

Technical Supplement

CONSIDERATIONS FOR

PROTECTION OF

TOWN HIGHWAYS

INCLUDING REGULATION OF OVERSIZED AND OVERWEIGHT VEHICLES

Compiled By Southern Tier East Regional Planning Development Board

[REVISED DRAFT]

DISCLAIMER - The following discussion of the new York Highway Law and the Vehicle and Traffic Laws is from the perspective of a community planner and DO NOT REPRESENT LEGAL OR ENGINEERING INTERPRETATIONS. Citations are provided for the sources of the specific provisions, and in all cases it is recommended that the original text be consulted and to the extent desired, legal advice sought from the municipal attorney or such other trained legal and/or engineering authority as may be appropriate.

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Compiled By Southern Tier East Regional Planning Development Board
Binghamton, New York

INTRODUCTION

Many rural communities are facing development issues in areas for which they have only limited resources to meet. This is particularly true for activities associated with harvesting natural resources – woodlands, quarries, gravel pits, wind farms, as well as natural gas wells. These activities frequently involve heavy and oversized vehicles and are usually conducted in remote areas where the road infrastructure is often the most fragile. In addition, roads and public rights-of-way will be impacted by the need to gather gas from the wells and connect them to a distribution system by means of underground pipes. Underground pipes may also be used in transporting fresh and used water to drilling sites reflecting the water intensive nature of current natural gas extraction techniques known as hydro-fracturing – or “fracking”. One of the characteristics of this development is that while it may span several years, the intensive use of the larger and heavier vehicles is of a limited duration – basically during construction. Traffic patterns and volume will also change during fracking operations when water trucks will be bringing in freshwater and removing excess wastewater.

This monograph is intended to provide background material for the discussion of measures which towns within the Southern Tier East Region of New York can take to help preserve their local highways from some of the negative consequences of increased use in support of development in very rural areas. While initiated by the prospects of natural gas development on the Marcellus Shale formation which underlies much of the region, these preservation concerns are intended to be applicable to any larger scale construction or development in rural areas which could adversely impact these rural roads.

There appear to be three major issues which have been identified as requiring preventive action:

- Damage to roads, bridges and neighboring property resulting from movement by heavy and oversized vehicles, especially construction equipment;
- Disruption of residential neighborhoods and damage to light duty roads, especially in rural areas, by significantly increased traffic volumes; and
- Interruption of traffic flow or irregular road surfaces as the result of road cuts to allow placement of pipelines and other facilities alongside or across rural roads.

Because they are designed to provide access to low density development, low volume town roads in rural areas are usually designed for limited traffic and low vehicle weights. Roads are often unpaved or are limited to a layer of gravel with or without some form of surface binder. While suitable for the occasional automobile or pickup truck, many of these roads usually lack the base and wearing surface needed to support larger or heavier vehicles which might be involved in construction projects, collecting milk from dairy farms, hauling fresh cut lumber, transporting stone from remote quarries, or involved in harvesting natural gas resources.

Many town roads serve rural residential and agricultural areas where there is currently very little traffic. Increases in traffic associated with construction disturb quiet neighborhoods. The introduction of heavy traffic may be either for a short period, as in the case of during a construction project, or on a permanent basis as in the case of building a new school or major new business. The preplanning of traffic circulation can help to minimize negative traffic impacts, noise and congestion.

Construction may also involve road cuts to allow pipelines and underground utilities to run alongside or pass underneath local roads. In either case traffic on the public roadway can be interrupted and permanent damage can result if the road way is not properly repaired when the trench is closed after construction.

There are several approaches to the preservation of local roads which are exposed to oversized and heavy equipment, but most commonly they involve one of two basic approaches – preventative, or remedial. Prevention usually involves regulation of the movement of vehicles which may injure local roads to divert such vehicles from the most vulnerable roads, while remediation usually involves financial tools such as performance bonds to assure the replacement of damage resulting from use.

DAMAGE PREVENTION

Damage prevention attempts to avoid injury to roads and adjoining properties by limiting or prohibiting use by vehicles of a size or weight most likely to create such damage. In particular this approach typically involves locally adopted regulations which impose limitations on the size and weight of vehicles allowed to cross bridges or traverse roads under Town jurisdiction. In addition the negative impact of increased truck traffic can be reduced by restricting such traffic to designated truck routes which can help divert such traffic from sensitive areas or during night-time periods.

Temporary Truck Exclusion

State Law authorizes a Town Highway Superintendent to temporarily exclude from any portion of a town highway any vehicle having a gross weight over 4 tons or more, when in his opinion the highway will be materially injured by the operation of such a vehicle on it.¹ This temporary exclusion authority can be especially useful when a “moratorium” on heavy or oversize vehicles is sought while a Town Board considers the adoption of more permanent regulations. Exclusions can take effect upon erection of signs on the highway and newspaper publication of a notice and remain in effect until the signs are removed as directed by the town board. While temporary exclusions are useful, they are not a substitute for a more comprehensive approach.

Vehicle operators can apply to the Town Board for permits providing appropriate exemption to the temporary exclusion for their vehicle, if it is deemed to be performing essential local pickup or delivery service and that a failure to grant such permit would create hardship. The permit may designate the route to be traversed and contain other reasonable restrictions or conditions deemed necessary. The State Law requires that such permits be carried on the permitted vehicle and be open to inspection by any law enforcement officer. Temporary exclusion permits are valid for the duration of the restriction.

Establishing Truck Routes

There is an obvious need to accommodate large vehicles on at least some Town roads. The intent of establishing truck routes within a town should be to direct heavier or larger vehicles, already

¹ Article 41, §1660a(11) of the New York State Vehicle and Traffic Law

allowed on state or county highways with or without special permits, onto roads best able to accommodate them, and to avoid areas where substantial truck traffic might imperil light-duty roads or be detrimental to residential or other sensitive land uses.

One of the values of the Town highway inventories being prepared by the Regional Planning Board in cooperation with Town Highway Superintendents is that the resulting map of road conditions can be the basis for identification of functional road classifications and development of a truck route plan.

Under Section 1660a(10) of the New York State Vehicle and Traffic Law, a Town Board has the authority to establish a system of truck routes for all trucks having a gross weight greater than 5 tons, and exclude such trucks from all roads except the designated truck routes.² This authority is extended elsewhere to authorize the Town Board to set limits on the hours of operation of permitted trucks and commercial vehicles.³

While the Town Board has this regulatory authority it also has the limitation that truck exclusion does not apply to local deliveries or pick-up of merchandize, and that truck routes must provide suitable connection to all state highways entering the Town.

Oversized Vehicle Permits

The state has a permit system for oversized vehicles and has provided authority other levels of jurisdiction to issue similar permits for vehicles traveling on roads under their jurisdiction. However the state law provides that the fee charged for such permit shall not exceed ten (\$10) dollars.⁴ These permits may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the issuing authority, and it shall be carried on the vehicle to which it refers and shall be open to the inspection of any enforcement officer.⁵ These provisions would appear to allow Towns and Villages to use this permit authority to govern a truck route designation program.

Several of the models included in this monograph rely upon the authority to require permits for use of designated haul roads. The permit issuing authority is then used to support a system of agreements between the Permittee and the municipality. The actual preservation requirements, including documentation of road conditions before and after use, take the form of a contractual agreement. This agreement is also a way of shifting the responsibility for and the cost of documentation to the Permittee who presumptively is also the beneficiary of the permit.⁶

ROAD RESTORATION

Several of the model regulations reviewed in the preparation of this monograph rely permits for the use of Town Roads, which are in turn supported by bonds, escrow accounts, or certificates of deposit which are used to demonstrate both the fiscal capacity of the Permittee, as well as to cover any expanses involved in restoring the road to its previously documented condition.

The State has provided that the surfacing of town roads shall conform generally to the following minimum standards when they are improved: roadbeds not less than 18 feet wide; shoulders not less than 5 feet wide: and a minimum surfacing application consisting of not less than two

² See also Article 41, §1660a(19), and §1660a(28) of the New York State Vehicle and Traffic Law

³ Article 41, §1660a(28) of the New York State Vehicle and Traffic Law

⁴ Article 10 §385.15b New York Vehicle and Traffic Law

⁵ Article 10 §385.15d New York Vehicle and Traffic Law

⁶ In particular see the Yates County model included in the Appendix A

courses of crushed stone and bituminous material.⁷ While many Town Roads meet these standards a significant portion do not, especially those in remote rural areas where they are built to a much lower standard in reflection of the fact that they serve very small numbers of users. In addition there should be provision for the construction or reconstruction of necessary bridges.

Shared Responsibilities

One of the major concerns about the use of bonds to provide for the restoration of local roads is the determination of the source of damage for which repairs are sought. If there is a single entity which is responsible for construction in an area, the determination of responsibility may be relatively simple. On the other hand, where a road or segment is used by multiple operations, there may be some difficulty involved in determining degrees or responsibility. Even with a single operator, there is usually a need to document "pre-existing conditions" for which the operator is not responsible.

In addition to the determination of degrees of responsibility, there is always an issue of the amount of any bond or escrow account. It is fine to state that a bond will be required in an amount sufficient to restore a roadway to its pre-existing condition but there needs to be a means for determining what that cost will amount to, as well as policies concerning the frequency for remediation. For example, if a project extends over several years but is suspended during winter months, should the bond be used to pay for restoration at the conclusion of each construction season or should it only be used at the final completion of construction. In the latter case, other road users may be faced with restricted or difficult travel for extended periods of time, while in the former there is a question of how frequently restorative actions must be taken.

Enforcement

The adoption of regulations regarding the use of local roads is meaningless in the absence of enforcement. In New York, rural towns rarely have their own law enforcement capabilities and are therefore dependent upon county and state agencies for enforcement, which local roads would remain vulnerable. Some of the model regulations reviewed in developing the Region model provide that any person who operates a vehicle which exceed the limitations provided in section 385 on town roads without obtaining the required permit is guilty of a Class A misdemeanor, which is punishable by a fine not exceeding one thousand (\$1,000.00) dollars, per day of violation.⁸

Recent press articles on an enforcement effort for gas drilling wastewater hauling vehicles performed by Pennsylvania State Police and the Department of Environmental Protection reported that three out of every four trucks inspected were cited for violations. The news report said the state police had issued 1,066 citations for the more than 1,400 trucks it and the DEP inspected over three days in late October 2010. They placed 207 trucks and 52 drivers out of service. The most common citations were for unsecured loads and lights or lamps that weren't working. The DEP inspected for weight, load security and waste hauling paperwork.⁹

RESTORATION OF UTILITY CUTS

The protection of roadways from deterioration due to heavy traffic use is an opportunity to also protect the roads from disruptions resulting from road cuts to install underground facilities. Traditionally this has been an issue mostly for urban and suburban communities and most typically

⁷ Article 8-A §223(3) New York Highway Law

⁸ The classification of violations as a misdemeanor is from Section 12 of the Cortland County Model Regulations.

⁹ Binghamton Press and Sun Bulletin, November 9, 2010 citing Associated Press Article from Harrisburg.

involved utility lines, especially local water and sewer lines. Occasionally it would also involve residential gas connections or underground electric or cable connections – again in more densely settled area.

Natural gas exploration and harvesting is somewhat unique in the sense that many natural gas wells will be located in rural areas. Because the gas is only marketable if it can be collected and brought to compressor stations and multi-state transmission, these remote well sites need to be connected through gathering lines virtually all of which will take the form of underground pipelines. The installation of these gathering lines will involve digging along or across public rights-of-way and therefore should be governed by the same type of requirements for road protection as are proposed for the use of the surface of the road itself.

This monograph is organized in several sections which follow. The first presents a draft local law which provides sample wording that could be the point of beginning for the development of a proposal for adoption by a Town Board. With minor adjustments this draft could also serve as a model for a Village.

This draft regulation is followed by Appendix A which provides a variety of examples of some local regulations which have been drafted by various local and statewide authorities to address the issue of rural road preservation. In a significant number of provisions, the regional draft regulations are built upon sections which appear in these examples.

Appendix B of this monograph provides a discussion concerning various rules and regulation in the State Highway and State Vehicle and Traffic Laws. These laws set forth the context within which Towns may take actions to protect their existing roads and restore roads which may have been damaged through use by vehicles larger and heavier than those for which they were designed.

The final section, Appendix C, focuses on provisions of the September 30, 2009 State Draft Generic Environmental Impact Statement relating to the impact of drilling operations on public roads.

SOUTHERN TIER EAST MODEL ROAD PRESERVATION LAW

DISCLAIMER - The following model has been prepared from the perspective of a community planner and DO NOT REPRESENT LEGAL OR ENGINEERING OPINIONS OR INTERPRETATIONS. Citations are provided for the sources of the specific provisions, and in all cases it is recommended that the original text be consulted and to the extent desired, legal advice sought from the municipal attorney or such other trained legal and/or engineering authority as may be appropriate. A part of the consideration of this or any other model Town officials should consult with the Town Attorney, Town Engineer, and Town Highway Superintendent

The following model has been prepared by the Southern Tier East Regional Planning Development Board for use as a starting point in the development of a Local Law to assist rural towns in the Region preserve their Town Roads. This model is developed from elements of a number of model regulations which appear in the various appendices to this monograph.

Basically this model relies upon a Haul Road permit system supported by a road user agreement.

The model begins with a basic exclusion of trucks with gross weights (vehicle and load) greater than 4 tons. This exclusion is authorized by the State Vehicle and traffic Law and is intended to give a town some breathing space during which a more specific set of regulations can be developed and adopted.

The model continues with provisions for the designation of a system of Haul Roads which would initially be built upon the Local Road Inventory being developed by the Southern Tier East Regional Planning Development Board under grants from the Appalachian Regional Commission. Trucks with gross weights of 4 tons or greater would be allowed to travel on designated haul roads, but would be required to obtain and operate under authority of a haul road use permit.

This model continues with model regulations relating to road cuts associated with the construction of pipelines and other underground facilities and then concludes with a set of exemptions for local delivery trucks and emergency vehicles.

_____ TOWN ROAD PRESERVATION AND PROTECTION LAW

WHEREAS, the Town of _____ finds that there is a legitimate public interest in protecting the condition of the public highways under its jurisdiction, and to repair such roads whenever required, and

WHEREAS, many Town highways have been developed to accommodate traffic volumes and vehicles of the type, size and weight of vehicles which were typical of very rural areas, and future traffic may be of a volume, size, height or weight that it may cause or contribute to a deterioration of Town roads, and

WHEREAS, well maintained roads are important to the economic well-being of the Town, and construction, maintenance, and operation of high impact commercial endeavors such as, but not limited to, timber harvesting, quarrying, mining, natural gas or oil drilling, wind energy facilities and telecommunications facilities can be economically beneficial if conducted in an appropriate manner, and

WHEREAS, some uses of Town Highways is anticipated to be temporary, being associated with construction type activities which will be conducted over a definable period, and which therefore would not necessarily justify permanent upgrading of certain rural roads, but

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do which require that the condition of such Town roads during and at the conclusion of such activity be at least as it was at the commencement of such activity, and

WHEREAS, it is necessary and desirable that in the event that a road is opened to allow the installation of culverts, pipes, conduits or any other facility or construction to cross beneath it, that the Town have assurances that traffic be maintained during such installation and that the road surface be adequately restored upon completion of such installation,

WHEREAS, it is the intent of the Town Board of the Town of _____ in adopting this local law to maintain the safety and general welfare of the Town residents by regulating activities that may adversely impact roads and public property, NOW THEREFORE BE IT

RESOLVED, that the Town Board of the Town of _____ hereby adopts the following Road Preservation and Protection Local Law.

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Section 3. Temporary Exclusion Of Vehicles With A Gross Weight Greater Than Four (4) Tons	Section 6 Requirement for Insurance and Performance Bonds	Section 9: Exemptions For Emergency Vehicles And Conditions
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Section 1: TITLE

This Local Law shall be known as the _____ Town Road Preservation and Protection Law

Section 2: DEFINITIONS

a. Gross Weight:

b. High Frequency Truck Traffic. Traffic to and from a project site that generates more than ten truck trips per day for more than three consecutive days, involving trucks that exceed thirty (30) tons (truck and load combined) that could impact Town roads and/or property. (Not including the operation of year round permanent facilities such as commercial quarries).¹⁰

b. High Impact Truck Traffic. Other truck traffic of considerable weight (e.g. total weight exceeding 30 tons) and/or size (e.g. trucks requiring escort vehicles) as determined by the Highway Superintendent that could impact Town roads, and/or property. Any seismic testing by vibroseis trucks (aka "thumper trucks") is considered high impact truck traffic.¹¹

c. Highway Superintendent – The Highway Superintendent of the Town of _____.

d. Local Delivery Vehicles – Vehicles which provide local delivery services to multiple addresses of individually addressed packages which individually weigh forty (40) pounds or less, and which typically make a single circuit of its delivery route per day, and stopping once during any day at any individual address. This term also includes trucks of not more than three axles operated by or under contract to retail businesses for the delivery of individual purchases such as furniture, appliances, home owner building materials, and other consumer goods weighing individually less than four hundred (400) pounds.

e. Permittee: Shall mean and include the holder of any permit required or issued under this Local Law, its contractors, subcontractors, employees and agents.

f. Town shall mean the Town of _____, and Town Board shall mean the Town Board of _____.

Section 3: TEMPORARY EXCLUSION OF VEHICLES WITH A GROSS WEIGHT GREATER THAN FOUR (4) TONS

The Town Highway Superintendent, pursuant to §1660a(11) of the New York State Vehicle and Traffic Law, may temporarily exclude from any town highway any vehicle with a gross weight of over four (4) tons or any vehicle with a gross weight in excess of any designated weight on any wheel, axle, any number of axles, or per inch width of tire, when in his opinion such highway would be materially injured by the operation of any such vehicle thereon.

a. Such exclusion shall take effect upon the erection of signs on the affected section of highway, newspaper publication of the notice in the county where the highway is situated.

¹⁰ Adapted from definitions in Section 5 of the Schoharie Road Preservation Law

¹¹ Adapted from definitions in Section 5 of the Schoharie Road Preservation Law

- b. The exclusion shall remain in effect until the removal of the signs as directed by the town board.
- c. Upon written application by any operator of a vehicle subject to this section, the Town highway Superintendent on behalf of this Town Board may issue a permit providing appropriate exemption to such vehicle, if it is deemed that said vehicle is performing essential local pickup or delivery service and that a failure to grant such permit would create hardship.
- d. Every such permit may designate the route to be traversed and contain other reasonable restrictions or conditions deemed necessary.
- e. Every such permit shall be carried on the vehicle to which it refers and shall be open to inspection of any law enforcement officer, acting pursuant to his duties.
- f. Such permits shall be for the duration of the restriction imposed.

Section 4: ESTABLISHMENT AND DESIGNATION OF TOWN TRUCK HAUL ROUTES¹²

4.1 Pursuant to Section 1660 a(6)(ii) of the New York Vehicle and Traffic Law and subject to approval by this Town Board, the Town Highway Superintendent is hereby authorized to establish a system of Town Truck Haul Routes. Once such a system has been established trucks, tractors, and tractor-trailer combinations or other vehicle having a total gross weight in excess of four (4) tons, as defined in Vehicle and Traffic Law §117, as determined by the town superintendent of highways, are prohibited from travel on any Town road except for those designated as part of such Truck Haul Route System.¹³

4.2. The Town Highway Superintendent shall prepare, and with the consent of the Town Board from time to time, amend a map clearly marking the Town Truck Haul Routes which shall be depicted on a map of suitable size and design an available for public inspection in the offices of both the Town Clerk and the Town Highway Superintendent. This map may be amended by the Town Highway Superintendent from time to time as circumstances may require, and shall be of such detail that the public may be able to discern roads or road segments which are designated Truck Haul Routes. Signs shall be erected marking truck routes or segments of such Town Truck Haul Routes.

4.3 In designing the system of Town Truck Haul Routes, the Town Highway Superintendent shall provide the all Town Truck Haul Routes have suitable connection directly or by means of other designated Town Truck Haul Roads or county roads, to state routes entering or leaving the Town.

4.4 When necessary and desirable, the Town Highway Superintendent may impose conditions on the use of designated Truck Haul Routes including limiting the hours during which vehicle of greater than 4 tons in weight can operate on designated Truck Haul Routes, or portions thereof.¹⁴

4.5 Any resident, property owner, or vehicle operator may file a written request with the Town Highway Superintendent seeking the inclusion in the Town Truck Route System of a Town Road or portion thereof. Such request shall include a description of the road or portion for which Truck Haul Route designation is sought, a description of why such redesignation is sought and why it would be in the best interest of the Town to so designate. The Town Highway Superintendent may approve, approve with conditions, or disapprove such a redesignation request. In the event that the request is disapproved, the requestor may appeal his request to the Town Board which may affirm or over-rule the Town Highway Superintendent's decision.

Section 5: REQUIREMENT FOR TOWN HAUL ROAD USE PERMIT

5.1 The owner or operator of any truck or other vehicle or combination of vehicles with a gross weight of four (4) tons or greater, which is otherwise allowed to traverse public highways under New York State Law, may only operate said truck or vehicle on designated Town Haul Routes provided that he or she has applied for and obtained from the Town Highway Superintendent a Town Haul Road Use Permit. In order to protect the affected Town roads may require that a permit applicant, as a condition to the issuance of such a permit, shall enter into an agreement with the town, the intent of which is to hold the Town harmless for any damage to said road resulting from the permitted use.

¹² This section is adapted from §200 of the Cornell Local Roads Model.

¹³ Section 201A of the Cornell Local Roads model uses a figure of 5 tons, which has been changed to 4 tons in this text to reflect toe 4 ton limit under the temporary exclusion provision of Section 1 of this model.

¹⁴ This section is adapted from Section 500 and 501 of the Cornell Local Roads Model. And is authorized under NYS Vehicle and Traffic Law §1660a(28)

- a. An application for a Town Haul Road Use Permit shall also include an environmental assessment form. Permit issuance shall be subject to Article 8 of the New York State Environmental Conservation Law – State Environmental Quality Review (“SEQR”). An application fee and a maintenance fee shall be established by Town Board resolution.
- b. Where multiple vehicles are to be used on a site a “generic environmental assessment” may be submitted on behalf of a group of two or more permit applications.

5.2 There shall be a separate Town Haul Road Use Permit for each vehicle, which after it is approved shall be kept with the vehicle and produced on request by any law or code enforcement officer. Where permits are sought to cover multiple vehicles owned or operated by the same person, company, or corporation, and where all of the vehicles will be used on the same route, there may be a single joint application prepared which then will support multiple vehicle specific Town Haul Road Use Permits.

5.3 The application for a Town Haul Road Use Permit shall identify:

- a. the location of the premises, construction site, or destination to be accessed by travel along the Town Haul Road(s);
- b. all a Town Haul Roads, or portions thereof, upon which it is proposed to travel between a county or state highway and the Town Haul Road destination;
- c. and estimation of the total number of vehicles to be used on a daily basis, their weight size, and number of axels. and at the destination total amount and hourly peak flow of construction related traffic, including the methodology of estimation;
- e. the principal hours during which activity will be conducted at the destination.
- f. such other details, descriptions, or documentation which in the opinion of the Town Highway Superintendent may require in order to assess the impact of such traffic upon the Town Haul Roads proposed to be traveled under authority of the permit.

5.4 As a condition to receiving a Town Haul Road Use Permit, the Permittee shall enter into a Road Use Agreement with the Town. As part of this Road Use agreement, the Permittee shall conduct, prepare, and present to the Town Highway Superintendent a pre-construction survey report as provided for under section 5.4, below, and upon conclusion of work a Post Use Pavement Survey report as provided for under section 5.5, below. In addition:¹⁵

- a. The permit shall not authorize the holder to exceed the maximum gross weight limit authorized for crossing an R-Posted bridge.
- b. Every permit shall require that the roads be kept passable at all times for all motor vehicles, including public safety vehicles, unless otherwise approved by the town highway superintendent.
- c. The town highway superintendent may require that a road be improved prior to use so that it will withstand the proposed use without significant damage.

5.5 Pre-Construction Survey- As part of the application for a Town Haul Road Use Permit, the applicant shall provide the following report, to the Town Highway Superintendent in such form as he may specify. Said report shall be prepared at the applicant's expense by licensed professional engineer agreed to by the Town Highway Superintendent and include the following documentation.¹⁶

- a. Video Survey of Road - Videotape or other visual recording showing condition of the Town Haul Road(s) to be used under authority of the permit.
- b. Distress Survey. – A measure and record of the extent and severity of surface distresses for each designated haul road over which the Permittee proposes to travel.
- c. Rutting and cross slope assessment. – A measure of wheel rut depth in both outer and inner wheel paths made at a uniform spacing at 15 locations per mile.
- d. Road Roughness – A report of the International Roughness Index (IRI) using a profilometer for each designated haul road.
- e. Core Sample- A core or crosscut sample may be required, at the Town's discretion, to determine necessary repairs.
- f. Inspection of Culverts and Bridges- An inspection report covering all culverts and bridges on the proposed route, including photographs, and describing the status of culverts and bridges that shall require improvements/upgrades prior to their use by vehicle covered by the proposed permit. The Town reserves the right to require an evaluation of any bridge that will be crossed by an overweight special hauling vehicle, which would be done by a NYS licensed engineer, at the applicant's expense.

5.6 Post Use Pavement Survey – The Permittee shall complete a Post Use Pavement Survey by having the following tasks within a three (3) month window following the project completion date. . Said report shall be prepared at the applicant's expense by licensed professional engineer agreed to by the Town Highway Superintendent and include the following documentation:

¹⁵ These additional requirements and options are based upon similar provisions in Section 11 of the Cortland County Model

¹⁶ Adapted from Section 5.4 of Yates County Road Preservation, Use, and Repair Policy

- a. Photo & Video Survey of Roads – Repeat as described in section 5.5 (a) above.
- b. Distress Survey – Repeat as described in Section 5.5 (b) above.
- c. Rut Depth and Cross Slope measurements – Repeat as described in Section 5.5 above.
- d. Road Roughness – Repeat as described in Section 5.5 (d) above.
- e. Core Sample- May be required at the discretion of the Town Highway Superintendent.

5.7 Determination Of Final Repairs - The Town Highway Superintendent, in consultation with such other officials and advisors as may in his opinion be appropriate, 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 Highway Superintendent shall determine the need for any repairs and shall prepare a report of the needed repairs that includes the treatment for each road segment and the total estimated cost of the repair. A copy of this report shall be provided to the Town Board and the Permittee.¹⁷

5.8 Emergency and/or Periodical Repair- The Permittee will perform any emergency repairs and or periodical, necessary repairs to the haul roads, including the pavement, drainage structures, or any other highway related appurtenance that is damaged and which the Town determines must be repaired. The Municipality will inform the Developer of required emergency repairs and the repair shall be accomplished within a minimum of three days of notice. If more time is required the Permittee shall inform the Town of the status of the repair on a daily basis. All costs of repairs made under this section shall be paid for by the Permittee.¹⁸

Section 6 Requirement for Insurance and Performance Bonds

6.1 With the exception of normal wear and tear, the holder of a Town Haul Road Use Permit or Road Cut Permit is responsible for all damages done to the roadways, ditches, curbs, sidewalks or other improvements and to public utilities in the roadway. Upon due notice being given to the permit holder and at the Town option, the Town may request the permit holder to repair all damages, or the Town may arrange for the necessary repairs and charge the permit holder for all labor and materials at the prevailing rates, charging the cost thereof against the performance bond¹⁹.

6.2 When any Town Haul Road Use Permit involves High Frequency Truck Traffic or. High Impact Truck Traffic, as defined in this Local Law or if based upon the location or level of activity the Highway Superintendent determines that a Bond is required to enforce the provisions of a Town Haul Road Use Permit, or Road Cut Permit, such Bond must be paid to the Town and remitted to the Town Supervisor. In the event that that such bond is expended, the Permittee shall replace the same within five (5) days of the receipt of written notice from the Town Highway Superintendent, failing which the Town Haul Road Use Permit or Road Cut Permit shall be subject to revocation.²⁰

2. If the Highway Superintendent determines that funds are needed to promptly reimburse the Town for seeking reimbursement for damages, injuries, discharges or spills involving Town Roads or other Town Property, the applicant for a Road Preservation Vehicle Permit may be required by the Highway Superintendent to file with the Town Clerk of the Town of _____ an initial deposit in the sum of _____ dollars (\$ _____)

6.3. As used in this section, the term "cost and expenses" shall be determined to include the reasonable fees charged by engineers consultants and/or experts: reasonable administrative costs and expenses incurred by the Town in connection with the repair, restoration, and preservation of Town Roads and Other Town Property; and reasonable legal fees, accountants fees, engineers fees, costs , expenses, disbursements, expert witness fees and other sums expended by the Town in pursuing any rights, remedies, or claims to which the Town may be entitled under this Local Law, or under applicable provisions of Law, as against any Permittee, any person who has violated this Local Law, any insurance company, any bonding company, any issuer of a letter of credit and/or any United States or State of New York agency, board, department, bureau, commission, or official.

6.4. These funds may be required to accompany the filing of the application and the Town shall maintain a separate escrow account for all such funds.

¹⁷ Adapted from Yates County Road Preservation, Use, and Repair Agreement, Section 7

¹⁸ Adapted from Yates County Road Preservation, Use, and Repair Agreement, Section 7.7

¹⁹ Adapted from Chapter 100-5 of Broome Road Use Local Law 5 of 2010

²⁰ Adapted for Section VII (1) of the Schoharie County Model Road Preservation Law.

- a. The Town is hereby authorized to withdraw funds from said escrow account (without prior notice or consent from the Permittee) in order to promptly reimburse the Town for any costs and expenses (as defined herein).
- b. Immediately following any such withdrawals, the Town shall give written notice to the Permittee detailing such withdrawals and the reasons therefore.
- c. If at any time during the period when a Road Preservation Vehicle Permit is in effect, this escrow account has a balance less than _____ dollars, the Permittee shall immediately upon notification from the Town, replenish said escrow account so that it has a balance of at least _____ dollars.
- d. In the event that there is any balance remaining in the escrow account as of the date that the Highway Superintendent determines the Road Preservation Vehicle Permit has expired and further determines that no damage or injuries have been caused to any Town road or other Town property for which the Town has not been fully reimbursed, the Town shall pay to the Permittee the balance remaining in the escrow account.

6.5. Upon completion of the project, the Permittee will apply to the Highway Superintendent for a preliminary Bond Release. Upon inspection of the work site, as necessary, the Highway Superintendent may approve the release of the Bond. If the release is not approved, the Superintendent will specifically document the tasks that must be accomplished in order for the bond to be released. In this case the Permittee will remedy the specified problem(s) items and then reapply for a Bond Release. Final Bond Release must be approved by the Town Board for repayment of Bond funds.

6.6 The Permittee holder must present proof satisfactory to the Commissioner that it has satisfied the insurance requirements of the State of New York Department of Transportation for a single vehicle special hauling permit. ²¹

6.7 The Permittee is required to agree to fully indemnify, defend, save and hold harmless the Town of _____ and all of its departments, officers and employees from and against any and all claims, costs, damages, expenses, charges, risks, losses, lawsuits, judgments, executions, penalties, fines, assessments or any other liability of any type arising out of, occurring in connection with, or resulting from any and all activity to be performed by permit holder pursuant to this permit. ²²

Section 7: PERMIT REQUIRED FOR CONSTRUCTION IN PUBLIC RIGHT OF WAY

7.1 Except as otherwise permitted, construction or relocation of any underground facilities, including but not limited to pipes, conduits, wires, culverts for draining storm water, or any other facilities on or in the town highway right of way shall not commence until a Road Cut Permit therefore is granted by the Town Highway Superintendent. ²³

- a. The Town Highway Superintendent shall provide and from time to time may update such an application form as in his opinion is needed.
- b. The Road Cut Permit application shall include a sketch showing the location of the proposed utility with reference to highway center line and the nearest intersecting streets in either direction and shall include a description of the work to be performed in sufficient detail to assure that the requirements of this section shall be met. .

7.2 As part of their application process, all persons seeking to construct or relocate underground facilities shall identify all existing underground facilities and provide for their location and marking so as to avoid injury to such facilities. All existing underground facilities shall be shown on the sketch or a map which is made a part of or attached to the application form, and shall be identified and appropriately marked on the construction site.

- a. The applicant shall also provide appropriate documentation of protective liability insurance coverage and that required worker's compensation and disability coverage is in force.²⁴
- b. The applicant shall assume all liability for, and save the Town, its agents and employees, harmless from, any and all claims for damages, actions or causes of action arising out of the work to be done herein and the continuing uses by the Utility, including but not limited to the placing, constructing, reconstructing, maintaining and using of said utility under this application and Permit.²⁵

²¹ Adapted from Chapter 100-6 of Broome Road Use Local Law 5 of 2010

²² Adapted from Chapter 100-7 of Broome Road Use Local Law 5 of 2010

²³ Adapted from Section I of Clay County Minnesota example.

²⁴ This provision closely follows the notification requirements of the State Department of Transportation Highway work permit, Section 1

²⁵ Adapted from Section X of Clay County Minnesota example

7.3 The Town may require the applicant, to furnish a deposit in the form of a certified check, a surety bond, or other equivalent corporate undertaking, in favor of the Town of _____ for any expense incurred by the Town in the repairing of damage to any portion of a Town right of way caused by work performed under a Road Cut Permit, including any out of the ordinary engineering supervision and inspection expense provided by the town. In those instances wherein a deposit is required, the amount of the deposit shall be specified in the Special Provisions of the Permit.²⁶

7.4 Except for emergencies, anyone seeking a Road cut Permit for activities in a Town right of way shall notify the Town Highway Superintendent through the filing of the highway work permit application not less than seven (7) working days prior to proposed commencement of work. In case of emergencies such work as is immediately necessary for public health and safety may be performed, provided that the application therefore be filed the next working day.²⁷

7.5 When in the opinion of the Town Highway Superintendent it is necessary for public safety, he may require that the Permittee provide barricades, warning devices and flagmen during all phases of their construction and maintenance operations in the Town highway right of way. When required because of construction, the Town Highway Superintendent is authorized to designate detours and to erect such signs at the expense of the Permittee as may be necessary to redirect traffic while the road is closed.²⁸

7.6 If at any time the Town of _____ shall deem it necessary to make any improvements or changes on all or any part of the right of way of a Town Highway which affect any underground facilities located on the Town Highway right of way, the owner of the underground facility shall within 15 days after notice from the Town proceed to alter, change, vacate, or remove said utility from the county highway right of way so as to conform to said highway changes and as directed by the Town. Such work shall be done without any cost whatsoever to the Town and shall be completed within the date specified in the notice. The facility owner shall assume all liability and save the Town harmless from any nature whatsoever occasioned by damages to utilities due to construction or maintenance operations.²⁹

7.7 Upon completion of an installation, the Permittee shall restore the Town highway right of way to its original condition and notify the Town Highway Superintendent of the completion of the work so that inspection can be made to determine its acceptability and any bond or escrow account balance may be released.³⁰

7.8 Revocation of Permit - Upon the violation of any provisions of this permit, the Town Highway Superintendent may suspend any permit issued hereunder for no more than thirty (30) days, and following a public hearing at which the permit holder shall have the right to appear and be heard, may revoke any permit on notice to the permit holder. ³¹

7.9 Stop Work Orders - The Town Highway Superintendent shall have the right and authority to issue stop work orders to those operating in violation of the terms of this local law, or contrary to the permit holder's application or conditions upon which its permit was issued.³²

SECTION 8: VARIANCES, WAIVERS AND RELIEF

Request for a variance from the standards set forth in this Local Law shall be made to the Town Board in writing and shall contain the grounds on which the appellant relies for requesting the variance, including allegations on any facts on which the appellant will rely. Where the Town Board finds that due to special circumstances of the particular case a waiver of certain requirements as stated in this Local Law is justified, a variance may be granted. No variance shall be granted, however, unless the Town Board finds and records in its minutes that: (a) granting the variance would be in keeping the intent and spirit of this Local Law and is in the best interests of the community, (b) there are special circumstances involved in the particular case; (c) denying the variance would result in undue hardship to the applicant, provided that such hardship has not been self-imposed; (d) the variance is the minimum necessary to accomplish the purpose.³³

Section 9: EXEMPTIONS FOR EMERGENCY VEHICLES AND CONDITIONS

²⁶ Adapted from Section XI of Clay County Minnesota example

²⁷ This provision closely follows the notification requirements of the State Department of Transportation Highway work permit, Section 4

²⁸ Article 7, §140 (14) New York Town Law

²⁹ Adapted from Section IX of Clay County Minnesota example

³⁰ Adapted from Section XII of Clay County Minnesota example

³¹ Adapted from Chapter 100-9 of Broome Road Use Local Law 5 of 2010

³² Adapted from Broome County Local Law #5 of 2010, Section 100-8

³³ Adapted from Berkshire Road Preservation Law, Section VII, which appears to be very similar to Section XIII of the Schoharie County model as well.

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9.1 Vehicles with a gross weight of four (4) tons or less are exempt from the requirements of this local law.

9.2 The temporary exclusion of trucks from certain Town Roads, and/or the requirement for a Town Road Use Permit shall not be construed as preventing road use by trucks in the delivery or pickup of merchandise to or from individual addresses or premises along the highways from which such vehicles and combinations are otherwise excluded, nor shall such trucks be required to obtain or display a Town Road Use Permit, provided that such trucks do not constitute High Impact Truck Traffic as defined in this Local Law.³⁴

9.3 The restrictions imposed by this local law shall not apply to any emergency operation, fire, emergency ambulance service vehicle, environmental emergency response vehicle, hazardous materials emergency vehicle or police vehicle as defined in Article 1 of the New York State Vehicle and Traffic Law.³⁵

9.4 When necessary for the protection of public safety under emergency conditions, the Town Highway Superintendent may temporarily suspend the restrictions imposed under this Local Law as it would apply to any or all vehicles which in his opinion are needed to assist in such emergency, such suspension to be limited to the period of any applicable emergency declaration by the Town Supervisor of his or her designee.

SECTION 10. PENALTIES FOR VIOLATION OF LOCAL LAW

Any person who shall operate or move a vehicle or a combination of vehicles, the weights or dimensions of which exceed the limitations provided in section 385 on town roads or highways without obtaining the permit required hereunder shall be guilty of a Class A misdemeanor, which shall be punishable by a fine not exceeding one thousand (\$1,000.00) dollars, per day of violation.

Section 11: SEPARABILITY

11.1 If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of _____ hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.³⁶

11.2 Citations to sections of New York State Law contained in this Local Law refer to the sections as they existed at the time of the adoption of this Local Law

11.3 All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

Section 12: EFFECTIVE DATE

This Local Law shall take effect upon filing with the Office of the Secretary of State of the State of New York, pursuant to §27 of the Municipal Home Rule Law of the State of New York.

³⁴ The exemption of local delivery trucks is intended to avoid licensing store delivery trucks and package delivery service type vehicles and is common to several models including the Cornell Local Roads model (Section 200B and 201B)

³⁵ See definitions in Article 1 of the New York State Vehicle and Traffic Law § 114-b, §115-a, §115-c, §117-c, and §132-a, respectively

³⁶ Adapted from Broome County Local Law #5 of 2010, which appears earlier in this section.

APPENDIX A – SAMPLE MODEL ROAD REGULATIONS

This Appendix contains a number of models which can be used wholly or in parts as the basis for developing local regulations and includes the following:

A1 - Cornell Model Road Preservation and Protection Code – This model code has elements which include a provision for the exclusion of oversized vehicles, or for the establishment of a “Truck Route” system for vehicles greater than 5 tons in weight. The truck routes are authorized by the Town Board and established by the Town Highway Superintendent. The model is actually a set of regulatory sections addressing individual topics more than a model which could be easily adapted to a Town use, and lacks many of the formal elements (e.g. separability, effective date, etc.)

A2 - Berkshire Town Road Preservation Local Law – This model relies upon a permit requirement supported by bond in an amount to be determined by the Town Highway Superintendent based upon completed “Road Preservation Local Law” worksheet which outlines the activities to be performed. The Berkshire code includes a provision for variance of requirements upon appeal to the town Board.

A3 - Schoharie County Model Road Preservation Law – The Schoharie County model relies upon performance bonds and escrow accounts to fund repair of road damage resulting from either “high frequency truck traffic” (10 trips daily by trucks over 30 tons) or “high impact truck traffic” (trucks over 30 tons or requiring escort on state highways). Road preservation permits are required and are issued by the Town Highway Superintendent. The Permittee is required to document road conditions before us as part of the permit application, and after use to determine needs repairs, etc. The model also has provisions for a waiver of standards in cases of hardship.

A4 - Broome Road Use Local Law 5 of 2010 – This local law was developed by the Broome County Attorney’s Office and adopted for use by counties for county roads, however, it may also be used as a model for Town regulations. The regulations require “Special Hauling Permits” for any vehicles which exceed the limits defined in §385 of the State Vehicle and Traffic Law. The county hauling permit is supported by and conditioned upon a “road use agreement” entered into by the Permittee. A single permit may cover all vehicles of the Permittee, and the Permittee is required as part of the agreement.

A5 - Rules for Utilities on County Highways – This set of rules is based upon requirements which were adopted for Clay County, Minnesota. While it is an out-of-state model, it never-the-less can be used as a model for provisions governing the installation of utilities in public rights-of-way.

A6 - Yates County Road Preservation, Use, And Repair Policy - Yates County which is located in the Finger Lakes region of New York, north of Corning, addressed the need to preserve its roads through the adoption of requirements for a “road preservation, use, and repair agreement”. This is the most detailed set of regulations in this appendix and includes a very specific definition of county roads into five structural classes. The agreement requires the developer to conduct detailed pre-construction and post construction documentation of road conditions (including culverts and bridges), and provides a process for determining final repairs. A bond, letter of credit, or cash escrow account is required for each designated haul road, with the amount variable based upon an amount per mile according to road class.

A1 - CORNELL MODEL ROAD PRESERVATION AND PROTECTION CODE

The model which follows is adapted from and closely follows a model code prepared by the Cornell Local Roads Program at Cornell University³⁷ The Cornell Student "Resource Binder" prepared for Tioga County in the Spring of 2010 as part of the Cornell University Marcellus Workshop presented by the Cornell University Department of City and Regional Planning includes a "model road protection ordinance" which was built by Schoharie County Planning, incorporating concepts from a sample ordinances from Broome, and Chenango Counties.³⁸

The Cornell Model includes the following **"INSTRUCTIONS AND GUIDELINES FOR USE"**:

A municipal traffic regulation which excludes trucks and similar vehicles from a highway "must have some basis of necessity, and usually requires the affording of another route reasonably adequate and useful" (People v. Grant, 306 N.Y. 258, 264-265 (1954) citing with approval, Associated Transport v. City of Syracuse, 274 App. Div. 565, 568 (4th Dept. 1948); People v. Randazzo, 60 N.Y.2d 952, 953-954 (1983)). These requirements are based on the court imposed rule that local traffic regulations must be "reasonable" (NYS PEF by Condell v. City of Albany, 72 N.Y.2d 96 (1988) People v. Grant, 306 N.Y. 258, 262 (1954)). Local traffic regulations and restrictions "generally are deemed reasonable only if they pertain to matters of public safety" (McQuillin, Municipal Corporations § 24.610 [3d rev ed]) (NYS PEF by Condell v. City of Albany, 72 N.Y.2d 96 (1988)).

Therefore, in determining the proper weight limits to fix, consideration must be given to the characteristics of the particular highway or highways and how the weight limit sought to be imposed will further some goal of public safety or preservation of the highway. This will usually require engineering study if a weight limit is sought to be justified on the basis that damage to the highway will result if vehicles in excess of the proposed weight are permitted to travel on the highway. Therefore, different highways may be subjected to different weight limits depending on the results of an engineering study.³⁹

With respect to any truck routes established (see, section 200 and 201 below), the system must "provide suitable connection with all state routes entering or leaving the town" as required by Vehicle and Traffic Law §1660 [10].

Vehicle and Traffic Law § 1660(a) authorizes a town board to act with respect to these matters "with respect to highways outside of villages in any such town, but not including state highways maintained by the state" with exceptions for state highways not relevant here (see, Vehicle and Traffic Law §1660(a)[6],[8],[9],[10]).

Pursuant to Vehicle and Traffic Law §1604, unless the State Legislature gives a town a particular power to regulate traffic, a town "shall have no power to pass, enforce or maintain any ordinance, rule or regulation requiring from any owner of a motor vehicle ...any tax, fee, license or permit for the use of the public highways, or excluding any such owner ...from the free use of such public highways." General court principles will enforce the concept that "the right to use of the highways is said to rest with the whole people of the State, not with the adjacent proprietors or the inhabitants of the surrounding municipality" and "this public right is 'absolute and paramount'" (NYS PEF by Condell v. City of Albany, 72 N.Y.2d 96, 101 (1988)).

A traffic ordinance established by a municipality will be upheld so long as it is reasonable and nondiscriminatory" (People v. Randazzo, 60 N.Y.2d 952, 953 (1983)). A discriminatory regulation is one that favors municipal residents over non-residents (NYS PEF by Condell v. City of Albany, 72 N.Y.2d 96 (1988)). Vehicle and Traffic Law § 1660(a) authorizes a town board to act with respect to these matters by "ordinance, order, rule or regulation." However, the Municipal Home Rule Law states that if a town board has the power to act by ordinance, it may also act by enacting a local law (see Municipal Home Rule Law §10[2]).

The Cornell Model relies upon the ability of Towns to establish truck routes for heavier and larger vehicles and to exclude such trucks from these designated routes. The designation of highways and covered segments by name helps to avoid confusion, but the use of text rather than a reference map can restrict the ease with which alternative routes can be recommended.

³⁷ Published by Cornell Local Roads Program on August 16, 2010, see CLRP Report No. 2010-02,

³⁸ Compiled by Schoharie County Senior Planner Lillian Bruno from Broome County Local Law No 3 of 2009, and the Chenango "Model

³⁹ Cornell NOTE: The Schedules set forth in the model legislation assume the same weight limit for all highways on the Schedule but these Schedules can, and should, be modified if differing weight limits are sought to be applied to the highways on the Schedule.

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These draft regulations also include the concept of regulating the hours of operation, but appears to rely on a published schedule rather than focusing on the loss of daylight which is commonly used in the state traffic code. State regulations which limit hours of operation of oversized vehicles to "daylight hours" - usually specified as from a half hour before sun rise to a half hour after sun set.

Because it appears to offer a series of options for particular regulations, this draft lacks a standard severability clause or any provision for appeals from, variances to, or interpretations of the regulations that would typically be found in stand-alone regulations.

Cornell Model Town Ordinance

[various limitations on heavy truck traffic]

Pursuant to the authority granted by Vehicle and Traffic Law §1660, the Town of _____, hereby ordains and enacts the following legislation to {select one or more purposes} [establish a system of truck routes], [to temporarily exclude trucks and other similar vehicles exceeding a certain designated gross weight from highways], [to exclude certain trucks and other similar vehicles from highways]

Cornell Note: These sample Recitals are optional, typical examples, general in form and should be modified so as to be tailored to the specific facts confronting the Town Board and related to the justification for the particular restrictions enacted

Whereas, the highways designated in this ordinance are maintained in whole or in part at Town expense; and

Whereas the Town Board has been advised, and from its own observation has ascertained, that certain Town highways are caused to be rapidly deteriorating by the operation of certain trucks and similar vehicles; and

Whereas certain Town highways will have to be repaved, reconstructed or repaired shortly by reason of such operation at an estimated cost to Town property tax payers in excess of _____ dollars; and

Whereas the highways from which trucks and other similar vehicles are excluded or limited are in predominantly residential areas, highly congested areas or areas containing schools and children;

Whereas this Town Board has determined that for the preservation of its limited resources and the health, safety and the welfare of the inhabitants of the Town and the protection and security of its highways that certain trucks, commercial vehicles, tractor-trailer semi-trailer combinations must be restricted from certain Town highways as set forth below.

NOW THEREFORE BE IT ORDAINED

That the Town Board of the Town of _____ hereby enacts the following legislation by adding to the Town Code a new section in chapter _____ as follows:

Cornell Note: The sections below contain examples of the general types of exclusions, limitations and restrictions that a town board may enact and/or delegate to a town superintendent of highways

§100. Truck exclusions based on weight ⁴⁰

A. All trucks, commercial vehicles, tractors and tractor-trailer combinations in excess of ___ thousand (___,000) pounds gross weight, as defined in Vehicle and Traffic Law §117, are hereby excluded from the highways or portions thereof as described in the Schedule set forth in subdivision "C" below as authorized by Vehicle and Traffic Law §1660, subdivision 28.

⁴⁰ This section is authorized under authority of the NYS Vehicle and Traffic Law §1660, subdivision 28

B. This section shall not be construed to prevent: (1) the delivery or pickup of merchandise or other property along the highways from which such vehicles or combinations are otherwise excluded; or (2) the use of the highways designated in the attached Schedule by such vehicles or combinations if the town superintendent of highways determines that the use of such highways by such vehicles or combinations is necessary to assist in the maintenance, service and repair of highways, sidewalks, sewers and other similar public improvements or the installation of such.

C. SCHEDULE - Name of highway or portion thereof

Cornell Note: Examples

Ferris Road - entire length
Lewis Street – from its intersection with Emerson Avenue to its intersection with Woods Road, [etc.]

§101. Truck exclusions based on weight as established by the town superintendent of highways.

Cornell Note: Alternate to §100 based on delegation to town superintendent of highways to designate highways

A. All trucks, commercial vehicles, tractors and tractor-trailer combinations in excess of the gross weight, as defined in Vehicle and Traffic Law §117, as determined by the town superintendent of highways for a particular highway or highways, are hereby excluded from the highways or portions thereof as described in any Schedule that the town superintendent of highways files with the town clerk .

B. This section shall not be construed to prevent: (1) the delivery or pickup of merchandise or other property along the highways from which such vehicles or combinations are otherwise excluded; or (2) the use of the highways designated in any Schedule filed by the town superintendent of highways if the town superintendent of highways determines that the use of such highways by otherwise excluded vehicles or combinations is necessary to assist in the maintenance, service and repair of highways, sidewalks, sewers and other similar public improvements or the installation of such.

C. Pursuant to Vehicle and Traffic Law §1603(e), this town board hereby delegates to the town superintendent of highways its authority to designate such highways and gross weights under Vehicle and Traffic Law §1660, subdivision 28.

§200 Truck Route System ⁴¹

A. A truck route system upon which all trucks, tractors and tractor-trailer combinations having a total gross weight in excess of ten thousand pounds are permitted to travel and operate shall consist of the highways described in the Schedule in "C" below and such vehicles are hereby excluded from all other highways within the Town, outside of villages, pursuant to Vehicle and Traffic Law §1660, subdivision 10.

B. Notwithstanding the above exclusion, the above shall not be construed to prevent the delivery or pickup of merchandise or other property along the highways from which such vehicles and combinations are otherwise excluded or the use of such highways if the town superintendent of highways determines that the use of such highways by such vehicles or combinations is necessary to assist in the maintenance, service and repair of highways, sidewalks, sewers and other similar public improvements or the installation of such.

C. SCHEDULE - Name of highway or portion thereof

Cornell Note: Examples

Academy Boulevard - entire length
Navigation Highway – from its intersection with County Road 12 to its intersection with State Route 190 [etc.]

§ 201 Truck Route System as established by the town superintendent of highways

⁴¹ This section is authorized under authority of the NYS Vehicle and Traffic Law §1660, subdivision 10

Cornell Note: Alternate to §200 based on delegation to town superintendent of highways to designate highways

A. A truck route system upon which all trucks, tractors and tractor-trailer combinations having a total gross weight in excess of ten thousand pounds are permitted to travel and operate shall consist of the highways or portions thereof as described in any Schedule that may be filed with the town clerk by the town superintendent of highways and such vehicles are hereby excluded from all other highways within the Town outside of villages pursuant to Vehicle and Traffic Law §1660, subdivision 10.

B. Notwithstanding the above exclusion, the above shall not be construed to prevent the delivery or pickup of merchandise or other property along the highways from which such vehicles and combinations are otherwise excluded or the use of such highways if the town superintendent of highways determines that the use of such highways by such vehicles or combinations is necessary to assist in the maintenance, service and repair of highways, sidewalks, sewers and other similar public improvements or the installation of such.

C. Pursuant Vehicle and Traffic Law §1603(e), this town board hereby delegates to the town superintendent of highways its authority to designate a truck route system of highways under Vehicle and Traffic Law §1660, subdivision 10.

§300. Temporary exclusions based on weight⁴²

A. From (month, date, year) to (month, date, year), all trucks, commercial vehicles, tractors and tractor-trailer combinations in excess of a gross weight, as defined in Vehicle and Traffic Law §117, of over four or more tons {or any vehicle with a gross weight in excess of _____ pounds on any wheel, axle, any number of axles, or per inch width of tire} are hereby excluded from the highways or portions thereof as described in the Schedule set forth in "C" below as authorized by Vehicle and Traffic Law §1660, subdivision 11.

B. Upon written application by any operator of a vehicle subject to the restrictions of this section, the town board {or town superintendent of highways pursuant Vehicle and Traffic Law §1603(e)} may issue a permit providing an appropriate exemption to such vehicle from the above exclusions, if it is determined that said vehicle is performing essential local pickup or delivery service, or services related to the maintenance, repair or installation of public improvements, and that a failure to grant such permit would create hardship. Every such permit may designate the route to be traversed and contain other reasonable restrictions or conditions deemed necessary. Every such permit shall be carried on the vehicle to which it refers and shall be open to inspection of any peace officer, police officer or town highway department officer or employee. Such permits shall be limited to the time periods of the restrictions imposed under this section.

C. SCHEDULE - Name of Highway or portion thereof

Cornell Note: Examples

Avery Avenue - entire length
Harrington Street – from its intersection with Tompkins Avenue to its intersection with Terry Road

§301 Temporary Exclusion Of Trucks Based On Weight As Established By The Town Superintendent Of Highways

Cornell Note: Alternate to §300 based on delegation to town superintendent of highways to designate highways

A. The town superintendent of highways is hereby delegated the power of this town board as granted to it by Vehicle and Traffic Law §1660, subdivision 11, to temporarily exclude from highways designated by him all trucks, commercial vehicles, tractors and tractor-trailer combinations in excess of a gross weight, as defined in Vehicle and Traffic Law §117, of over four or more tons {or any vehicle with a gross weight in excess of _____ pounds on any wheel, axle, any number of axles, or per inch width of tire}.

B. The highways applicable to such temporary exclusions shall be as designated by the superintendent of highways on any Schedule that he files with the town clerk.

C. Upon written application by any operator of a vehicle subject to the restrictions of this section, the town superintendent of highways may issue a permit providing an appropriate exemption to such vehicle from any exclusions he establishes as authorized above, if he

⁴² This section is authorized under authority of the NYS Vehicle and Traffic Law §1660, subdivision 11

determines that said vehicle is performing essential local pickup or delivery service, or services related to the maintenance, repair or installation of public improvements, and that a failure to grant such permit would create hardship. Every such permit may designate the route to be traversed and contain other reasonable restrictions or conditions deemed necessary. Every such permit shall be carried on the vehicle to which it refers and shall be open to inspection of any peace officer, police officer or town highway department officer or employee. Such permits shall be limited to the time periods of the restrictions imposed under this section by the superintendent.

D. Pursuant Vehicle and Traffic Law §1603(e), this town board hereby delegates to the town superintendent of highways its authority to designate such highways under Vehicle and Traffic Law §1660, subdivision 11.

§400. Truck exclusions based on {height, length or width in excess of eight feet} – {chose all or one of the types of exclusions} ⁴³

A. All trucks, commercial vehicles, tractors, tractor-trailer combinations, tractor-semitrailer combinations and tractor-trailer-semitrailer combinations {in excess of ___ feet in height} {in excess of ___ feet in length} {in excess of eight feet in width} are hereby excluded from the highways or portions thereof as described in the Schedule set forth in "C" below as authorized by Vehicle and Traffic Law §1660, subdivision 28.

B. This section shall not be construed to prevent: (1) the delivery or pickup of merchandise or other property along the highways from which such vehicles or combinations are otherwise excluded; or (2) the use of the highways designated in the Schedule by such vehicles or combinations if the town superintendent of highways determines that the use of such highways by such vehicles or combinations is necessary to assist in the maintenance, service and repair of highways, sidewalks, sewers and other similar public improvements or the installation of such.

C. SCHEDULE - Name of Highway or portion thereof

Cornell Note: Examples

Charles Street - entire length
Herkimer Avenue – from its intersection with Orchard Avenue to its intersection with Kensington Street [etc.]

§401. Truck exclusions based on {height, length or width in excess of eight feet} as established by the town superintendent of highways

A. All trucks, commercial vehicles, tractors and tractor-trailer combinations, tractor-semitrailer combinations and tractor-trailer-semitrailer combinations, in excess of any height or length as may be established by the town superintendent of highways {or in excess of eight feet in width} are hereby excluded from the highways designated by the town superintendent of highways as described in any Schedule that the town superintendent of highways files with the town clerk.

B. This section shall not be construed to prevent: (1) the delivery or pickup of merchandise or other property along the highways from which such vehicles or combinations are otherwise excluded; or (2) the use of the highways designated in the attached Schedule by such vehicles or combinations if the town superintendent of highways determines that the use of such highways by such vehicles or combinations is necessary to assist in the maintenance, service and repair of highways, sidewalks, sewers and other similar public improvements or the installation of such.

C. The town superintendent of highways is hereby delegated the power of this town board as granted to it by Vehicle and Traffic Law §1660, subdivision 28, to exclude such vehicles from designated highways.

§500. Truck exclusions based on hours of operation⁴⁴

A. From the hours of {set forth range of hours and days of week} all trucks, commercial vehicles, tractors and tractor-trailer combinations {in excess of ___ feet in height} {in excess of ___ feet in length} {in excess of eight feet in width} are hereby excluded

⁴³ This section is authorized under authority of the NYS Vehicle and Traffic Law §1660, subdivision 28

⁴⁴ This section is authorized under authority of the NYS Vehicle and Traffic Law §1660, subdivision 28

from the highways or portions thereof as described in the Schedule set forth in "C" below, as authorized by Vehicle and Traffic Law §1660, subdivision 28.

B. This section shall not be construed to prevent: (1) the delivery or pickup of merchandise or other property along the highways from which such vehicles or combinations are otherwise excluded; or (2) the use of the highways designated in the attached Schedule by such vehicles or combinations if the town superintendent of highways determines that the use of such highways by such vehicles or combinations is necessary to assist in the maintenance, service and repair of highways, sidewalks, sewers and other similar public improvements or the installation of such.

C. SCHEDULE - Name of Highway or portion thereof

Cornell Note: Examples

Freeman Street - entire length

Winthrop Road – from its intersection with Andiron Drive to its intersection with Highbridge Street, [etc.]

§501. Truck exclusions based on hours of operation as determined by the town superintendent of highways

A. The town superintendent of highways is hereby delegated the power of this town board, which it possess pursuant to Vehicle and Traffic Law §1660, subdivision 28, to establish the hours of operation during which all trucks, commercial vehicles, tractors and tractor-trailer combinations in excess of any height or length as fixed by the town superintendent of highways (or in excess of eight feet in width), are excluded from the highways or portions thereof as described in any Schedule that the town superintendent of highways files with the town clerk.

B. This section shall not be construed to prevent: (1) the delivery or pickup of merchandise or other property along the highways from which such vehicles or combinations are otherwise excluded; or (2) the use of the highways designated in the attached Schedule by such vehicles or combinations if the town superintendent of highways determines that the use of such highways by such vehicles or combinations is necessary to assist in the maintenance, service and repair of highways, sidewalks, sewers and other similar public improvements or the installation of such.

C. Pursuant Vehicle and Traffic Law §1603(e), this town board hereby delegates to the town superintendent of highways its authority to designate such highways under Vehicle and Traffic Law §1660, subdivision 28.

A2 - BERKSHIRE TOWN ROAD PRESERVATION LOCAL LAW⁴⁵

The following is the text of a local law adopted by the Town of Berkshire in Tioga County for the protection of town roads. Basically the Berkshire approach relies upon the use of bonds to assure the restoration of road conditions at the conclusion of a “job”. The concept of using performance bonds or similar financial guarantees to assure the restoration of roads affected by construction activity at no cost to the community, is attractive and common to several of the models in this appendix.

Berkshire Town Model Local Law

Outline

Section I – Purpose	Section VI – Appeals
Section II – Applicability	Section VII – Requests for Variance
Section III – Definitions	Section VIII – Invalid Segment
Section IV – General Provisions	Section IX – Effective Date
Section V – Fees	

Section I PURPOSE

The purpose of this local law is to maintain the safety and general welfare of Town residents by regulating commercial activities that have the potential to adversely affect road right-of-ways.

Well maintained roads are important to the economic well-being of the Town. Commercial endeavors, such as timber harvesting and mining are also economically beneficial. This law is not intended to regulate such business: the intent is to protect the public right-of-ways from damage. The Town Board of the Town of Berkshire hereby enacts the following Road Preservation Law pursuant to the provision of the Municipal Home Rule Law.

Section II APPLICABILITY

The Berkshire Town Board delegates to the Berkshire Highway Superintendent the oversight of assuring commercial activities do not have an adverse impact on public right-of-ways

Section III DEFINITIONS

1. **Specific Contracted Activity:** Commercially contracted activities between Town land owner and commercial contractors that could impact Town road right-of-ways
2. **Bond:** A commercial bond to ensure that the condition of the Town roads impacted by the job is left in good or better condition at the completion of the job as they were at the start of the job.
3. **Road Preservation Local Law Worksheet (Appendix A):** A worksheet is to be completed by the owner or contractor, summarizing the job, site location, start and completion dates, expected max gross vehicle weight used for the contract, and any other items that the Town Highway Superintendent deems necessary.
4. **Preliminary Bond Release:** A bond release given by the Town Highway Superintendent based on satisfactory job site status at job completion.
5. **Final Bond Release:** Final release of the Bond by the Berkshire Town Board

⁴⁵ This Local Law was Adopted by the Berkshire Town Board on April 19, 2005

Section IV GENERAL PROVISIONS

1. Prior to the start of any contracted activity that could have an impact on the Town right-of-ways, a permit must be obtained. A bond amount shall be determined by the Town Board and will be listed on the fees schedule on file with the Berkshire Town Clerk. The amount of the bond may be changed by the Town Board by Resolution. A completed Road Preservation Local Law (RPLL) Worksheet (Attachment A), available from the Town Clerk or Highway Superintendent, must be submitted to the Highway Superintendent.
2. The Highway Superintendent will decide if the scope of work is such that a bond is required. If no bond is needed the RPLL worksheet is approved by the Superintendent and becomes the Work Permit.
3. If the Highway Superintendent determines that a bond is required, the bond must be paid to the Town of Berkshire and remitted to the Town Supervisor. The Worksheet will then be approved by the Highway Superintendent and becomes the Work Permit.
4. Upon completion of the contract, the contractor will apply to the Highway Superintendent for a Preliminary Bond Release. Upon inspection of the work site, as necessary, the Highway Superintendent may approve the release of the Bond. If the release is not approved, the Superintendent will specifically document the tasks that must be accomplished in order for the Bond to be released. In this case, the Contractor will remedy the specified problem items and then reapply for a bond release. Final Bond Release must be approved by the Town Board for repayment of the Bond funds.
5. If a contractor does not comply and operates outside the parameters as specified on the worksheet, any law enforcement officer or Code Enforcement Officer has the authority to shut down the operation.
6. The landowner will be responsible for the repair of any damages that occur to the Town of Berkshire road right-of-ways, when a project proceeds without a proper permit

Section V FEE

A non-refundable processing fee as depicted in the Town of Berkshire Fee Schedule, payable to the Town of Berkshire, must accompany each Worksheet submitted to the highway department

Section VI APPEALS

Contractor has the right to appeal to the Berkshire Town Board

Section VII REQUEST FOR VARIANCE

Request for a variance from the standards set forth in this Local Law shall be made to the Berkshire Town Board in writing and shall contain the grounds on which the appellant relies for requesting the variance, including allegations on any facts on which the appellant will rely.

Where the Berkshire Town Board finds that due to special circumstances of the particular case a waiver of certain requirements as stated in Section IV is justified, then a variance may be granted. No variance shall be granted, however, unless the Town Board finds and records in its minutes that: (a) granting the variance would be in keeping the intent and spirit of this Local Law and is in the best interests of the community, (b) there are special circumstances involved in the particular case; (c) denying the variance would result in undue hardship to the applicant, provided that such hardship has not been self-imposed; (d) the variance is the minimum necessary to accomplish the purpose.

Section VIII INVALID SEGMENT

Should any section or provision of this Local Law contained herein or as amended hereafter be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Local Law as a whole, or any part thereof – other than the part declared to be invalid.

Section IX EFFECTIVE DATE

This Local Law shall take effect upon filing with the State of New York.

A3 - SCHOHARIE COUNTY MODEL ROAD PRESERVATION LAW

This proposed Local Law was developed by the Schoharie County Department of Planning for use by rural towns. Like several other models in this appendix, the model relies upon the use of performance bonds and escrow accounts to assure that any damages to Town roads would be repaired without cost to the public. A major issue with the use of bonds and escrow accounts is the need for documentation of prior conditions and the standards to be used in determining the amount of a bond or to be held in escrow.

The model requires a use permit whenever High Frequency Truck Traffic and/or High Impact Truck Traffic crosses or travels on a Town road, and delegates the responsibility for administration of the code by the Town Highway Superintendent

Schoharie Model Preservation Law⁴⁶

Outline:

Section I - Title	Section VII – Application and Road Preservation	Section XI – Other Special Conditions
Section II - Purpose	Vehicle Permit Requirements	Section XII - Fee
Section III - Authority	Section VIII – Highway Permit	Section XIII – Request for Waiver
Section IV – Applicability	Bond/Maintenance Bond/ Escrow Account	Section XIV – Invalid Segment
Section V - Definitions	Section IX – Stop Work Orders	Section XV – Effective Date
Section VI – Permit Issuing Authority	Section X – Revocation of Road Preservation	
	Vehicle Permit	

Be it hereby enacted by the Town Board of the Town of _____, Schoharie County, New York, as follows:

Section I – Title

This Local Law may be cited as the Town of _____ Road Preservation Law.

Section II – Purpose

The purpose of this local law is to maintain the safety and general welfare of the Town residents by regulating high impact commercial activities that have the potential to adversely impact roads and property. Well maintained roads are important to the economic well-being of the Town. Construction, maintenance, and operation of high impact commercial endeavors (e.g. timber harvesting, mining, natural gas drilling, wind energy facilities and telecommunications facilities) can be economically beneficial. This Law is not intended to regulate such endeavors, but the intent is to protect the Town roads and property from damage from such endeavors that typically require use of heavy equipment with heavy loads.

Section III – Authority

The Town Board of the Town of _____ enacts this local law under the authority granted under section 10 of the New York State Municipal Home Rule Law and the New York State Town Law.

Section IV – Applicability

The _____ Town Board hereby delegates to the Town Highway Superintendent (herein called "Highway Superintendent") the oversight of assuring commercial activities do not have an adverse impact on public roads and property.

⁴⁶ The Schoharie model was originally designed for both towns and villages. The version presented here has been modified by eliminating references to villages. The version used here is the draft version of March 18, 2010.

Section V - Definitions

1. **Bond** : A commercial bond to ensure that the condition of the Town roads and/or property impacted by high frequency, high impact truck traffic is left in good or better condition at the completion of the project as they were at the start of the project.
2. **Escrow**: Money put into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.
3. **Final Bond Release**: Final release of the Bond by the Town Board
4. **High Frequency Truck Traffic**: Traffic to and from a project site that generates more than ten truck trips per day for more than three consecutive days, involving trucks that exceed thirty (30) tons (truck and load combined) that could impact Town roads and/or property. (Not including the operation of year round permanent facilities such as commercial quarries).
5. **High Impact Truck Traffic**: Other truck traffic of considerable weight (e.g. total weight exceeding 30 tons) and/or size (e.g. trucks requiring escort vehicles) as determined by the Highway Superintendent that could impact Town roads, and/or property. Any seismic testing by vibroseis trucks (aka "thumper trucks") is considered high impact truck traffic.
6. **Permitee**: Shall mean and include the holder of a "Road Preservation Vehicle Permit", its contractors, subcontractors, employees and agents, issued pursuant to this Local Law.
7. **Preliminary Bond Release**: A bond release given by the Highway Superintendent based upon satisfactory road conditions at project completion.
- 8 **Project Site**: An area where construction work is performed on a short term basis (i.e. not including year round permanent business such as commercial quarries), Construction work includes any of the following:

- (a) excavation, including the removal of soil or gravel for off-site use or excavation or filling of trenches, ditches, shafts, wells, tunnels and pier holes, and the use of caissons and cofferdams.
- (b) building, including the construction (including the manufacturing of prefabricated elements of a building at the place of work concerned), alteration, renovation, repair, maintenance and demolition of all types of buildings.
- (c) civil engineering, including the construction, structural alteration , repair, maintenance and demolition of, for example, airports, dams, river and landslide defense works, roads and highways, railways, bridges and tunnels, viaducts, and works related to the provision of services such as communications, drainage, sewerage, water, and energy supplies.

- 9 **Property**: Shall mean and include any real property (including any improvements therein, thereon or thereunder) or personal property owned by, or leased to, in the Town of _____.
10. **Road**: Shall mean and include any highway, road, street, avenue, boulevard, parkway, shoulder, guard rail, concourse, driveway, easement, right-of-way, bridge, culvert, sluice pipe, ditch, dock, tunnel, sidewalk or any utilities or improvements therein, thereon, or thereunder.
11. **Road Preservation Local Law Worksheet**: Worksheet to be completed by a potential Permitee, summarizing the project, project location, start and completion dates, expected maximum gross vehicle weight used for the project, proposed truck routes, and any other items that the Highway Superintendent deems necessary.

Section VI – Permit Issuing Authority

1. The Highway Superintendent is hereby designated as the authority to receive and approve applications for a Road Preservation Vehicle Permit to use, park, operate, transport, or move High Frequency Truck Traffic and/or High Impact Truck Traffic, as defined above, on, over or across a designated Town Road or other Town property. The Highway Superintendent must submit a copy of the Road Preservation Vehicle Permit to the Town Code Enforcement Officer (herein called "Code Enforcement Officer").
2. The Highway Superintendent is hereby authorized to consult with others (i.e. County Department of Public Works) and/or hire, in compliance with Town Local Laws and procurement policies, any engineer, consultant and/or expert which the Highway Superintendent deems necessary to assist in reviewing and evaluating any application hereunder for a Road Protection Vehicle Permit

Section VII – Application and Road Preservation Vehicle Permit Requirements

1. The Highway Superintendent is hereby authorized to promulgate:

- (i) an application form requesting the issuance of a Road Preservation Vehicle Permit, said application shall require the person requesting the permit to provide at time of initial application and continuing thereafter a proposed road map that the High Frequency Truck Traffic and/or High Impact Truck Traffic will travel on, a video or photographic documentation demonstrating the condition of the proposed road and/or property described in the permit, and any other documents, maps, sketches, and plans which the Highway Superintendent may require;

- (ii) money in escrow, a highway permit bond, maintenance bond, or comparable blanket bond and the amount shall be determined by the Town Board and will be listed on the fee schedule on file with the Town Clerk. The amount of the bond or money in escrow may be changed by the Town Board by Resolution;
- (iii) a completed Road Preservation Local Law (RPLL) Worksheet, available from the Town Clerk or Highway Superintendent.

All materials must be submitted to the Highway Superintendent.

2. The Highway Superintendent will decide if the scope of work is such that a Bond or money in escrow is required. If no Bond or money in escrow is needed, the RPLL worksheet is approved by the Highway Superintendent and becomes the Work Permit.

3. Upon issuance of the Work Permit and prior to commencement of the work, the Permittee will arrange for a video or photographic documentation of the roads, shoulders, and all structures (culverts, bridges, etc.) that will be traversed by the permitted traffic. The video or photographic documentation will also occur monthly and within two weeks of the conclusion of the permitted work. All video or photographic documentation will be submitted to the Highway Superintendent within one week of recording. Failure to submit the required video or photographic documentation will result in immediate revocation of the Work Permit.

Section VIII – Highway Permit Bond/Maintenance Bond/ Escrow Account

1. If the Highway Superintendent determines that a Bond is required, the Bond must be paid to the Town and remitted to the Town Supervisor. At such time, if ever, that said highway permit bond, maintenance bond, comparable blanket bond is expended, the Permittee shall replace the same within 5 days of the receipt of written notice from the Town, failing which the Road Preservation Vehicle Permit shall be subject to revocation. The Worksheet will then be approved by the Highway Superintendent and becomes the Work Permit.

2. If the Highway Superintendent determines that a source of funds is needed to promptly reimburse the Town for any reasonable costs and expenses incurred by the Town in processing an application for a Road Preservation Vehicle Permit, and/or seeking reimbursement for damages, injuries, discharges or spills involving Town Roads or other Town Property, the applicant for a Road Preservation Vehicle Permit may be required by the Highway Superintendent to file with the Town Clerk of the Town of _____ an initial deposit in the sum of _____ dollars (\$ _____)

3. As used in this section, the term "cost and expenses" shall be determined to include the reasonable fees charged by engineers consultants and/or experts hired in accordance with provisions of §VI of this Law: reasonable administrative costs and expenses incurred by the Town in connection with the permitting process and the repair, restoration, and preservation of Town Roads and Other Town Property; and reasonable legal fees, accountants fees, engineers fees, costs , expenses, disbursements, expert witness fees and other sums expended by the Town in pursuing any rights, remedies, or claims to which the Town may be entitled under this Local Law, or under applicable provisions of Law, as against any Permittee, any person who has violated this Local Law, any insurance company, any bonding company, any issuer of a letter of credit and/or any United States or State of New York agency, board, department, bureau, commission, or official.

4. These funds may be required to accompany the filing of the application and the Town shall maintain a separate escrow account for all such funds.

5. The Town is hereby authorized to withdraw funds from said escrow account (without prior notice or consent from the Permittee) in order to promptly reimburse the Town for any costs and expenses (as defined herein).

6. Immediately following any such withdrawals, the Town shall give written notice to the Permittee detailing such withdrawals and the reasons therefore.

7. If at any time during the period when a Road Preservation Vehicle Permit is in effect , this escrow account has a balance less than _____ dollars , the Permittee shall immediately upon notification from the Town, replenish said escrow account so that it has a balance of at least _____ dollars.

8. In the event that there is any balance remaining in the escrow account as of the date that the Highway Superintendent determines the Road Preservation Vehicle Permit has expired and further determines that no damage or injuries have been caused to any Town road or other Town property for which the Town has not been fully reimbursed, the Town shall pay to the Permittee the balance remaining in the escrow account.

9. Upon completion of the project, the Permittee will apply to the Highway Superintendent for a preliminary Bond Release. Upon inspection of the work site, as necessary, the Highway Superintendent may approve the release of the Bond. If the release is not approved, the Superintendent will specifically document the tasks that must be accomplished in order for the bond to be released. In this case the Permittee will remedy the specified problem(s) items and then reapply for a Bond Release. Final Bond Release must be approved by the Town Board for repayment of Bond funds.

Section IX – Stop Work Orders

The Highway Superintendent and the Code Enforcement Officer shall each have the right and authority to issue stop work orders to those operating violations of the terms of the Road Preservation Vehicle Permit, in violation of this Local Law, in violation of applicable provisions of law, or violation of any conditions or requirements set forth in any permit issued by the New York State Department of Environmental Conservation, or contrary to the conditioned upon which the Road Preservation Vehicle Permit was issued.

Section X – Revocation of Road Preservation Vehicle Permit

Upon violation of any provisions of the Road Preservation Vehicle Permit, or violation of any provision of this Local Law, the Highway Superintendent may suspend any such permit until there is a remedy of the violation in the allocated time period set by the Highway Superintendent. A public hearing may be scheduled by the Town Clerk at which the Permittee shall have the right to appear and be heard. The Highway Superintendent may permanently revoke any Road Preservation Vehicle Permit on written notice to the Permittee.

Section XI – Other Special Conditions

1. In no event shall vehicles or equipment be parked or located outside the roadway boundaries or block access to neighboring landowners.
2. Traffic will be maintained in accordance with the Uniform Traffic Control Manual
3. The Permittee shall supply proof of insurance co-naming the Town _____ within a minimum of \$3 million liability insurance coverage. The Town shall be notified 30 days prior by the insurance company of determination⁴⁷ of coverage.
4. The Permittee shall be responsible for any and all repairs of damages cause by their operation to any Town property.
5. This Law applies to the entire duration of any project that induces High Frequency Truck Traffic and/or High Impact Truck Traffic, as defined above.
- 6 The Road Preservation Vehicle Permit shall not be assigned, conveyed, pledged, or transferred without prior written consent of the Highway Superintendent.
7. The Highway Superintendent shall be given one week's written notice in advance by said Permittee of the date when the Permittee intends to begin the activity authorized by the Road Preservation Vehicle Permit, and shall be given prompt written notice of its completion.
8. The Road Preservation Permit shall not authorize the holder thereof to exceed the maximum gross weight limit authorized for crossing any bridge. The Highway Superintendent shall have the authority to reasonably alter the proposed roads and other property set forth in the application before a permit is issued or after the permit is issued.
9. The Town of _____ makes no warranties or representations as to the conditions or fitness of any Road or other property; or their fitness for any intended use; or to the Town's rights, titles, or interests therein or thereto.
10. If any of these conditions are not met, the permit is automatically voided and all work shall cease.

Section XII – Fee

A non-refundable processing fee as depicted in the Town of _____ Fee Schedule, payable to the Town of _____ must accompany each worksheet submitted to the Highway Superintendent.

⁴⁷ It appears that this word should have been "termination"

Section XIII – Request for Waiver

Request for a waiver from the standards set forth in this Local Law shall be made to the _____ Town Board in writing and shall contain the grounds on which the appellant relies for requesting the waiver, including all allegations on any facts on which the appellant will rely. Where the _____ Town Board finds that due to special circumstances of a particular case a waiver of certain requirements as stated in Section IV is justified, then a waiver may be granted. No waiver shall be granted, however, unless the Town Board finds and records in its minutes that: (a) granting the waiver would be keeping the intent and spirit of this Local Law and is in the best interests of the community, (b) there are special circumstances involved in the particular case; (c) denying the waiver would result in undue hardship to the applicant, provided that such hardship has not been self-imposed; (d) the waiver is the minimum necessary to accomplish the purpose.

Section XIV – Invalid Segment

If any part or provision of this Local Law or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town of _____ hereby declares that it would have passed this Local Law or the remainder thereof had such application or invalid provision [not been included].

Section XV – Effective Date

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

A4 - BROOME ROAD USE LOCAL LAW 5 OF 2010

The following Local Law was developed by the Broome County Attorney's Office and was adopted earlier this year. The Local Law is intended to govern the use of county roads in Broome County but includes a number of provisions which could be followed in parallel codes for Towns and Villages.

Local Law Permanent 5 of 2010

A LOCAL LAW CREATING CHAPTER 100 OF THE BROOME COUNTY CHARTER AND CODE PROVIDING THAT A SPECIAL HAULING PERMIT SHALL BE REQUIRED FOR USE OF COUNTY ROADS BY CERTAIN VEHICLES THAT EXCEED THE WEIGHT OR DIMENSIONAL LIMITS IN SECTION 385 OF THE VEHICLE AND TRAFFIC LAW OF THE STATE OF NEW YORK.

Be it enacted by the Legislature of the County of Broome as follows:

Section 1 Chapter 100 of the Broome County Charter and Code shall be and hereby is adopted to read as follows:

Outline ⁴⁸	Chapter 100-6 Insurance	Chapter 100-11 Violation of Local Law: Penalties
Chapter 100-1 Authority for this Local Law	Chapter 100-7 Indemnity and Save Harmless	Chapter 100-12 Severability
Chapter 100-2 Permit Required	Chapter 100-8 Stop Work Orders	Chapter 100-13 Repealer
Chapter 100-3 Application Form	Chapter 100-9 Revocation of Permit	
Chapter 100-4 Permit Form	Chapter 100-10 Special Conditions and Exclusions	
Chapter 100-5 Damage to County Roads		

Chapter 100-1. Authority for this Local Law

This Local Law is enacted pursuant to the authority of Vehicle & Traffic Law Section 385(15) authorizing a County to issue a Special Hauling Permit (hereinafter "Permit") to operate or move a vehicle or a combination of vehicles, the weights or dimensions of which exceed the limitations provided in Section 385 on County roads or highways, similar to that permit issued by the State of New York relating to the state system of highways.

Chapter 100-2. Permit Requirement

A. A vehicle or a combination of vehicles, the weights or dimensions of which exceed the limitations provided in Section 385 shall not be operated on County roads or highways unless a Permit has been issued in accordance with the provisions of this Local Law.

B. The Commissioner of Public Works (hereinafter the "Commissioner") of the County of Broome (hereinafter the "County") is hereby designated as the authority to receive applications for permits to operate or move a vehicle or a combination of vehicles, the weights or dimensions of which exceed the limitations provided in Section 385 on County roads or highways. Such permit can only be issued to applicants who are eligible for or are holders of valid New York State Hauling Permits issued by the New York Department of Transportation (hereinafter NYS DOT) pursuant to Title 17 Transportation, New York Code of Rules and Regulations Part 154.

Chapter 100-3. Application Form

The Commissioner is hereby authorized to promulgate an application form requesting a Permit. The application form shall include

- A. A list of Broome County highway(s) to be used as hauling routes, if any, by the permit holder.
- B. Copies of valid New York State Vehicle Registrations for each vehicle.
- C. Copies of valid New York State Special Hauling Permits, if any, for each vehicle.

⁴⁸ This Outline was added by STERPDB.

D. Proof of Insurance as required by Chapter 100-6 of this Local Law.

E. The Commissioner is authorized to issue regulations that require additional reasonable information on application forms. Any such regulations must be filed by the Commissioner with the Clerk of the Broome County Legislature.

F. Designation of a Permit Fee as allowed by the State of New York Vehicle and Traffic Law.

Chapter 100-4 Permit Form

The Commissioner is hereby authorized to promulgate the Permit form to be issued upon review and approval of an application for a Permit. In the event that the holder of a NYSDOT Special Hauling Permit(s) presents proof (satisfactory to the Commissioner of Public Works) that such holder, for itself, its agents and sub-contractors plans to use more than one vehicle the weights or dimensions of which exceed the limitations provided in Section 385 on County roads or highways vehicle, the holder of the NYSDOT Special Hauling permit(s) may elect to execute a County wide road maintenance agreement in lieu of separate permits for each vehicle(s). Said road maintenance agreement shall conform to the minimum requirements of this local law, shall be executed by the County and the Permit holder and shall include such additional terms as are reasonably required by the Commissioner, including but not limited to insurance, maintenance bond, hauling route designations, traffic schedules, inspections and road surveys. All of the vehicles specifically listed in such agreement, including those owned by the holder, its agents and sub-contractors, shall be deemed to be covered by such agreement, and upon execution of the agreement the Commissioner shall issue a blanket permit.

Chapter 100-5. Damage to County Roads

With the exception of normal wear and tear, the permit holder is responsible for all damages done to the roadways, ditches, curbs, sidewalks or other improvements and to public utilities in the roadway. Upon due notice being given to the permit holder and at the County option, the County may request the permit holder to repair all damages, or the County may arrange for the necessary repairs and charge the permit holder for all labor and materials at the prevailing rates.

Chapter 100-6. Insurance

The permit holder must present proof satisfactory to the Commissioner that it has satisfied the insurance requirements of the State of New York Department of Transportation for a single vehicle special hauling permit.

Chapter 100-7. Indemnity and Save Harmless

The Permit holder will be required to agree to fully indemnify, defend, save and hold harmless the County of Broome and all of its departments, bureaus, divisions, boards, officers and employees from and against any and all claims, costs, damages, expenses, charges, risks, losses, lawsuits, judgments, executions, penalties, fines, assessments or any other liability of any type arising out of, occurring in connection with, or resulting from any and all activity to be performed by permit holder pursuant to this permit.

Chapter 100-8. Stop Work Orders

The Commissioner shall have the right and authority to issue stop work orders to those operating in violation of the terms of this local law, or contrary to the permit holder's application or conditions upon which its permit was issued.

Chapter 100-9. Revocation of Permit

Upon the violation of any provisions of this permit, the Commissioner may suspend any permit issued hereunder for no more than thirty (30) days, and following a public hearing at which the permit holder shall have the right to appear and be heard, may revoke any permit on notice to the permit holder.

Chapter 100-10. Special Conditions and Exclusions

A. The permit shall not be assigned or transferred without the written consent of the Commissioner

B. The Commissioner shall be given one day's notice by said permit holder of the date when it intends to begin the activity authorized by the permit, and prompt notice of its completion.

C. The permit shall remain valid only for so long as the permit holder continues to hold a valid New York State Hauling Permit.

D. The permit shall not authorize the holder to exceed the maximum gross weight limit authorized for crossing any weight posted bridge.

E. Due to the vital nature of the following vehicles in providing public services deemed necessary in preventing emergencies or in safeguarding the public health, safety and welfare, and since overweight vehicles may be required to perform these services, the following vehicles are granted exemptions from the permitting process of this local law:

(1) Maintenance, repair and service vehicles owned and operated by the County of Broome or municipal corporations located in the County of Broome and on official County or municipal business.

(2) Maintenance, repair and service vehicles owned and operated by a utility company or authority and on official utility business.

(3) Emergency vehicles and vehicles owned by New York or municipal corporations of New York.

F. Nothing contained in this Chapter shall be deemed to limit the right to farm as set forth in Article 25-AA of the New York State Agricultural and Markets Law.

Chapter 100-11 Violation of Local Law; Penalties

A. Any person who shall operate or move a vehicle or a combination of vehicles, the weights or dimensions of which exceed the limitations provided in Section 385 on County roads or highways without obtaining the permit required hereunder shall be guilty of a Class A misdemeanor, which shall be punishable by a fine not exceeding One Thousand (\$1,000.00) Dollars.

B. In addition to the above prescribed penalties, the County Board may in its discretion maintain an action or proceeding in the name of the County in a court of competent jurisdiction to compel compliance with this Local Law by injunction, abatement or otherwise compel cessation of each violation, and obtain restitution to the County for costs incurred by the County in remedying each violation, including but not limited to reasonable attorney's fees.

Chapter 100-12. Severability

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the County Board of the County of Broome hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

Chapter 100-13. Repealer

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

Section 2.

This Local Law shall take effect January 1, 2011 after filing in the office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

A5 - RULES FOR UTILITIES ON COUNTY HIGHWAYS⁴⁹

One of the ways in which local roads can be damaged is by the digging of trenches to accommodate public utilities and other underground facilities such as pipelines, electric conduits, sewers and water lines. There are basically two concerns addressed in the typical control of utility cuts - interruption of traffic flow, and restoration of roads upon completion of construction. The following listing of general rule is taken from the utility road cut permit form used by Clay County, Minnesota.

While road cuts are most commonly for water and sewer lines in Villages and suburban areas, some operations, especially gas and oil pipelines will extend into vary rural areas. In either case it is desirable that municipalities preserve the ability of local and through traffic to pass along roads. There is a caution about using the term "utility" in New York because it may be considered as applying only to officially designated "public utilities" which are governed by the State Public Service Commission.

DEFINITIONS

Utility. Under this order "Utility" shall mean and include all privately, publicly or co-operatively owned communication lines and facilities, any systems, lines and facilities for the distribution and transmission of electrical energy, oil, gas, water, sewer, steam and other pipe lines, railways, ditches, flumes or other structures which under the laws of this State or the ordinance of any village or city may be constructed, placed or maintained across, along or on county highway right of way. Dependent upon the meaning intended in the context, "Utility" shall also mean the utility company, inclusive of any wholly owned subsidiary.

GENERAL

I. Except as otherwise permitted, utility construction and relocation on county highway right of way shall not be commenced until an application for a Permit has been made and such Permit granted. The Permit sketch shall show the location of the proposed utility with reference to county highway center line. A copy of the sketch shall be provided for each copy of such Permit.

II. Burning or disking operations and/or the use of chemicals to control or kill trees, brush and other vegetation is prohibited without prior approval from the County Highway Engineer.

III. All waterways and lines of drainage shall remain operative.

IV. Wherever topsoil and sod are disturbed they shall be replaced and maintained satisfactorily until the turf is established.

V. The utility facility and installation shall not interfere with any existing utility facilities on the county highway right of way.

VI. When necessary, barricades, warning devices and flagmen shall be provided by the Utility during all phases of their construction and maintenance operations on county highway right of way.

VII. At the time of construction of the utility and at the times of subsequent maintenance, prior approval shall be obtained from the County Highway Engineer for the cutting and trimming of trees within the county highway right of way. Wherever trees are cut the resulting stumps shall be removed unless otherwise provided in the Special Provisions of the Permit. Any holes caused by stump removal shall be backfilled, the area leveled and all materials associated therewith disposed of outside the county highway right of way. The utility shall advise the County Highway Engineer at least 48 hours in advance on its intent to start clearing and grubbing operations so that proper supervision can be provided.

VIII. The Utility shall notify the County Highway Engineer of its intent to perform service and maintenance operations, which will interfere with the flow of traffic on county highways, and shall obtain his approval prior to performing such operations. However, the

⁴⁹ From Clay County Minnesota. The county seat is located in Moorehead, Minnesota

Company may perform service and maintenance operations on county highways including opening and disturbing the surface of the right of way without prior approval in those instances where an emergency exists that is dangerous to the life or safety of the public and which requires immediate repair. The Utility shall take all necessary and reasonable safety measures to protect the traveling public and shall notify the County Highway Engineer at the earliest possible moment.

IX. If at any time Clay County shall deem it necessary to make any improvements or changes on all or any part of the right of way of the county highway which affect a utility located on county highway right of way, the owner of the utility shall within 15 days after notice from the county proceed to alter, change, vacate, or remove said utility from the county highway right of way so as to conform to said highway changes and as directed by the county. Such work shall be done without any cost whatsoever to Clay County and shall be completed within the date specified in the notice. The utility shall assume all liability and save Clay County harmless from any nature whatsoever occasioned by damages to utilities due to construction or maintenance operations.

X. The Utility shall assume all liability for, and save the County, its agents and employees, harmless from, any and all claims for damages, actions or causes of action arising out of the work to be done herein and the continuing uses by the Utility, including but not limited to the placing, constructing, reconstructing, maintaining and using of said utility under this application and Permit.

XI. The County may require the Utility, or its contractor, to furnish a deposit in the form of a certified check, a surety bond or corporate undertaking, in favor of the County of Clay, for any expense incurred by the County in the repairing of damage to any portion on the county highway right of way caused by work performed under a Permit, including any out of the ordinary engineering supervision and inspection expense provided by the county. In those instances wherein a deposit is required, the amount of the deposit shall be specified in the Special Provisions of the Permit. If a check is furnished, any monies remaining over and above such expense shall be returned to the applicant.

XII. The Permit as issued does not in any way imply an easement on private property.

XIII. The installations shall be made in conformity with all applicable laws, regulations and codes covering said installations. All installations shall be made in conformity with regulations of governmental agencies for the protection of the public.

XIV. Upon completion of an installation, the Utility shall restore the county highway right of way to its original condition. The Utility shall then notify the office of the County Highway Engineer of the completion of the work so that inspection can be made to determine its acceptability.

A6 - YATES COUNTY ROAD PRESERVATION, USE, AND REPAIR POLICY

The following model was developed by Yates County and was intended for use by Yates County, and its Towns and Villages. For the purpose of this monograph, this model has been edited for use by Towns. In addition the original text had some inconsistencies in the outline format of subsection numbers and these have been adjusted where appropriate and where they help clarify the relationship between paragraphs.

RESOLUTION NO. 227-10

ADOPT ROAD PRESERVATION USE AND REPAIR POLICY

RESOLVED, that the following Road Preservation Use and Repair Agreement is hereby adopted as a policy by the Yates County Legislature for the purpose of maintaining the safety and general conditions of County roads and County right-of-ways when subject to use by vehicles and equipment associated with industrial operations, and be it further

RESOLVED, that copies of this resolution be given to the Highway Superintendent and the County Planner.

Road Preservation Use and Repair Agreement

This Agreement (Agreement) effective the ____ day of _____, 20__ is made and entered into by and between _____, acting through its duly constituted _____ Department (Municipality), located at _____; and _____ (Developer), a corporation, organized and existing under the laws of, or duly authorized to conduct business in the State of New York, having its principal place of business at _____.

Whereas, the parties hereto desire to provide for the use and repair of _____ Roads when subjected to damage or degradation by frequent or repetitive traversing of heavy vehicles employed in respect to transporting heavy construction equipment and hauling construction materials.

Now Therefore, in consideration of the premises and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Terms and Conditions: Shall be set forth in Sections One to Eleven and Appendices A, B, and C.

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.

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

Developer Municipality

By: _____ By: _____

Name: Name:

Title: Title:

Date: _____ Date: _____

Approved as to Form: Date: _____

Outline ⁵⁰ 1. Purpose 2. Enforcement 3. Definitions 4. General Provisions – Designation of Haul Roads	5. Use of Designated Haul Roads and Pre-Construction Road Survey 6. Post Use Pavement Survey 7. Determination of Final Repairs 8. Permits 9. Warranties by Developer	10. Warranties by Developer 11. Fees 11 Indemnity 12 Compliance with Rules, Regulations and Laws 13 Conflict of Interest 14. Independent Contractor Status 15. Governing Law
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⁵⁰ This Outline was added by STERPDB.

Road Preservation Use and Repair Agreement
An Agreement Relating to the Use and Repair of Roads in the Town of _____

(Date)

Section 1: PURPOSE - The purpose of this agreement is to maintain the safety and general welfare of town residents by regulating commercial activities that have the potential to adversely affect road conditions and public right-of-ways. Well maintained roads are important to the economic well-being of the Town of _____ hereinafter, "the Municipality." Commercial endeavors such as mining and natural gas drilling are also economically beneficial. This agreement is not intended to regulate such business; the intent is to protect the public right-of-ways from damage. The Town Board of the Town of (_____) hereby enacts the following Road Preservation agreement pursuant to the provisions of the Municipal Home Rule Law.

Section 2: ENFORCEMENT - The Municipality delegates to _____ hereinafter, "the Designee," the oversight of assuring commercial activities do not have an adverse impact on roads. This individual will work directly with the company representative named on Appendix A.

Section 3: DEFINITIONS -

a. Structural Class:

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/or 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 drilling 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 but is not limited to 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.

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/or 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 but is not limited to 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.

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 drilling. 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.

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 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 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.

**CONSIDERATIONS FOR THE PROTECTION OF TOWN HIGHWAYS
INCLUDING REGULATION OF OVERSIZED AND OVERWEIGHT VEHICLES**

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5. Structural Class 5 – 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 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 project. Use of the road without prior reconstruction may result in significant distresses such as potholes, rutting, and very rough ride-ability within the duration of the project. The accelerated deterioration would create excessive demand for 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.

b. High Frequency, High Impact Traffic: Traffic to and from a single project site that generates more than ten truck trips per day for more than four consecutive days, involving trucks that exceed 20 tons (truck and load combined) that could impact the Municipality's roads.

c. Road Preservation Use and Repair Worksheet (Appendix A): Worksheet is to be completed by project sponsor, summarizing the project, project location, start and completion dates, expected max gross weight used for the project, designated haul routes (Appendix B), and any other information that the Designee deems necessary.

d. Designated Haul Routes (Appendix B): Roads used for; (1) transportation and delivery of drilling equipment and components and other materials and equipment to be used in connection with the Project; (2) truck transportation leaving the Project site following delivery of equipment and materials; (3) movement of the drilling rigs and (4) transportation and delivery of local sources of materials, including concrete and gravel.

e. Developer: Refers to the Developer, who is a party to this Agreement, and any subcontractor used by the Developer.

f. Commencement of Construction: Construction shall begin upon issuance of access/driveway permits by the municipality (pre-construction surveys must be completed and approved before the issuance of access/driveway permits).

Section 4: GENERAL PROVISIONS - DESIGNATION OF HAUL ROUTES

The Developer shall submit requested routes (hereto referred to as Designated Haul Routes) for hauling equipment and materials to and from the project to the Municipality for approval. These routes will be further designated, by the Municipality as Structural Class 1, 2, 3, 4, or 5 (as defined in Section 3) with certain requirements stipulated for their use as set forth in Sections 4.1, 4.2 and Section 5 below. A list and map of the Designated Haul Routes are identified in Appendix A. The Haul Routes shall be designated prior to the commencement of construction activities and prior to the final signing and execution of the Road Use Agreement. The Pre-Construction Survey will begin after the signing of the Road Use Agreement.

4.1 Class 1, 2, and 3 Roads – These roads can be used by the Developer for the Drilling 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, at the Developer's expense, as needed.

4.2 Class 4 and 5 Roads – The Developer may proceed to use the road at their own risk. However, the Municipality shall monitor the use of the road during the construction project. If the road becomes dangerous to the traveling public, the Municipality shall close the road to all construction traffic. In the case of closure, the Developer shall be required, at their own expense, 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 Municipality shall determine the full cross section design and material specifications for this reconstruction. The Developer shall hire a qualified contractor of its choice to construct the pavement system (base and asphalt pavement layers for Class 4, if applicable) according to the full specifications provided by the municipality.

Section 5: USE OF DESIGNATED HAUL ROADS AND PRE-CONSTRUCTION ROAD SURVEY

5.1 Construction Traffic Estimation- The Developer shall engage and pay for the services of a NYS licensed Civil Engineering firm approved by the Municipality, 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. This shall be done for overweight vehicles hauling in drilling equipment 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 (ESAL's), 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 will use for the project. The Road Use Agreement will be executed only after this data is submitted and the Haul Routes are designated. All Designated Haul Routes will be posted at each end of the road with final locations to be determined by the Municipality and paid for as detailed in Appendix B.

5.2 As soon as practicable after the execution of the Road Use Agreement, but in any event prior to the commencement of construction the Developer shall select a third party NYS licensed Civil Engineering firm, approved by the Municipality to conduct the surveys and assessments explained in section 5.4 below. Roads and highways within the boundaries of the Municipality 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 Municipality's Highway Superintendent or their designee prior to data collection to review how the data will be collected and reported. The Municipality shall either agree and approve or disapprove the data collection process and the report formats. The Pre-Construction survey shall be done before the final execution of the Road Use Agreement.

5.3 Structural Class Designation- The Municipality shall retain exclusive rights to designate the Road Structural Class for the Designated Haul Routes. The Developer agrees to abide by this decision. The Municipality shall make this decision based on the road surface condition, structural condition, and the traffic using the road. Pre-construction road survey requirements are enumerated in Section 5.4 (a)-(d) below.

5.4 Pre-Construction Survey- A full report of the assessments in (a) – (d) below shall be provided to the Municipality by the Developer and paid for by the Developer, 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. Videos will be provided in a DVD format. The full costs of the Video Survey will be borne by the Developer. Additional video surveys shall only be conducted in the event the Parties mutually agree and the additional survey costs are borne by the Developer.

(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 Municipality at no cost to the Municipality prior to the commencement of construction.

(e) Core Sample- A core or crosscut sample may be required, at the Municipality's discretion, to determine necessary repairs.

5.5 Inspection of Culverts and Bridges- Within one month after the execution of this agreement, and prior to the commencement of construction, the Developer shall select a qualified engineering company, subject to approval by the Municipality, to inspect the culverts and bridges on the Designated Haul Routes. The inspection shall be done within that same month following execution of the agreement. Culverts and bridges on any other roads anticipated to serve 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. Based on the inspections the selected engineering firm shall provide a report discussing the status of culverts and bridges that shall require improvements/upgrades prior to their use Project. This report shall also present the recommended improvements/upgrades to the structures and shall be submitted to the Municipality for review. The Municipality will prepare a final list of improvement/upgrade projects that must be done prior to commencement of construction. The Municipality 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 a qualified NYS licensed engineering firm.

5.6 Limitations of Road Use –

(a). Restrictions. All other Municipal roads not selected as Designated Haul Routes 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 Municipality shall be informed, and will determine whether or not Appendix B shall be amended. All Sections 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 Municipal road not identified on Appendix B as a Designated Haul Road, then the Developer shall notify the appropriate Municipality's Designee, describing in detail such use and the reasons therefore. If the use is to be 'one time,' the Municipal Designee shall make the determination to allow the road use without the road being added to Appendix B as a Designated Haul Route. If the Developer determines that the road may be used multiple times it shall be added to Appendix B as described in Section 4 of this Article as a Designated Haul Route.

(c) Extreme Weather Conditions – Once construction begins on the Project the Municipal Designee shall be entitled, at any time, to notify the Developer 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 shall work with the Municipality's Designee to develop a plan to mitigate or prevent safety liabilities concerning all designated haul routes as a result of such weather conditions. If the Parties are able to develop a plan to mitigate or prevent such safety liabilities, then the Developer may continue to use such roads provided such mitigation is implemented. If the Parties are unable to develop such a plan, the Developer may propose an alternate route to the Project site for approval by the Municipality (such approval not to be unreasonably withheld).

Section 6: POST USE PAVEMENT SURVEY

6.1 Post Use Pavement Survey Tasks – The Developer shall engage and pay for the services of a NYS licensed Civil Engineering firm, approved by the Municipality, to do the post use survey. The Post Use Pavement Survey tasks listed below shall be completed within a three (3) month window following the project completion date.

- (a) Photo & Video Survey of Roads** – Repeat as described in section 5.4 (a) above.
- (b) Distress Survey** – Repeat as described in Section 5.4 (b) above.
- (c) Rut Depth and Cross Slope measurements** – Repeat as described in Section 5.4 (c) above.
- (d) Road Roughness** – Repeat as described in Section 5.4 (d) above.
- (e) Core Sample**- May be required per Municipality's discretion.

Section 7: DETERMINATION OF FINAL REPAIRS

The Municipality 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 Municipality shall determine the needed repairs. If the Municipality determines repairs are necessary, such repairs as set forth in paragraphs 7.1 to 7.6. The Municipality shall prepare a report of the needed repairs that includes the treatment for each road segment and the total estimated cost of the repair. The report shall be submitted to the Developer within the first three month period after the project completion date (assuming the Developer submits the Post Use Pavement survey data to the Municipality within forty-five days).

7.1 – 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 Municipality. 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 Municipality shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services, shall be paid by the Developer to the Municipality. *The Municipality retains the right to make the final decision regarding the extent and type of road repairs.*

7.2 Class 2 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 Municipality. 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 Municipality shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services shall be paid by the Developer to the Municipality. *The Municipality retains the right to make the final decision regarding the extent and type of road repairs.*

7.3 Class 3 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 Municipality. 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 Municipality shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services shall be paid by the Developer to the Municipality. *The Municipality retains the right to make the final decision regarding the extent and type of road repairs.*

7.4 Class 4 and 5 Roads - If the road was not rebuilt by the Developer prior to or during the project then upon completion of the project the road will be repaired by one of the following methods; Full pavement rehabilitation (recycling or replacement of asphalt) or Full depth reconstruction (asphalt pavement and base layer reconstruction). One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services shall be paid by the Developer to the Municipality.

(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.
The Municipality retains the right to make the final decision regarding the extent and type of road repairs.

7.5 One-Time Use Roads – The Developer 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 Municipality and Developer shall meet to review the damage in relation to the Initial Survey or most recent subsequent survey, as applicable. The Developer shall repair (or cause to be repaired) such damage and restore the road to the standard agreed upon, unless the Developer can demonstrate to the reasonable satisfaction of the Municipal Designees that the damage was not caused by the Developer. Any repair and restoration shall be promptly performed at such times as the Developer and the Municipality determine, having due regard for safety and, the presence of emergency conditions. In the event that the Developer fails to repair such roads within the agreed period, then, unless the Parties mutually agree otherwise, the Municipality may make such repairs and shall invoice the Developer for the costs incurred by the Municipality in connection with the repair. The Developer shall pay such invoiced amounts within ten (10) days following receipt of the invoice.

7.6 Culverts and Bridges – Improvements/Upgrades to bridges and culverts may be required prior to commencement of the project. These improvements are discussed in Section 5.5. Damage as a result of the Project to a culvert or bridge structure that was not improved or upgraded must be repaired following the project, or sooner if deemed necessary by the Municipality. All modifications or repairs to culverts or bridges shall be designed by a Professional Engineer licensed to practice in New York State in accordance with accepted AASHTO and NYSDOT standards and approved by the Municipality. All damage due to Developer's work shall be mitigated, either through repair or replacement, by the Developer at its expense to the satisfaction of Municipality.

7.7 Emergency and/or Periodical Repair- The Developer will be expected to perform any emergency repairs and or periodical, necessary 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 Municipality determines must be repaired. The Municipality will inform the Developer of required emergency repairs and the repair shall be accomplished within a minimum of three days' time. If more time is required the Developer shall inform the Municipality of the status of the repair on a daily basis. Close communication will be required between the Municipal Highway Designee and the Project Manager of the Project. All costs of the repair shall be paid for by the Developer.

7.8 Insurance Requirements- The Municipality requires the following Certificates of Insurance showing the following:

(a). **Certificate of Insurance** - 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 County shall be listed as additional named insured on the liability policy.

(b) **Workers Compensation and New York State Disability Benefits Insurance.** The County 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 at [insert address] _____ shall be notified immediately if the insurance coverage is in any way modified or terminated while this agreement is in effect.

Section 8: PERMITS

The Developer shall obtain all necessary governmental permits and approvals that are necessary to permit the Developer to make the modifications and improvements to the Designated Roads contemplated herein. The Developer shall be responsible for obtaining all required permits and approvals as follows:⁵¹

3. Municipality's Highway Work Permits – For any and all work in the Municipal right-of way (including utilities)
4. Municipality's Highway Driveway Access Permits
5. Municipality's Overweight and Special Hauling Permits
6. NYS DOT Overweight and Special Hauling Permits for County Roads
7. NYS DEC permits for water crossings, wetlands, etc.
8. Army Corps of Engineer permits for water crossings etc.

Section 9: WARRANTIES BY DEVELOPER

9.1 Workmanship and Material Warranties- The following warranty and workmanship requirements apply to all repairs, modifications, and improvements that the Developer (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 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 such completion date.

(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 NYS Department of Transportation (NYSDOT) standards and specifications, and Developer's construction responsibility shall be carried out in accordance with sound construction practices. The Developer shall require from its construction contractors and subcontractors the same standards for engineering and construction practice. The Developer warrants that it shall perform and complete all repairs, modifications and improvements hereunder in a good and workmanlike manner.

(b) The Developer warrants that all repairs, modifications and improvements hereunder shall be free from defects in material and workmanship. The Developer 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. The Municipality will determine whether there are defects, as explained.

9.2 Remedies- During the Applicable Warranty Period, the Municipality shall notify the Developer in writing of any defects in the repairs, modifications or improvements. At no additional cost to the Municipality, the Developer shall proceed promptly to take such action relating to its performance or that of its subcontractors 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.

⁵¹ There are no subsections 1 or 2 in the original

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

Section 10: WARRANTIES BY DEVELOPER

A bond, letter of credit, or cash escrow (to be determined by Municipality) will be required for each designated haul road in an amount to be determined subsequent to the designation of Haul routes but prior to signing of the final agreement. The Bonded amounts shall be in accordance with the following schedule:

1. Class I Roads - \$150,000 per mile
2. Class II Roads - \$150,000 per mile
3. Class III Roads - \$140,000 per mile
4. Class IV Roads - \$70,000 per mile

These amounts are merely guidelines and the Municipality retains the right to change them as necessary. *The final release of all bonds/letter of credit/cash escrow will be determined once all damage has been repaired to the satisfaction of the Municipality.*

Section 11: FEES

A non-refundable processing fee of one-thousand dollars (\$1,000) payable to the Municipality must accompany each executed Appendix A. *The Municipality reserves the right to issue a stop-work order and consequent revocation of this agreement for violations of agreement.*

11. 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.

12. 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 Driver's 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.*

13. 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 therefrom or who is a party thereto.

14. 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.

15. 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 A-6.A [Yates Model]
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: _____
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. Appendix B 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 B 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

APPENDIX A-6.B [Yates Model]
DESIGNATED HAUL ROUTES

(Attach map)

Approval 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 is \$175 (includes labor, all materials, stakeout and call to Dig Safely NY).

APPENDIX A-6.C [Yates Model]
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, licenser, 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.

DRAFT

A7 – CORTLAND COUNTY MODEL ROAD PRESERVATION LAW

The following model was developed by the Cortland County Planning Department in early 2010 and was intended for use by its Towns and Villages. For the purpose of this monograph, this model has been edited for use by Towns. Unlike some of the other models, this model relies upon the Town Supervisor for its administration, although presumably he may choose to delegate this responsibility to either the Town highway Superintendent or Code Enforcement Officer, if desired.

This model includes a specific reference to the requirement for an Environmental Assessment Form to accompany the permit application.

A LOCAL LAW REQUIRING A PERMIT PRIOR TO ANY ALTERATION OF A TOWN ROAD AND REQUIRING A PERMIT FOR USE OF TOWN ROADS BY VEHICLES WITH A GROSS WEIGHT IN EXCESS OF THE LIMITATIONS IN SECTION 385 OF THE NEW YORK STATE VEHICLE AND TRAFFIC LAW

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

Section 1. Authority For This Law.

This Local Law is enacted pursuant to Municipal Home Rule Law Section 10 and Vehicle and Traffic Law Section 385(15) authorizing a town to require the issuance of a permit to operate or move a vehicle or a combination of vehicles, the weights or dimensions of which exceed the limitations provided in section 385 on town roads or roadways, similar to that issued by the State of New York relating to the state system of highways.

Section 2. Damage To Town Roads Prohibited.

No person shall alter or disturb a town road or the area within the road right of way without a permit issued pursuant to this local law. No person shall operate an oversized vehicle or an overweight vehicle on a town road without a permit issued pursuant to this local law.

Section 3. Permit Issuing Authority.

The Town Supervisor (hereinafter the "Supervisor") of the Town of _____ (hereinafter the "Town") is hereby designated as the authority to receive applications for permits to operate or move a vehicle or a combination of vehicles, the weights or dimensions of which exceed the limitations provided in section 385 on town roads or highways (hereinafter the "permit".) Such permit can only be issued by a majority vote of the town board to applicants who hold a valid New York State Hauling or Divisible Load Permit issued pursuant to 17 NYCRR Subpart 154-2. The town board may grant a permit waiver to applicants who use a road 2 times per day or less, and to applicants who have been granted a town franchise agreement.

Section 4. Application Form, Permit Form And Application Fee.

The Supervisor is hereby authorized to promulgate application and permit forms. The application must specify all roads and adjacent driveways that are proposed to be used. Detailed plans and specifications shall be required for any new construction within a road right of way. An application shall be accompanied by maps of all proposed routes, and plans for all construction in a road right of way, including proposed pipelines. An application shall also include an environmental assessment form. Permit issuance shall be subject to Article 8 of the New York State Environmental Conservation Law – State Environmental Quality Review ("SEQR"). An application fee and a maintenance fee shall be established by Town Board resolution. The application fee shall be separate and in addition to the maintenance fee which shall be adequate to reimburse the town for all related expenses, including consultants' fees.

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Section 5. Damage To Town Roads.

The Permittee shall be responsible for the repair of all damages done to the roadways, bridges, driveways, culverts, ditches, curbs, sidewalks or other improvements and to the public utilities in the roadway and easement area. Upon due notice being given to the Permittee, and at the Town's option, the Town may require the Permittee to repair all damages or the Town may arrange for the necessary repairs and charge the Permittee for all labor and materials at the prevailing rates. The Town shall have the authority to specify a deadline by which time all repairs shall have been completed. The highway shall be restored and maintained for a period of one year from the date of any repairs. Particular attention is called to the necessity of thoroughly compacting the back fill, which will be required by the Town. The Town shall have the authority to assess damages and to collect said damages from the responsible party. The Town shall also have the authority to require the applicant to arrange for and pay for the cost of videotaping or otherwise documenting the condition of a road before the applicant uses the road.

Section 6. Insurance.

a. The Permittee shall present to the Town certificates of insurance evidencing the acquisition of liability insurance coverage naming the Town as an additional insured on a non-contributory basis with the minimum limits of coverage for bodily injury equal to \$2,000,000.00 for each person injured, \$5,000,000.00 for aggregate bodily injury resulting from each occurrence, and \$5,000,000.00 property damage.

b. Said insurance shall be maintained throughout the term of the permit and the aforementioned certificates shall provide for thirty (30) days' notice to the Town prior to cancellation of coverage. Expiration of insurance coverage shall automatically operate to revoke any permit issued pursuant to this local law.

c. All persons performing work under this permit are to be covered by Worker's Compensation Insurance and Disability Benefits insurances as required by New York law.

Section 7. Maintenance Bond.

The Permittee shall present to the Town a maintenance bond in the amount of \$500,000.00 and a bank letter of credit in the amount of \$50,000.00 in favor of the Town guaranteeing compliance with the provisions of the permit. At such time, if ever, that said letter of credit is expended, the Permittee shall replace the same within 5 days written notice by the Town, failing which the permit shall be subject to revocation.

Section 8. Indemnity and Save Harmless.

The Permittee will be required to agree to fully indemnify, defend, save and hold harmless the Town and all of its departments, boards, officers and employees from and against any and all claims, costs, damages, expenses, charges, risks, losses, lawsuits, judgments, executions, penalties, fines, assessments or any other liability of any type arising out of, occurring with, or resulting from any and all activity to be performed by Permittee pursuant to this permit.

Section 9. Stop Work Orders.

The Town Supervisor or Code Enforcement Officer shall have the right and authority to issue stop work orders to those operating in violation of the terms of a permit, or contrary to the permit tee's application or conditions upon which a permit was issued pursuant to this local law.

Section 10. Revocation Of Permit.

Upon violation of any provisions of a permit, the Town Supervisor or Code Enforcement Officer may suspend the permit issued hereunder, for no more than forty five (45) days. Upon permit suspension, a Permittee shall have the right to appear and be heard at a hearing. The Town Board may permanently revoke any permit for due cause following said hearing.

Section 11. Special Conditions.

- a. A permit shall not be assigned or transferred without the written consent of the Supervisor.
- b. The Supervisor shall be given one week's notice by the Permittee of the date it intends to begin the activity authorized by the permit, and prompt notice of its completion.
- c. A permit for an overweight or oversized vehicle shall remain valid only for so long as the Permittee continues to hold a valid New York State Hauling or Divisible Load Permit issued pursuant to 17 NYCRR Subpart 154-2.
- d. The permit shall not authorize the holder to exceed the maximum gross weight limit authorized for crossing an R-Posted bridge.
- e. Every permit shall require that the roads be kept passable at all times for all motor vehicles, including public safety vehicles, unless otherwise approved by the town highway superintendent.
- f. The town highway superintendent may require that a road be improved prior to use so that it will withstand the proposed use without significant damage.
- g. The town board may impose other conditions where reasonable, including a requirement to fund engineering studies, videotaping or other documentation of a road, and seasonal restrictions.

Section 12. Violation Of Local Law; Penalties Therefore.

Any person who shall operate or move a vehicle or a combination of vehicles, the weights or dimensions of which exceed the limitations provided in section 385 on town roads or highways without obtaining the permit required hereunder shall be guilty of a Class A misdemeanor, which shall be punishable by a fine not exceeding one thousand (\$1,000.00) dollars, per day of violation.

Section 13. Severability.

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application provision been apparent.

Section 14. Repealer.

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

Section 15. Effective Date.

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

APPENDIX B - RULES GOVERNING TOWN HIGHWAYS

State law, principally in the Town Highway and the Vehicle and Traffic Laws, sets forth the standards for public highways and enables Town governments to exercise certain powers concerning the use of these roads. The following are summaries various provisions of the New York Highway Law and the Vehicle and Traffic Law that appear most applicable to Town regulation to protect and preserve Town highways.

DISCLAIMER - The following discussion of the New York Highway Law and the Vehicle and Traffic Laws is from the perspective of a community planner and DO NOT REPRESENT LEGAL OR ENGINEERING INTERPRETATIONS. Citations are provided for the sources of the specific provisions, and in all cases it is recommended that the original text be consulted and to the extent desired, legal advice sought from the municipal attorney or such other trained legal and/or engineering authority as may be appropriate.

GENERAL ENABLING AUTHORITY

Under Section 10 of the New York Municipal Home Rule Law (HRL) every local government in New Yorks state has the power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government. Further Towns and Villages are specifically authorized to adopt Local Laws governing the acquisition, care, management and use of its highways, roads, streets, avenues and property.⁵² Further the HRL provides that Towns and Villages have the authority to fix fees and charges.⁵³ The principal limitation on Towns is that their powers relate only to the area of the Town outside of any village⁵⁴

DUTIES OF TOWN HIGHWAY SUPERINTENDENT

In addition to his other duties the town highway superintendent is required to periodically measure all town highways, and ascertain and report to the State Transportation Department the town highways which have been surfaced with gravel, those which have been surfaced with crushed stone and those which have been shaped and crowned.⁵⁵

In addition the Town Law provides that the Town Highway Superintendent may perform such other duties and have such other powers as may be imposed or conferred by law, or the rules and regulations of the department of transportation.⁵⁶

CREATING LOCAL ROADS

New Roads – In New York State no highway shall be less than three rods in width, except when it is an extension of an existing public highway, and less than a half mile in length, in which case the width of the extension should be no less than the maximum width of the portion of the road being extended.⁵⁷ New Highways should be laid out to avoid buildings, enclosures or yards without the

⁵² Section 10(1)a(6) of New York Municipal Home Rule Law.

⁵³ Section 10(1)a(9-a) of New York Municipal Home Rule Law

⁵⁴ Section 10(1)a(12)(a) of New York Municipal Home Rule Law

⁵⁵ Article 7, §140 (12) New York Town Law.

⁵⁶ Article 7, §140 (17) New York Town Law

⁵⁷ Article 8, §180 of New York Highway Law. A rod is a surveyor's measure equaling 16.5 feet. A "three rod road" would have a right of way of 49 ½ feet.. This requirement is repeated in § 189 *infra*

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consent of the owner, unless so ordered by the supreme court upon a certification of the town superintendent showing that the public interests will be greatly promoted by the laying out and opening of such highway

Three Rod Roads Created by Public Usage - Land used by the public as a highway for 10 years or more shall be a highway as if it had been officially laid out and recorded as a highway by the town superintendent. Such highways shall be open to a width of three rods.⁵⁸

DISCONTINUING OR ABANDONING ROADS

Highway Abandonment by Resolution - Upon the request of the county superintendent of highways, any town board may, by resolution after 30-day notice, declare a town highway or portion thereof running through forest lands, not necessary for ingress to or egress from bordering lands, and not necessary to connect existing town, county or state highways, to be abandoned and discontinued for public purposes.⁵⁹

Discontinuance of Highway - Whenever the town superintendent determines that a portion of town highway outside of a village, is unnecessary for highway purposes he may direct such highway to be abandoned for public purposes, through an order duly entered in the town clerk's office. Provided, however, that no portion of such highway shall be greater than one thousand feet from its terminus and that the owners of the land on both sides of such highway proposed for abandonment requested the discontinuance thereof, by written petition.⁶⁰

Abandoning of parts of town highways - When as part of realigning or improving a town highway, a town acquires land necessary for road right-of-way from adjacent owners and after such a project is completed has land which is no longer needed for highway purposes, the town board by resolution, upon recommendation of the town superintendent of highways with the consent of the county superintendent of highways, may abandon to the abutting owners such sections or parts of the old road as previously which are of no further use for highway purposes, providing the road after such abandonment shall be not less than three rods wide.⁶¹

Highway Abandonment By Lack of Use – Highways and rights of way not travelled or used as a public highway for six years shall be deemed abandoned, along with their right of way. The Town Highway Superintendent, with the consent of the Town Board, shall file a written description of each highway and public right-of-way so abandoned.⁶²

Qualified Abandonment - Where it appears to the town superintendent and town board that a highway has not become wholly disused, but for two years has not been traveled wholly or partially by more than two vehicles daily, and it shall also appear to the county highway superintendent that a qualified abandonment of such highway is proper and will not cause hardship to the owner or occupant of land adjoining such highway, they shall record a certificate containing a description of that portion of the highway partly disused declaring a qualified abandonment thereof in the town clerk's office.⁶³ As a result of qualified abandonment, a highway is no longer maintained at

⁵⁸ Article 8, §189 of New York Highway Law. A rod is a surveyor's measure equaling 16.5 feet. A "three rod road" would have a right of way of 49 ½ feet.

⁵⁹ Article 8, §211-a New York Highway Law

⁶⁰ Article 8, §207 New York Highway Law

⁶¹ Article 8, §212-a New York Highway Law

⁶² Article 8, §205(1) New York Highway Law

⁶³ Article 8, §205(2) New York Highway Law. This section does shall not apply to highways less than two rods (33 feet) in width, unless it appears to the town superintendent that the highway has not been usually traveled along the greater part thereof by more than ten pedestrians daily, during the months of June to September during the previous two .

public expense, but it does not cease to be a highway for purposes of the public easement, and shall not be obstructed, although the owner of property on both sides may install unlocked gates and fencing across the ends.

Seasonal Limited Use Highways - A town highway superintendent is authorized to annually designate, on or before the first day of November in each year, a town highway as a seasonal limited use highway. Seasonal limited use highways shall be those town highways without occupied residences or commercial buildings dependent upon such highways for access and shall be appropriately posted. The town is authorized to temporarily discontinue snow and ice removal and maintenance from the first day of December until the first day of April on any highway so designated.⁶⁴

Widening Roads Narrowed by Natural Causes - Resident taxpayers may petition for the widening of a road narrowed by natural causes such as flooding. Petitions need to certify whether the highway is an important connection between two or more cities or villages, in which case, if the cost of widening exceeds \$2,500, a court may require the county to pay for at least half the cost.⁶⁵

Exclusions for Emergency Vehicles

Article 1 of the NYS Vehicle and Traffic Law provides for the exclusion of emergency vehicles or certain vehicles in emergency conditions from certain restrictions:

“Emergency Operation” is defined as the operation, or parking, of an authorized emergency vehicle, when such vehicle is engaged in transporting a sick or injured person, transporting prisoners, delivering blood or blood products in a situation involving an imminent health risk, pursuing an actual or suspected violator of the law, or responding to, or working or assisting at the scene of an accident, disaster, police call, alarm of fire, actual or potential release of hazardous materials or other emergency. However, the Law states that emergency operation shall not include returning from such service.⁶⁶

“Fire Vehicle” is defined as every vehicle operated for fire service purposes owned and identified as being owned by the state, a public authority, a county, town, city, village or fire district, or a fire corporation subject to the provisions of subdivision (e) of section fourteen hundred two of the not-for-profit corporation law or a fire company as defined in section one hundred of the general municipal law. Any of the following vehicles shall be fire vehicles only for the purpose of section one hundred one of this chapter: 1. a vehicle operated by officials of the office of fire prevention and control, 2. a vehicle ordinarily operated by a chief or assistant chief of a fire department, or a county or deputy county fire coordinator, or county or assistant county fire marshal, or town or assistant town fire coordinator, or such vehicle when operated in an official capacity by or under the direction of such person, and 3. a vehicle specially designed and equipped for firefighting purposes which is regularly used for firefighting purposes by a firefighting unit on property used for industrial, institutional or commercial purposes and which vehicle is owned by the owner or lessee of such property.⁶⁷

An “emergency ambulance service vehicle” is defined as an appropriately equipped motor vehicle owned or operated by an ambulance service as defined in section three thousand one of the public health law and used for the purpose of transporting emergency medical personnel and equipment to sick or injured persons.⁶⁸

⁶⁴ Article 8, §205-a New York Highway Law

⁶⁵ Article 8, §199 New York Highway Law

⁶⁶ Article 1, §114-b New York Vehicle and Traffic Law

⁶⁷ Article 1, §115-a New York Vehicle and Traffic Law

⁶⁸ Article 1, §115-c New York Vehicle and Traffic Law

“Environmental emergency response vehicle” is defined as every designated vehicle operated by an agency of the state or a political subdivision thereof, charged with the responsibility for environmental protection, while engaged in a response to a report of an emergency resulting from an actual or potential release, spill or leak of, or other exposure to, hazardous substances.⁶⁹

“Hazardous materials emergency vehicle” is defined to include every designated vehicle operated by a hazardous materials emergency response team created pursuant to section two hundred nine-y of the general municipal law specifically equipped for and used in response to reports of emergencies resulting from actual or potential releases, spills or leaks of, or other exposure to hazardous substances.⁷⁰

The term “Police Vehicle” is defined as every vehicle owned by the state, a public authority, a county, town, city or village, and operated by the police department or law enforcement agency of such governmental unit or by a constable or police constable of a town when acting pursuant to his special duties. Any other vehicle operated by a chief or deputy or assistant chief of a police department, a sheriff, undersheriff or regular deputy sheriff, and a vehicle owned and operated by the law enforcement unit of a public or private corporation authorized by law to maintain a unit for the enforcement of law on the property of such corporation shall be a police vehicle only for the purposes of section one hundred one of this chapter.⁷¹

TOWN HIGHWAY SPECIFICATIONS

General Town Highway Specifications - The State identified a set of general specifications for the improvement, repair or reconstruction of town highways, including necessary grade and culvert work, and for any plans and specifications thereof. Such work should conform generally to the following minimum specifications; provided, however, that the county superintendent and the NYS DOT Commissioner may permit deviations below such minimum specifications if, in their opinion, the particular circumstances make such deviation advisable:

- (a) raising of roadbed above grade,
- (b) grading back slope and eliminating brush,
- (c) widening of roadbed to not less than eighteen feet,
- (d) surfacing with gravel or other suitable material to a depth of not less than twelve inches, which shall be stabilized with suitable binding materials,
- (e) widening shoulders to not less than five feet,
- (f) providing for adequate drainage facilities,
- (g) if necessary, providing for vegetative protection on the sides of state or municipally owned slopes bordering on highways to prevent erosion of soil and to conserve water, and
- (h) providing for the construction or reconstruction of necessary bridges, subject to the provisions of section two hundred twenty-four of this article.⁷²

Within such general specifications, each project is to be completed in accordance with a design and specifications approved by the county superintendent and the commissioner.

Surfacing Of Town Highways – The State has provided that the surfacing of town roads shall conform generally to the following minimum standards:

- (a) widening of roadbed to not less than eighteen feet;
- (b) widening shoulders to not less than five feet;
- (c) providing for the construction or reconstruction of necessary bridges;
- (d) minimum surfacing application shall consist of not less than two courses of crushed stone and bituminous material.⁷³

⁶⁹ Article 1, §115-d New York Vehicle and Traffic Law

⁷⁰ Article 1, §117-c New York Vehicle and Traffic Law

⁷¹ Article 1, §132-a New York Vehicle and Traffic Law

⁷² Article 8-A, §222 New York Highway Law

Differentiation between Bridges and Culverts - The New York State Highway Law defines a "Bridge" means any single or multiple span structure with a clear span of more than 5 feet, while the term "Culvert" means any such structure with an interior width of five feet or less.⁷⁴

Storm Water Sewers In Town Highways - Where a storm water drain or sewer is in a public highway, the town board may construct storm water drains or sewers at the expense of the owners of the land fronting on said street, provided there is a petition therefore signed by at least a majority of the owners of real property fronting on said street, streets. All such storm water sewers shall be maintained under the supervision of the town superintendent of highways, and the expense thereof shall be a town charge. The town board has the power to make such rules and regulations as may be necessary for the proper management and control of such storm water sewers.⁷⁵

Scenic Byways Program - Scenic byways are transportation routes and adjacent areas of particular scenic, historic, recreational, cultural or archeological characteristics, designated and managed by the NYS Transportation Commissioner to protect such characteristics and to encourage economic development through tourism and recreation. The commissioner is authorized to make or fund improvements to enhance the recreational value of the scenic highway and to protect historical and cultural resources in areas adjacent to the highway⁷⁶

REQUIREMENT FOR PERMITS

Permits Required For Work Within State Highway Right Of Way. – The New York State Department of Transportation is responsible for the State highway system. The use of New York State highway right of way must be carried out and completed in accordance with terms and conditions of a work permit issued by the commissioner of transportation or his duly assigned agent, in accordance with Article 3 Section 52 of the State Highway Law. The NYSDOT reviews all permit applications from developers, utility companies, municipalities, residents, etc., desiring to conduct various activities within the right of way. Such activities include for example: driveway installations and maintenance, construction of highway improvements, utility installations, etc.⁷⁷

Considerations for Permits for Driveway Entrances – Regulations concerning driveway entrance permits, shall take into consideration the prospective character of the development, the traffic which will be generated by the facility within the reasonably foreseeable future, the design and frequency of access to the facility, the effect of the facility upon drainage as related to existing drainage systems, the extent to which such facility may impair the safety and traffic carrying capacity of the existing state highway and any proposed improvement thereto within the reasonably foreseeable future, and any standards governing access, non-access or limited access which have been established by the department of transportation.⁷⁸

Permits for Signs in Right of Way - An advertising sign, display or device, or any part thereof, erected or maintained in a state right of way without a permit shall be removed by the owner or the

⁷³ Article 8-A §223(3) New York Highway Law

⁷⁴ Article 8-A, §219 (11) and §219 (12) New York Highway Law

⁷⁵ Article 8, §218 New York Highway Law

⁷⁶ Article 8, §349-bb New York Highway Law

⁷⁷ Article 3 §52 New York Highway Law. The term "state highway right of way" refers to the entire width between the boundary line of all property which has been purchased or appropriated by the state for highway purposes, all property over which the commissioner of transportation has assumed jurisdiction for state highway purposes, all property over which the commissioner has assumed jurisdiction during the period of construction, reconstruction or improvement, and all property which has become part of the state highway system through dedication or use.

⁷⁸ Article 3 §52 New York Highway Law

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party responsible for its erection and maintenance, or by the commissioner of transportation after 30 day notice.

REGULATION OF VEHICLE SIZE

Vehicle Width - The width of a vehicle, inclusive of load, shall be not more than ninety-six (96) inches plus safety devices, except that the maximum width of a vehicle, inclusive of load, shall be one hundred two (102) inches, plus safety devices, on any qualifying or access highway. Except in a city the maximum width of a vehicle, inclusive of load shall not be more than one hundred two (102) inches plus safety devices on any other highway with traffic lanes designed to be a width of ten (10) feet or more.⁷⁹ A county, upon consultation with any affected municipality may request that the commissioner to limit the width to ninety-six (96) inches if it is determined that a roadway cannot accommodate vehicles which are one hundred two (102) inches wide. There are a number of exceptions to this general rule:

- Farm equipment up to twelve (12) feet in width,⁸⁰
- Farm equipment up to seventeen (17) feet wide in width during daylight hours,⁸¹
- Farm vehicles owned by dealers and in transport on another vehicle cannot be more than thirteen (13) feet wide,⁸²
- School buses up to ninety-eight (98) inches⁸³
- Buses carrying more than seven passengers shall not exceed one hundred two (102) inches⁸⁴
- Racks for carrying hay, straw, or un-threshed grain may be up to ten (10) feet wide at the top and no more than one hundred two (102) inches at the base and overall,⁸⁵
- A house coach, or a "fifth wheel" trailer, used for non-commercial purposes may exceed the maximum width if such excess width is wholly attributable to an awning and its support hardware that is no less than seven and one-half (7½) feet off the ground and extends no more than six (6) inches beyond the body of the vehicle on the passenger side and four inches (4) beyond the body of the vehicle on the driver's side.⁸⁶

Vehicle Height - The height of a vehicle from under side of tire to top of vehicle, inclusive of load, shall be not more than thirteen and one-half (13½) feet; however, any damage to highways, bridges or highway structures resulting from the use of a vehicle exceeding thirteen (13) feet in height where such excess height is the proximate cause of the accident shall be compensated for by the owner and operator of such vehicle.⁸⁷

Vehicle Length - The length of a single vehicle, inclusive of load and bumpers, shall be not more than forty (40) feet and the (b) The length of a semitrailer or trailer shall not exceed forty-eight feet (48) provided, however, that the length of any trailer or semitrailer being operated in combination with another trailer or semitrailer shall not exceed twenty-eight and one-half (28½) feet, exclusive of the "B-train" assembly.⁸⁸ Other specialized length limits include.⁸⁹

- Buses having a carrying capacity of more than seven passengers shall not exceed forty-five feet,

⁷⁹ Article 10 §385.1a(i) New York Vehicle and Traffic Law

⁸⁰ Article 10 §385.1b New York Vehicle and Traffic Law, Twelve feet is 144 inches.

⁸¹ Article 10 §385.1c New York Vehicle and Traffic Law, seventeen feet is 204 inches. For vehicles between 12 and 17 feet in width, if the vehicle or load extends beyond the center line of a highway or if the vehicle is being operated during any time when, due to rain, sleet, snow, hail, fog, insufficient light, or for any other reason, visibility for a distance of one thousand feet ahead is not clear, the vehicle is preceded by an escort vehicle which is equipped with a warning sign and flashing lights in compliance with regulations prescribed by the commissioner of transportation.

⁸² Article 10 §385.1d New York Vehicle and Traffic Law, Thirteen feet is 156 inches.

⁸³ Article 10 §385.1e New York Vehicle and Traffic Law

⁸⁴ Article 10 §385.1f New York Vehicle and Traffic Law.

⁸⁵ Article 10 §385.1g New York Vehicle and Traffic Law.

⁸⁶ Article 10 §385.1h New York Vehicle and Traffic Law.

⁸⁷ Article 10 §385.2 New York Vehicle and Traffic Law

⁸⁸ Article 10 §385.3 (a) and (b) New York Vehicle and Traffic Law

⁸⁹ All of the exceptions listed here are from Article 10 §385.3 (c) New York Vehicle and Traffic Law, unless otherwise noted.

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- Articulated buses shall not exceed sixty-two (62)feet.
- House coaches shall not exceed forty-five feet (45) in length, provided that if it exceeds forty (40)feet in length, its wall-to-wall turning diameter shall not exceed ninety feet three inches (90'3")
- Fire trucks⁹⁰
- Semitrailers longer than forty-eight (48)feet, but not exceeding fifty-three (53)feet, may be operated on any qualifying highway or specifically designated access highway if the distance between the kingpin of the semitrailer and the centerline of the rear axle does not exceed forty-three feet and if the semitrailer is equipped with a rear-end protective device of substantial construction.⁹¹
- The length of any center panel of an altered livery (stretch limo)is limited to one hundred (100) inches unless the owner of such vehicle can demonstrate that the livery conforms to all applicable federal and state motor vehicle safety standards at the time of registration.⁹²

Length of Vehicle Combinations - The total length of a combination of vehicles, inclusive of load and bumpers, shall not be more than sixty-five (65)feet, except for:⁹³

- A combination of vehicles being operated on any qualifying highway or access highway;
- Vehicles of a corporation which is subject to the jurisdiction of the interstate commerce commission, the public service commission or other regulatory body and which are used in the construction, or maintenance of its property or facilities, provided that any such vehicle complies with the safety requirements of
- the laws and regulations of the United States and of this state pertaining to overlength vehicles;
- Vehicles hauling poles, girders, columns, or other similar objects of great length provided that any such vehicle complies with the safety requirements of the laws and regulations of the United States and of this state pertaining to such overlength vehicles;
- Fire vehicles;
- A vehicle or combination of vehicles which is disabled and unable to proceed under its own power and is being towed for a distance not in excess of ten (10) miles for the purpose of repairs or removal from the highway, except that the distance to the nearest exit of a controlled-access highway shall not be considered in determining such distance; and
- Stinger-steered automobile transporters or stinger-steered boat transporters, while operating on qualifying and access highways provided they do not exceed seventy-five (75)feet exclusive of an overhang of not more than three feet on the front and four feet on the rear of the vehicle.⁹⁴

Vehicle Weight - The maximum permissible weight of a single vehicle or a combination of vehicles equipped with pneumatic tires, when loaded is defined at several levels:

- Per inch width of tire on any one wheel shall be not more than eight hundred (800)pounds⁹⁵
- On any one wheel shall be not more than eleven thousand two hundred (11,200)pounds.⁹⁶
- On any one axle shall be not more than twenty-two thousand four hundred (22,400) hundred pounds.⁹⁷
- On any two consecutive axles when such axles are spaced less than eight feet from center to center, shall be not more than thirty-six thousand (36,000)pounds, except where axles are spaced eight feet or greater, but less than ten feet, the weight on those two axles shall not exceed forty thousand (40,000)pounds.⁹⁸
- Vehicles having three axles or more may have a total weight on all axles not to exceed thirty-four thousand (34,000) pounds, plus one thousand (1,000) pounds for each foot and major fraction of a foot of the distance from the center of

⁹⁰ Article 10 §385.3 (d) New York Vehicle and Traffic Law

⁹¹ Article 10 §385.3 (e) New York Vehicle and Traffic Law

⁹² Article 10 §385.3 (f) New York Vehicle and Traffic Law

⁹³ All of the exceptions listed here are from Article 10 §385.4 New York Vehicle and Traffic Law, unless otherwise noted

⁹⁴ Article 10 §385.4 (c) New York Vehicle and Traffic Law reiterates the maximum overhang stated above. A stinger steered unit is a semi-trailer combination in which the fifth wheel is located on a drop frame located behind and below the rear-most axle of the power unit, and is most commonly used for automobile transporters and logging trucks

⁹⁵ Article 10 §385.6 New York Vehicle and Traffic Law In determining the number of wheels and axles on any vehicle only two wheels shall be counted for each axle, and axles which are less than forty-six inches apart, from center to center, shall be counted as one axle. However, in the case of multiple tires or multiple wheels, the sum of the widths of all the tires on a wheel or combination of wheels shall be taken in determining tire width.

⁹⁶ Article 10 §385.7 New York Vehicle and Traffic Law

⁹⁷ Article 10 §385.8 New York Vehicle and Traffic Law

⁹⁸ Article 10 §385.9 New York Vehicle and Traffic Law

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the foremost axle to the center of the rearmost axle, provided that the total weight does not exceed eighty thousand(80,000) pounds.⁹⁹

- For any vehicle or combination of vehicles having a total gross weight less than seventy-one thousand (71,000)pounds, the higher of the following shall apply:¹⁰⁰
 - The total weight on all axles shall not exceed thirty-four thousand (34,000) pounds plus one thousand (1,000) pounds for each foot and major fraction of a foot of the distance from the center of the foremost axle to the center of the rearmost axle, or
 - The overall gross weight on a group of two or more consecutive axles shall not exceed the weight produced by application of the following formula:

$$W = 500 ((L*N)/(N-1) + (12*N)+36)$$

Where:
 W - equals overall gross weight on any group of two or more consecutive axles to the nearest five hundred pounds,
 L - equals distance in feet from the center of the foremost axle to the center of the rearmost axle of any group of two or more consecutive axles, and
 N - equals number of axles in group under consideration,
 Except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more.

- For any vehicle or combination of vehicles having a total gross weight of seventy-one thousand pounds or greater, paragraph (b) shall apply to determine maximum gross weight which is permitted hereunder.¹⁰¹

The maximum permissible weight for a vehicle equipped with any solid rubber tires shall not have weights more than eighty (80%) per centum of those permitted for pneumatic tires,¹⁰² while vehicles or trailers equipped with metal tires shall not have weights more than forty (40%) per centum of those permitted for pneumatic tires.¹⁰³

Prohibition of Oversize or Overweight Vehicles on Bridges - No person shall operate or move a vehicle or a combination of vehicles over, on any bridge or structure on any highway if the weight of such vehicle, or combination of vehicles, and load, is greater than the posted capacity of the structure or exceeds the height of the posted clearance as shown by an official sign.¹⁰⁴

Motor Vehicle Noise Limits - Except for emergency vehicles and farm implements, it is unlawful to operate any motor vehicle on a public highway under any condition of grade, load, acceleration or deceleration in such a manner as to exceed the following noise limits:¹⁰⁵

Type of Vehicle	Maximum Allowable A-Weighted Sound Levels*	
	35 MPH or Less	More Than 35 MPH
a. Motor Vehicles weighing 10,000 pounds or more	86 dBA	90 dBA
b. Motor Vehicles weighing 10,000 pounds or more and equipped with an engine speed governor	88 dBA	88 dBA
c. Motor vehicles, except motorcycles, with a maximum gross weight of 10,000 pounds or less,	76 dBA	82 dBA
d. Motorcycle, at any time,	82 dBA	86 dBA
* Measured at a distance of 50 feet from center of lane in which the vehicle is travelling		

⁹⁹ Article 10 §385.10 New York Vehicle and Traffic Law

¹⁰⁰ Article 10 §385.10 New York Vehicle and Traffic Law

¹⁰¹ There is a Federal standard defined for interstate highways under 23 CFR 658.17 Weight. Under the federal requirements the minimum/maximum gross weight limit that States must enforce on the Interstate System is 80,000 pounds, unless a lower weight is derived from the bridge formula, or a higher weight is grandfathered.

When Interstate System weight limits were raised to the current levels in 1974 (20,000 pounds single axle, 34,000 pounds tandem axle, 80,000 pounds overall gross weight limits, plus bridge formula limits), States were not required to raise their limits accordingly, although most did. This was changed in 1982 when Congress established Interstate System weight limits as minimums as well as maximums.

¹⁰² Article 10 §385.11 New York Vehicle and Traffic Law

¹⁰³ Article 10 §385.12 New York Vehicle and Traffic Law. The Law also provides maximum weights for municipally operated vehicles, including snow removal equipment (§385.17a) and fire fighting vehicles (§385.17b) .

¹⁰⁴ Article 10 §385.14 New York Vehicle and Traffic Law

¹⁰⁵ Article 10 §386 New York Vehicle and Traffic Law

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STATE PERMITS

Permits For Work Within The State Highway Right Of Way - Except in connection with the construction, reconstruction, maintenance or improvement of a state highway, no person, firm, corporation, municipality, or state department or agency shall construct or improve, within the state highway right of way an entrance or connection to such highway, or construct within the state highway right of way any works, structure or obstruction, or any overhead or underground crossing thereof, or lay or maintain therein underground wires or conduits or drainage, sewer or water pipes, except in accordance with the terms and conditions of a work permit issued by the commissioner of transportation or his duly designated agent, notwithstanding any consent or franchise granted by any town or county superintendent, or by any other municipal authority.¹⁰⁶

State Permits for Oversized Vehicles - The commissioner of transportation may grant permits for the operation of vehicles having weights or dimensions which exceed the set limitations upon any highway under his jurisdiction, outside of cities. Such permits may include a requirement that a vehicle be accompanied by escort vehicles operated by an individual having a valid state escort certificate.¹⁰⁷ An oversized load may be permitted when a load consists of a single item which cannot be divided into parts of lesser weight.¹⁰⁸ Bulk milk may be considered one piece or item.

Road Use Permit for Oversized Vehicles -The department of transportation may issue a permit to operate a vehicle which exceeds regulatory weight or the dimension limitations on state highways outside of cities For any other public highway not on the state system of highways, the authority having jurisdiction over same may issue a similar permit, provided that the fee charged for such permit shall not exceed ten (\$10) dollars.¹⁰⁹ Permits may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the issuing authority, and it shall be carried on the vehicle to which it refers and shall be open to the inspection of any enforcement officer¹¹⁰

Indivisible Load and Agricultural Permits - An oversized load may be permitted when a load consists of a single item which cannot be divided into parts of lesser weight.¹¹¹ Bulk milk may be considered one piece or item. The department of transportation may issue a seasonal agricultural that will be valid for four consecutive months with a fee equal to half the annual permit fee.

Proximate Cause Of Damage - In any action brought for damage or destruction of any highway or bridge under State Law there shall be a presumption that the operation of a vehicle in excess of the established maximum weight is the proximate cause of such damage or destruction to the highway bridge or appurtenant structure, whether or not a permit to exceed such weight limits was issued by the appropriate authority.¹¹²

¹⁰⁶ Article 52 of NYS Highway Law

¹⁰⁷ Article 10 §385.15a New York Vehicle and Traffic Law

¹⁰⁸ Article 10 §385.15d New York Vehicle and Traffic Law

¹⁰⁹ Article 10 §385.15b New York Vehicle and Traffic Law

¹¹⁰ Article 10 §385.15d New York Vehicle and Traffic Law

¹¹¹ Article 10 §385.15d New York Vehicle and Traffic Law

¹¹² Article 10 §385.15h New York Vehicle and Traffic Law

TRAFFIC REGULATIONS

Uncontrolled Intersections -) In the absence of any traffic control devices, the driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different highway; however, when two vehicles enter an intersection from different highways at approximately the same time the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.¹¹³

Local Traffic Control – In New York State, Town boards are authorized to exercise control over local traffic. The enabling legislation sets forth these powers. Under Section 1660 of the New York Vehicle and Traffic Law a town board, with respect to any non-state highways located outside of any village or city may by ordinance, order, rule or regulation:

- Designate county roads and town highways as through highways and order the erection of stop signs, flashing signals or yield signs on county roads or town highways at specified entrances to such through highways or designate any intersection except those where one or more entering highways is a state highway maintained by the state as a stop intersection or a yield intersection and order like signs or signals at one or more entrances to such intersections.¹¹⁴
- Upon a roadway which is divided into three lanes, allocate the center lane exclusively for traffic moving in a specified direction.¹¹⁵
- Order signs erected directing slow-moving traffic, trucks, buses or specified types of vehicles to use a designated lane, or with signs, signals or markings designate those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway.¹¹⁶
- Determine those highways or portions of highways which shall be marked to indicate where overtaking and passing or driving to the left of or crossing such markings would be especially hazardous in accordance with the standards, minimum warrants and sign or marking specifications established by the department of transportation.¹¹⁷
- Regulate traffic by means of traffic-control signals.¹¹⁸
- License and regulate or prohibit speed contests, races, exhibitions of speed, processions, assemblages, or parades, provided that detours be designated whenever traffic movement on a state highway would be blocked for more than 10 minutes.¹¹⁹
- Prohibit vehicles engaged in retail sales of frozen desserts directly to pedestrians from stopping for the purpose of such sales, provided that the operator of such vehicle may stop such vehicle off of such highway, in a safe manner, for the sole purpose of delivering a retail product directly to the residence of a consumer or to the business address of a customer of such retailer.¹²⁰
- Prohibit or regulate the operation and the stopping, standing or parking of vehicles in cemeteries and in public parks.¹²¹
- Provide for the removal and storage of vehicles parked or abandoned on highways during snowstorms, floods, fires or other public emergencies, or found unattended where they constitute an obstruction to traffic or any place where stopping, standing or parking is prohibited and for the payment of reasonable charges for such removal and storage by the owner or operator of any such vehicle.¹²²
- Provide for the installation, operation, and supervision of parking meters, establish parking time limits and hours of operation of such meters.¹²³
- Establish a system of truck routes upon which all trucks, having a total gross weight in excess of ten thousand (10,000) pounds are permitted to travel and excluding such vehicles all highways except for those which constitute such truck route system. Such exclusion shall not be construed as preventing the delivery or pickup of

¹¹³ Article 26 §1140 New York Vehicle and Traffic Law

¹¹⁴ Article 41 §1660 a(1) New York Vehicle and Traffic Law

¹¹⁵ Article 41 §1660 a(2) New York Vehicle and Traffic Law

¹¹⁶ Article 41 §1660 a(3) New York Vehicle and Traffic Law

¹¹⁷ Article 41 §1660 a(4) New York Vehicle and Traffic Law

¹¹⁸ Article 41 §1660 a(5) New York Vehicle and Traffic Law

¹¹⁹ Article 41 §1660 a(6)(i) New York Vehicle and Traffic Law

¹²⁰ Article 41 §1660 a(6)(ii) New York Vehicle and Traffic Law

¹²¹ Article 41 §1660 a(7) New York Vehicle and Traffic Law

¹²² Article 41 §1660 a(8) New York Vehicle and Traffic Law

¹²³ Article 41 §1660 a(9) New York Vehicle and Traffic Law

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merchandise along the highways from which such vehicles and combinations are otherwise excluded. Truck routes shall provide suitable connection with all state routes entering or leaving such town.¹²⁴

- Temporarily exclude from any portion of any town highway any vehicle with a gross weight of over four (4) tons or any vehicle with a gross weight in excess of any designated weight on any wheel, axle, any number of axles, or per inch width of tire, when in its opinion such highway would be materially injured by the operation of any such vehicle thereon. Such exclusion shall take effect upon the erection of signs on the affected section of highway, newspaper publication of the notice in the county where the highway is situated. The exclusion shall remain in effect until the removal of the signs as directed by the town board. Upon written application by any operator of a vehicle subject to this section, the town board may issue a permit providing appropriate exemption to such vehicle, if it is deemed that said vehicle is performing essential local pickup or delivery service and that a failure to grant such permit would create hardship. Every such permit may designate the route to be traversed and contain other reasonable restrictions or conditions deemed necessary. Every such permit shall be carried on the vehicle to which it refers and shall be open to inspection of any law enforcement officer, acting pursuant to his duties. Such permits shall be for the duration of the restriction imposed.¹²⁵
- Prohibit, restrict or regulate the operation of vehicles on any controlled-access highway or the use of any controlled-access highway by any vehicle, device moved by human power or pedestrian.¹²⁶
- Prohibit or regulate the turning of vehicles or specified types of vehicles at intersections or other designated locations.¹²⁷
- Regulate the crossing of any roadway by *pedestrians*.¹²⁸
- Authorize angle parking on any roadway.¹²⁹
- Designate any highway or any separate roadway thereof for one-way traffic.¹³⁰
- Exclude trucks, commercial vehicles, tractors, tractor-trailer combinations, from highways specified by such town board, provided such exclusion shall not be construed as preventing the delivery or pickup of merchandise or other property along the highways from which such vehicles and combinations are otherwise excluded.¹³¹
- Prohibit, restrict or limit the stopping, standing or parking of vehicles.¹³²
- Designate safety zones.¹³³
- Designate a portion of a slope as a path for the use of bicycles.¹³⁴
- Order signs or markings to identify the portion of the highway to be used for bicycle travel.¹³⁵
- Designate preferential use lanes for specified types or classes of vehicles.¹³⁶
- Prohibit, restrict or regulate the operation of limited use vehicles on any street or highway.¹³⁷
- Adopt such additional reasonable ordinances, orders, rules and regulations with respect to traffic as local conditions may require subject to the limitations contained in the various laws of this state.¹³⁸
- Make special provisions with relation to stopping, standing or parking of vehicles registered for use by severely disabled persons.¹³⁹
- Declare a snow emergency and designate any highway or portion thereof as a snow emergency route.¹⁴⁰
- Exclude trucks, commercial vehicles, tractors, tractor-trailer combinations, in excess of any designated weight, length, or height, or eight feet in width, from highways or set limits on hours of operation of such vehicles on particular town highways or segments of such highways. Such exclusion shall not be construed to prevent the delivery or pickup of merchandise or other property along the highways from which such vehicles or combinations are otherwise excluded.¹⁴¹

¹²⁴ Article 41 §1660 a(10) New York Vehicle and Traffic Law

¹²⁵ Article 41 §1660 a(11) New York Vehicle and Traffic Law

¹²⁶ Article 41 §1660 a(12) New York Vehicle and Traffic Law

¹²⁷ Article 41 §1660 a(13) New York Vehicle and Traffic Law

¹²⁸ Article 41 §1660 a(14) New York Vehicle and Traffic Law

¹²⁹ Article 41 §1660 a(15) New York Vehicle and Traffic Law

¹³⁰ Article 41 §1660 a(16) New York Vehicle and Traffic Law

¹³¹ Article 41 §1660 a(17) New York Vehicle and Traffic Law

¹³² Article 41 §1660 a(18) New York Vehicle and Traffic Law

¹³³ Article 41 §1660 a(19) New York Vehicle and Traffic Law

¹³⁴ Article 41 §1660 a(21) New York Vehicle and Traffic Law

¹³⁵ Article 41 §1660 a(22) New York Vehicle and Traffic Law

¹³⁶ Article 41 §1660 a(23) New York Vehicle and Traffic Law

¹³⁷ Article 41 §1660 a(24) New York Vehicle and Traffic Law

¹³⁸ Article 41 §1660 a(25) New York Vehicle and Traffic Law

¹³⁹ Article 41 §1660 a(26) New York Vehicle and Traffic Law. This section refers to the registration of vehicles of severely disable persons under §404-a

¹⁴⁰ Article 41 §1660 a(27) New York Vehicle and Traffic Law

¹⁴¹ Article 41 §1660 a(28) New York Vehicle and Traffic Law

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Bridge Weight Limits - Each such town board shall cause to be determined the capacity in tons of all bridges and elevated structures under its jurisdiction, the capacity in tons which the bridge or structure will safely carry, and shall erect signs to inform the public of the safe capacity if less than would be normal.¹⁴²

Bridge Height Clearance - Each town board shall cause signs to be erected to inform persons of the legal overhead clearance for all bridges and elevated structures on highways under its jurisdiction. The legal clearance shall be one foot less than the measured clearance. The measured clearance shall be the minimum height to the bridge or structure measured vertically from the traveled portion of the roadway. On bridges or structures having fourteen feet or more of measured clearance, no such signs shall be required.¹⁴³

Parking on Town Property - A town board also may by ordinance, order, rule or regulation prohibit, restrict or limit the stopping, standing or parking of vehicles upon property owned or leased by such town.¹⁴⁴

¹⁴² Article 41 §1660 b New York Vehicle and Traffic Law

¹⁴³ Article 41 §1660 c New York Vehicle and Traffic Law

¹⁴⁴ Article 41 §1660 d New York Vehicle and Traffic Law

APPENDIX C – LOCAL ROAD COMPONENTS OF NEW YORK STATE DRAFT GENERIC ENVIRONMENTAL IMPACT STATEMENT FOR MARCELLUS SHALE DRILLING

The New York State Draft Generic Environmental Impact Statement (NYSDGEIS) distributed for review and public comment at the end of September 2009 discussed the impact of drilling on the Marcellus shale on roads in several contexts.

As reported in the NYSDGEIS, the NTC Consultants' evaluation for NYSERDA concluded that one of the largest and most obvious potential impacts of the proposed activity on community character is the issue of trucking to support high-volume hydraulic fracturing. While local authorities retain control over local roads, the Department of Environmental Conservation strongly encourages operators and municipalities to attain road use agreements. The road use agreement, or the operator's trucking plan if no agreement is reached, will be on file with the Department.¹⁴⁵

LOCAL ROAD USE

The NYSDGEIS observes that while trucking for site preparation, rig, equipment, materials and supplies is similar for horizontal drilling, the water requirement of high volume hydraulic fracturing could lead to significantly more truck traffic than before. NYSDEC has estimated that each horizontal well will need between one to three million gallons or more of water for stimulation. Estimates of truck trips per well are as follows:¹⁴⁶

Drill Pad and Road Construction Equipment	10 - 45 Truckloads	Drilling Equipment (casing, drill pipe, etc.)	25 - 50 Truckloads
Drilling Rig	30 Truckloads	Completion Rig	15 Truckloads
Drilling Fluid and Materials	25 - 50 Truckloads	Completion Fluid and Materials	10 - 20 Truckloads

On-Site Access Roads¹⁴⁷

The NYSDGEIS observes that one of the first steps in developing a natural gas site involves the construction of private access roads on private property owned or leased by the driller to connect a drill site with a public highway. Access road construction is described as typically involving clearing the route and preparing the surface for movement of heavy equipment. Ground surface preparation typically involves placing a layer of crushed stone, gravel or cobbles over geotextile fabric. Sedimentation and erosion control features are also constructed as needed along the access roads and culverts may be placed across ditches at the entrance from the main highway or in low spots along the road.

The NYSDGEIS notes that the size of the access road is dictated by the size of equipment to be transported to the well site, distance of the well pad from an existing road and the route dictated by property access rights and environmental concerns. The route selected may not be the shortest distance to the nearest main road. Routes for access roads may be selected to make use of existing roads on a property and to avoid disturbing environmentally sensitive areas such as protected streams, wetlands, or

¹⁴⁵ See Draft New York State Generic Environmental Impact Statement September 30, 2009, Section 12.1, Page 7-110

¹⁴⁶ See Draft New York State Generic Environmental Impact Statement September 30, 2009, Section 6.11, Page 6-139

¹⁴⁷ See Draft New York State Generic Environmental Impact Statement September 30, 2009, Section 5.1.1, Page 5-5

steep slopes. Property access rights and agreements and traffic restrictions on local roads may also limit the location of access routes.

The NYSDGEIS notes that instead of one well per access road as was typically the case more than a decade ago, at the present time most shale gas development will consist of several wells on a multi-well pad serviced by a single access road. Therefore, in areas developed by horizontal drilling using multi-well pads, fewer access roads as a function of the number of wells will be needed.

As of September 2009 when the NYSDGEIS was published, the NYS Department of Environmental Conservation had received applications for 47 horizontal Marcellus Shale wells to be developed in Broome, Chemung, Delaware and Tioga Counties by high-volume hydraulic fracturing. Using this set of applications as a demonstration of the kind of disturbances that can be anticipated in the placement of access roads, the NYSDEC calculated that proposed disturbed access road acreage for these sites ranges from 0.1 acres to 2.75 acres, with the access roads ranging from 130 feet to approximately 3,000 feet in length. Widths would range from 20 to 40 feet during the drilling and fracturing phase to 10 to 20 feet during the production phase.

During the construction and drilling phase, additional access road width is necessary to accommodate stockpiled topsoil and excavated material along the roadway and to construct sedimentation and erosion control features such as berms, ditches, sediment traps or sumps, or silt fencing along the length of the access road. Pipelines may follow the access road, so additional clearing and disturbance may be conducted during the initial site construction phase to accommodate a future pipeline, adding to the access road width. Some proposals include a 20-foot access road with an additional 10-foot right-of-way. In the situations where pipelines do not follow an access road, sediment and erosion control measures will be followed. Access roads will also be required for the centralized compression facilities and centralized water storage facilities.

Mitigating Road Use Impacts¹⁴⁸

The NYSDGEIS states that under New York State Highway Vehicle Traffic Laws, local governments retain control over their roads. This makes it important for municipalities to monitor the NYSDEC web site for information regarding gas development in their areas. Local governments (County, Town and Village) should be proactive in exercising their authority under New York State Highway Vehicle Traffic Laws. This would include the completion of a road system integrity study to potentially assess fees for maintenance and improvements. The applicant for a road use permit should attempt to obtain a road use agreement with the municipality or document the reasons for not obtaining one. When there is no agreement, operators should develop a trucking plan that includes estimated amount of trucking, hours of operations, appropriate off road parking/staging areas, and routes for informational purposes.

Examples of measures that could be included in a road use agreement or trucking plan include:

- route selection to maximize efficient driving and public safety,
- avoidance of peak traffic hours, school bus hours, community events, and overnight quiet periods,
- coordination with local emergency management agencies and highway departments,
- upgrades and improvements to roads that will be traveled frequently for water transport to and from many different well sites,
- advance public notice of any necessary detours or road/lane closures,

¹⁴⁸ See Draft New York State Generic Environmental Impact Statement September 30, 2009, Section 7.11, Page 7-109

- adequate off-road parking and delivery areas at the site to avoid lane/road blockage, and
- use of rail or temporary pipelines where feasible to move water to and from well sites.

Supplementary permit conditions for high-volume hydraulic fracturing will re-emphasize that issuance of a well permit does not provide relief from any local requirements authorized by or enacted pursuant to the NYS Vehicle and Traffic Law. The permit conditions will additionally require the following:

- Prior to site disturbance, the operator shall submit to the Department, for informational purposes only, a copy of any road use agreement between the operator and municipality.
- If no road use agreement has been reached, the operator shall file its trucking plan with the Department, for informational purposes only, along with documentation of its efforts to reach a road use agreement.

Transport of Hydraulic Fracturing Additives¹⁴⁹

New York State regulations require that carriers and drivers operating in intrastate commerce comply 17 NYCRR Part 820, in addition to the applicable requirements and regulations of the NYS Vehicle and Traffic Law and the NYS Department of Motor Vehicles (DMV). These regulations require registration or operating authority for transporting hazardous materials from State or Federal Departments of Transportation. Specifically Part 820.8 (Transportation of hazardous materials) requires that any hazardous material be “properly classed, described, packaged, clearly marked, clearly labeled, and in the condition for shipment...”. The regulations require a shipper of hazardous materials to have someone available at all times to answer questions with respect to the material being carried and the hazards involved and provides for immediately reporting to “the fire or police department of the local municipality or to the Division of State Police any incident that occurs during the course of transportation (including loading, unloading and temporary storage) as a direct result of hazardous materials”.

Road Spreading of fracking fluids¹⁵⁰

Consistent with past practice regarding flowback water disposal, in January 2009, the NYSDEC’s Division of Solid and Hazardous Materials (“DSHM”), released a notification to haulers applying for, modifying, or renewing their Part 364 permit that flowback water may not be spread on roads and must be disposed of at facilities authorized by the Department or transported for use or re-use at other gas or oil wells where acceptable to the Division of Mineral Resources.

Estimation of Truck Traffic and Cumulative Impacts¹⁵¹

Cumulative impacts are the effects of two or more single projects considered together. Adverse cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time

The potential for site specific cumulative impacts as a result of multi-well pads, while real, is easily quantified and can be adequately addressed during the application review process. General areas of concern with regard to noise, visual, and community character issues are the same as those of individual well pads. While the pads may be slightly larger than those used for single wells, the significant impacts are due to the cumulative time and trucking necessary to drill and stimulate each individual well.

¹⁴⁹ See Draft New York State Generic Environmental Impact Statement September 30, 2009, Section 5.5, Page 5-65 to 67

¹⁵⁰ See Draft New York State Generic Environmental Impact Statement September 30, 2009, Section 5.13.3.5, Page 5-124

¹⁵¹ See Draft New York State Generic Environmental Impact Statement September 30, 2009, Section 6.13, Page 6-142 to 143

In 1992 when an earlier GEIS was prepared, it was assumed that a well pad would be constructed, drilled and reclaimed in a period measured in a few months, with the most significant activity being measured in one or two weeks for the majority of wells. By comparison, a horizontal well takes four to five weeks of 24-hour-per-day drilling with an additional three to five days for the hydraulic fracture. This duration will be required for each well, with industry indicating that it is common for six to eight wells to be drilled on a multi-well pad.

Typically, one or two wells are drilled and stimulated and then the equipment is removed. If the well(s) are economically viable, the equipment is brought back and the remaining wells drilled and stimulated. Current regulations require that all wells on a multi-well pad be drilled within three years of starting the first well. As industry gains confidence in the production of the play, there is the possibility that all wells on a pad would be drilled, stimulated and completed consecutively. This concept will shorten the time frame of noise generation and eliminate the noise generated by one rig disassembly/reassembly cycle.

The trucking requirements for rigging and equipment will not be significantly greater than for a single well pad, especially if all wells are drilled consecutively. Water and materials requirements, however, will greatly increase the amount of trucking to a multi-well pad compared to a single well pad. Estimates of truck trips per multi-well pad are as follows (assumes two rig and equipment deliveries and 8 wells):

Drill Pad and Road Construction Equipment 10 – 45 Truckloads	Completion Equipment – (pipe, wellhead) 10 Truckloads
Drilling Rig 60 Truckloads	Hydraulic Fracture Equipment (pump trucks, tanks) 300 – 400 Truckloads
Drilling Fluid and Materials 200 – 400 Truckloads	
Drilling Equipment (casing, drill pipe, etc.) 200 – 400 Truckloads	Hydraulic Fracture Water 3,200 – 4,800 Tanker Trucks
Completion Rig 30 Truckloads	Hydraulic Fracture Sand 160 – 200 Trucks
Completion Fluid and Materials 80 – 160 Truckloads	Flow Back Water Removal 1,600 – 2,400 Tanker Trucks

These NYSDEC estimates show that the vast majority of trucking is involved in delivering water and removing flow back. Multiple wells in the same location provide the potential to reduce this amount of trucking by reusing flow back water for the stimulation of other wells on the same pad. The centralized location of water impoundments may also make it economically viable to transport water via pipeline or rail in certain instances.

REGIONAL CUMULATIVE IMPACT¹⁵²

The NYSDGEIS notes that the level of impact of Marcellus drilling on a regional basis will be determined by the amount of development and the rate at which it occurs. Accurately estimating this is inherently difficult due to the wide and variable range of the resource, rig, equipment and crew availability, permitting and oversight capacity, leasing, and most importantly, economic factors. This holds true regardless of the type of drilling and stimulation utilized. Historically in New York, and in other plays around the country, development has occurred in a sequential manner over years with development activity concentrated in one area then moving on with previously drilled sites fully or partially reclaimed as new sites are drilled. As with the development addressed in 1992, once drilling and stimulation activities are completed and the sites have been reclaimed, the long term impact will consist of widely spaced and partially re-vegetated production sites and fully reclaimed plugged and abandoned well sites.

¹⁵² See Draft New York State Generic Environmental Impact Statement September 30, 2009, Section 6.13.2 Page 6-143

The statewide spacing regulations for vertical shale wells of one single well pad per 40-acre spacing unit will allow no greater density for horizontal drilling with high volume hydraulic fracturing than is allowed for conventional drilling techniques. This density was anticipated in 1992 and areas of New York, including Chautauqua, Cayuga and Seneca Counties, have experienced drilling at this level without significant negative impacts to agriculture, tourism, other land uses or any of the topics discussed in this report.

Clustering on Multi-well Pads

As discussed earlier, the density for multi-well pads, one per 640-acre spacing unit, is significantly less than for single well pads, reducing the total number of disturbances to the landscape. While multi-well pads will be slightly larger than single well pads the reduction in number will lead to a substantial decrease in the total amount of disturbed acreage, providing additional mitigation for long term visual and land use impacts on a regional basis. The following table provides an example for a 10 square mile area (i.e., 6,400 acres), completely drilled, comparing the 640 acre spacing option with multi-well pads and horizontal drilling to the 40 acre spacing option with single well pads and vertical drilling.

		Spacing Option	
		Multi Well 640 Acres	Single Well 40 acre
Number of Pads		10	160
Total Disturbance - Drilling Phase	Acres	50 (5 per pad)	480 (3 per pad)
	%	0.78	7.50
Total Disturbance - Production Phase	Acres	30 (3 per pad)	240 (1.5 per pad)
	%	0.46	3.75

As can be seen, multi-well pads will significantly decrease the amount of disturbance on a regional basis in all phases of development. The reduction in sites should also allow for more resources to be devoted to proper siting and design of the pad and to mitigating the short-term impacts that occur during the drilling and stimulation phase.