

APPENDIX A
ATTACHED TO AND FORMING A PART OF
TOWN OF BETHEL (NY) LOCAL LAW NO. 1 of the YEAR 2012,
being:

**A local law to amend the Town of Bethel Code Chapter 345 – Zoning
(as heretofore amended), by:**

**Establishing a Severability Clause;
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;
Requiring Manufacturing and Light Industrial Uses to be
Performed within Enclosed Structures; and
Modifying, Clarifying, and Adding to the Provisions Regarding Area and Use
Variances Generally, and Use Variances Respecting Explicitly Prohibited Uses,
Specifically.**

Bethel Local Law No. 1 of 2012, 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 Bethel 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; Environmental Conservation Law § 17-1101, §27-0711; and New York State Law, Public Health Law § 228 (2), and (3) and the Town Code of the Town of Bethel §345-64.

Section 2. Findings of Fact.

A. The Town of Bethel (herein, “Bethel” or the “Town”) is the centerpiece of Sullivan County. Bethel is both an agricultural area and part of the Catskills vacation and scenic Upper Delaware River regions. The Town takes great pride in and assigns great value to its natural and agricultural landscapes, rural residential character, and blend of historic, cultural, scenic, and natural resources. The world-famous Woodstock Festival of 1969 took place in Bethel, and Bethel is now proud home to the Bethel Woods Center for the Arts and The Museum at Bethel Woods, which attract a quarter of a million visitors a

year. With its beautiful forested areas, abundant water areas, and superb outdoor recreation opportunities, Bethel seeks to attract even more visitors. That strategy has the potential to be a significant economic development driver for the Town provided that Bethel protects its scenic and other natural resources and does not instead devote its open space to natural gas drilling and other high-impact uses.

B. In addition to tourism, second home ownership, together with conversion of seasonal properties to year-round homes, contributes significantly to the economic basis of the Town. This economic driver is also dependent on the Town's protection of its air quality, water quality, scenic vistas and other natural resources.

C.. The Town includes access to 27 large water bodies. 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.

D. Preservation of the Town's irreplaceable historic and recreation sites, high-quality agricultural land, air quality and water quality, and priceless and unique character, is of significant value to the year-round inhabitants of the Town, second homeowners and other seasonal residents, and the tourists who visit here.

E. 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. Aesthetic issues are real and evoke strong reactions from people. They deeply affect the way people feel about a place – whether or not seasonal homeowners will choose to retire here, businesses and newcomers will want to locate here, and recreationalists and tourists will want to visit here.

F. Allowing one or more of the Explicitly Prohibited Uses described in § 345-38 of the Local Law to be conducted within the Town would 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 the health and welfare of the people living in or in proximity to the communities in which they are located. Such negative impacts may include, without limitation, degradation of water quality, degradation of air quality, adverse health impacts, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, forested areas and scenic views, decreased recreational opportunities, increased truck traffic, noise, vibrations, and fumes, and damage to the tourism industry and second home market.

G. If one or more of the Explicitly Prohibited Uses described in § 345-38 of the Local Law are conducted within the Town, increased traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians, cyclists, and motorists. The population of the Town almost doubles during the summer months and many tourists and residents alike walk with children and strollers on roads that lack sidewalks. Even for those in cars, accidents involving heavy trucks

have greater potential for death and serious injury than those involving smaller vehicles. Increased truck traffic may also result in traffic congestion that delays emergency response times for medical emergencies, fires and accidents and constitute a significant disincentive to tourists, visitors and prospective residents. Increased truck traffic increases air pollution and noise levels, and decreases the quality of life and property values for those living nearby. Roads are a critical public resource and constitute a major investment of the public's money.

H. Allowing one or more of the Explicitly Prohibited Uses described in § 345-38 of the Local Law to be conducted within the Town could negatively impact second home ownership, seasonal home conversions to year-round homes and tourism within the Town, all significant economic drivers of the Town's economy, and could impair the Town's ability to attract additional tourism-related businesses.

I. If one or more of the Explicitly Prohibited Uses described in § 345-38 of the Local Law are conducted within the Town, the air pollution, dust and odors generated thereby (whether due to the Explicitly Prohibited Use and/or the truck traffic to and from the proposed site of such activities) could be hazardous or inconvenient to the inhabitants of the Town, particularly pregnant women, infants and children, the elderly, and individuals with chemical sensitivities or respiratory ailments. Air pollution is a known and serious threat to human health and the environment.

J. Allowing one or more of the Explicitly Prohibited Uses described in § 345-38 of the Local Law to be conducted within the Town could negatively impact the quality of water resources within the Town. All of the Town's residents depend on surface and groundwater for drinking water and a high percentage of Town residents secure their drinking water from unfiltered private wells. If a domestic water source is contaminated, that contamination may not be immediately known causing an exacerbation of the health risk to humans and other receptors. Further, remediation of a contaminated water source is time and cost intensive, and may not restore the water resource to a quality acceptable for domestic use. Water pollution is hazardous to the public health and the environment.

K. If one or more of the Explicitly Prohibited Uses described in § 345-38 of the Local Law are conducted within the Town, additional traffic impacts, noise and light pollution may occur, which are already recognized by the Town and the State of New York to have sufficient environmental impacts so as to need separate regulatory review (*See, e.g.*, Chapter 220 of the Code, §345-21.F, and 6 NYCRR §617.7(c)(1)(i).

L. The creation, generation, keeping, storage or disposal of Hazardous Wastes and/or Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as those terms are defined at § 345-38 C. 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.

M. The high costs associated with the disposal of Hazardous Wastes and/or Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as those terms are defined at § 345-38 C. of the Local Law) have in other localities resulted, and could in

the 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 have a significant negative impact on wildlife habitats.

N. The explicit proscription of the Explicitly Prohibited Uses described in § 345-38 of the Local Law is a legitimate goal of land use laws. There is no question that exclusion of the specified Explicitly Prohibited 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.

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, high quality physical environments and wildlife habitats, historic and cultural resources, and other assets, to encourage the tourism industry and the second homeowner market, 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 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 § 345-38 of this Local Law were allowed to be conducted within the Town;

(2) protect the Town's unique character, the preservation of which is of significant value to the year-round and seasonal 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 § 345-38 of this Local Law were allowed to be conducted within the Town;

(3) preserve the Town's irreplaceable historic, water quality, air quality, scenic landscapes, tourism sites, and other natural resources, 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 § 345-38 of this Local Law were allowed to be conducted within the Town; and

(4) 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.

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 Explicitly Prohibited Uses described in § 345-38 of this Local Law.

(2) Prohibition Against Specified Solid Wastes And Certain Waste Disposal Sites. 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" or "Hazardous Wastes" on lands and in bodies of water within the Town. This Local Law also intends to prohibit, through the exercise of the Town's authority under applicable law, including without

limitation, NY ECL § 27-0711, Dumps, Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dumps and Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/ Storage Facilities and, to the extent permitted by NY ECL 27-1107, all Hazardous Waste Landfills.

(3) Protection of 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” by the Town of its police power applied to the 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 air and water quality, 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.
