

TOWN OF HIGHLAND (NY) LOCAL LAW NO. 3 of the YEAR 2012,
being:

**A local law to proscribe certain high impact industrial uses,
by:**

**Amending Local Law No. 1 of 1999, as heretofore amended;
Adding §190-27 to the Code of the Town of Highland;
Articulating Certain Explicitly Prohibited Uses;
Adding Certain New Definitions, and Changing Certain Existing Definitions;
Establishing a Severability Clause.**

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

Article I. General Provisions

Section 1.1. Authority for Adoption

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 Highland 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 1.2. Findings of Fact

1. Highland is a community in Sullivan County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, and scenic and other natural resources. These unique assets and the need for their protection is fully articulated in the "Comprehensive Plan for the Town of Highland - 2012." The protection of these assets is fundamental and integral to the health, safety and welfare of the people of the Town of Highland.
2. Maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health, safety and welfare of Town residents, and the local economy.
3. 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 scenic and other natural resources of the Town is important for both a healthy environment and vibrant economy.

4. The creation, generation, keeping, storage or disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at § 190-27 D. of the Local Law) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.

Section 1.3. Purpose & 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 one or more of the Explicitly Prohibited Uses described in § 190-27 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 one or more of the Explicitly Prohibited Uses described in § 190-27 of this Local Law were allowed to be conducted within the Town; and

(4) protect the Town's traditional activities including traditional activities such as hunting and fishing. Nothing set forth in §190.27 of this Local Law shall in any way affect the Town's traditional activities including hunting and fishing.

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 Highland adopted as Local Law No. 1 of 1999, as amended.

As used herein, the term this "Local Law" shall mean and be this Local Law No. 3 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 to add new § 190-1A to the Existing Zoning Law

The Existing Zoning Law is hereby amended so as to add the following new § 190-1A thereto, said new § 190-1A to be inserted immediately after the text of present § 190-1 thereof (entitled 'Purposes') and immediately prior to the text of present § 190-2 thereof (entitled 'Definitions'):

"§ 190-1A. Severability.

If any clause, sentence, paragraph, section, or part of this Law shall be adjudicated by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Law, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof declared to be invalid."

2.2. Amendments to § 190-2 of the Existing Zoning Law

A. § 190-2 of the Existing Zoning Law is hereby amended so as to insert the following definition of "Explicitly Prohibited Uses" therein, said definition to be inserted immediately after the present definition of "EDUCATIONAL INSTITUTIONS" and immediately before the present definition of "FAMILY":

"EXPLICITLY PROHIBITED USES" – Shall mean and be the Explicitly Prohibited Uses defined and described in § 190-27 of this Law."

B. § 190-2 of the Existing Zoning Law is hereby further amended so as to add the following text to the present definition of "MINERAL EXTRACTION," said text to be inserted immediately following the end of the sentence that begins "Operations extracting greater...":

"In no event shall 'mineral extraction' be construed to mean, be, or include natural gas and/or petroleum exploration activities or natural gas and/or petroleum extraction activities (as those terms are respectively defined at § 190-27 of this chapter)."

C. § 190-2 of the Existing Zoning Law is further hereby amended so as to delete the term "OIL AND NATURAL GAS DRILLING" and its corresponding definition (beginning "Any oil or natural gas ...") in the entirety.

D. § 190-2 of the Existing Zoning Law is further hereby amended so as to delete the words 'AND UTILITY' from the (present) term "PUBLIC FACILITY AND UTILITY."

E. § 190-2 of the Existing Zoning Law is further hereby amended so as to insert the following definition of "Public Utility" therein, said definition to be inserted immediately after the present

definition of "PUBLIC PARKS AND RECREATION" and immediately before the present definition of "QUARRYING":

"PUBLIC UTILITY – An entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission. A public utility facility is a facility which is operated by a public utility, and which provides electric, gas, steam, telephone service, water or sewerage directly to the general public."

F. § 190-2 of the Existing Zoning Law is hereby further amended so as to add the following text to the present definition of "QUARRYING," said text to be inserted immediately following the end of the sentence that begins "An excavation or pit...":

"In no event shall 'quarrying' be construed to mean, be, or include natural gas and/or petroleum exploration activities or natural gas and/or petroleum extraction activities (as those terms are respectively defined at § 190-27 of this chapter)."

G. § 190-2 of the Existing Zoning Law is hereby further amended so as to add the following text to the present definition of "STRIPPING," said text to be inserted immediately following the end of the sentence that begins "Permanent relocation of soil...":

"In no event shall 'stripping' be construed to mean, be, or include natural gas and/or petroleum exploration activities or natural gas and/or petroleum extraction activities (as those terms are respectively defined at § 190-27 of this chapter)."

2.3. Amendment to add the text of a New Section to the Existing Zoning Law

§ 190-27 of the Existing Zoning Law is hereby amended so as to delete the word "(Reserved)" therefrom, and so as to insert the following new Section 190-27 thereat, said new Section to be inserted immediately after the text of present § 190-26 of the Existing Zoning Law:

"§ 190-27. 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 subsection D. below of this § 190-27*) 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:

1. High-impact Industrial Uses, including but not limited to any of the following: (a) Natural Gas And/Or Petroleum Exploration Activities; (b) Natural Gas And/Or Petroleum Extraction Activities; (c) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility; (d) Injection well; (e) Land Application Facility; (f) Natural Gas And/Or Petroleum Extraction, Exploration Or

Production Wastes Dump; (g) Natural Gas Compression Facility; (h) Natural Gas Processing Facility; (i) Non-regulated Pipelines; (j) Underground Injection; and (k) 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 expressly 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 Highland 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 Waste from Natural Gas And/Or Petroleum Extraction, Exploration Or Production.

C. No Application to Customary Local Distribution Lines, Etc. The prohibitions set forth above in this § 190-27 are not intended, and shall not be construed, to (a) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (b) prevent or prohibit the transmission of natural gas through utility pipes, lines, reduction stations, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or (c) 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 permitted uses within the Town.

D. Defined terms. For purposes hereof, and in addition to the terms defined in § 190-2 of this Law, the following terms shall have the meanings respectively set forth below:

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).

HIGH-IMPACT INDUSTRIAL USES ---Land uses which by the very nature in which they are conducted have the potential to significantly impact the environment, pose a risk to human health and safety, or disturb or interfere with reasonable community expectations regarding odors, noise, light, traffic and water quality. High impact industrial uses include but are not limited to what are traditionally considered to be "heavy industrial uses" and specifically include but are not limited to the following land uses: a) natural gas and/or petroleum exploration activities; b) natural gas and/or petroleum extraction activities; c) natural gas exploration, extraction, or production wastes disposal or storage facility; d) injection wells; e) land application facility; f) natural gas exploration, extraction, or production wastes dump; g) natural gas compression facility; h) natural gas processing facility; i) non-regulated pipelines; j) underground injection; k) underground natural gas storage. For purposes of this Law, "high impact industrial uses" do not include 1) agriculture use; 2) any use that is specifically articulated in this Law as allowed by right within an appropriate district as a principal permitted or accessory use; or 3) any use that is specifically articulated in this Law as allowed within an appropriate district as a principal permitted or accessory use upon obtaining a special use permit.

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. (Note: as used in this Law, the term "Natural Gas And/Or Petroleum Exploration Activities" is not intended and shall not be construed to include the conduct of

"seismic surveys," which are separately defined at, and subject to, the provisions of Chapter 147 ("Seismic Surveys") of the Code of the Town of Highland.)

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 related to natural gas and/or petroleum extraction activities.

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 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, 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 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 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 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.

WATER; WATER RESOURCES --- All streams, ditches, lakes, ponds, marshes, vernal pools, watercourses, waterways, wells, springs, drainage systems, and all other bodies or accumulations of water, surface or underground, intermittent or perennial, which are contained in, flow through or border upon the Town or any portion thereof.

2.4. Severability.

If any clause, sentence, paragraph, section, or part of this Law shall be adjudicated by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Law, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof declared to be invalid.

2.5. 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.