

Town of Skaneateles
Introductory Local Law No. 2012-A

A local law to amend and supplement Local Law No. 3 of 2005,
(as heretofore amended),

by :

Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited;
Articulating Certain Explicitly Prohibited Uses;
Adding Certain New Definitions, and Changing Certain Existing Definitions; and
Modifying, Clarifying, and Adding to the Provisions Regarding Use Variances Generally, and Use
Variances Respecting Explicitly Prohibited Uses, Specifically.

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

Article I. General Provisions

Section 1.1. Authority for Adoption

The Town Board hereby adopts this Local Law pursuant to the authority described at Section 1. of **Appendix A** attached hereto, which **Appendix A** is hereby incorporated and made a part of this Local Law for all purposes by this reference.

Section 1.2. Findings of Fact

The Town Board has heretofore made certain findings, determinations, and declarations relative to the matters set forth in this Local Law, and a copy of the text of such findings, determinations, and declarations is set forth at Section 2. of **Appendix A** attached hereto.

Section 1.3. Purpose & Intent

The Purposes and Legislative Intent underlying the Town Board's passage of this Local Law are set forth at Section 3. of **Appendix A** attached hereto.

Section 1.4. Definition of "Existing Zoning Law," this "Local Law," and "this "Law"

As used in this Local Law, the term "Existing Zoning Law" shall mean and be the Zoning Law of the Town of Skaneateles dated December 1, 2005 (Local Law No. 3 of 2005), as amended by: (i) Local Law No. 3 of 2006, passed October 2, 2006; (ii) Local Law No. 1 of 2007, passed January 18, 2007; (iii) Local Law No. 12 of 2007, passed June 21, 2007; (iv) Local Law No. 13 of 2007, passed July 24, 2007; (v) Local Law No. 5 of 2008, passed October 20, 2008; (vi) Local Law No. 1 of 2009, passed February 5, 2009; (vii) Local Law No. 2 of 2009, passed June 16, 2009; (viii) Local Law No. 4 of 2009, passed October 1, 2009; (ix) Local Law No. 1 of 2010, passed May 6,

2010; and (x) Local Law No. 1 of 2011, passed January 20, 2011, as any of the foregoing may have heretofore been amended or supplemented.

As used herein, the term this “Local Law” shall mean and be this Local Law No. ___ of 2012.

As used in Article II of this Local Law, the term “this Law,” “this chapter,” and “herein” shall mean, be, and refer to the Existing Zoning Law as amended by this Local Law.

Section 1.5. Interpretation

The statements of purpose, intent and findings are legislatively adopted along with the formal text of the amendments to the Existing Zoning Law effected by this Local Law. They are intended as a legal guide to the administration and interpretation of this Local Law and shall be treated as legislative history.

Article II. Amendments of Existing Zoning Law

2.1. Amendment of Clause A. of § 148-8 of the Existing Zoning Law

The Existing Zoning Law is hereby amended so as to delete the text of present Clause A. of § 148-8 thereof in its entirety, and to replace the same with the following text:

“A. Purpose; Any Use Not Specifically Permitted is Prohibited. It is the purpose of this chapter to allow flexibility of land use, subject always to the restrictions, prohibitions, and design and performance requirements contained herein. Any use not specifically set forth as a permitted use in any district shall be expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specifically set forth as a permitted use in said other district. Except as otherwise provided herein: (a) no building or land shall hereafter be used or occupied, and no building or part thereof shall be erected, moved or altered, unless in conformity with the regulations herein specified for the district in which it is located; and (b) no building shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller rear yards, front yards, or side yards, than is specified herein for the district in which such building is located. “

2.2. Amendment of Clause B. of § 148-8 of the Existing Zoning Law

Clause B. of § 148-8 of the Existing Zoning Law is hereby amended so as to delete the present third sentence thereof (which begins “In the event that a proposed use...” in its entirety, and to replace the same with the following text: “Nothing contained herein shall prohibit any person from submitting a request for a zoning law amendment or a variance in accordance with the provisions of this Law and the New York State Town Law.”

2.3. Amendments of Clause C. of § 148-8 of the Existing Zoning Law

Clause C. of § 148-8 of the Existing Zoning Law is hereby amended so as to delete the present first sentence thereof (which begins “Any use, whether or not...”) in its entirety, and to replace the same with the following text: “Any use, even if otherwise permitted by virtue of the Use Table, shall be prohibited if it does not satisfy the all applicable performance criteria contained in this Law.”

Additionally, the present final sentence Clause C. of § 148-8 of the Existing Zoning Law (which begins “The following uses are prohibited...”) so as (i) to delete the word “and” between the words “facilities” and “dumps” and to insert a comma therefor, and (ii) to insert the following text after the word “debris” and immediately prior to the period presently at the end of the sentence: “, and any Explicitly Prohibited Use described in § 148-47 of this Law.”

2.4. Amendment of Clause A. of § 148-13 of the Existing Zoning Law

Clause A. of § 148-13 of the Existing Zoning Law is hereby amended so as to delete the present second sentence thereof (which begins “Many uses are therefore permitted...”) in its entirety, and to insert the following text at the present end of such Clause A., immediately following the parenthetical “(See Use Table at the end of this chapter.)”:

“Some uses are uses for which issuance of a special permit is required and for which conformance to additional standards is required, in addition to all other requirements of this Law. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific case or use shall be considered as an individual case that requires consideration of the merits and details of each proposed use to assure that such proposed use is in harmony with this Law and the Comprehensive Plan, and that such proposed use will not adversely affect the general character of the surrounding area if the conditions of the special permit are met.”

2.5. Amendment of Clause D. of § 148-21 of the Existing Zoning Law

Clause D. of § 148-21 of the Existing Zoning Law is hereby amended so as (i) to insert the words “located within the LW District” between the words “existing facilities” and “that engage” in the second sentence of said Clause D. (beginning ‘Agricultural uses and...’), and (ii) to delete the text of clause (7) thereof (which begins “Petroleum product pipelines...”) in its entirety, and to replace the same with the following text: “Pipelines (as that term is defined in Clause D. of § 148-47 of this Law).”

2.6. Amendments of § 148-45 of the Existing Zoning Law

Clause B. of § 148-45 of the Existing Zoning Law is hereby amended so as to delete the text of clause (1) thereof (which begins “Where there are practical difficulties...”) in its entirety, and to replace the same with the following text:

“The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Codes Enforcement Officer or other administrative official or body charged with the enforcement of this Zoning Law, after public notice and hearing and in

accordance with the requirements of law and this Law, to grant area variances and use variances as those terms are defined herein.”

§ 148-45 of the Existing Zoning Law is hereby amended so as to delete present Clause C. thereof (entitled “Use variances.”) in its entirety, and to replace the same with the following text:

“C. Use Variances.

(1) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Codes Enforcement Officer or other administrative official or body charged with the enforcement of this Zoning Law, after public notice and hearing and in accordance with the requirements of law and this Law, to grant use variances as defined herein.

(2) If a use variance is granted, the applicant must obtain Site Plan Review approval from the Planning Board prior to commencing the use and prior to obtaining a Building Permit.

(3) No such use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Zoning Board of Appeals finds that otherwise applicable zoning regulations and restrictions have caused unnecessary hardship.

(i) Unnecessary Hardship. In order to prove such unnecessary hardship the applicant is required to demonstrate to the Zoning Board of Appeals that, with respect to every permitted use under the zoning regulations for the particular district where the property is located, each of the following four criteria is satisfied: (w) the applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (x) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood involved; (y) the requested use variance, if granted, will not alter the essential character of the neighborhood; and (z) the alleged hardship has not been self-created.

(ii) Reasonable Rate of Return. In evaluating whether the applicant can realize a reasonable rate of return, the Zoning Board of Appeals shall examine whether the entire original or expanded property holdings of the applicant (as opposed to just the site of the proposed project) are incapable of producing a reasonable rate of return. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Zoning 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 (as opposed to just the site of the proposed project) and for each and every permitted use in the district (including those uses permitted by Special Use Permit).

(iii) Unique Hardship. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Zoning 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 area.

(iv) Essential Character of the Neighborhood. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Zoning Board of Appeals finds that the proposed project will not alter the essential character of the neighborhood. In making its determination of whether the proposed project will alter the essential character of the neighborhood, the Zoning Board of Appeals shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (a) the fact that Skaneateles Lake is a public water supply; (b) any agricultural data statement submitted pursuant to § 148-31; (c) the rural residential and historic character of the Town, (d) its irreplaceable recreation and tourism sites, (e) the extent of hazard to life, limb or property that may result from the proposed project, (f) health impacts, (g) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (g) the impact on property values, and (h) whether the applicant will use a style of development that will result in degradation to the air quality, water quality or scenic and natural resources of the Town. In order to find that the proposed development project does not alter the essential character of the neighborhood, the Zoning Board of Appeals shall interpret the public interest in said essential character of the neighborhood 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.

(v) Self-Created Hardship. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Zoning Board of Appeals finds that the alleged hardship was not self-created. The Zoning Board of Appeals may find that the applicant suffers from a self-created hardship in the event that the Board finds that (i) the applicant's inability to obtain a reasonable return on the property as a whole results from having paid too much or 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 and which did not apply to the parcel as a whole; or (iii) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

- (4) In addition to the application requirements set forth in Clause F. of this § 148-45, an application for any use variance shall contain a typewritten narrative explaining what the application is for, and how the project meets or exceeds all of the criteria for a use variance, including:

(i) Competent Financial Evidence. Competent written financial evidence containing reasonable written specification of, and back-up (confirmation) for, the nature and

factual particulars of such claim, and articulating the basis for the applicant's claim, and including, at a minimum (as to the entire parcel of which the proposed project is a part): (a) date of acquisition; (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) cost of erecting a new building(s) for each and every permitted use in the zoning district (including uses allowed by Special Use Permit); (i) efforts to market the property; and (j) a schedule of all other property in common ownership at either the date of the enactment of this Law or thereafter.

Competent written financial evidence must include written "dollars and cents proof" such as appraisals, economic studies, and any other written evidence supporting the applicant's contention that the desired relief is appropriate, including appraisals relating to any alleged diminution of all or substantially all of the fair market value of property. For the purposes of this Law, common ownership means all other interests in property either located within the Town or contiguous to the Town that is held by the any of the applicants (if more than one), whether such ownership is of a legal or equitable interest, in whole or in part, contiguous or not, and whether such property 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.

(ii) Unique Nature of the Property. The applicant must provide evidence demonstrating 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 to make the plight of the property unique or to contribute thereto. Exceptional topographic conditions are an example of a factor demonstrating the unique nature of the property.

(iii) Alteration of the Essential Character of the Neighborhood. The applicant must demonstrate that the proposed development project will not adversely change the essential character of the neighborhood with regard to physical, economic, social or environmental elements. Adverse impacts to the essential character of the neighborhood include, but are not limited to, 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.

(iv) Hardship Not Self-Created. In order to show that the hardship is not self-created, the applicant must demonstrate either (i) that when the property was purchased the zoning restrictions from which a use variance is now sought were not in existence or did not otherwise apply, or (ii) some other change has occurred since the applicant's

purchase which makes the use non-conforming, as long as such other change was not caused by the applicant.

- (5) The Zoning Board of Appeals, in the granting of use variances, shall grant only the minimum variance that it shall deem necessary and adequate to allow an economically beneficial use of the property, and at the same time preserve and protect the essential character of the neighborhood and the health, safety, and welfare of the community.
- (6) The Zoning Board of Appeals, in the granting of use variances, shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed development project. Such conditions shall be consistent with the spirit and intent of this Law, and shall be imposed for the purpose of minimizing any adverse impact such use variance may have on the neighborhood or community. Such conditions may include, but are not limited to, landscaping, lighting, access and egress, signs, screening, architectural features, location and layout of buildings, limitations upon the use or characteristics of the use which are reasonably related to the public health, safety and general welfare and as may be necessary to carry out the intent of this Law. If the applicant refuses to accept such requirements and conditions, the use variance shall be denied.
- (7) In addition to the application requirements set forth in Clause F. of this § 148-45, the following reports shall be required to be submitted in writing in connection with any appeal or application for a use variance concerning what is otherwise an Explicitly Prohibited Use (as defined in § 147-48). The purpose of these reports in the context of otherwise Explicitly Prohibited Uses is to assist the Zoning Board of Appeals in its determination as to the impact of a proposed project on the Town and/or the “essential character of the neighborhood” and/or to determine whether the proposed project complies with the requirements of this Law:
 - a. Environmental Assessment Form. A completed draft of a long form Environmental Assessment Form, Part I.
 - b. Description of Surrounding Uses. The approximate location of all neighboring residential, hamlet, village, park/recreational, and/or agricultural areas, as well as all county-designated Unique Natural Areas and locally-designated Critical Environmental Areas (if any) within a two (2) mile radius of the perimeter of the site of the proposed use.
 - c. Traffic Impact Report. A traffic impact report containing: (i) the proposed traffic circulation plan, the projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hour traffic levels; (ii) existing and proposed daily and peak traffic hour levels as road capacity levels; (iii) a determination of the area of impact of traffic to and from the proposed development project; (iv) the proposed traffic routes to the nearest intersection with an arterial highway, including gross weights and heights of vehicles; (v) the projected traffic flow pattern including vehicular movements at all major intersections likely to be affected by the proposed

project; (vi) the impact of this traffic upon existing abutting public and private ways in relation to existing road capacities; (vii) a traffic impact analysis of the effects of the proposed project on the transportation network in the Town using passenger car equivalents; (viii) 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; (ix) 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; and (x) determination of whether there is sufficient road frontage so that any vehicle leaving the site may turn into the lane of traffic moving in the desired direction and be channeled within such lane before crossing the nearest intersection or proceeding along the road, and any vehicle entering the property may turn out of the nearest lane of traffic without interfering with other traffic.

d. Road Impact Report. An evaluation of (i) appropriate roadway geometry including required road widths, bridge widths, starting and stopping sight distances, intersection sight distances, horizontal and vertical curves along the proposed traffic routes; (ii) the adequacy of existing pavement 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; and (iii) impacts to the rural or scenic character of any roads along the proposed traffic route.

e. Transportation Plan. A description of ingress and egress through the proposed project site through which equipment and supplies will be delivered and which will provide access during and after construction, and identification of any roads, streets, intersections, bridges, and other facilities along the proposed traffic route that do not meet New York State Department of Transportation standards. 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 access/traffic routes, and measures that will be taken to restore damaged routes following construction, and measures to maintain the scenic and/or rural characteristics of such roads.

f. Noise Impact Report. A report on the following topics: (i) the existing audible conditions at the project site to identify a baseline sound presence and preexisting ambient noise, including seasonal variation; (ii) 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, including noise impacts from truck traffic travelling within the Town to and from the proposed project; (iii) for the noise generated by construction and use of the proposed project, the range of noise levels and the tonal and frequency characteristics expected, and the basis for the expectation; (iv) a description and map of the existing land uses and structures including any sound receptors (i.e. residences, hospitals, libraries, schools and places of worship, parks, and areas with outdoor workers) within one (1) mile of the development project parcel boundaries. Said description shall include the location of the structure/land use, distances from the proposed development project and expected decibel readings for each receptor;

(v) the report shall cover low frequency, A-weighted, infrasound, pure tone, and repetitive/impulse noise; and (vi) the report shall describe the proposed project's noise-control features, including specific measures proposed to protect off-site workers and mitigate noise impacts for sensitive receptors.

g. 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 (2) miles radius of the perimeter of the site of the proposed project. This presentation shall include computerized photographic simulation showing the site during construction and fully developed, and demonstrating any visual impacts from strategic vantage points. 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.

h. Report of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes, and Other Wastes. A report of (i) a description of any Natural Gas and/or Petroleum Extraction, Exploration, or Production Wastes (as that term is defined at Clause D. of § 148-47 of this Law), and other solid wastes, industrial wastes, hazardous wastes and pollutants expected to be produced, stored, injected, discarded, discharged, disposed, released, or maintained on the project site if the variance is granted.

i. Compatible Uses Report. A discussion of characteristics of the proposed project that may decrease the Town's and/or the neighborhood's suitability for other uses such as residential, commercial, historical, cultural, tourism, recreational, environmental or scenic uses.

j. Fiscal Impact Assessment. An assessment describing the adverse effects and impacts on Town revenue and costs necessitated by additional public facility and service costs likely to be generated by the proposed project.

k. Fire Prevention, Equipment Failure and Emergency Response Report. A report containing: (i) 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; (ii) an analysis of the worst-case disaster associated with the proposed project and the impact of such a disaster upon the health, safety and welfare of the inhabitants of the Town and their property; (iii) designation of the specific agencies that would respond to potential fires, equipment failures, accidents or other emergencies; (iv) description of all emergency response training and equipment needed to respond to a fire, accident, equipment failure or other emergency, including an assessment of the training and equipment available to local agencies; and (v) the approximate or exact location of all fire, police, and emergency response service facilities within a five (5) mile radius of the perimeter of the site of the proposed use.

l. Public Facilities and Services Assessment. An assessment describing: (i) whether current Town public facilities and services, including water supply, fire protection, school services, recreation facilities, police protection, roads and storm-water facilities, are adequate for the proposed development project (taking into account all other uses that have been permitted or are currently operating in the Town); (ii) a comparison of the capacity of the public services and facilities to the maximum projected demand that may result from the proposed development project (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 time shall also include the time it takes volunteer emergency personnel to get to their stations); and (iii) a review of the impact of the proposed project on the safety of all children going to and from school by car, bus, bicycle, and walking during and outside of school zone hours and whether safety measures such as signaled cross walks or elevated sidewalks exist along intended truck routes so as to aid in prevention of accidents.

m. Property Value Assessment. A property value analysis, prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of the project on the value of properties adjoining the project site.

n. Health Impact Assessment. A human health impact assessment that identifies ways in which the proposed development project could adversely affect the health of Town residents and a priority list of recommendations to minimize the potential health impacts of the proposed project. The health impact assessment shall include (i) a risk assessment of possible impact of chemical exposure on the health of residents, including the Chemical Abstract Service number of all chemicals proposed to be used or generated at the project site; (ii) an assessment of possible health effects due to industrial operations in non-heavy industrial zoned areas; and (iii) 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 sudden changes in population numbers, demographics and customs.

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2.7. Amendment of § 148-47 of the Existing Zoning Law

§ 148-47 of the Existing Zoning Law is hereby amended so as to delete the parenthetical “(Reserved)” therefrom, and to replace the same with the following text:

§ 148-47. Explicitly Prohibited Uses; Prohibition Against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.

A. Explicitly Prohibited Uses. The following uses and activities (*being respectively defined in Clause D. below of this § 148-47*) are hereby expressly and explicitly prohibited in each and every zoning district within the Town, and no building or structure shall be created, altered or erected, and no body of water, land or building thereon shall be used, for any of such uses or activities:

- (a) Land Application Facility;
- (b) Natural Gas And/Or Petroleum Exploration Activities;
- (c) Natural Gas And/Or Petroleum Extraction Activities;
- (d) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility;
- (e) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump;
- (f) Natural Gas Compression Facility;
- (g) Natural Gas Processing Facility;
- (h) Non-regulated Pipelines;
- (i) Underground Injection; and
- (j) Underground Natural Gas Storage.

Any condition caused or permitted to exist in violation of this Clause A. is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance. Collectively the above expressly prohibited uses may be referred to in this law as "Explicitly Prohibited Uses," any one of the above Explicitly Prohibited Uses may be referred to in this law as an "Explicitly Prohibited Use," and any combination of more than one such use may also be referred to as "Explicitly Prohibited Uses."

B. Prohibition against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes. The Town of Skaneateles hereby exercises its authority and right under NY ECL § 27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this Local Law complies "with at least the minimum applicable requirements" set forth in such statute, and the rules and regulations promulgated pursuant to said Article 27.

It shall be unlawful for any person to produce, store, inject, discard, discharge, dispose, release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, disposed, released, or maintained, anywhere within the Town, any Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.

C. No Application to Customary Local Distribution Lines, Etc. The prohibitions set forth above in this § 148-47 are not intended, and shall not be construed, to (x) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (y) 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 (z) 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. Defined terms applicable to this § 148-47. For purposes of this Law, the following terms shall have the meanings respectively set forth below:

AGRICULTURE USE--- Land used for 'Agriculture' (as that term is defined at § 148-56 of this Law).

BELOW-REGULATORY CONCERN --- Radioactive material in a quantity or of a level that is distinguishable from background (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.

GATHERING LINE, or PRODUCTION LINE --- Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, and 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).

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 and/or Petroleum Extraction, Exploration or Production Wastes are applied to the soil surface or injected into the upper layer 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, 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 making 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 statutory or regulatory definitions of “industrial waste,” “hazardous,” or “toxic,” 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, 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, 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 before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

NATURAL GAS COMPRESSION FACILITY --- Those facilities or combination of facilities that move natural gas or oil 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, 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. Specifically includes production lines and gathering lines.

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 and other 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 easement or private right of way within the Town. This term includes, without limitation, gathering lines, production lines, and transmission lines.

RADIOACTIVE MATERIAL --- Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. 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.

TRANSMISSION LINE --- A pipeline that transports petroleum, natural 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 section 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 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 for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines.

E. Pre-Existing, Legal Non-Conforming Natural Gas And/Or Petroleum Extraction Activities. Notwithstanding any provision of this Law to 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.a. 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 all valid permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies for such activities, 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 of clauses 2. and 3. of this Clause E.

b. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding clause 1.a. of this Clause E. shall not be grandfathered, and shall in all respects be prohibited as contemplated by Clause A. of this § 148-47.

2. Upon the depletion of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause 1.a. of this Clause E., or upon any other substantive cessation of Natural Gas And/Or Petroleum Extraction Activities (otherwise grandfathered by virtue of clause 1.a. of this Clause E.) for a period of more than twelve (12) months, then and in such event the non-conforming use status of such Activity shall terminate, and thereafter such Natural Gas And/Or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by Clause A. of this § 148-47.

3. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by clause 1.a. of this Clause E. 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 shall not be grandfathered under clause 1.a. of this Clause E., and instead shall in all respects be prohibited as contemplated by Clause A. of this § 148-47."

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

2.8. Amendments of § 148-56 of the Existing Zoning Law

§ 148-56 of the Existing Zoning Law is hereby amended so as to add the following text to the present definition of “Open Pit Mining,” said text to be inserted immediately following the end of the sentence which begins “Use of a parcel of land...”:

“In no event shall ‘open pit mining’ be construed to mean, be, or include natural gas and/or petroleum exploration activities or natural gas and/or petroleum extraction activities.”

§ 148-56 of the Existing Zoning Law is hereby further amended so as to delete the heading and text of the present definition of “Utility Facility” in the entirety, and so as to substitute the following text therefor:

“UTILITY FACILITY/PUBLIC UTILITY –A utility facility is a use which is operated by a public utility, and which provides cable television, electric, gas, steam, telephone service, water, or sewerage directly to the general public. Examples are electric substations. A public utility is an entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission. Connections from utility facilities to the homes and businesses of customers of the public utility are considered accessory uses.”

2.9 Effective Date of this Local Law

This Local Law shall be effective upon filing with the office of the Secretary of State, and the Town Clerk is directed to immediately file a copy of this Local Law with the New York State Secretary of State as required by law.

Adopted by the Skaneateles Town Board on _____.

APPENDIX A
ATTACHED TO AND FORMING A PART OF
TOWN OF SKANEATELES (NY) LOCAL LAW NO. ____ of the YEAR 2011,
being:

A local law to amend and supplement Local Law No. 3 of 2005,
(as heretofore amended),
by:

Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited;
Articulating Certain Explicitly Prohibited Uses;
Adding Certain New Definitions, and Changing Certain Existing Definitions; and
Modifying, Clarifying, and Adding to the Provisions Regarding Use Variances Generally, and
Use Variances Respecting Explicitly Prohibited Uses, Specifically.

Skaneateles Local Law No. ____ of 2011, the Local Law to which this Appendix A is attached, is herein sometimes referred to as "the Local Law," "this Local Law" or "this Law."

This Appendix A is a part of the Local Law to which it is attached for all purposes.

Section 1. Authority. This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Skaneateles 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, Section 2 (c)(ii)(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, §27-0711; and New York State Law, Public Health Law § 228 (2), and (3).

Section 2. Findings of Fact.

- A. Skaneateles is a community in the Finger Lakes Region that takes great pride in its rural residential and agricultural character, scenic and other natural resources, and small-town atmosphere.
- B. Preservation of the Town's irreplaceable historic, recreation, and tourism sites, water and air quality, prime farmland, and priceless and unique character, is of significant value to the inhabitants of the Town and to the tourists who visit here.
- C. The Town's rich natural and visual environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the water, scenic and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions

from people. They deeply affect the way people feel about a place – whether or not businesses will want to locate or people will want to live in and visit a place.

- D. The Explicitly Prohibited Uses described in § 148-47 of this Law are in conflict with the Town's 2005 Comprehensive Plan (the Town and Village of Skaneateles Joint Comprehensive Plan, adopted July 11, 2005), and would impair the existing character of the Town, because by their very nature such uses have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities in which they are located. 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, decreased recreational opportunities, and damage to the tourism industry.
- E. If one or more of the Explicitly Prohibited Uses described in § 148-47 of this Law are conducted within the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Roads are a critical public resource and constitute a major investment of the public's money. Accidents involving heavy trucks have greater potential for death than those involving smaller vehicles. Increased truck traffic increases air pollution and noise levels, and decreases the quality of life and property values for those living nearby.
- F. Allowing one or more of the Explicitly Prohibited Uses described in § 148-47 of this Law to be conducted within the Town could negatively impact the tourism industry within the Town, and could impair the Town's ability to attract additional tourism-related businesses.
- G. If one or more of the Explicitly Prohibited Uses described in § 148-47 of this Law are conducted within the Town, the air pollution, dust and odors generated thereby (whether onsite or by truck traffic to and from the sites of such uses) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the public health.
- H. Much of the Town is in the Skaneateles Lake watershed, and land use activity is a major determinant of the Lake's water quality. The Lake serves as the principal water supply for the City of Syracuse. Furthermore, a portion of Owasco Lake's watershed is in the Town. Allowing one or more of the Explicitly Prohibited Uses described in § 148-47 of this Law to be conducted within the Town could negatively impact the quality of water resources within the Town. 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.
- I. If one or more of the Explicitly Prohibited Uses described in § 148-47 of this Law are conducted within the Town, noise, vibrations, and light caused by such uses could be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, and vibrations can have negative effects on human health and wildlife.

- J. The creation, generation, keeping, storage or disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as defined in § 147-48) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.
- K. The high costs associated with the disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as defined in § 147-48) 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.
- L. The explicit proscription of the Explicitly Prohibited Uses described in § 148-47 of this Law is a legitimate goal of land use laws. There is no question that exclusion of specified industrial uses is a legitimate goal of land use laws:

As the United States Supreme Court stated in *Village 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.

[...]

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one [....] The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people. 416 U.S. at 9.

And see also *Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y. 2d 668 (1996), where 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,' and 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.)

Section 3. Purposes and Intent.

The Purposes and Legislative Intent respecting this Local law are as follows:

A. Purposes. This Local Law is enacted so as to take proactive steps to protect and preserve the quality of the Town's air and water and historic resources, and other assets, and to protect and promote the health, safety, and welfare of the Town and its present and future residents. Without limiting the generality of the foregoing, this Local Law is intended and is declared by the Town Board to:

(1) promote the purposes of planning and land use regulation by, among other things, preserving the roads, and fire, police, and other emergency response services in the Town;

(2) promote the health, safety and welfare of the Town, its present and future inhabitants, by protecting them from the adverse public nuisance and/or land use impacts and effects that could result if the activities prohibited by § 148-47 of this Local Law were allowed to be conducted within the Town;

(3) protect the Town's priceless and unique character, the preservation of which is of significant value to the inhabitants of the Town and the tourists who visit here, by protecting it from the adverse public nuisance and/or land use impacts and effects that could result if the activities prohibited by § 148-47 of this Local Law were allowed to be conducted within the Town; and

(4) protect the Town's irreplaceable historic, water quality, air quality, scenic and other natural resources, by protecting them from the adverse public nuisance and/or land use impacts and effects that could result if the activities prohibited by § 148-47 of this Local Law were allowed to be conducted within the Town.

B. Declaration of Intent.

(1) Exercise of Police Power. This Local Law is a police power, public nuisance and land use regulation, designed to establish and provide for general land use regulation, environmental protection, public safety, prevention of increased traffic congestion, protection of rural and agricultural resources, preservation of the character of the Town, protection of air quality, protection of water resources quality, prevention of noise and disturbance, protection against diminished property values, and protection of the public from nuisance and/or land use effects and impacts, resulting from the activities prohibited by § 148-47 of this Local Law.

(2) Prohibition Against Specified Solid Wastes. This Local Law also intends to regulate, in a manner consistent with law, including without limitation, NY ECL § 27-0711, and conducive to the health and welfare of the citizens of the Town, the dumping, discharging, injection and disposal of materials herein defined as "Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes" on lands and in bodies of water within the Town.

(3) Protection of Private Drinking Water Supplies. This Local Law is intended to protect drinking water supplies and is intended to supplement and enhance and is

not intended to impinge upon the Safe Drinking Water Act and the Underground Injection Control programs administered by the Environmental Protection Agency.

(4) Matters of Local Concern. This Local Law is intended to and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town Board to address matters of statewide concern.

(5) Negative Externalities. This Local Law is intended and is hereby declared to impose conditions and restrictions on the use of property that are directly related to and incidental to the use of that property, and such conditions and restrictions are aimed at minimizing or precluding the adverse impact on the Town that could result from an inappropriate use of the property that could otherwise adversely affect the comfort, peace, enjoyment, health and safety of the surrounding land.

(6) Land Use Control. This Local Law is intended to act as and is hereby declared to exercise the permissive "incidental control" of a police power law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community. This Law is not intended to regulate the operational processes of any business. This Local Law is a law of general applicability and is intended to promote the interests of the community as a whole.

-- END --