



LEILANI CRAFTS ULRICH
Chairwoman

TERRY MARTINO
Executive Director

MEMORANDUM

TO: Robyn Burgess, Local Government Services
FROM: Paul Van Cott, Associate Attorney
DATE: March 12, 2015
RE: ALLUP Proposed Amendment - Queensbury

As requested, this memorandum provides comments on Queensbury's proposal to define "water extraction" for off-site purposes as an allowable use in its LC-10 (APA Rural Use) and LC-42 (APA Resource Management) districts.

The Agency considers "water extraction" for off-site purposes to be a use that may require an Agency permit in Rural Use and Resource Management. The extraction of water for off-site commercial purposes is a "commercial use," while the extraction of water for off-site municipal purposes is either a "public utility use" or "major public utility use." A water bottling facility is an "industrial use" regardless of whether the water is extracted on-site or off-site.

For purposes of Agency jurisdiction in Queensbury, a commercial use is a Class B project in the town's LC-42 District. In LC-10, it is a Class B project if it involves less than 2,500 square feet of floor space and a Class A project if it involves 2,500 square feet or more of floor space. A public utility use does not require an Agency permit in Queensbury's LC10 or LC-42 districts, but a major public utility use is a Class A project in both districts.

I offer the following comments and suggestions based on my review of the proposed local law. Language proposed to be added is underlined, and existing language proposed to be deleted is in brackets.

Regarding section 1, I suggest that the references to silviculture and agriculture are unnecessary and confusing. For the town's consideration, I offer the following alternative language:

Section 1. Intent; Authority – *The Town Board acknowledges the absence of any explicit definition of ‘Water Extraction’ or such use of land within Chapter 179 of the Town Code and wishes to exercise its legislative authority to provide for and regulate such land use within the Town. The Town Board recognizes that the extraction of water [the sustainable harvesting and transport of this renewable natural resource] has occurred for over 125 years on the lands of the City of Glens Falls watershed (the largest landowner within the Town) [and is analogous to the currently allowed use of Silviculture which is included in the definition of “Agricultural Use” in the code]. The extraction of water for on-site residential, industrial, commercial or agricultural use is not governed by this section. This Local Law is adopted pursuant to New York Municipal Home Rule Law.*

My second comment pertains to the definition of “water extraction.” The definition does not apply to extraction for on-site uses, but I think Queensbury could make that point more clearly by changing the second sentence as follows:

WATER EXTRACTION – means withdrawal, removal, diversion, taking, or collection by any means of water from ground water sources, aquifers, springs, wells, pumps, or similar, and including the infrastructure associated with the water extraction process necessary for its withdrawal and transport offsite. [On-site residential, industrial, commercial or agricultural use is not included in this definition.] Water Extraction as defined herein does not include the withdrawal of water for on-site uses.

Please do not hesitate to share this memorandum with Queensbury as part of the Agency’s review of the proposed ALLUP amendment.