads
  - Private Road
  - Old Railroad Grade
  - Single Track/Siding/Spur
  - Hydrography
  - Rivers/Streams
  - Adult Use Overlay
  - Commercial
  - Hamlet Commercial
  - Hamlet Residential
  - High Density Residential
  - Industrial
  - Light Industrial
  - Mixed Use
  - Planned Development
  - Residential
  - Agricultural

Data Sources: NYS GIS Clearinghouse, Livingston County, Town of York, FEMA, NYS DEC, US EPA, Clark, Patterson Lee.  
 Prepared By: Clerk Patterson Lee (All Rights Reserved), Tuesday, November 27, 2012







# - Town of York - Physical/Natural Features and Infrastructure

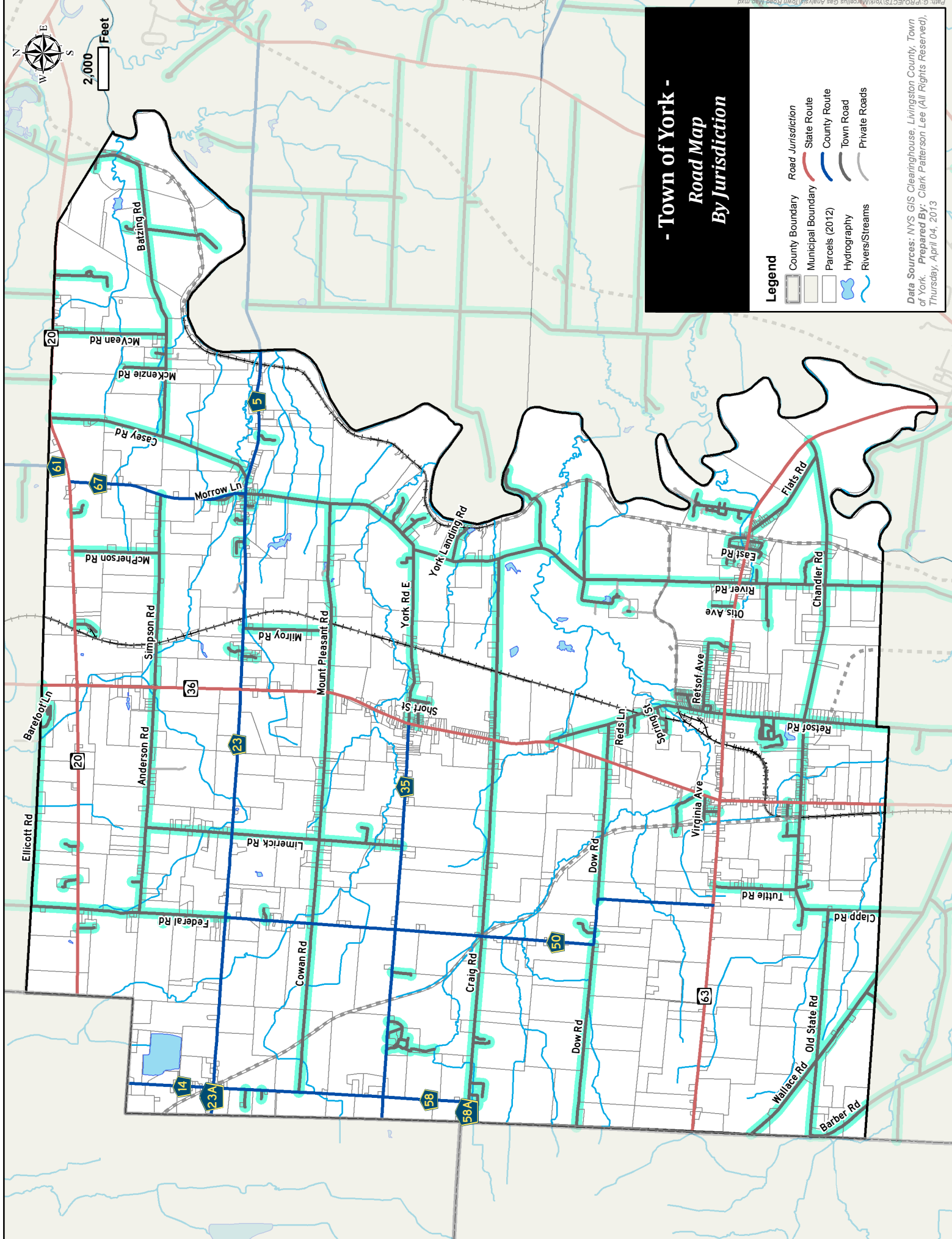
- Legend**
- County Boundary
  - Municipal Boundary
  - Parcels (2012)
  - Road Jurisdiction
    - State/County Roads
    - Local Roads
    - Private Road
    - Old Railroad Grade
    - Single Track/Siding/Spur
    - County AG District (2008)
  - No-Drill Zones (1)
  - Hydrography
  - Rivers/Streams
  - NYS DEC Wetlands
  - Federal Wetland
  - EPA TRI Site
  - Water Well (NYS DEC)
  - Mines (soil/minerals)
  - Gas/Oil/Other Wells
  - Parcels w/o Public Water

(1) No drill zones include 50' buffers on ponds/streams, 330' radius well spacing, 100' NYS DEC wetland buffers, Federal wetlands, FEMA floodplains, residentially-zoned districts 500' from private water wells, 75' from travelled roadway, the York salt mine underground extents, and primary/principle aquifers. Setbacks and surface restrictions per 6 NYCRR Part 560 & 553 as currently proposed as of the production of this map.

Data Sources: NYS GIS Clearinghouse, Livingston County, Town of York, FEMA, NYS DEC, US EPA, Clark, Patterson Lee.  
Prepared By: Clark Patterson Lee (All Rights Reserved), Tuesday, November 27, 2012



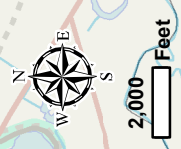




# - Town of York - Road Map By Jurisdiction

- Legend**
- County Boundary
  - Municipal Boundary
  - Parcels (2012)
  - Hydrography
  - Rivers/Streams
  - Road Jurisdiction
  - State Route
  - County Route
  - Town Road
  - Private Roads

Data Sources: NYS GIS Clearinghouse, Livingston County, Town of York. Prepared By: Clark Patterson Lee (All Rights Reserved), Thursday, April 04, 2013





**Appendix C**  
**Draft Road Use and Repair Agreement**



**Town of York Road Use and Repair Agreement**

This Agreement effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ is made and entered into by and between the **Town of York** (herein "Town") with an office 2668 Main Street, York, New York, 14592; and ( ) (**Developer**), a corporation, organized and existing under the laws of, or duly authorized to conduct business in the State of \_\_\_\_\_, having its principal place of business at \_\_\_\_\_.

**Whereas**, the purpose of this agreement is to maintain the safety and general welfare of the Town of York residents by regulating commercial and industrial activities that have the potential to adversely affect road conditions and infrastructure within the public right-of-ways. Well maintained roads are important to the economic well being of the Town. Commercial and industrial endeavors such as, but not limited to, natural resource mining and drilling are also economically beneficial. The intent of this agreement is to protect the public infrastructure within Town right-of-ways. The Town Board of the Town of York hereby enacts the following Road Use and Repair Agreement pursuant to the provisions of Municipal Home Rule Law.

**Whereas**, the parties hereto desire to provide for the use and repair of Town Roads when subjected to damage or degradation by frequent or repetitive traversing of heavy vehicles.

**Now, Therefore**, in consideration of mutual promises and covenants contained herein, the parties agree as follows:

**ARTICLE I  
DEFINITION OF ROAD STRUCTURAL CLASSES**

**Section 1.1 Structural Class 1.** The road structure has been upgraded to an adequate and high quality base of uniform thickness and material type. The driving surface is either an asphalt concrete pavement or bituminous surface treatment in good to excellent condition. The Granular Base and the Asphalt Pavement/Bituminous Surface Treatment are less than 10 years old and have 20 to 30 years remaining life. The complete road structure is capable of supporting heavy construction equipment (total estimated 18-KIP Equivalent Single Axles Loads) throughout the duration of the anticipated construction project, without needing major structural improvements prior to the project. However, heavy construction traffic loading will expend some of the useful life of the road pavement structure and shorten the life expectancy of the road, even though visible damage at the end of the project may not be severe. Visible damage could include increased extent of one or more of the following distresses; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths), and overall ride roughness.

**Section 1.2 Structural Class 2.** The road structure has been upgraded to an adequate and high quality base of uniform thickness and material type. The driving surface is either an asphalt concrete pavement or bituminous surface treatment in fair to good condition. The Granular Base and the Asphalt Pavement/Bituminous Surface Treatment are 10-20 years old, and have 10 to 20 years remaining life. The road is adequate to sustain construction traffic for the project. However, damage to the asphalt pavement/bituminous surface or base will be likely during the project thereby causing a significant decrease in serviceability for the traveling public, rough travel for construction equipment, and potential safety issues and increased difficulties in performing winter maintenance. Visible damage could include increased extent of one or more of the following distresses; alligator

cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths), and overall ride roughness.

**Section 1.3 Structural Class 3.** The road structure has not been upgraded. The base layer/s is/are of inconsistent structure, poor to marginal quality and less than desired thickness. The asphalt pavement is in fair to good condition with one or more of the following surface distresses present; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths). Ride roughness may range from fair to excellent. The combined layers of the pavement structure continue to provide an acceptable level of service for the traffic using the road. The road is judged to be generally adequate to service the construction traffic and the traveling public throughout the duration of the proposed project. However, by the end of the project damage to the pavement structural system will likely be visible, and will take the form of increased extent of one or more of the following distresses; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths), and increased ride roughness.

**Section 1.4 Structural Class 4.** The road structure has not been upgraded. The base layer/s is/are of inconsistent structure, poor to marginal quality and less than desired thickness. The asphalt pavement is in poor to fair condition with a rough deteriorated driving surface. The road is not capable of sustaining the magnitude and the duration of loading commensurate with a designated haul route (total estimated 18-KIP Equivalent Single Axles Loads) for an extended and demanding development project. Use of the road without prior reconstruction may result in significant distresses such as severe alligator cracking, potholes, rutting, and very rough ride-ability within the duration of the construction project. The accelerated deterioration would create excessive demand for pavement repairs (i.e. pothole patching, rut filling etc.). The effectiveness of winter snow and ice maintenance would be greatly diminished (i.e. snow plows would not be able to operate efficiently and safely, snow and ice would be left in deep wheel path ruts after plowing etc.). Consequently the safe passage of the traveling public as well as construction equipment would be seriously compromised.

**Section 1.5 Structural Class 5 - (GRAVEL ROADS).** The road structure has been upgraded to an adequate and high quality base of uniform thickness and material type. The driving surface is gravel and in good to excellent condition. The granular base is less than 5 years old and has 5 – 10 years of life remaining. The complete road structure is capable of supporting heavy construction equipment (total estimated 18-KIP Equivalent Single Axles Loads) throughout the duration of the anticipated construction project, without needing major structural improvements prior to the project. However, heavy construction traffic loading will expend some of the useful life of the road structure and shorten the life expectancy of the road, even though visible damage at the end of the project may not be severe. Visible damage could include increased extent of one or more of the following distresses; potholes, raveling, rutting (especially in the wheel paths), and overall ride roughness.

**Section 1.6 Structural Class 6 – (GRAVEL ROADS).** The road structure has not been upgraded. The gravel base is of inconsistent structure, poor to marginal quality and less than desired thickness. The gravel surface is in poor to fair condition with a rough deteriorated driving surface. The road is not capable of sustaining the magnitude and the duration of loading commensurate with a designated haul route (total estimated 18-KIP Equivalent Single Axles Loads) for an extended and demanding development project. Use of the road without prior reconstruction may result in significant distresses such as severe potholes, excessive raveling, severe rutting, and very rough ride-ability within the duration of the construction project. The accelerated deterioration would create excessive demand for repairs. The effectiveness of winter snow and ice maintenance would be greatly diminished (i.e.

snow plows would not be able to operate efficiently and safely). Consequently the safe passage of the traveling public as well as construction equipment would be seriously compromised.

## **ARTICLE II DESIGNATION OF HAUL ROUTES**

The Developer(s) shall submit routes (hereto referred to as Designated Haul Routes) for hauling equipment and materials to and from the project. These routes will be further designated by the Town as Structural Class 1, 2, 3, 4, 5 or 6 (as defined in ARTICLE I) with certain requirements stipulated for their use as set forth in sections 2.1, 2.2, and ARTICLE III below. As part of the Road Use and Repair Agreement worksheet in Appendix A, a list and map of the Designated Haul Routes are required.

**Section 2.1 Class 1, 2, 3 and 5 Roads.** These roads can be used by the Developer(s) of the project without any repairs or improvements to the pavement structure prior to construction. However, geometric improvements (turning radii etc) and bridge or culvert improvements will still be required as needed.

**Section 2.2 Class 4 and 6 Roads.** The Town may require, for the safety of the traveling public, that the Developer(s) reconstruct the road before the construction process begins. This determination shall be at the sole discretion of the Town. If the Town does not require reconstruction prior to construction, the Developer(s)' use the road will be at their own risk. The Town shall monitor the use of the road during the construction project. If the road becomes dangerous to the traveling public the Town shall close the road to all construction traffic. In the case of closure the Developer(s) shall be required to complete reconstruction of the road base and asphalt concrete pavement to include shoulders and necessary improvements of ditches, culverts and other drainage related facilities before construction traffic is allowed to continue. The Town shall determine the full cross section design and material specifications for this reconstruction. The Developer(s) shall hire a qualified contractor of its choice, to be approved by the Town, to construct the pavement system (base and asphalt pavement layers) according to the full specifications provided by the municipality. The Developer(s) shall pay for all associated costs in accordance with the percentages of costs explained in Article VI below for the costs of the labor, materials, and equipment needed, as well as the costs for design and construction inspection services. The Developer(s) shall provide a full and detailed record of all costs encumbered for the repairs.

**Section 2.3 – Time Requirement for Designation of Haul Routes.** The Haul Routes shall be designated within thirty (30) days of the execution of the Road Use Agreement. The Pre-Construction Survey shall be started immediately thereafter and completed no later than three months prior to the commencement of the project.

## **ARTICLE III USE OF DESIGNATED HAUL ROUTES**

**Section 3.1 Use of Designated Roads.** In connection with the development, construction, operation and maintenance of the Project, the Town and the Developer agree that the Developer, its contractors and subcontractors and each of their respective agents, employees, representatives, and permitted assigns (collectively, the “Developer (s)”) shall use the roads and highways located in the Town identified on Appendix A hereto (the “Designated Haul Routes”). These Designated Routes shall be used by all tandem axle or tri-axle trucks, equipment and assembled cranes both to and from the

work site. Any other vehicles (cars, pickups and single axle dump trucks) associated with the Developer(s) Project are not limited to the Designated Haul Routes and thus may use any other alternate Town Roads. The Town of York Highway Superintendent (“Superintendent”) reserves the right to exclude certain Town roads from the Designated Haul Routes if the loads hauled by the Developer significantly change that road’s traffic loading. Appendix A identifies the Designated Haul Routes that will be used for: (1) transportation and delivery of equipment and components and other materials and equipment to be used in connection with the Project;(2) movement of any assembled cranes; and (3) transportation and delivery of local sources of materials, including concrete and gravel.

**Section 3.2 Modifications to Designated Haul Routes.** The Parties acknowledge and agree that certain modifications and improvements to the Designated Haul Routes and related appurtenant structures are necessary to accommodate the use of Designated Haul Routes by the Developer(s) contemplated hereby, including the widening of certain roads and modifications and improvements necessary to accommodate the heavy equipment and materials to be transported on the Designated Haul Routes. The modifications and improvements that shall be made by the Developer are described in detail on Appendix A hereto. The Town and the Developer agree that such improvements and modifications shall be made in accordance with the specifications set forth on Appendix A. Notwithstanding anything herein to the contrary, upon the reasonable request of the Developer the Town is authorized from time to time to grant consent to deviations from the specifications set forth on Appendix A. Appendix A shall be submitted to the Town by the Developer(s) prior to commencement of construction.

**Section 3.3 Limitations of Road Use.** The acknowledgement of use by Developer set forth in Section 3.1 shall be contained in special use permits issued by the Town simultaneously herewith and which are subject to the following conditions:

(a) **Restrictions.** All other Town roads not selected as Designated Haul Routes (reference Article II) are strictly forbidden for use by the Developer throughout the duration of the Project. In the event that the Developer would like to amend and add any road to the list of Designated Haul Routes during the project the Town shall be informed, and if approved by the Town, Appendix A shall be amended to reflect the change. All Articles of this agreement shall then be immediately applicable and satisfied prior to the added road being used.

(b) **‘One Time Use’ of a road that is not a Designated Haul Route** - In the event the Developer determines it is necessary for the Project to use a Town road not identified on Appendix A as a Designated Haul Road, then the Developer shall notify the appropriate Town Designee, describing in detail such use and the reasons therefore. If the use is to be ‘one time’ the Superintendent shall determine whether to allow the road use without the road being added to Appendix A as a Designated Haul Route. If the Developer(s) determines that the road may be used multiple times, the procedure as described in section 3.3 (a) of this Article shall be used.

(c) **Extreme Weather Conditions** - Once construction begins on the Project the Superintendent shall be entitled, at any time, to notify the Developer(s) that use of a/the Designated Haul Road/s may result in excessive damage to a/the Designated Haul Road/s due to weather conditions that may pose a serious safety risk to the traveling public. The Developer(s) shall work with such Town Designee to develop a plan to mitigate or prevent the safety liabilities of such weather conditions. If the Parties are able to develop a plan to



mitigate or prevent such safety liabilities, then the Developer(s) may continue to use such roads provided such mitigation is implemented.

#### **ARTICLE IV PRE-USE SURVEY OF ROADS & BRIDGES**

**Section 4.1 Construction Traffic Estimation.** The Developer(s) shall engage and pay for the services of a NYS licensed Civil Engineering firm appearing on the current approved NYSDOT Region-4 LDSA lists, to estimate all of the construction traffic that will use each Designated Haul Route. The type, weight, number of axles, and load on each axle, of each construction vehicle shall be defined and the number of trips for each shall be estimated by the Developer(s) or NYS Licensed Civil Engineering firm. This shall be done for overweight vehicles hauling any components as well as all non-overweight loads carrying aggregate, concrete and any other building supplies and materials over the designated haul roads from any and all suppliers, vendors, contractors etc. involved in the project. Then, the sum total estimated construction traffic shall be converted to a total number of Equivalent 18-Kip Single Axle Loads (ESALs), according to the AASHTO Pavement Design Guide, over the duration of the project. This shall be done for each Designated Haul Route that the Developer(s) will use for the project. A complete written report of this analysis for each road will be provided to the Town at least three months in advance of the commencement of work.

**Section 4.2** As soon as practicable after the execution of this Agreement, but in any event no later than three months prior to the commencement of the Developer's project, the Developer(s) shall select a third party NYS licensed Civil Engineering firm appearing on the current approved NYSDOT Region-4 LDSA lists and approved by the Town, to conduct the surveys and assessments set forth in section 4.4 below. Roads and highways within the boundaries of the Town anticipated to be used as Designated Haul Routes plus any roads anticipated to serve on a one time basis or roads which could be added as Designated Haul Routes will be assessed as described below. A representative from the Engineering Firm shall meet with the Town prior to data collection to review how the data will be collected and reported. The Town shall agree and approve the data collection process and the report formats. The Pre-use survey shall be commenced after the signing of the Road Use Agreement and completed at least three months prior to the commencement of the project. Roads will be posted to heavy traffic if the survey is not completed on time.

**Section 4.3 Structural Class Designation.** The Town shall retain exclusive rights to designate the Road Structural Class for the Designated Haul Routes. The Developer(s) agrees to abide by this decision. The Town shall make this decision based on the road surface condition, work history, structural condition, and the traffic using the road. Pre-construction road survey requirements are enumerated in section 4.4 (a)-(d) below.

**Section 4.4 Pre-Use Survey.** A full report of the assessments in (a) – (d) below shall be provided to the Town at no cost to the Town at least three months prior to the commencement of construction.

**(a) Video Survey of Roads.** Videotape the Designated Haul Roads and Non-Project Roads that could be used as explained above. The full costs of the Video Survey will be borne by the Developer(s). Additional surveys shall only be conducted in the event the Parties mutually agree and the additional survey costs are borne by the Developer(s).

**(b) Distress Survey.** Measure and record the extent and severity of surface distresses for each designated haul road. The survey shall include the severity and extent of alligator

cracking, longitudinal cracking, transverse cracking, edge cracking/deterioration, potholes and patches

**(c) Rutting and cross slope assessment.** Wheel rut depth in both outer and inner wheel paths shall be measured with a straight edge. If the lane is crowned in the middle the rut depth can be measured for each wheel path by laying the straight edge from the centerline of the road to center of the lane and from the center of the lane to edge of the road for the inner wheel path and outer wheel path, respectively. Cross slope shall also be measured, using the full lane width straightedge and a “smart level” in percent mode. Again, if there is a crown in the middle of the lane the cross slope shall be measured independently, and recorded as such, for the inner and outer wheel paths. The rut depth and cross slope measurements will be made at a uniform spacing at 15 locations per mile.

**(d) Road Roughness.** Measure, record, and report the International Roughness Index (IRI) using a profilometer for each designated haul road. A full report of the Roughness assessment shall be provided to the Town at no cost to the Town prior to the commencement of construction.

**Section 4.5 Inspection of Culverts and Bridges.** Within one month after the execution of this agreement the Developer(s) shall select a NYS licensed engineering company appearing on the current approved NYSDOT Region-4 LDSA lists, to inspect the culverts and bridges on the Designated Haul Routes. The inspection shall be completed and provided to the Town at least three months prior to the commencement of the project. Culverts and bridges on any other roads anticipated to be used on a one- time basis or roads which could be added as Designated Haul Routes shall also be included. The third party engineer shall take photographs of the culvert and bridges. The full costs of the inspections will be borne by the Developer(s). Based on the inspections the selected engineering firm shall provide a report discussing the status of all culverts and bridges and shall designate those culverts and bridges that shall require improvements/upgrades prior to their use in the Project. This report shall also present the recommended improvements/upgrades to the structures and shall be submitted to the Town for review. The Town will prepare a final list of improvement/upgrade projects that must be done prior to commencement of the Project. The Town reserves the right to require an evaluation of any bridge that will be crossed by an overweight special hauling vehicle. The evaluation shall be done by the qualified NYS licensed engineering firm. The full cost of the evaluation(s) will be borne by the Developer(s).

**ARTICLE V  
POST USE ROAD SURVEY  
PROJECT COMPLETION DATE**

**Section 5.1 Post Use Pavement Survey Tasks .** The post use survey shall be completed within two months after the project is completed. The Developer(s) shall engage and pay for the services of a NYS licensed engineering firm appearing on the current approved NYSDOT Region-4 LDSA lists, to do the post use survey. The Post Use Pavement Survey tasks listed below shall be completed within a two months of the Project Completion Date.

**(a) Photo & Video Survey of Roads** – Repeat as described in section 4.4 (a) above.

**(b) Distress Survey** – Repeat as described in Section 4.4 (b) above.

**(c) Rut Depth and Cross Slope measurements** – Repeat as described in Section 4.4 (c) above.

(d) **Road Roughness** – as described in Section 4.4 (d) above.

**Section 5.2 Structural Evaluation of Roads.** After analysis of the Post Use Pavement Survey the Town shall determine if a repair selection can be made from the survey data or if a structural evaluation will also be needed in order to select the best repair alternative. If the Town determines a structural evaluation is also needed the Town shall conduct a forensic investigation that could include test pits, pavement cores, and material testing of specimens removed from the test pits. The Developer(s) shall pay for all associated costs.

**ARTICLE VI  
DETERMINATION OF FINAL ROAD REPAIRS  
PAYMENT FOR COST OF REPAIRS**

The Town, or its Designee(s), shall examine the post use survey data and compare it to the pre-construction survey data. Based on the data, field inspection, and structural evaluation (if necessary) the Town shall determine the needed repairs within one month following the receipt of the post use survey. The Town shall prepare a report of the needed repairs that includes the treatment for each road segment. The report shall be submitted to the Developer(s). The Developer(s) shall repair the damages in accordance with sections 6.1 through 6.6 of this Article VI.

**Section 6.1 - Class 1 Roads.** Upon completion of the project, a thin asphalt concrete overlay (less than 2 inches) or a microsurfacing shall be done to replace the structural capacity loss of the pavement and to reseal cracks, restore road smoothness and correct ride-ability deficiencies that may have been induced. The thickness, materials, and method of construction for this overlay or microsurfacing shall be specified by the Town. If asphalt pavement damage is significant a thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1 ½” hot mix top may be required. However, if the post construction survey indicates significant deep structural damage to the pavement and base has occurred, the repair could include **Full Pavement Rehabilitation** (recycling or replacement of asphalt) or **Full Depth Reconstruction** (asphalt pavement and base layer reconstruction). Structural Damage to the base will be assessed by the increase in depth and width of wheel ruts and the extent of alligator cracking, potholes and patches. The Town shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. The Town retains the right to make the final decision regarding the extent and type of road repairs. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services, shall be paid by the Developer(s). The Developer(s) shall hire a qualified contractor of its choice, to be approved by the Town, to construct the road repair. The Developer shall be responsible for complying with all required purchasing and labor requirements of New York State General Municipal Law and New York State Labor Law. *The Town retains the right to make final decision regarding the extent and type of road repairs.*

- (a) **Full Pavement Rehabilitation** – Major rehabilitation of the asphalt pavement only, such as a thick asphalt overlay or a Cold-in-Place recycle with a hot mix over lay.
- (b) **Full Depth Reconstruction** – Asphalt pavement repair/replacement and gravel base material repair/replacement.

**Section 6.2 Class II Roads.** Upon completion of the project, a thin asphalt concrete overlay (less than 2 inches) or a microsurfacing shall be done to replace the structural capacity, ~~of the~~ pavement and to reseal cracks, restore road smoothness and correct ride-ability deficiencies that may have been induced. The thickness, materials, and method of construction for this overlay or

microsurfacing shall be specified by the Town. If asphalt pavement damage is significant a thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1 ½” hot mix top may be required. However, if the post construction survey indicates significant deep structural damage to the pavement and base has occurred, the repair could include **Full Pavement Rehabilitation** (recycling or replacement of asphalt) or **Full Depth Reconstruction** (asphalt pavement and base layer reconstruction). Structural Damage to the base will be assessed by the increase in depth and width of wheel ruts and the extent of alligator cracking, potholes and patches. The Town shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. The Town retains the right to make the final decision regarding the extent and type of road repairs. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services, shall be paid by the Developer(s). The Developer(s) shall hire a qualified contractor to be approved by the Town, to do the repairs. The Developer shall be responsible for complying with all required purchasing and labor requirements of New York State General Municipal Law and New York State Labor Law. *The Town retains the right to make final decision regarding the extent and type of road repairs.*

- (a) **Full Pavement Rehabilitation** – Major rehabilitation of the asphalt pavement only, such as a thick asphalt overlay or a Cold-in-Place recycle with a hot mix over lay.
- (b) **Full Depth Reconstruction** – Asphalt pavement repair/replacement and gravel base material repair/replacement.

**Section 6.3 Class III Roads.** Upon completion of the project, a thin asphalt concrete overlay (less than 2 inches) or a microsurfacing shall be done to replace the structural capacity loss of the pavement and to reseal cracks, restore road smoothness and correct ride-ability deficiencies that may have been induced. The thickness, materials, and method of construction for this overlay or microsurfacing shall be specified by the Town. If asphalt pavement damage is significant a thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1 ½” hot mix top may be required. However, if the post construction survey indicates significant deep structural damage to the pavement and base has occurred, the repair could include **Full Pavement Rehabilitation** (recycling or replacement of asphalt) or **Full Depth Reconstruction** (asphalt pavement and base layer reconstruction). Structural Damage to the base will be assessed by the increase in depth and width of wheel ruts and the extent of alligator cracking, potholes and patches. The Town shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. . The Developer(s) shall pay for one hundred percent (100%) of the costs of the labor, materials, and equipment needed, as well as the costs for any design and construction inspection services. The Developer(s) shall hire a qualified contractor to be approved by the Town, to construct the road repair. The Developer shall be responsible for complying with all required purchasing and labor requirements of New York State General Municipal Law and New York State Labor Law. *The Town retains the right to make final decision regarding the extent and type of road repairs.*

- (a) **Full Pavement Rehabilitation** – Major rehabilitation of the asphalt pavement only, such as a thick asphalt overlay or a Cold-in-Place recycle with a hot mix over lay.
- (b) **Full Depth Reconstruction** – Asphalt pavement repair/replacement and gravel base material repair/replacement.

**Section 6.4 Class IV Roads.** If the road was not rebuilt by the Developer(s) prior to or during the Construction project then upon completion of the project the road will be repaired by one of the following methods. . The Developer(s) shall pay for one hundred percent (100%) of the costs of the

labor, materials, and equipment needed, as well as the costs for any design and construction inspection services. The Developer(s) shall hire a qualified contractor to be approved by the Town, to construct the road repair. The Developer shall be responsible for complying with all required purchasing and labor requirements of New York State General Municipal Law and New York State Labor Law. *The Town retains the right to make final decision regarding the extent and type of road repairs.*

- (a) **Full Pavement Rehabilitation** – Major rehabilitation of the asphalt pavement only, such as a thick asphalt overlay or a Cold-in-Place recycle with a hot mix over lay.
- (b) **Full Depth Reconstruction** – Asphalt pavement repair/replacement and gravel base material repair/replacement.

**Section 6.5 Class V Roads.** Upon completion of the project, it may be necessary to re-grade, reshape and re-compact the driving surface of the Haul Routes. However if it is determined that a significant portion of the gravel material has been lost then the Developer(s) shall be required to add gravel material before the final re-grading, reshaping, and re-compacting of the Haul Road. The Developer(s) shall pay for one hundred percent (100%) of the costs of the labor, materials, and equipment needed, as well as the costs for any design and construction inspection services. The Developer(s) shall hire a qualified contractor, to be approved by the Town, to construct the road repairs. The Developer shall be responsible for complying with all required purchasing and labor requirements of New York State General Municipal Law and New York State Labor Law. *The Town shall determine the repair type, and the material specifications for the repair. The Town retains the right to make the final decision regarding the extent and type of repairs*

- (a) **Partial Base Repair** - If the needed repair is limited to a placement of 4” – 6” of gravel material the Developer(s) shall pay for one hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services. (placing of 4” – 6” of crushed type 4 gravel)
- (b) **Full Depth Repair** - If the needed repair includes replacing the granular base and any areas that may need undercutting with geo-textile materials the Developer(s) shall pay one hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services.

**Section 6.6 Class VI Roads.** If the road was not rebuilt by the Developer(s) prior to or during the Construction project then upon completion of the project the road will be repaired by one of the following methods. The Developer(s) shall hire a qualified contractor to be approved by the Town, to construct the road repair. The Developer shall be responsible for complying with all required purchasing and labor requirements of New York State General Municipal Law and New York State Labor Law. *The Town retains the right to make final decision regarding the extent and type of road repairs.*

- (a) **Partial Base Repair** - If the needed repair is limited to a placement of 4” – 6” of gravel material the Developer(s) shall pay for one hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services. (placing of 4” – 6” of crushed type 4 gravel)
- (b) **Full Depth Repair** - If the needed repair includes replacing the granular base and any areas that may need undercutting with geo-textile materials the Developer(s) shall pay

one hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services.

**Section 6.7 One -Time Use Roads.** In accordance with Article III section 3.2 (b) roads may be used on a one time basis if requested in writing. The Developer(s) will repair any damage caused by the project to the One-time use roads, and return such roads to the condition such roads were in prior to such damage (as near as is reasonably practicable having due regard for normal wear and tear). Prior to commencement of such repair, the Town and Developer(s) shall meet to review the damage in relation to the Initial Survey or most recent subsequent survey, as applicable. The Developer(s) shall repair (or cause to be repaired) such damage and restore the road to the standard agreed upon, unless the Developer(s) can demonstrate to the reasonable satisfaction of the Town Designees that the damage was not caused by the Developer(s). Any repair and restoration shall be promptly performed at such times as the Developer(s) and the Town determine, having due regard for safety, the presence of emergency conditions and the costs of such repairs. In the event that the Developer(s) fails to repair such roads within the agreed period, then, unless the Parties mutually agree otherwise, the Town may make such repairs and shall invoice the Developer(s) for the costs incurred by the Town in connection with the repair. The Developer(s) shall pay such invoiced amounts within ten (10) days following receipt of the invoice.

**Section 6.8 Culverts and Bridges – Improvements/Upgrades to bridges and culverts may be required prior to commencement of the project.** Damage as a result of the Construction Project to a culvert or bridge structure must be repaired following the project, or sooner if deemed necessary by the Town. All modifications or repairs to culverts or bridges shall be designed in accordance with accepted AASHTO and NYSDOT standards by a Professional Engineer licensed to practice in New York State and employed by a Civil Engineering firm appearing on the approved NYSDOT Region-4 LDSA lists. All damage by the contractor shall be mitigated, either through repair or replacement, by the contractor at his expense to the satisfaction of the Town of York.

**Section 6.9 Payment for road repair and inspections done by Town forces - All material, labor, inspection and equipment costs for any repair shall be paid by the Developer(s).**

- a. To the extent that any repairs arising out of the operations under this Agreement are handled “in house” by the Town, the labor costs will be the burdened rate of pay actually paid to the persons who perform the work, the reference to “burden” referring specifically to benefits associated with Town employment. The documentation for those costs will come directly from the Town Treasurer, including any payroll services it utilizes. For any Town equipment used for such repair work, the Town has a program, generally based on the current NYSDOT Equipment Rental Rates, to determine the “equipment rates” associated with each piece of Town equipment, which rates will be the basis for calculating the amount Developer(s) will be required to pay in respect of Town Equipment used to accomplish any repairs. Those rates are calculated upon placing such equipment in service and published for internal use by the Highway Department and the Town Treasurer. The latest list of said rates is attached hereto and by this reference incorporated herein. It is understood and acknowledged that the equipment rate list is updated when new equipment is placed in service, when equipment is removed, or when NYSDOT revises its current equipment Rental Rates, and revised lists will be made available to the Developer(s) upon request. Any materials used in these repairs purchased through the Town “procurement process”, will be based upon the particular contract

consideration and ultimately upon the actual cost to the Town. The Town will pass those contract and ultimately actual costs along to the Developer(s) without any “add-ons.”

- b. The Developer(s) shall pay for any contracted inspection services performed by the Town, as well as any cost incurred by the Town to hire an Administrator to facilitate the implementation and monitor the adherence to the Road Use Agreement(s).

## **ARTICLE VII OTHER CONDITIONS**

**Section 7.1 Protection of Traveling Public and Pedestrian Safety Plan.** The Developer(s) shall prepare and submit a Protection of Traveling Public and Pedestrian Safety Plan to the Town prior to performing any work as part of this Agreement. The Safety Plan shall identify the Developer’s designated Safety Officer with 24-hour contact information and address how the Developer(s) will ensure the safety of the traveling public and pedestrians along all designated haul routes. Special consideration in the Plan shall be given to high volume routes including seasonally high volume routes near visitor attractions, bicycle and pedestrian routes, routes through Hamlets, routes near any community gathering locations (e.g. churches, parks), and routes near schools. The Developer(s) shall identify means to monitor and control the speeds of their construction vehicles at all times and the scheduling of their routes to avoid peak hour traffic in the morning and afternoon on the way to and from home, work and school.

**Section 7.2 List of Materials and Construction Techniques.** Ten (10) days prior to the commencement of any modification or improvement pursuant to this Article VII, the Developer(s) shall deliver to the Town a list of all materials to be used and construction techniques to be employed in connection therewith, subject to the approval of the Town (not to be unreasonably withheld).

**Section 7.3 Subsequent Modifications or Improvements.** If modifications or improvements are necessary to the Designated Haul Routes and related appurtenant structures that were not contemplated when this Agreement was executed, the parties agree to negotiate in good faith and mutually agree to such modification or improvement, together with the materials to be used, the construction techniques to be employed, and the specifications applicable to such work.

**Section 7.4 Compliance with Law.** The Developer(s) agrees that all modifications and improvements shall comply with all applicable laws, subject to the obligation of the Town set forth in Article XI.

**Section 7.5 Appendix B - Utility Operations.** The Parties acknowledge that the Developer(s) may desire to route certain wires, cables, conduits and/or pipelines (and their associated equipment) related to the Project above or below ground at a location adjacent to, under or across certain Designated Roads, as identified in Appendix A. However, it should not be inferred by the Developer(s) that any utility operations would be allowed/ disallowed in every application involving Town of York right-of-way. The Town must review each proposed utility system after the appropriate project documentation has been submitted. Reasons for rejecting utility systems in whole or in part may be based on, but not limited to: existing utility congestion, highway maintenance distress, projected road reconstruction and structural proximity.

All road crossings in regards to allowing “open cuts” will be at the sole discretion of the Town Highway Superintendent or Designee. The Parties further agree that the Developer(s) shall be

responsible for obtaining all private land rights as are necessary to permit the Developer(s) to complete any type of installation approved by the Town and make the modifications and improvements to the Designated Haul Routes contemplated by this Agreement, including obtaining all necessary land rights from private landowners adjacent to the Designated Haul Routes. The Developer(s) shall submit Appendix B to the Town prior to the commencement of construction.

**Section 7.6 Permits.** The Developer(s) shall obtain all necessary governmental permits and approvals that are necessary to permit the Developer(s) to make the modifications and improvements to the Designated Roads contemplated herein, including obtaining all necessary private land rights that may be required in connection with Section 7.5. The Town shall not be responsible for obtaining any such private land use rights. The Developer(s) shall be responsible for obtaining all required permits and approvals as follows:

1. Town Driveway Permits
2. NYS DEC permits for water crossings, wetlands, storm water phase 2 permits, etc.
3. Army Corps of Engineer permits for water crossings, wetlands, etc.

**Section 7.7 Enforcement.** The Town shall identify and delegate an individual hereinafter, “the Designee,” the oversight of assuring commercial and industrial activities subject to this agreement do not have an adverse impact on roads or the public right-of-ways. The Town and/or Designee may also utilize outside resources as part of the oversight of activities. The individual will work directly with the company representative identified as part of this agreement. ***The Municipality reserves the right to issue a stop-work order and consequent revocation of this agreement for violations of agreement.***

**Section 7.8 Insurance Requirements.** The Town requires the following Certificates of Insurance showing the following:

- (a) Certificate of Insurance showing that the contractor is carrying General Liability Insurance with limits of \$2,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operation aggregate limits. The Town shall be listed as additional named insured on the liability policy.
- (b) Workers Compensation and New York State Disability Benefits Insurance. The Town must be listed as Certificate holder. The previously accepted ACCORD 25 forms will not be accepted as proof of Worker’s Compensation or Disability Insurance. Forms C-105.2, U-20.3, GSI-105.2 or SI-12 are the only forms that will be accepted as proof of Workers’ Compensation Insurance or Disability Insurance. The only exception to this requirement is the unincorporated sole proprietorship or partnership, where there are no employees. In such event Form CE-200 (Certificate of Attestation) must be submitted.
- (c) The Town Highway Superintendent shall be notified immediately if the insurance coverage is in any way modified or terminated while this agreement is in effect.

**Section 7.9 Fees.** A non-refundable fee of one thousand dollars (\$1,000) payable to the Town must accompany each executed Appendix A.



**ARTICLE VIII  
INTERIM AND EMERGENCY REPAIRS**

The Town will perform periodic inspections of the specified haul route(s) designated by the Developer(s). The Town will determine if any repairs are required to maintain the safety of the traveling public. The Town may deem necessary that the designated haul route(s) be restored to like new conditions before the project is complete. The Developer(s) will be expected to perform any emergency repairs to the haul roads, including the pavement, drainage structures, or any other highway related appurtenance that is damaged by the project and which the Town determines must be repaired. The Town will inform the Developer(s) of required emergency repairs and the repair shall be accomplished within a minimum of twelve (12) hours. If more time is required the Developer(s) shall inform the Town of the status of the repair on a daily basis, but at no time shall the road become impassable or become dangerous to the traveling public. Close communication will be required between the Town Highway Superintendent and the manager of the project. All costs of the repair shall be paid for by the Developer(s). Due to the constantly changing condition of gravel roads the condition of Gravel Haul routes will be monitored closely. All gravel haul routes shall be treated for dust control throughout the construction project. At a minimum two times between the months of May and September, the gravel haul routes shall be treated with Calcium Chloride or a suitable liquid asphalt prime coat. At the discretion of the Town, depending on road conditions more dust control treatments may be required. The Town will determine when re-grading and dust control treatments are required for gravel roads and shall direct the Developer(s) when to do them.

**ARTICLE IX  
WARRANTIES BY DEVELOPER**

**Section 9.1 Workmanship and Material Warranties.** The following warranty and workmanship requirements apply to all repairs, modifications, and improvements that the Developer(s) (its contractors or subcontractors) shall make prior to or during the course of the Construction project in order to accomplish the construction process. As used herein, “Applicable Warranty Period” means, with respect to any repair, modification, or improvement by the Developer(s) hereunder, the time period that begins on the date repairs, modifications or improvements to Designated Roads are complete and ending on the date that is twelve (12) months after the repairs, modifications or improvements to Designated Roads are completed.

(a) Developer’s engineering responsibility, including the selection of material and equipment suitable for the repair of, and modifications and improvements to, the Designated Haul Routes and One Time Use Roads shall be carried out in accordance with generally accepted engineering practices, and Developer’s construction responsibility shall be carried out in accordance with sound construction practices. The Developer(s) shall require from its construction contractors and subcontractors the same standards for engineering and construction practice. The Developer(s) warrants that it shall perform and complete all repairs, modifications and improvements hereunder in a good and workmanlike manner.

(b) The Developer(s) warrants that all repairs, modifications and improvements hereunder shall be free from defects in material and workmanship. The Developer(s) shall remedy any defects in the repairs, modifications and improvements performed hereunder including repairs, modifications and improvements, workmanship, materials and equipment provided

by subcontractors during the “Applicable Warranty Period”. A “defect” means any and all design, engineering, construction, manufacturing, installation, materials, equipment, repairs, modifications or improvements which (1) does not conform to the terms of this Agreement (2) is of improper or inferior workmanship, or (3) is not suitable for use under the applicable climatic and range of operating conditions.

**Section 9.2 Remedies.** During the Applicable Warranty Period, the Town shall notify the Developer(s) in writing of any defects in the repairs, modifications or improvements. At no additional cost to the Town, the Developer(s) shall proceed promptly to take such action relating to its performance hereunder as is necessary to cause the repairs, modifications and improvements to comply with the warranties specified in this Agreement. The Developer shall be available either at the project or by telephone for the performance of warranty repairs on a seven (7) day a week, twenty-four (24) hours per day basis.

**Section 9.3 Final Waiver of Liens** The Developer(s) warrants that all repairs, modifications, improvements and materials furnished in connection with the performance by Developer(s) Parties under this Agreement shall be free and clear of all liens.

## **ARTICLE X BONDING**

### **Section 10.1 Bonding**

A bond, standby letter of credit, or other form of security acceptable to the Town, will be required in an amount to be determined subsequent to the road classification of Haul routes and prior to the commencement of project construction. The bond posting dates must be for a period starting no later than the commencement of construction date and ending upon the completion of any repairs the Town determines are necessary after review of the Post Use Road Survey as set forth in Article V. The security will be in accordance with the following schedule:

1. Class 1 Roads – \$ 150,000 / mile
2. Class 2 Roads - \$ 185,000 / mile
3. Class 3 Roads - \$ 240,000 / mile
4. Class 4 Roads - \$ 300,000 / mile
5. Class 5 Roads - \$ 95,000 / mile
6. Class 6 Roads - \$ 190,000 / mile

**Section 10.2 Multiple Users** In the event that there are multiple users on any Designated Haul Routes;

- a) A list of all developers using the same Designated Haul Routes shall be distributed to each developer by the Town.
- b) All interim and emergency repair costs (ref. Article VIII), as well as all final road repair costs (ref. Article VI), incurred after multiple Road Use Agreements are in place, shall be shared by the Developer(s). Any costs incurred before multiple Road Use Agreements and in place, shall be borne by the original Developer(s).

**ARTICLE XI  
DEFAULT AND REMEDIES**

**Section 11.1:** In the event that the Developer(s) fails substantially to perform each and every obligation and undertaking to be performed by it hereunder, and such default shall not be cured within thirty (30) days after notice from the Town, then the Town shall have the right to terminate this Agreement by giving ten (10) days' notice.

**Section 11.2:** The Town reserves the right at any time during the life of this Agreement to terminate the Agreement in its absolute discretion on thirty (30) days' notice in the event that,

- (a) The Developer(s) becomes insolvent; or
- (b) Any voluntary or involuntary petition in bankruptcy or for corporate reorganization or for any similar relief is filed by or against the Developer(s) and, in the case of an involuntary petition, such petition is not dismissed within thirty (30) days after such filing; or
- (c) A liquidation proceeding is commenced by or against the Developer(s), and, in the case of an involuntary proceeding, such proceeding is not dismissed within thirty (30) days after commencement thereof; or
- (d) All or substantially all of the business or assets of the Developer(s) are transferred to a third party (other than a parent or ASSOCIATED COMPANY of the Developer) by agreement, order of court, or otherwise, including, without limitation, by a merger or consolidation.

**Section 11.3:** Upon termination of this Agreement as hereinabove provided or by operation of law or otherwise, all rights and licenses granted and obligations assumed hereunder shall terminate forthwith, except;

- 1. The obligation to pay amounts accrued or to accrue as of the termination date as provided hereinabove; and
- 2. The provisions of Article IX hereof for any amounts accrued or to accrue as provided hereinabove; and
- 3. The provisions undertaken under Article X.

**ARTICLE XII  
NOTIFICATION OF ALL ASSOCIATED MUNICIPALITIES**

**Section 12.1:** The Developer(s) shall notify all other County, Town and Village Municipalities that will be impacted by the Developer(s) associated with the Designated Haul Routes according to this Road Use Agreement. The Developer(s) shall enter into a Road Use Agreement where required, with any other Municipality that will be impacted by the construction project.

**Term of Agreement:** This Agreement shall be for a term commencing on the effective date hereof and ending when the project in respect of which it is entered into is complete, unless sooner terminated or extended as provided in Exhibit A of the Agreement.

**In Witness Whereof**, the parties hereto have executed this agreement as of the latest date written below.

**Town of York**

**By:** \_\_\_\_\_

Name:

Title:

**Date:** \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Town Attorney

**By:** \_\_\_\_\_

Name: Gerald L. Deming

Title: Town Supervisor

**Date:** \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX A  
ROAD PRESERVATION USE AND REPAIR WORKSHEET**

**Project Sponsor:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_  
**Project Manager:** \_\_\_\_\_  
**24-Hr Contact #:** \_\_\_\_\_

**Work Location:** \_\_\_\_\_  
**Estimated Project Start Date:** \_\_\_\_\_  
**Estimated Project Completion Date:** \_\_\_\_\_  
*(Includes full project build-out)*  
**Maximum Gross Vehicle Weight:** \_\_\_\_\_  
**Maximum Truck Trips/Day:** \_\_\_\_\_

**Required Documentation:**

**a. Construction Traffic Estimate**

Date Received: \_\_\_\_\_  
Approved By: \_\_\_\_\_

**b. Pre-Construction Survey**

Date Received: \_\_\_\_\_  
Approved By: \_\_\_\_\_

**c. Bond/Letter of Credit (Check one)**

Bond Amount: \_\_\_\_\_  
Date Paid: \_\_\_\_\_  
Letter of Credit: \_\_\_\_\_  
Date Paid: \_\_\_\_\_

**d.  Haul Routes Map attached** - In connection with the development, construction, operation and maintenance of the Project, the Municipality hereby acknowledges and agrees that \_\_\_\_\_, its contractors and subcontractors and each of their respective agents, employees, representatives, and permitted assigns (collectively, the "Developer") shall use the roads and highways located in the Municipality identified on Appendix A hereto (the "Designated Haul Routes"). The Designated Haul Routes may be used by Developer only in connection with the development, construction, operation, and maintenance of the Project, including the transportation of heavy equipment and materials to and from the Project.

**e.** This agreement must be renewed one year from the effective date of filing

**Agreement Approval and Effective Date:** \_\_\_\_\_

**Approved by:** \_\_\_\_\_  
Municipal Official

**Approved by:** \_\_\_\_\_  
Authorized Project Representative

**DESIGNATED HAUL ROUTES**  
**(Attach map(s))**

**Approval and Effective Date:** \_\_\_\_\_

**Approved by:** \_\_\_\_\_  
Municipal Official

**Approved by:** \_\_\_\_\_  
Authorized Project Representative

*Note: All designated haul routes will be posted as such. All expenses associated with route posting will be paid by the Developer. The Unit Price for one sign will be determined by the Designee and shall include labor, all materials, stakeout, call to Dig Safely NY and installation.*

**APPENDIX B**  
**UTILITY OPERATIONS**  
**(Attach map(s) and detail(s) as necessary)**

In accordance with Section 7.5, the Developer shall identify all wires, cables, conduits and/or pipelines (and their associated equipment) related to the Project above or below ground at a location adjacent to, under or across certain Designated Roads that are desired to be rerouted. A map showing the location of the existing and proposed routes and the details of construction shall be included.

**Approval and Effective Date:** \_\_\_\_\_

**Approved by:** \_\_\_\_\_  
Municipal Official

**Approved by:** \_\_\_\_\_  
Authorized Project Representative

**APPENDIX C  
GENERAL TERMS AND CONDITIONS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Developer” herein refers to any party other than the Municipality, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** This contract shall be deemed executor only to the extent of money available to the Municipality for the performance of the terms hereof. In accordance with Section 41 of the State Finance Law, the Municipality shall have no liability under this contract to the Developer or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNABILITY CLAUSE.** This contract may not be assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the Municipality.

**3. INSURANCE.** The Developer shall carry, at his expense, from insurers licensed in the State of New York, at least the insurance coverage and limits as set forth in Section 7.8.

**4. INDEMNITY.** The Developer shall at all times without limitation indemnify the Municipality from all claims, damages or judgments or for the defense or payment thereof, based on any claim, action or cause of action whatsoever, including any action for libel, slander, or personal injury, or any affiliated claims, by reason of any act or failure to properly act on the part of the Developer and in particular, as may arise from the performance under this contract.

**5. COMPLIANCE WITH RULES, REGULATIONS AND LAWS.** It is mutually agreed that all rules, regulations and laws pertaining hereto shall be deemed to be part of this contract, and anything contained herein that may be in whole or in part inconsistent therewith shall be deemed to be hereby amended and modified to comply with such legislation, rules, regulations and laws, for and during such time the same shall be in effect, but at no other time. If any provision contained herein is found now or during the life of this Contract to be null and void, in whole or in part as a matter of law, then said clause or part hereof shall be deemed to be severed and deleted from this Contract leaving all other clauses or parts thereof in full force and effect. It is further agreed that there shall be no gap in the coverage or applicability of said remaining clauses or parts thereof. Developer agrees to comply with the Federal Commercial Drivers License Drug and Alcohol Testing Program requirements set forth in CFR 49 parts 40 and 382. In acceptance of this Agreement, Developer covenants and certifies that it will comply in all respects with all Federal, State, County or other Municipal Law which pertains hereto regarding work on municipal contracts, matters of employment, length of hours, workers’ compensation and human rights.

**6. CONFLICT OF INTEREST.** Developer hereby stipulates and certifies that there is no member holding a municipal office or other municipal officer or employee forbidden by law to be interested in the contract directly or indirectly, who will benefit there from or who is a party thereto.

**7. INDEPENDENT CONTRACTOR STATUS.** Developer covenants and agrees that it will conduct itself consistent with its status, said status being that of an independent contractor and that itself, its employees or agents will neither hold themselves out as, nor claim to be an officer or employee of the Municipality, for such purposes as, but not limited to, Workers’ Compensation coverage, Unemployment Insurance Benefits, Social Security or Retirement membership or credit.

**8. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.



**Appendix D**  
**Draft Zoning Amendments / Revisions**



**Town of York**  
**Natural Gas & Petroleum Drilling**  
**Proposed Zoning Amendments**

**1. Section 201 (Definitions)**

**Add:**

Drilling/Extraction Company – A person or organization who constructs a well and /or conducts drilling operations, including management and oversight of any subcontractor(s).

High Volume Hydraulic Fracturing – A well stimulation technique involving the pumping of hydraulic fracturing fluid (includes base fluid and any additives), possibly with a proppant, into a formation to increase formation permeability and productivity.

Leaseholder – A person or organization that has been granted rights by the owner to drill into and produce or extract natural gas or oil from a specified area of land.

Natural Gas – Methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure condition, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons, excluding any gas produced by a permitted landfill. Natural gas also includes any manufactured, mixed and/or by-product gas. May also be referred to as simply *gas*.

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

Natural Gas Processing Facility – Those facilities that separate and recover natural gas liquids (NGL) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning and stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGL, removing sulfur or carbon dioxide, fractionation of NGL or the capture of CO<sub>2</sub> separated from natural gas streams.

Natural Gas and Petroleum Extraction and Production Wastes –

- A. Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection

laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste:

1. Below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, storage, or transportation of, natural gas, petroleum, or any related hydrocarbons;
  2. Natural gas or petroleum drilling fluids;
  3. Natural gas or petroleum exploration, drilling, production or processing wastes;
  4. Natural gas or petroleum drilling treatment wastes (such as oils, hydrofracturing fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material);
  5. Any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, storage, processing or refining of natural gas or petroleum;
  6. Soil contaminated in the drilling, transportation, storage, processing or refining of natural gas or petroleum;
  7. Drill cuttings from natural gas or petroleum wells; or
  8. Any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum.
- B. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 CFR § 261.4(b).
- C. The definition of natural gas and/or petroleum extraction, exploration or production wastes does not include:
1. Recognizable and non-recognizable food wastes; or
  2. Waste generated by agriculture use.

Natural Gas and Petroleum Extraction and Production Activities – The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, utilizing any means of extraction or production, including but not limited to vertical drilling, horizontal drilling, high volume hydraulic fracturing and directional drilling. Gas produced and captured/extracted by a permitted landfill is excluded.

Natural Gas and Petroleum Facilities – Any facility associated with legally permitted commercial Natural Gas and Petroleum Extraction or storage operations, including any structures, appurtenances, roads/driveways, the drill hole (well), ponds, and any surface disturbance used in connection with drilling operations for the oil or gas well.

Non-regulated Pipelines – Those pipelines that are exempt or otherwise excluded from regulation under Federal and State laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

Petroleum – A simple or complex liquid mixture of hydrocarbons that can be refined to yield gasoline, kerosene, diesel fuel and various other products. May also be referred to as *oil*.

Property Owner – The owner of the legal title to the premises from which the gas or oil is to be extracted.

Temporary – An established, fixed period of time with the intent to discontinue a specific use, activity or action upon such expiration of such time.

Temporary Dwelling Facilities – Non-permanent facilities used to provide space for transient individuals for a limited period of time for the placement of temporary dwelling facilities, including but not limited to tents, recreational vehicles, and mobile homes for non-recreational purposes.

Underground Injection Well – A well, including depleted natural gas or petroleum reservoirs and salt caverns, that is utilized for subsurface storage of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas or the placement, either temporary or permanently, of natural gas and/or petroleum extraction, exploration or production wastes.

Well or wellpad – The hole which is drilled or put down for the purpose of mining for the production of natural gas or oil. Where reference is made anywhere to the prohibition of the construction of a natural gas or oil well within certain distance of specified places or features, such distances shall be measured from the edge of the wellpad except where otherwise provided.

## **2. Section 303 (Interpretation of Permitted Uses) - NEW SECTION**

Any land use not specifically identified in the listing of permitted or specially permitted uses within each zoning district shall be deemed to be not permitted unless a use variance is granted by the Zoning Board of Appeals as set forth in Section 902 of this code.

## **3. Section 400 (Agricultural District) / Section 408 (Industrial District) Permitted Uses**

**Add:** “Natural Gas and Petroleum Extraction Facilities” to special permitted uses under section 400.C and 408.C.

**4. Section 401 (Residential), 402 (Hamlet Residential), 403 (High Density Residential), 404 (Hamlet Commercial), 405 (Commercial), 406 (Mixed Use), 407 (Light Industrial), 409 (Planned Development)**

**Add:** "Prohibited Uses: Natural Gas and Petroleum Extraction Facilities"

**5. Section 508 (Accessory Buildings)**

**Add:** "F. Structures and facilities beyond the drilling rig on a Natural Gas and Petroleum Extraction and Production Facility shall be considered accessory uses and shall be contained within the well pad site."

**6. Section 509 (Dumping of Waste Material)**

**Add:** "... Only lawfully produced wastes generated from within the Town of York may be disposed of in the Town of York. No outside wastes shall be brought into the Town and disposed of."

**7. Section 510 (Outdoor Storage of Materials and Equipment)**

**Add A (5):** "Equipment, vehicles, machinery and materials being temporary stored as part of a Natural Gas and Petroleum Extraction and Production Facility, either on the same site or at an off-site location."

**Add D (6):** "In instances where machinery, equipment or vehicles associated with a Natural Gas and Petroleum Extraction and Production Facility exceeds the height of screening, such machinery, equipment or vehicle (s) shall be located on the site in such a manner so it is not viewable from a publically accessible viewpoint past any fencing or screening feature."

**8. Section 512 (Temporary Uses and Structures)**

**Add:** "Temporary dwelling facilities for non-recreational purposes, not otherwise permitted or regulated in this Code or not associated with the construction of a single dwelling unit, is not permitted in the Town of York."

**9. Section 514 (Protection of Environmentally Sensitive Areas)**

**Add A (7):** "Principal Aquifer areas as defined by the NYSDEC."

**10. Section 516 (Performance Standards)**

**Add to the end of 516.A(2)b:** “The Code Enforcement Officer may utilize the Town Engineer or other third party professionals, including consultants or local law enforcement, to confirm a violation and/or certify compliance with these standards should the owner/operator/applicant of the proposed use not provide this information with no expense to the Town or any third party utilized.”

## **11. Section 518 (Outdoor Lighting Regulations)**

**Add to the end of 518.F(4):** “Temporary or longer duration construction or operations within 500 feet of an adjacent residential dwelling or agricultural building used to house livestock and livestock products shall be shielded to minimize light trespass onto the adjoining property.”

## **12. Section 618 (Natural Gas and Petroleum Extraction and Production) - NEW SECTION**

- A. Intent. The intent of this section is to provide standards that shall be met for the construction of Natural Gas and Petroleum Extraction and Production Facilities (“Facilities”) in the Town of York to preserve local public health, safety and resources that have not otherwise been addressed by the New York State DEC.
- B. Applicability.
- (1) The standards and requirements set forth in these regulations shall apply to all Natural Gas and Petroleum Extraction and Production Activities, proposed, operated, modified or constructed after the effective date of this Zoning Code.
  - (2) These standards and requirements shall only apply to legally permitted Natural Gas and Petroleum Extraction and Production Facilities in which the extracted gas or oil is to be commercially sold or transported. Natural Gas and Petroleum Extraction and Production Facilities in which a single, legal residential, commercial or industrial use or a legal residential subdivision on the same site from which the resource is extracted or land which the owner legally titled to are exempt from these regulations.
  - (3) Natural Gas and Petroleum Extraction and Production Facilities shall not be the primary use of land.
- C. Fees. The fees for the review of Natural Gas and Petroleum Extraction and Production Facilities are set forth in the “Fee Schedule”, in the Town Code, and may be amended from time to time by the Town Board, by resolution after a properly noticed public hearing.
- (1) The Town shall also charge any fees accumulated from outside consultants hired by the Town during the review or inspection of any Natural Gas and Petroleum Drilling Facilities to the applicant. As an alternative, the Town and applicant may enter into an agreement for review for these unique facilities. In such case, the Town and

applicant will agree to a fee arrangement and escrow agreement to pay for the cost of the review of the plans, certifications, or conduct inspections as agreed by the parties.

D. Zoning Permit Required.

- (1) No Natural Gas and Petroleum Extraction and Production Facilities shall be constructed, reconstructed, modified or operated in the Town of York except in compliance with these regulations.
- (2) No zoning permit or other approval shall be required for Natural Gas and Petroleum wells that exist prior to the effective date of this Zoning Code amendment.
- (3) The transfer or sale of any Natural Gas and Petroleum Extraction and Production Facilities or special use permit shall not occur without prior notice to the Town of York. The new owner(s) are fully bound to the special use permit, along with any conditions attached hereto, and assumes full liability for the Facility upon final sale or transfer.
- (4) The Town Board may revoke a zoning permit under the following instances:
  - a. A Natural Gas and Petroleum Extraction and Production Facility is not operational within one year of the issuance of a special use permit from the Town of York.
  - b. A Natural Gas and Petroleum Extraction and Production Facility is not maintained in a safe and operational condition at all times, subject to reasonable maintenance and upgrades. Safe and operational condition includes meeting all OSHA and NYSDEC standards as well as any performance standards applicable to the Natural Gas and Petroleum Extraction and Production Activities and any other permit conditions. Should a permit condition be violated, the owner or operator shall remedy the situation within 30 days after written notice from the Town Board. The applicant shall have 30 days after written notice from the Town Board, to cure any deficiency. An extension of the 60 day period may be considered by the Town Board, but the total period may not exceed 120 days or longer if indicated under NYS DEC regulations.
  - c. Notwithstanding any other provision specified in this section, if a Natural Gas and Petroleum Extraction and Production Facility made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order revocation of the special use permit for the facility and issue a violation notice and subsequent violation fees.

E. Permit Applications for Natural Gas and Petroleum Drilling Facilities.

- (1) Six (6) copies of the permit application, along with applicable fees, for Natural Gas and Petroleum Extraction and Production Facilities shall be submitted to the Code Enforcement Officer (CEO). The CEO shall forward the application, if deemed complete, to the Town Board for review. The application shall include the following information:



- a. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
- b. Name and address of the property owner, leaseholder, drilling/extraction company and any participating, non-participating or royalty owner(s). If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
- c. Address, or other property identification, of the Facility location, including Tax Map section, block and lot number.
- d. A brief description of the project.
- e. A copy of all completed and approved permit activities from all required State and County Agencies, as appropriate, along with any conditions imposed on the permit as well as insurance certificates held by the applicant and naming the Town as an additional insured entity.
- f. A stamped and certified site plan shall be prepared by a licensed surveyor or engineer drawn and in sufficient detail. The site plan shall conform to the site plan requirements specified in 6 NYCRR Section 560.3 and shall also include the proximity to the following specified local features:
  - (i) Principal aquifers as identified in by the U.S. Geological Survey
  - (ii) The boundaries of any underground mine footprints
  - (iii) Any agricultural buildings, pasture fields and farmable lands used in conjunction with agricultural operations in the Town of York
  - (iv) Any Sensitive Environmental Features as identified in section 514
  - (v) Adjoining private wells
  - (vi) Bridges and culverts
- g. Clearing and grading plan indicating the extent of the area to be cleared and reclaimed as well as details of erosion and sedimentation control and stormwater pollution prevention measures. The minimum amount of vegetation required for the well pad shall be cleared. The applicant shall make the best possible use of existing hedgerows, berms, tree lines, forested areas and other existing vegetation or natural features for screening and buffering from adjacent areas and avoid clearing these areas.
- h. Lighting Plan showing any proposed lighting and the extent of lighting area in accordance with section 518.
- i. Decommissioning/Reclamation plan as submitted and approved by the NYSDEC.
- j. Completion of a Local Road Use Agreement based on the Transportation and Traffic Plan with the appropriate bonds fully set up prior to the beginning of any work associated with a Natural Gas and Petroleum Extraction and Production Activity. The Agreement shall include the designation of local haul routes, use of local haul routes, pre- and post-use condition survey, and determination of final road repairs and payment.

- k. Transportation and Traffic Plan. The construction of Natural Gas and Petroleum Extraction and Production Facilities poses potential risks due to the large size of and volume of construction vehicles, their impact on traffic safety, and their physical impact on local roads
  - l. Public Response Plan. The application will include a public resolution process to address complaints and issues from nearby residents relating to violations of these standards or any other standards from Federal or State agencies. The applicant shall make every reasonable effort to resolve any complaint or issue.
  - m. A construction schedule describing the commencement, completion, and any major milestone dates.
  - n. Completed Part 1 of the Full EAF. All Natural Gas and Petroleum Drilling/Extraction Activities shall be considered a Type 1 action.
  - o. A statement, signed under penalties of perjury that the information contained in the application is true and accurate.
- F. Standards. The following standards shall apply to all Natural Gas and Petroleum Facilities, unless specifically waived by the Town Board as part of a special use permit:
- (1) The applicant shall adhere to and provide proof that the performance standards for noise, vibration, dust, lighting, and other potential impacts in section 516 will not be exceeded during any phase of the Natural Gas and Petroleum Extraction and Production Activity.
  - (2) Temporary dwelling facilities associated with Natural Gas and Petroleum Extraction and Production Activities are not permitted in the Town.
  - (3) Driveway permits are required and shall be constructed in accordance with Town specifications.
  - (4) The applicant shall coordinate and land clearing activities associated with Natural Gas and Petroleum Extraction and Production Facilities, including placement of non-regulated pipelines, Natural Gas Compression Facilities with the respective landowners to ensure that the minimum amount of vegetation or trees are removed and that any cleared trees, if desired by the landowner, are placed in a suitable location or cleared in such a manner that the landowner could utilize the trees for personal or commercial use.
  - (5) Contact information for complaints and a public informational document showing the summary of the operation, timeframe, and extent of the well site shall be conspicuously posted at the entrance to the site for public interaction and outreach.
  - (6) Natural Gas and Petroleum Extraction and Production Activities that take place within 500 feet of inhabited dwellings or agricultural buildings shall not occur during the hours of 7 pm to 7 am Monday through Saturday and shall not occur on Sunday.
  - (7) Facilities shall provide adequate off-street parking for all employees, including any subcontractors, so that no vehicles are parked or standing on any public roadways. Parking facilities shall be designed and constructed in accordance with section 519, with the exception of 519.F(2); parking shall be located within the well pad site.
  - (8) A landscaping plan shall be required for Natural Gas Compression or Processing Facilities in accordance with section 520.

G. Required Setbacks.

- (1) The following features represent unique or explicitly defined features to the Town of York which require protection from disturbance. Natural Gas and Petroleum Extraction and Production Facilities shall not be located within:
- a. 500-feet of the boundary of a principal aquifer
  - b. 500-feet of the existing footprint of any current or former underground mine
  - c. 500-feet of an agricultural building used to house livestock
  - d. 500-feet of any water supply source identified and utilized for livestock

H. Noise and Setback Easements.

- (1) In the event the noise levels resulting from a Natural Gas and Petroleum Extraction and Production Activity exceed the criteria established in these regulations or setback requirement is not met, a waiver may be granted by the Town Board if:
- a. Written consent from the affected property owners has been obtained stating that they are aware of the Facility and the noise and/or setback limitations imposed by these regulations, and that consent is granted to: (1) allow noise levels to exceed the maximum limits otherwise allowed; and/or (2) all setbacks less than required.
- (2) Waivers granted under this subsection differ from variances in that no variance is required if a waiver is given under this subsection. A use variance must be sought following the procedures for obtaining a use variance from the Zoning Board of Appeals if a waiver cannot be obtained based on the criteria above.

I. Abandonment or Discontinuance of Use.

If any Natural Gas and Petroleum Extraction and Production Facility remains non-operational for a continuous period of one (1) year, the applicant agrees that, without any further action by the Town Board, it shall remove any and all facilities associated with the operation at its own expense. Following removal, the site shall be reclaimed in accordance with the reclamation plan provided by the applicant and approved by the NYSDEC.

J. Limitations on Approvals, Easements on Town Property.

Pursuant to the powers granted to the Town to manage its own property, the Town may enter into easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by State or local law.

13. Section 807 (State Environmental Quality Review Act (SEQRA))

**Add to A(2):** "Special use permits and Site plans with the exception of Natural Gas and Petroleum Drilling/ Extraction and Production Activities – Planning Board"

**Add new A(3):** "Special use permits and Site plans for Natural Gas and Petroleum Drilling/ Extraction and Production Activities – Town Board"

**Renumber:** A(3) to A(4).

#### **14. Section 1001 (Penalties for offenses)**

**Change:** penalty amount to not more than \$2,000.

**Add:** “The Town may also or in place of fines or imprisonment, request a court ordered injunction, restraining further activity or use by the applicant until such time as the violation is remedied.”

#### **15. Section 1109 (Reimbursable Costs)**

**Add:** “Any costs incurred by the Town for the use of outside consultants or third parties for inspections or review of plans and applications associated with permitted or specially permitted uses in the Town shall be charged to and paid by the applicant, with no costs incurred by the Town.”

#### **16. Section 1111 (Inspection of Improvements)**

**Add to the end of the last sentence:** “, and to determine adherence with the standards contained within this chapter or conditions imposed upon such activity or use in any approved permit.”

**Appendix E**  
**Draft Principal Aquifer Overlay Regulations**



#### **410. Principal Aquifer Overlay (PAO)**

- A. Purpose. Significant portions of the Town of York are not within a public water district or serviced by a public water source. Residents and businesses within these areas rely on groundwater as the source for their potable water supply needs. A New York State-designated Principal Aquifer is located within the Town and provides potable groundwater to much of unserved areas within the Town. The Town finds that this resource is a vulnerable resource to contamination from above and below ground uses that could result in significant environmental and financial impacts to the Town and its residents if impacted. The intent of the Principal Aquifer Overlay is, in the interest of public health, safety and general welfare, to preserve the quality and quantity of the Town of York's groundwater resource within the Principal Aquifer areas. This will be accomplished by identifying certain uses that could be potentially damaging to groundwater quality, and by establishing minimum documentation and submittal requirements to protect groundwater quality and quantity.
- B. Relation to Other Districts. Within the Principal Aquifer Overlay all of the underlying land use district regulations shall remain in effect except as specifically modified by this Section. In case of a conflict between this Section and the underlying use regulations, the more restrictive shall apply.
- C. Applicability. The Principal Aquifer Overlay shall include all those lands contained within the Principal Aquifer, as identified by NYSDEC and mapped by USGS Water Resources mapping for the area, "Potential Yields of Wells in Unconsolidated Aquifers in Upstate New York – Niagara Sheet." Where the Overlay boundary is in dispute, the landowner shall consult a professional geologist, hydrologist, or other professional to determine more accurately the boundary of the Principal Aquifer Overlay.
- D. Prohibited Uses. The following uses are not permitted in the Principal Aquifer Overlay:
1. The discharge, land application, underground storage or disposal of any hazardous material, toxic substance or radioactive material;
  2. Any principal use that includes the production or processing of any hazardous material or toxic substance;
  3. The dumping or disposal of snow or ice collected off site from roadways or parking areas into or within 100 feet of any watercourse;
  4. Any form of underground injection of wastes, with the exception of agricultural manures provided a Comprehensive Nutrient Management Plan is in place;
  5. Land spreading of septic waste;
  6. The disposal of toxic substances or hazardous materials by means of discharge to a septic system;
  7. Commercial open storage of pesticides, herbicides, fungicides and artificial fertilizers within fifty (50) linear feet of any watercourse, unless watertight containment structures are utilized;
  8. Solid or liquid waste disposal facilities;
  9. Concentrated animal feeding operations in areas outside of designated Agricultural Districts created pursuant to New York State Agriculture and Market Law;

10. The drilling of a well used for natural gas, oil, natural gas storage, solution mining, or brine disposal for commercial use or resale;
11. Fuel oil or bulk petroleum wholesale dealer/distributor.

E. Site Development Requirements. Any permitted use or activity wholly or partially within the Principal Aquifer Overlay shall be required to have site development plan review and approval by the Planning Board prior to issuance of a building permit or certificate of occupancy except for the construction or modification of a single one- or two-family dwelling, accessory building or use; and/or agricultural uses.

1. The Planning Board may require changes or additions to the site development plan as a condition of approval to safeguard groundwater resources. No building permit and no certificate of occupancy shall be issued unless and until such conditions have been fully met or performed. All improvements to the site shall be completed in strict conformance with the site plan as approved.
2. Such changes or additions to the site development plan may include:
  - a. The location of the property in relation to the aquifer protection overlay district;
  - b. A pollution control plan that includes measures and activities proposed to prevent on-site-disposal and potential contamination of groundwater or surface water, including spill response activities
  - c. A description of any regulated hazardous materials used or stored on the property as part of any commercial or industrial processes
  - d. A disposal and storage plan for any regulated hazardous materials