

**TOWN OF LANSING, TOMPKINS COUNTY, NEW YORK
LOCAL LAW NUMBER 2 OF 2013**

**TO EXTEND LOCAL LAW NUMBER 1 OF 2012 FOR
AN ADDITIONAL PERIOD OF ONE YEAR**

Be it enacted by the Town of Lansing as follows:

A LOCAL LAW IMPOSING A 12-MONTH EXTENSION OF LOCAL LAW NUMBER 1 OF 2012 ENTITLED “MORATORIUM AND PROHIBITION WITHIN THE TOWN OF LANSING OF HIGH-IMPACT INDUSTRIAL USES, INCLUDING NATURAL GAS AND PETROLEUM EXPLORATION AND EXTRACTION ACTIVITIES, THE UNDERGROUND STORAGE OF NATURAL GAS, AND THE DISPOSAL OF NATURAL GAS OR PETROLEUM EXTRACTION, EXPLORATION, AND PRODUCTION WASTES.”

ARTICLE 1. TITLE.

This Local Law shall be referred to as the “Local Law #2 of 2013.”

ARTICLE 2. PURPOSE AND INTENT.

By the enactment of Local Law #1 of 2012, the Town of Lansing legislatively found that the potential for industrial development was inimical to its ongoing Comprehensive Planning updates and its Town Center Project, and that existing Town zoning, review procedures, and regulations did not adequately address industrial uses and land use impacts. Included among these industrial land uses was the potentially imminent development of oil and gas reserves through HVHF, solution mining processes, and oil and gas development processes. Industrial activities and land uses pose and create certain risks that the Town Board needed to address prior to any permitting of or authorizations for such industrial activities, including, without limitation, the protection of roadways and regulation of traffic impacts, the protection of aquifers, wellheads, drinking water, and surface air and waters, and the protection of the public health and weal, among others. The Town of Lansing thus desires to commence and/or continue aquifer analyses and water protection, the development of road use regulations, the identification and consideration of scenic areas, the preservation of lake views and viewscapes, the study and designation of critical environmental areas, and the protection of wetlands, including wetlands of local importance, the protection of agriculture, and to consider local laws to regulate or prohibit or mitigate the effects of certain of such industrial activities within the Town.

The Town has discovered, in attempting to complete such analyses and studies, that several of the same are lengthy and complex issues, both factually and legally, including the processes of mapping aquifers and obtaining roadway engineering data to support road use regulations or agreements. In order to more effectively protect the health, safety and welfare of the community, and to help assure the orderly development and use of

lands within the Town, and to examine the impacts of heavy industry and heavy industrial activities, including oil and gas development projects upon the town, its properties, infrastructure, and citizenry, the Town of Lansing has legislatively determined that the existing moratorium needs to be extended.

The Town believes, based upon progress to date, that critical regulations may be enacted within such additional 12-month period and that, therefore, extending the existing moratorium for another year is reasonable and necessary. Therefore, pursuant to the statutory powers vested in the Town to regulate and control land uses, and to protect the health, safety and welfare of its residents, the Town Board of the Town of Lansing hereby declares an additional 12-month moratorium on industrial activities as defined in Local Law #1 of 2012 (and as re-defined and/or amended below), including all defined Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas activities, and the Disposal of Natural Gas or Petroleum Extraction, Exploration, and Production Waste activities, each and all of which shall remain prohibited so as to allow the Town to address, in a careful manner and upon a Town-wide basis, rather than on an *ad-hoc* basis, the issues presented by heavy industrial land uses and/or oil and gas and solution mining, storage, extraction, and production waste disposal.

ARTICLE 3. SCOPE OF CONTROLS.

All terms, conditions, clauses, requirements, and procedures of Local Law #1 of 2012, as amended or as herein below re-stated, are incorporated herein. Such amendments and re-statement(s) being a material part of this Local Law #3 of 2013:

Section 2. AUTHORITY AND INTENT; FINDINGS; PURPOSE

A. This Local Law is intended and declared to be consistent with, and is adopted pursuant to, the authority granted to the Town Board under the New York State Constitution and the laws of the State of New York, including, but not limited to, the following authorities: New York State Constitution Article IX, §§ 2(c)(6), 10; Municipal Home Rule Law § 10(1)(i); Municipal Home Rule Law §§ 10(1)(ii)(a)(6), (11), (12), and (14); Municipal Home Rule Law § 10(1)(ii)(d)(3); Municipal Home Rule Law § 10(2); Municipal Home Rule Law § 10(3); Municipal Home Rule Law §§ 10(4)(a), and (b); Statute of Local Governments §§ 10(1), (6), and (7); Town Law § 64 (17-a), (20-b), and (23); Town Law § 130(5), (6), (7), (8), (11), (14), (15), and (23); Town Law § 135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law § 17-1101, § 23-0303(2), and § 27-0711; and Public Health Law §§ 228(2), (3).

This Local Law is a police power and land use regulation. This Local Law is intended, and is hereby declared, to address matters of local concern. It is further declared that it is not the intention of the Town of Lansing (the "Town") to address matters of statewide concern. This Local Law is intended to act as, and is hereby declared an exercise of, the permissive "incidental control" of land uses that zoning

and land use laws are concerned with, being mainly broad areas of land use planning and the physical use of land and property within the Town, including physical externalities associated with certain herein-defined land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community. This Local Law is a law of general applicability and is intended and declared to promote the interests of the community as a whole, including by protecting drinking water supplies and supplementing and enhancing, but not limiting or impinging upon, the Safe Drinking Water Act and the Underground Injection Control programs administered by the Environmental Protection Agency. This Local Law is also intended and declared to impose conditions and restrictions on certain uses of property that are directly related and incidental to the use of property, with such conditions and restrictions being aimed at minimizing or precluding adverse impacts in and upon the Town that could result from a certain uses of property that pose a unique risk of adverse impacts to, and effects upon, the comfort, peace, enjoyment, health and safety of residents and their property.

B. The Town Board has found, determined, and made the following declarations and findings:

1. Lansing is a community in the northern part of Tompkins County that contains a lakeshore (Cayuga Lake), major creek valleys, gorges, waterfalls, protected and impaired waterways, native trout streams and tributaries to Cayuga Lake, wetlands, historic buildings, cemeteries and farmsteads, and other important natural, scenic, archaeological, and historic resources that contribute to the cultural fabric and quality of life that residents prize.

2. Whether utilizing public water supplies or private wells, residents of the Town are dependent upon aquifers and Cayuga Lake for life-sustaining water. Maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy. Certain of the activities described in Article 3, § 4 of this Local Law have the potential to damage surface and ground water resources in the event of (by way of example) human error, discharges and emissions of deleterious substances, power outages, flooding or other natural disasters, or engineered materials and structures experiencing stresses beyond those for which they were designed. Further, water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive and may not restore the water resource to a quality acceptable for domestic use. The Town Board believes it is appropriate to evaluate the effectiveness of aquifer protection legislation as one tool to fortify the Town's water resources and protect them from potential damage; and, if appropriate, to draft and enact such legislation.

3. Preservation of the Town's irreplaceable significant ecological, historic, and scenic sites, its air and water quality, its priceless and unique character, and its inventory of unique natural areas and communities, is of significant value to

the inhabitants of the Town and to the tourists who visit. In order to protect such Town assets in the face of significant development pressures, the Town Board believes it is appropriate to consider the identification and designation of Critical Environmental Areas within the Town and to consider Comprehensive Planning and updated zoning regulations that seek to protect these, and other, areas of the Town.

4. The Town's rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the agricultural, scenic, recreational, and other natural resources of the Town is important for both a healthy environment and a vibrant economy. Aesthetic issues are real and evoke strong reactions from people, and they deeply affect the way people feel about a place, whether businesses will want to locate in a place, and whether people will want to live in and visit a place.

5. Allowing the activities described in Article 3, § 4 of this Local Law could impair the existing character of the Town because, by their very nature, such activities have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities and areas where such activities occur. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, the fragmentation of natural communities and valuable wildlife and flora corridors, decreased recreational opportunities, and damage to the tourism industries. Thus, the Town believes that comprehensive planning and updated zoning regulations may mitigate these potential impacts, and thus the Town believes that legislative and planning solutions may achieve the proper balance between development and the preservation of important assets and features of the Town and the public health.

6. If one or more of the activities described in Article 3, § 4 of this Local Law are conducted within the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and pedestrians (especially children), cyclists, and motorists. Such traffic could result in traffic congestion that could delay emergency response times for medical emergencies, fires, and accidents. Certain of the activities described in Article 3, § 4 of this Local Law also typically involve a large volume of heavy vehicles, and accidents involving such vehicles have a greater potential for causing damages, severe injury, and death than those involving smaller vehicles. These incidents are more likely to occur on roads (such as many roads in the Town) that have sharp corners, narrow lanes, short sight lines, and/or limited roadway geometries. Thus, an increased volume of heavy vehicle and truck traffic may cause, contribute to, or create unsafe conditions for the traveling public and thus place a strain upon emergency responders. Increased heavy vehicular and truck traffic also tends to increase air pollution and noise levels, and decrease the quality of life and property values for

those living nearby. Further, roads are a critical public resource and constitute a major investment of the public's money, and many roadways in the Town are "highways by use" (New York Highway Law § 189), which have never been engineered, built, maintained, or designed to handle or carry repeated heavy loads or vehicles, even when within legal limits. The Town is not in a position to bear the high costs associated with the road use impacts that typically accompany many of the activities described in Article 3, § 4 of this Local Law. The Town Board thus believes it is appropriate to evaluate the effectiveness of road use and/or roadway classification legislation as tools to protect the Town's resources and roadways from such costs and damage, and, if appropriate, to develop a road use policy and enact legislation to protect Town taxpayers from having to shoulder the burden of repairing or rebuilding roads damaged by activities described in Article 3, § 4 of this Local Law.

7. If one or more of the activities described in Article 3, § 4 of this Local Law are conducted within the Town, the air pollution, noise, vibrations, dust, and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) could be hazardous to the inhabitants of the Town. Air pollution is a known hazard to the public health, and unchecked pollution, noise, vibrations, dust and odors are known air contaminants that can cause public nuisances. The Town thus believes it is appropriate to understand the scope of municipal authority to regulate such air pollution and contaminants to prevent nuisances and air quality and, if appropriate, to enact legislation to so protect the Town and the public health of citizens of, and visitors to, the Town.

8. If one or more of the activities described in Article 3, § 4 of this Local Law are conducted within the Town, noise, vibrations, seismic, subterranean, lateral and subjacent support impacts, and light pollution typically caused by such activities could be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, vibrations, and seismic and other impacts to subterranean surface support can have negative effects on human health and wildlife. Also being potential nuisances, the Town desires to examine the extent to which the Town may mitigate or prohibit certain of these impacts and, if appropriate, enact legislation to protect the Town and its citizens from the effects of such potential nuisances.

9. The creation, generation, keeping, storage or disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined in Article 3, § 3 of this Local Law) within the Town could have a negative impact on the public health, safety, and welfare of the inhabitants of the Town. As well, there are substantial fiscal risks arising from such activities in terms of the need for the clean up, removal, and/or remediation of such wastes and lands upon which the same are generated, deposited, or emitted, whether purposefully or accidentally, including potential liability for such deposits or emissions. As well, the high costs associated with the disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is

defined at Article 3, § 3 of this Local Law) have in other localities resulted, and could in our Town result, in persons seeking to avoid such costs by depositing such material along roadways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety, and welfare of the inhabitants of the Town, and thus the Town desires to have time to study legislative options and to consider whether to effect a ban upon extractive or solution mining, a partial ban, or to otherwise respond with a legislative solution aimed at mitigating impacts from allowed mining operations. These solutions will each and all require comprehensive planning, coordination with county and regional planning offices, and the implementation of zoning or other regulations to place such solution(s) into effect.

10. Pipelines under 125 psi and less than 6” diameter are presently not regulated by the federal or New York state governments, yet may pose many the same dangers as larger, regulated lines when ruptured or impaired. In any event, such pipelines also require a clear zone for inspections, maintenance, and access. The Town Board believes it is appropriate to evaluate whether it is advisable to develop a policy to address such otherwise unregulated pipelines, and if so, to enact such a policy.

11. The Town Board believes it is appropriate to evaluate development and enactment of legislative standards to ensure that any industrial activity contemplated for the Town take place only if compatible with present land uses and the Town’s Comprehensive Plan. The evaluation and determination of whether the activities described in Article 3, § 4 of this Local Law are appropriate for the Town and are a legitimate goal of land use policies and laws. There is no question that exclusion of specified industrial uses is a legitimate goal of such laws. As the United States Supreme Court stated in *Town of Belle Terre v. Borass*, 416 U.S. 1 (1974):

...the concept of public welfare is broad and inclusive.... The values that it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the [local] legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.

416 U.S. at 6.

Further, in *Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y. 2d 668 (1996), the Court of Appeals, New York State’s highest court, evaluated a claim that a town’s prohibition of mining throughout the town was in effect unconstitutional ‘exclusionary zoning.’ The Court of Appeals held as follows:

We have never held, however, that the ... [‘exclusionary zoning’] test, which is intended to prevent a municipality from improperly using the zoning power

to keep people out, also applies to prevent the exclusion of industrial uses. A municipality is not obliged to permit the exploitation of any and all natural resources within the town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage to the rights of others and to promote the interests of the community as a whole.

87 N.Y. 2d at 683, 684 (*emphasis added*).

C. The purpose of the Local Law is therefore to provide the Town with a period of time to consider and, if appropriate, to draft and to enact one or more local laws, ordinances, or other legislation, to identify and designate wetlands and critical environmental areas, develop aquifer protection legislation, develop road use classification laws or other road use policies, to update Town's Comprehensive Plan, to examine nuisance controls and the Town's authority to mitigate or abate nuisances, including by regulating or prohibiting air and water pollution, and to update or amend, as indicated or needed, the Town's zoning laws, and/or to consider a ban or prohibition of the activities described in Article 3, § 4 of the Local Law. At this time, it appears to the Town Board that a moratorium of one (1) year in duration, coupled with a mechanism for a variance procedure, will achieve an appropriate balancing of interests between (on the one hand) the public need to safeguard the character and other resources of the Town and the health, safety and general welfare of its residents, and (on the other) the rights of individual property owners or businesses desiring to conduct such activities during such period.

Section 3. DEFINITIONS

For purposes of this Local Law, the following terms shall have the meanings respectively set forth below:

Agriculture Use - Land used for the production of crops and/or livestock and livestock products (as those terms are defined at § 301 of the New York State Agriculture and Markets Law).

Below-Regulatory Concern - Radioactive material in a quantity or of a level that is distinguishable from background levels (as that phrase is defined at 10 CFR § 20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

Board of Appeals - The Zoning Board of Appeals of the Town.

Explosive Materials - Substances capable of undergoing decomposition or combustion with great rapidity, involving much heat and producing a large volume of gas. The reaction products fill a much greater volume than that occupied by the original material and exert an enormous pressure, which can be used for blasting and for propelling. Examples include TNT, dynamite, nitroglycerin, and ammonium nitrate.

Gathering Line, Or Production Line - Any system of pipelines (and other equipment such as, but not limited to, drip stations, vent stations, pigging facilities, valve box, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move or transport oil, gas, or liquids from a point of production, a treatment facility, or a storage area to a transmission line which is (i) exempt from the Federal Energy Regulatory Commission's jurisdiction under § 1(b) of the Natural Gas Act, and (ii) which does not meet the definition of a "Major utility transmission facility" under the Public Service Law of New York, Article 7, § 120(2)(b).

High-Impact Industrial Uses - For purposes of this Law, "High-Impact Industrial Uses" does not include Agriculture Use(s), but does include those uses and industries that are traditionally considered to be "heavy industrial uses" or "heavy industry," and by way of illustration (and not limitation) include:

1. A Land Application Facility;
2. Natural Gas And/Or Petroleum Exploration Activities;
3. Natural Gas And/Or Petroleum Extraction Activities;
4. A Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility;
5. Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump;
6. A Natural Gas Compression Facility, Natural Gas Processing Facility, or any Non-regulated Pipelines;
7. Underground Injection;
8. Underground Natural Gas Storage;
9. Iron, steel, copper, brass, aluminum and similar smelting operations, foundries, forming and processing plants, and large-scale automotive and vehicular assembly plants;
10. Emery cloth and sandpaper manufacturing;
11. Smelting of ores and metallurgical products;
12. Petroleum or petroleum products refining;
13. Glue and adhesives manufacturing;

14. Explosive materials fabrication or manufacturing;
15. Wood or pulp, paper, and paperboard processing or manufacturing;
16. Petroleum and coal manufacturing;
17. Pesticide, fertilizer, and chemical manufacturing;
18. Rubber, resin, and synthetic fiber and plastics manufacturing or processing;
19. Commercial glass, clay, ceramics, china, and porcelain manufacturing or processing facilities;
20. Commercial leather and hide tanning and processing facilities;
21. Large-scale commercial meat or fish processing, storage, or canning facilities; and
22. Large scale commercial or industrial power generation by solar farming, water flows, wind flows, the burning of fossil or other fuels, including wastes, or the fission or fusion of any atoms, compounds, or materials.
23. Any other commercial or industrial business, land use, facility, or application (but not including Agricultural Uses or other uses that are exempt from this Local Law) that the Town determines is likely to: (i) have any one of the following characteristics identified as sub-sections (a) through (d) (mainly or generally, characteristics which potentially create negative impacts upon the Town or its residents); *plus* (ii) as to which sub-section (e) also applies:
 - a. A significant negative or deleterious impact upon the environment; or
 - b. A significant contribution to any increase in illnesses or mortality in the Town; or
 - c. Involves the use, storage, or creation of any Hazardous Wastes or Radioactive Materials, or which poses a risk of environmental harm by the release, emission, or transmission of any deleterious organic or non-organic wastes or hydrocarbons; or
 - d. Involves any significant volume of detrimental or obnoxious noise, smoke, vibration, odor, traffic, dust, or other impacts, conditions, or characteristics that may or will constitute a public nuisance; *plus*
 - e. Any use, operation(s), process, application, business, or industry that involves any three of the following impacts:

- (i) The employment of 20 or more persons, including all persons acting as independent contractors and/or as a joint-venturer (and the like), whether upon a temporary, intermittent, seasonal, or permanent basis;
- (ii) Has or uses any facility or improvement(s) that exceed 200,000 combined square feet of enclosed or partially enclosed space, or which creates more than 200,000 square feet of impervious or semi-impervious surfaces;
- (iii) Will utilize or disturb, when fully constructed, more than 3 acres of land;
- (iv) Involves the delivery or transportation of more than 10,000 tons of materials or equipment in any one month;
- (v) Utilizes more than 100 commercially classed vehicle trips to or from the site in any month where any 20 or more of such vehicles qualify as overweight or oversized vehicles such that special permits, divisible load permits, or heavy hauling permits are required from the New York State Department of Transportation for such vehicles;
- (vi) Requires roadway or intersection upgrades, whether to the load bearing capacity of any roadway, the surface quality of any roadway, or the roadway or intersection geometry of any roadway;
- (vii) Proposes, uses, or needs any outdoor storage of any supplies, materials, machinery, or equipment, wherever stored and whether within or without the Town, that, due to volume, size, or otherwise, would result in a lack of compliance with any outdoor storage requirements of the Town or would, if covered, exceed, or contribute to the exceeding of, the 200,000 square foot limitations set forth in sub-section (ii) above;
- (viii) Would produce graywater or other waste that, if delivered to a sewage treatment plant, would require removal, pre-treatment, or tertiary treatment;
- (ix) Would produce graywater or other waste that, if discharged under a SPDES Permit or otherwise, would cause excess sedimentation, excess turbidity of any surface waters, or that would result in the emission or transmission of any substance that is considered a Hazardous Material, that is a Radioactive Material, or that otherwise would either trigger an investigation or remediation under the New York State Navigation Law or would require the implementation and/or construction of any temporary or permanent stormwater practices;

- (x) Would use, store, remove, deliver or sequester 500,000 gallons or more of water from any source, supply, or location;
- (xi) Would require the construction of one or more staging areas and/or would require the building, improvement, or construction or replacement of any public facilities, including waterlines or roadways; and/or
- (xii) Would require the installation of any internal or external 3 phase or greater power supply or station, with or without transformers or cooling devices or towers; or high power or high tension power lines; and/or
- (xiii) Would use more than 250 kilowatts of power or electricity per day (or its equivalent in therms or other energy consumption equivalencies), whether so generated, used, or stored for future use; or which uses an equivalent amount of energy, electricity, or power through or by the use of generators, vehicles, or other machines and devices that utilize any substance or compound to generate electricity or power, or which convert any substance or compound to electricity or power, through the application or use of heat, conversion, pressure, or fossil fuels.

Injection Well - A bored, drilled, or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and less than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days.

Land Application Facility - A site where any Natural Gas Exploration And/Or Petroleum Production Wastes are applied to the soil surface or injected into the upper layer(s) of the soil.

Natural Gas - Methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the Earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

Natural Gas And/Or Petroleum Exploration Activities - Geologic or geophysical activities related to the search for natural gas, petroleum, or other subsurface hydrocarbons, including prospecting and geophysical and geologic seismic surveying and sampling techniques, *but only to the extent* that such activities involve or employ core, rotary, or any other type of drilling, or otherwise involve the making of any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

Natural Gas And/Or Petroleum Extraction Activities - The digging or drilling of a well for the purposes of exploring for, developing, or producing natural gas,

petroleum, or other subsurface hydrocarbons, including, without limitation, any and all forms of shale fracturing.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes -

Any of the following in any form, and *whether or not* such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from any statutory or regulatory definitions of “industrial waste,” or “hazardous” or “toxic” substances, materials, or wastes, and whether or not such substances are generally characterized as waste: (a) Below-Regulatory Concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, and in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production, or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing, or refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing, or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production, or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as “solid wastes which are not hazardous wastes” under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes *does not include* (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Agriculture Use.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility -

Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, and/or (iv) are being held for storage.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump -

Land upon which Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, or their residue or constituents, whether before or after treatment, are deposited, disposed, discharged, injected, placed, buried, or discarded, without any intention of further use.

Natural Gas And/Or Petroleum Support Activities - Shall mean and be any one or more of the following: (a) a Natural Gas Compression Facility; (b) a Natural Gas

Processing Facility; (c) a Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility; (d) a Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump; (e) a Land Application Facility; (f) Non-Regulated Pipelines; (g) Underground Injection; or (h) Underground Natural Gas Storage.

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

Natural Gas Processing Facility - Those facilities that separate and recover natural gas liquids, (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas; cooking and dehydration; residual refinement; treating or removing oil or condensate; removing water; separating NGLs; removing sulfur or carbon dioxide; fractionation of NGLs; and/or the capture of CO₂ separated from natural gas streams.

Non-Regulated Pipelines - Those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements, and specifically including production lines and gathering lines.

Person - Any individual, public or private corporation for profit or not for profit, association, partnership, limited liability company, limited liability partnership, firm, trust, estate, and any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

Pipeline - All parts of those physical facilities through which petroleum, gas, hazardous liquids, or chemicals move in transportation (including pipes, valves, and other equipment and appurtenances attached to pipes, together with other appurtenant or related equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), whether or not laid in public or private easements or a private right of way within the Town. This includes, without limitation, gathering lines, production lines, and transmission lines.

Radioactive Material - Material in any form that emits radiation. This definition specifically includes NORM (naturally occurring radioactive material), but only if such naturally occurring material has been moved from its naturally occurring location through an industrial process. All such material is “radioactive material” for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.

Radiation - The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

Subsurface - Below the surface of the Earth or of a body of water, as the context may require.

Town - The Town of Lansing, Tompkins County, New York.

Town Board - The Town Board of the Town.

Transmission Line - A pipeline that transports oil, gas, or water to end users as a public utility and which is subject to regulation either by: (a) the Federal Energy Regulatory Commission's jurisdiction under § 1(b) of the Natural Gas Act; or (b) as a "Major utility transmission facility" under the Public Service Law of New York, Article 7, § 120(2)(b).

Underground Injection - Subsurface emplacement of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, including emplacement by or into an Injection Well.

Underground Natural Gas Storage - Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location, whether for the purpose of load balancing the production of natural gas or for any other reason, including, without limitation, short-term, long-term, or intermittent storage for product quality, processing, or transportation purposes, or because of market conditions. Without limitation, this term includes compression and dehydration facilities, and associated pipelines.

Section 4. MORATORIUM AND PROHIBITION.

A. From and after the date of this Local Law, no application for a permit, building permit, special use permit, zoning variance (except as contemplated by Article 3, § 8 of this Local Law), site plan approval, subdivision approval, certificate of occupancy, or other Town-level approval shall be accepted, processed, approved, approved conditionally, or issued for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town for any High-Impact Industrial Use, including without limitation any of the following: (i) any Natural Gas And/Or Petroleum Exploration Activities; (ii) any Natural Gas And/Or Petroleum Extraction Activities; or (iii) any Natural Gas And/Or Petroleum Support Activities.

B. From and after the effective date of this Local Law, no person shall use, cause, or permit to be used, any land (including all surface and subsurface lands), body of water, waterway (whether above or below ground), building, or other structure located within the Town for any High-Impact Industrial Use, including without

limitation any of the following: (i) any Natural Gas And/Or Petroleum Exploration Activities; (ii) any Natural Gas And/Or Petroleum Extraction Activities; or (iii) any Natural Gas And/Or Petroleum Support Activities.

C. The moratorium and prohibition set forth above in sub-sections A and B of this Article 3, § 4 are not intended, and shall not be construed, to: (i) prevent or prohibit the right to use roadways in lawful commerce or otherwise for lawful travel; (ii) prevent or prohibit the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or (iii) prevent or prohibit the incidental or normal sale, storage, or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal Agriculture, residential, business, commercial, and other uses within the Town.

D. The term of this moratorium and prohibition shall beginning on the effective date of this Local Law and shall expire upon the earlier of (i) that date which is one year after said effective date, or (ii) the effective date of a duly enacted repeal of this Local Law.

Section 5. PENALTIES & ENFORCEMENT.

A. Failure to comply with any of the provisions or requirements of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and § 80.05 of the New York State Penal Law and, upon conviction thereof, shall be punishable by a fine of not more than Five Thousand Dollars (\$5,000) or imprisonment for not more than 10 days, or both, for the first offense. Any subsequent offense within a one (1) year period shall be punishable by a fine of not more than Ten Thousand Dollars (\$10,000) or imprisonment for a period of not more than 30 days, or both. For purposes of this sub-Clause A, each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

B. In addition, an action or proceeding may be instituted in the name of the Town in any court of competent jurisdiction to prevent, restrain, enjoin, correct, enforce, and/or abate any violation of, or non-conformance with, any provision or requirement of this Local Law. Additionally, any action may be so commenced to declare the rights of the Town and of any other Persons relative to any justiciable controversy arising from, under, or in relation to this Local Law, whether pertaining to its interpretation, application, legality, or enforceability, or otherwise. No such action or proceeding shall be commenced by the Town without appropriate authorization from the Town Board. If equitable relief is requested by the Town in the form of a temporary restraining order, a temporary injunction, or an injunction, or by any other form of prohibition or similar relief, the Town shall not be required to post any bond or undertaking as a condition or requirement for or of such relief, and the Town shall not be required to prove or show a lack of an adequate remedy at law. No right, remedy, or penalty specified in this Article 3, § 5 shall be the or an exclusive remedy of the Town, and each remedy or penalty specified in this Article 3, § 5 shall be in

addition to, and not in substitution for or in limitation of, any other remedies or penalties specified in this Local Law or permitted by any applicable law, rule, order, regulation, or right in law or equity. Any remedy or penalty specified in this Local Law may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this Article 3, § 5.

C. In addition, any Enforcement Officer may issue stop work orders or compliance notices relative to any violation of this Local Law. The failure of any Person to comply with any such notice or order shall be and be deemed a violation of any other applicable law or ordinance, including, without limitation, the Town's Code Enforcement Local Law, and its related rules and regulations, and New York State Executive Law § 382; and, in each case, such non-compliance or violation may also be enforced as such.

D. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all necessary costs incurred by the Town relative thereto, including attorneys', engineering, consulting, and experts' fees; provided, however, that any responsibility or liability therefor, and the amount thereof, shall be determined by a Court or other tribunal of competent jurisdiction and this clause shall be interpreted, construed, and applied only to the maximum extent permitted by applicable law.

Section 6. 'GRANDFATHERING' OF LEGAL, PRE-EXISTING NON-CONFORMING USE(S).

A. Natural Gas And/Or Petroleum Extraction Activities - Notwithstanding any provision hereof the contrary, any Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law shall be subject to the following:

1. If, as of the effective date of this Local Law, substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including, without limitation, the possession of valid non-revoked permits for all matters for which permits are required, and including compliance with each, any, and any listed permit conditions as are or may be required by the New York State Department of Environmental Conservation ("DEC") and all other regulating local, state, and/or federal governments, bureaus, or agencies, then and only then such Activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions set forth below.

2. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law which do not qualify for treatment under the preceding sub-Clause A(1) of this Article 3, § 6 shall not be grandfathered (or be permitted to continue or deemed lawful pre-

existing uses) and shall in all respects be prohibited as contemplated by Article 3, § 4 hereof.

3. Upon the depletion, closing, or reclamation of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of sub-Clause A(1) of this § 6, or upon any other substantive cessation of Natural Gas And/Or Petroleum Extraction Activities (otherwise grandfathered by virtue of sub-Clause A(1) of this § 6, or otherwise) for a period of more than twelve (12) months, then and in either or any such event the pre-existing and/or non-conforming use status (and any related “grandfathering rights”) of or relating to such Activity shall terminate, and thereafter such Natural Gas And/Or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by Article 3, § 4 hereof.

4. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by sub-Clause A(1) of this Article 3, § 6 is not intended, and shall not be construed, to authorize or grandfather any Natural Gas And/Or Petroleum Extraction Activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this Local Law. Any expansion, or attempted or purported expansion, of such well, whether as to its production, depth, horizon(s), or otherwise, shall not be grandfathered under sub-Clause A(1) of this Article 3, § 6, and instead shall in all respects be prohibited as contemplated by Article 3, § 4 hereof. ‘Grandfathered’ and allowed lawful pre-existing uses neither have nor possess any right to expand such non-conforming use, whether above or below ground, and no such right shall be deemed, so construed, or implied.

B. Existing Commercial or Industrial Uses – existing lawful uses within business and related parks and zones, such as the AES Cayuga Plant, Cargill Deicing Technologies, and Borg Warner, and other existing business uses now located within the Town, be and hereby are permitted to exist, and to continue to exist and expand as their business plans and operations may indicate, but only so long as:

1. No such expansion or proposed use constitutes a change of business uses (and not necessarily a change of land use) as compared to the business uses of land as currently conducted by such Person, or as to the existing uses of land or any business related appurtenant uses, including uses and appurtenant uses of waterbodies, waterways, structures, and facilities within the Town; and

2. No such expansion or proposed use involves the introduction into the Town, or the use of any land, waterbody, waterway, structure, or facility in the Town, of any High-Impact Industrial Use that had not been lawfully conducted in accord with all laws, permits, requirements, regulations, and permit conditions as of the date of adoption of this Local Law, except such uses as are appurtenant to such lawful pre-existing uses for such pre-existing industry or its land uses.

Section 7. INVALIDITY OF ANY CONFLICTING APPROVALS OR PERMITS.

Except as contemplated by Article 3, § 8 of this Local Law, no permit or approval issued by the Town shall be deemed valid when or to the extent that such permit or approval purports to allow or permit any activity that would violate the moratorium and prohibition set forth at Article 3, § 4 of this Local Law.

Section 8. HARDSHIP USE VARIANCE.

A. The Board of Appeals is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of law and of this Local Law) requests for a Hardship Use Variance from the application of the provisions of this Local Law by persons aggrieved hereby.

B. No such Hardship Use Variance shall be granted by the Board of Appeals without a showing by the applicant that the application or enforcement of Article 3, § 4 of this Law, or any other provision or requirement of this Local Law, as applied to such applicant has caused “unnecessary hardship.” For purposes hereof, and in order to prove the existence of an unnecessary hardship, the applicant must prove each and all of the following four conditions to the Board of Appeals’ satisfaction: (i) that, unless the applicant is granted a Hardship Use Variance from the provisions of Article 3, § 4 of this Law, the applicant cannot realize a reasonable rate of return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (ii) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the neighborhood or other area in the vicinity of the applicant’s property; (iii) that the alleged hardship has not been self-created; and (iv) that the requested Hardship Use Variance, if granted, will not alter the essential character of the neighborhood or other area in the vicinity of the applicant’s property in an adverse manner. For the purposes of interpreting and applying the above four standards, the following shall apply:

1. *Reasonable Rate of Return.* In evaluating whether the applicant can realize a reasonable rate of return for purposes hereof, the Board of Appeals shall examine whether the entire original or expanded property holdings of the applicant (as opposed to only the site of the proposed project) are incapable of producing a reasonable rate of return. No Hardship Use Variance shall be granted unless, in addition to satisfying all other applicable provisions of this Local Law, the Board of Appeals finds that the applicant has clearly demonstrated, by detailed written “dollar and cents” proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) unless the applicant is granted a Hardship Use Variance from the provisions of Article 3, § 4 of this Law.

2. *Unique Hardship.* No Hardship Use Variance shall be granted unless, in addition to satisfying all other applicable provisions of this Local Law, the Board of Appeals finds that the entire parcel of which the project is a part possesses

unique characteristics that distinguish it from other properties in the neighborhood, or from other areas in the vicinity of the applicant's property. The applicant must demonstrate the unique nature of the parcel as a whole. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded, or in disrepair, or the fact that the property is then unimproved, shall not be deemed sufficient to make the plight of the property unique or to contribute thereto. Exceptional topography is an example of a factor demonstrating the unique nature of the property.

3. *Self-Created Hardship.* The Board of Appeals may find that the applicant suffers from a self-created hardship in the event that the Board of Appeals finds, *inter alia*, that: (i) the applicant's inability to obtain a reasonable return on the property as a whole results from having paid too much for the property, or that such inability arises from a poor investment decision; (ii) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought, which condition did not either previously exist or previously apply to the parcel as a whole; or (iii) when the applicant purchased the property, the applicant knew or should have known that the property was subject to this Local Law.

4. *Adverse Alteration of Essential Character of the Neighborhood or Other Area in Vicinity.* In making its determination of whether the proposed project will adversely affect the essential character of the neighborhood or other area in the vicinity of the applicant's property, the Board of Appeals shall take into account factors that are of vital importance to the citizens of the Town including, without limitation: (i) the rural, residential, agricultural, and historic character and resources of the area and the Town; (ii) the impacts to the Town's irreplaceable ecological, historic, recreational, scenic, and tourism sites; (iii) the extent and likelihood of the creation or exacerbation of any hazard to life, limb, or property that may result from the proposed project; (iv) public health impacts; (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation, and other nuisances; (vi) impacts upon property values; and (viii) whether the applicant will use a type or style of development that will result in degradation to the air quality, water quality, or to the historic, scenic, and natural resources of the Town. In order to find that the proposed project does not alter the essential character of the neighborhood or other area in the vicinity of the applicant's property, the Board of Appeals shall interpret the public interest in said essential character of the neighborhood or other area to require, at a minimum, that the project will not do any of the following: (x) pose a threat to the public safety, including public health, water quality, or air quality, (y) cause an extraordinary public expense, or (z) create a nuisance.

C. In addition to any other application requirements from time to time established pursuant to, or made applicable to, this Local Law, an application for any Hardship Use Variance shall contain a typewritten narrative explaining what the application is for and how the project meets or exceeds all of the required criteria for a Hardship

Use Variance. In addition, such application shall also provide documentary evidence or a typewritten narrative addressing and/or explaining each and all of the following:

1. With respect to a claim that the applicant cannot realize a reasonable rate of return, the applicant shall provide written financial evidence containing reasonable specification of the nature and factual particulars of such claim, including, at a minimum (as to the entire parcel of which the proposed project is a part) and as applicable: (a) the date(s) of acquisition of the property; (b) the purchase price; (c) present value of the property; (d) the amount of real estate taxes; (e) the amount of mortgages or liens and other expenses; (f) the asking price for the property when it had been offered for sale; (g) the costs of demolishing any existing structures on the property; (h) efforts to market the property; (i) a schedule of all other property in common ownership at either the date of the enactment of this Law or thereafter; and (j) “dollars and cents proof” such as appraisals, economic studies, and any other such evidence supporting the applicant’s contention that the grant of a Hardship Use Variance is appropriate. For purposes hereof, “common ownership” means all other interests in property either located within the Town or contiguous to the Town that are held by any of the applicants (if more than one), whether such ownership is of a legal or equitable nature or interest, in whole or in part, contiguous or not, and whether such property or interest is held by any of the applicants through a legal or equitable interest in a(nother) corporation, partnership, trust, business, entity, association, fund, joint venture, or individually.
 2. With respect to a claim that, if granted, the requested Hardship Use Variance will not adversely alter the essential character of the neighborhood or other area in the vicinity of the applicant’s property, the applicant must demonstrate that the proposed project will not adversely affect such essential character with regard to the physical, economic, social, or environmental elements or characteristics of the applicable neighborhood or other area. Examples of adverse impacts to the essential character of the neighborhood or other area include (without limitation) decreased quality or increased quantity of stormwater runoff, increased soil erosion, increased traffic congestion, decreased road quality, impairment of the scenic or rural character of roads, increased noise, dust, odor and/or glare, reduced wildlife habitat, decreased air quality, decreased water quality, impairment of the viewshed, creation of solid wastes, negative impacts on sustainability efforts, increased social costs, increased emergency response times, negative impacts to public infrastructure, decreased property values, and negative impacts on the health of area residents.
- D. In addition to all other application requirements from time-to-time established pursuant to this Local Law, each application for a Hardship Use Variance may or shall also include one or more of the following enumerated reports, analyses, or supporting proofs or documents and the like, whenever not prohibited by applicable law and required by the Board of Appeals, whether in relation to this Local Law, any environmental review of such proposed action (such action being, as allowed or

applicable, the proposed review and/or granting or denial of a Hardship Use Variance application), or otherwise, so as to assist the Board of Appeals in determining whether a grant of the requested Hardship Use Variance will adversely alter the essential character of the neighborhood or other area in the vicinity of the applicant's property and/or so as to assist the Board of Appeals in its determination of whether to deny, grant, or grant with conditions such application:

1. Environmental Assessment Form. A completed draft of a Long Form Environmental Assessment Form, Part I, regarding the proposed project. Any action in consideration of whether to deny, grant, or grant with conditions such application shall be and be deemed a Type I Action under SEQRA, including, without limitation, 6 NYCRR Part 617, § 617.4.
2. Description of Surrounding Uses. The approximate location of all neighboring residential, hamlet, park/recreational, and/or agricultural areas, all county-designated Unique Natural Areas and locally designated Critical Environmental Areas (if any), all wetlands, any intermittent, seasonal and other streams, rivers, and waterways, any significant natural communities, any mapped or existing endangered and threatened species and species of concern, and any historical or archeologically sensitive or mapped areas within a two (2) mile radius of the perimeter of the site of the proposed use.
3. Traffic Impact Report. A traffic impact report containing: (a) the proposed traffic circulation plan and the projected number of motor vehicle trips to enter or leave the site, as estimated for daily and peak hour traffic levels, if the Hardship Use Variance is granted; (b) existing and proposed daily and peak traffic hour levels as road capacity levels; (c) a determination of the areas of impact of traffic going to and departing from the proposed project site; (d) the proposed traffic routes to the nearest intersection with an arterial highway, including the gross weights and dimensions of vehicles; (e) the projected traffic flow pattern, including vehicular movements at all major intersections likely to be affected by the proposed project if the Hardship Use Variance is granted; (f) the impact of this traffic upon existing abutting public and private ways in relation to existing road capacities; (g) a traffic impact analysis of the effects of the proposed project on the transportation network in the Town using passenger car equivalents if the Hardship Use Variance is granted; (h) an articulation of the effects and impacts of the proposed project on traffic based on existing conditions and projected future background traffic on the state, county, and Town road system if the Hardship Use Variance is granted; (i) an evaluation of whether the resulting traffic conditions are likely to hinder the passage of police, fire and emergency response vehicles, or degrade the quality of life, and/or otherwise contribute to hazardous traffic conditions if the Hardship Use Variance is granted; and (j) a determination of whether there is sufficient road geometry and frontage to allow vehicles to enter and depart from the site by only entering the lane of desired travel, and remaining solely in such lane of travel to the nearest intersection (along the proposed route of travel) with a County or State public highway.

4. Road Impact Report. An evaluation of: (a) appropriate roadway geometry, including required road widths, bridge widths, starting and stopping sight distances, intersection sight distances, and horizontal and vertical curves along the proposed traffic routes; (b) the adequacy of existing pavement and structures along the proposed traffic routes to accommodate the full weight load of any trucks and construction vehicles likely to be used in connection with the proposed project if the Hardship Use Variance is granted; and (c) impacts to the rural or scenic character of any roads along the proposed traffic route if the Hardship Use Variance is granted.

5. Transportation Plan. A description of ingress and egress to and through the proposed project site by which vehicles, equipment, and supplies will be delivered, including: (a) any temporary or permanent access routes or points provided, or to be provided, during and after construction if the Hardship Use Variance is granted; (b) an identification of any roads, streets, intersections, bridges, and other facilities along the proposed traffic route, including those that do not meet New York State Department of Transportation standards, and such plan shall describe any anticipated improvements to existing roads, bridges, or other infrastructure, any new road or access construction measures which will be taken to avoid damaging any public or private roads, highways, culverts, or other ways or appurtenances, and the measures that will be taken to restore damaged public or private roads, highways, culverts, or other ways or appurtenances following construction and during operations should the Hardship Use Variance be granted; and (c) all together with any measures proposed to be taken to maintain the scenic and/or rural characteristics of such roads or ways.

6. Noise Impact Report. A report that shall measure, project, factor, cover, and provide conclusions about, without limitation, low frequency, A-weighted, infrasound, pure tone, and repetitive/impulse noises containing the following information, studies, or descriptions and conclusions: (a) a description of the existing audible conditions at the project site to identify a baseline sound presence and pre-existing ambient noise, including seasonal variation; (b) a description and map of sound producing features of the proposed project from any noise generating equipment and noise generating operations that will be conducted in connection with the proposed project site if the Hardship Use Variance is granted, including noise impacts from vehicular traffic travelling within the Town to and from, or in support of, the use or proposed project site; (c) with respect to the noise to be generated by construction and uses of the proposed project site, the range of noise levels and the tonal and frequency characteristics expected, together with a written explanation for the bases for any such expectations or conclusions; (d) a description and map of the existing land uses and structures, including any sensitive area sound receptors (e.g., residences, hospitals, libraries, schools, places of worship, parks, and areas with outdoor workers, etc.) within one mile of the project parcel boundaries, which description shall include the location of the structure/land use, the distances from the proposed project, and the

expected decibel readings for each such receptor; and (e) a description of the project's proposed noise-control features, including specific measures proposed to protect off-site workers and mitigate noise impacts for sensitive area receptors.

7. Visual Assessment. A visual presentation of how the site of the proposed project will relate to and be compatible with the adjacent and neighboring areas, within a two mile radius of the perimeter of the site of the proposed project, if the Hardship Use Variance is granted. This presentation shall include computerized photographic simulation showing the site during construction and fully developed which shows and/or demonstrates any visual impacts from at least four strategic vantage points within the said two mile radius. Color photographs of the proposed site from at least two locations accurately depicting the existing conditions shall be included. The study shall also indicate the color treatment of the facility's components and any visual screening incorporated into the project that is intended to lessen visual prominence.

8. Report of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes and Other Wastes. A report containing a description of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes and other solid wastes, industrial wastes, hazardous wastes, toxic and/or poisonous substances and pollutants (whether or not any such substances enjoy exemption or definitional exceptions from state or federal laws otherwise intended to protect the public with respect to hazardous, toxic, or poisonous substances) expected to be produced, stored, injected, discarded, discharged, disposed, released, or maintained on the project site if the Hardship Use Variance is granted in relation to any natural gas or mining operations.

9. Compatible Uses Report. A discussion of characteristics of the proposed project that may decrease the Town's and/or the neighborhood's (or other area's) suitability for other uses such as residential, commercial, historical, cultural, tourism, recreational, environmental, or scenic uses if the Hardship Use Variance is granted.

10. Fiscal Impact Assessment. An assessment describing the adverse effects and impacts on Town revenue and costs necessitated by additional public facilities and service costs likely to be generated by the proposed project if the Hardship Use Variance is granted.

11. Fire Prevention, Equipment Failure and Emergency Response Report. A report containing: (a) description of the potential fire, equipment failures, and emergency scenarios associated with the proposed project that may require a response from fire, emergency medical services, police, or other emergency responders, if the Hardship Use Variance is granted; (b) an analysis of the worst case disaster associated with the proposed project if the Hardship Use Variance is granted, together with an impact analysis of such a disaster upon the health, safety, and welfare of the inhabitants of the Town and their property; (c) an

identification and designation of the specific agencies that would respond to potential fires, equipment failures, accidents, or other emergencies if the Hardship Use Variance is granted; (d) a description of all emergency response training and equipment needed to respond to a fire, accident, equipment failures, or other emergencies, including an assessment of the training and equipment resources available to local and potential responding agencies; and (e) the approximate or exact location of all fire, police, and emergency response service facilities within a five mile radius of the perimeter of the site of the proposed use.

12. **Public Facilities and Services Assessment.** An assessment describing: (a) whether current Town public facilities and services, including water supplies, fire protection, school services, recreation facilities, police protection, roads, and stormwater facilities are adequate for the proposed project (taking into account all other uses that have been permitted or are currently operating in the Town) if the Hardship Use Variance is granted; (b) a comparison of the capacity of the public services and facilities to the maximum projected demand that may result from the proposed project if the Hardship Use Variance is granted (in determining the effect and impact of the proposed project on fire, police, and emergency services, the review shall take into consideration response times, and the number and location of available apparatus and fire, police, and emergency service stations that are manned by full time professional service personnel; and where applicable, calculation of response times shall also include the time it takes volunteer emergency personnel to get to their stations); and (c) if the Hardship Use Variance is granted, a review of the impacts of the proposed project upon the safety of all children going to and from school by car, bus, bicycle, and walking during and outside of school zone hours, including an analysis of whether existing or proposed safety measures, such as signaled cross walks, elevated sidewalks, signage, traffic controls, traffic management or calming plans, and green space buffers for pedestrians or bicyclists, are adequate or sufficient to mitigate or help prevent accidents, together with an analysis of whether any walking or bicycle trails or routes overlap, cross, or run alongside intended traffic routes; each and all so as to mitigate or help prevent accidents.

13. **Property Value Assessment.** A property value analysis showing the impact upon adjoining property values, prepared by a licensed appraiser in accordance with industry standards, if the Hardship Use Variance is granted.

14. **Health Impact Assessment.** A human health impact assessment identifying ways in which the proposed project could adversely affect the health of Town residents if the Hardship Use Variance is granted; including a priority list of recommendations to minimize the potential health impacts of the proposed project. The health impact assessment shall, at a minimum, include: (a) a risk assessment of the possible impacts of chemical exposure on the health of residents, including the Chemical Abstract Service number of all chemicals proposed to be transported to, used, generated, or stored at the project site; (b) an assessment of possible health effects due to industrial operations in non-industrial

areas or zones; and (c) an assessment of possible health effects due to community changes, including the presence of an industrial activity in a previously non-heavy industrial area, declining property values, impacts to the education system, and the impacts and effects of any sudden changes in population numbers, demographics, and customs (if any).

E. To the extent any of the information, data, studies, reports, and the like, referenced above in this Article 3, § 8 have been prepared or submitted to the State of New York (or other government or governmental department, agency, or authority), whether in relation to any permit application, unit or spacing authorization, or any related environmental review or otherwise, the Board of Appeals may accept such previously prepared materials in lieu of any of the above items which may be so requested or mandated. However, nothing shall prevent the Board of Appeals from requiring updates, supplemental information, or site-specific analyses relative to such proposed use within the Town or such application for a Hardship Use Variance.

F. The purpose of this sub-section is to set forth those conditions and circumstances under which the Hardship Exemption application and submission requirements of may be modified or waived by the Town Board. Where the Town Board finds that, due to the special circumstances of a particular case, a waiver or modification of certain requirements or procedures is justified, a waiver or modification may be granted. In all cases, no waiver or modification shall be granted unless the Town Board finds and records in its minutes that: (1) granting the waiver or modification would be keeping with the intent and spirit of this Local Law, the information is not relevant to the application or the purposes of this Local Law, and a waiver or modification is in the best interests of the community; (2) there is or is expected to be no adverse effect upon the character, appearance, or welfare of any neighborhood or the environment due to the granting of any such waiver or modification; (3) there are special circumstances involved in the particular case; (4) denying the modification or waiver would result in undue hardship, provided that such hardship has not been self-imposed; and (5) the modification or waiver, if granted, is the minimum necessary degree of variation from the requirements of this Local Law. All applications for any such modification or waivers of any such requirements pertaining to Hardship Exemptions shall be submitted in writing.

Section 9. SEVERABILITY.

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such

person or circumstances, such invalid or unenforceable provision shall be and be deemed severed here from, and the Town Board hereby declares that it would have enacted this Local Law, or the remainder hereof, even if, as to particular provisions and persons or circumstances a portion hereof is severed or declared invalid or unenforceable.

Section 10. SUPERSEDING INTENT AND EFFECT.

During the time this Local Law is in effect, it is the specific intent of the Town Board, pursuant to Municipal Home Rule Law § 10(1)(ii)(d)(3) and § 22, to supersede: (a) any inconsistent provisions set forth in Town Law § 265-a; § 267; § 267-a, § 267-b, § 268; § 274-a, § 274-b; § 276, § 277, § 278, and § 279, but only to the extent expressly set forth herein; (b) any other inconsistent provisions set forth in Article 16 of the Town Law; (c) any inconsistent provisions of the Land Use Ordinance of the Town; and (d) to supersede any inconsistent provisions of any and all other local ordinances, local laws, or local resolutions or other legislation or policies of the Town.

Section 11. GENERAL PROVISIONS & CONSTRUCTION.

A. The Code Enforcement Officer of the Town is hereby designated as the enforcement officer for purposes of interpreting and enforcing this Local Law. The Town Board reserves the right to change or designate additional enforcement officers by resolution.

B. The section and other headings and titles to clauses and phrases in this Local Law are for convenience only and shall not be used or construed to limit or define the scope or application of the clauses and phrases so following such headings or titles. Each section of this Local Law, whether in the nature of a preamble or otherwise, is a material part of this Local Law.

C. In interpreting what is, or is not, a “High-Impact Industrial Use” the Code Enforcement Officer shall be guided by the following rules of construction:

1. Words used in definitions shall be given their ordinary meaning, unless expressly otherwise defined in or by this Local Law.
2. Where a use or application is not specifically listed, the Code Enforcement shall, in making his or her determination as to whether such use is allowed, whether such use is a High-Impact Industrial Use, or whether such use is prohibited or allowed only subject to the issuance of a Hardship Use Variance by the Board of Appeals, either: (i) make his or her determination based upon the general language of what is traditionally deemed or considered a heavy industry or heavy industrial use; and/or (ii) compare the proposed use or application to the lists of specifically listed and illustrative prohibited High-Impact Industrial Uses (see Article 3, § 3 Definitions of “High-Impact Industrial Use,” sub-sections 1 through 22, inclusive) and, where reasonable, select the closest applicable

category and then make his or her determination; and/or (iii) utilize the factorial determination procedure set forth in the definition of “High-Impact Industrial Use,” at Article 3, § 3, sub-section 23.

3. Each such determination of the Code Enforcement Officer shall be detailed in writing and be reasonably and rationally supported by facts, findings, or observations. In taking into account potential impacts in classifying any proposed use or application, the Code Enforcement Officer may and should consider that land uses which, though conceivably operable (in the event of a perfect-world scenario where human error never occurs, where power outages, flooding and other natural disasters never occur, and where engineered materials and structures never experience stresses beyond those for which they were designed and in any event never fail) without polluting the environment or otherwise posing a risk to human health and safety or disturbing or interfering with reasonable community expectations regarding odors, noise, and traffic, nonetheless, by virtue of their nature or by virtue of the manner in which (or the conditions under which) they are typically conducted (and because in the real world human error does occur, power outages, flooding and other natural disasters do occur, and engineered materials and structures do experience stresses beyond those for which they were designed and in any event do fail at times), such uses have the potential to pollute the environment, to otherwise pose a risk to human health and safety, and/or to disturb or interfere with reasonable community expectations regarding odors, noise, and traffic.

4. Any person aggrieved by any determination of the Code Enforcement Officer, or who alleges error in the making of a determination under the above-classification rules, shall be required to timely appeal such determination, classification, or other ruling to the Board of Appeals in accord with Town Law § 267-a.

Section 12.EFFECTIVE DATE.

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

ARTICLE 5. TERM.

The moratorium imposed, as extended by this Local Law, shall be in effect for a period of one year from the effective date of this Local Law.