



Town *of Caledonia*

3109 Main Street • Caledonia, NY 14423  
(585) 538-4927 • Fax (585) 538-6348



May 25, 2012

Towns of Avon, Leroy, Pavilion, Rush, Wheatland and York, the Villages of Avon and Caledonia and Clerk of Livingston, Genesee, and Monroe Counties

Re: Enclosed Proposed Local Law No. 1 For 2012  
Copy of Legal Notice  
Comments from Livingston County Planning Department

As per Town Law 264, this serves as official notice of such.

Sincerely,

Laurie Sattora  
Caledonia Town Clerk



Town  
of  
*Caledonia*

3109 Main Street • Caledonia, NY 14423  
(585) 538-4927 • Fax (585) 538-6348



TOWN OF CALEDONIA  
LEGAL NOTICE

NOTICE IS HEREBY GIVEN that on May 10, 2012 there has been presented to the Town Board of the Town of Caledonia New York, proposed Local Law No. 1 for The Year 2012. A Local Law to institute a Moratorium and Prohibition within the Town of Caledonia, Livingston County, New York (hereinafter "Town"), of Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes.

THEREFORE, pursuant to statute the Town Board will hold a public hearing on said Local Law at 7:15 P.M. on Thursday, June 14, 2012 at the Caledonia Town Hall, 3109 Main Street, Caledonia, Livingston County New York, at which time and place all persons interested will be heard.

May 11, 2012  
By Order of The Town Board  
Laurie Sattora  
Town Clerk  
Caledonia, New York



**LIVINGSTON COUNTY  
PLANNING BOARD**

Livingston County Government Center  
6 Court Street, Room 305  
Geneseo, New York 14454-1043

Telephone: (585) 243-7550

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May 11, 2012

Laurie Sattora  
Town of Caledonia  
3109 Main Street  
Caledonia, NY 14423

Re: Zoning Referral #2012-34, Town of Caledonia, Moratorium and Prohibition on Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration, and Production Wastes (Applicant: Town of Caledonia)

Dear Ms. Sattora:

The Livingston County Planning Board, at its regular meeting on May 10, 2012, reviewed the zoning referral from the Town of Caledonia of the above mentioned pursuant to Sections 239-l and m of the General Municipal Law of the State of New York. The Planning Board voted to recommend "Approval" of the proposed action with the following advisory comments:

1. The regulations of Town Law § 264 apply to this proposal because this proposal involves lands that are within 500 feet of the boundaries of the Towns of Avon, Leroy, Pavilion, Rush, Wheatland and York, the Villages of Avon and Caledonia, and Monroe and Genesee Counties. The Town should ensure all the necessary notifications are completed at least ten days prior to the public hearing, as required.
2. Laws that regulate local roads and real property taxes are two cases where municipalities are specifically granted power to act by the State regarding oil and gas drilling activities. Livingston County is developing a Model Road Use Agreement that will address the responsibilities of companies that wish to conduct natural gas and petroleum exploration or extraction activities in the county. The Town of Caledonia should consider creating a Road Use Agreement to protect town roads from any potential heavy use associated with natural gas and oil drilling activities.
3. If the Town of Caledonia adopts the proposed moratorium, the Town should consider educating landowners and farm operators on the importance of protective language in natural gas and oil rights leases to safeguard prime agricultural soil and other important natural resources.
4. The NRI advocates for well thought out development that weighs environmental impacts and encourages alternatives that minimize impact to natural resources.

5. During the 12-month moratorium, the Town will be obligated to research the pros and cons of natural gas drilling and the other activities listed in the moratorium and to determine the effects on public health, welfare and safety in the Town. Once the Town has a handle on the impact of these activities, it must then actively pursue a strategy to address the issue.
6. The Town may wish to consult with the NYS Department of State Local Government Office to determine how to handle the potential conflict between the grandfathering of new natural gas exploration activities and the findings in Section 2 of the proposed moratorium.

There was a quorum present at this meeting. There was a majority vote on this matter.

Thank you for submitting the proposed for County Planning Board review. If you have any questions regarding this referral, please do not hesitate to call Heather Ferrero, Planner, or me at 243-7550.

Sincerely,



Angela Ellis  
Planning Director

cc: Sue Erdle, Chairman, Livingston County Planning Board  
Joan Crunden, Town of Caledonia representative, Livingston County Planning Board  
Dan Pangrazio, Supervisor, Town of Caledonia, Applicant

**TOWN OF CALEDONIA LOCAL LAW NO. 1 OF 2012**

A local law to institute a Moratorium and Prohibition within the Town of Caledonia, Livingston County, New York (hereinafter “Town”), of Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes.

BE IT ENACTED by the Town Board of the Town of Caledonia, Livingston County, New York, as follows:

**Section 1. Title**

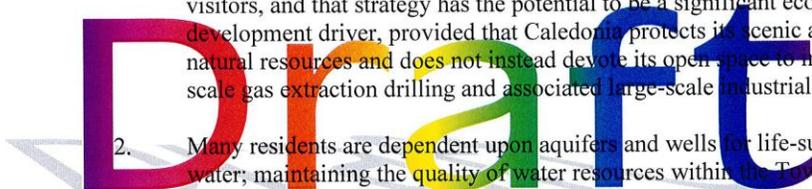
This Local Law shall be known as the “Moratorium on and Prohibition of Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes.”

**Section 2. Authority and Intent; Findings; Purpose**

- A. Authority and Intent – 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 Caledonia 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).

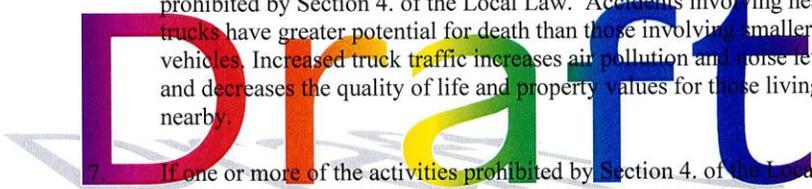
This Law is a police power and land use regulation. This Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive “incidental control” of a zoning law and land use 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.

- B. Findings of Fact - The Town makes the following Findings of Fact relating to this Local Law:



1. Caledonia is a community in the northern part of Livingston County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, fine agricultural lands, and cultural, recreational, scenic and other natural resources. Caledonia attracts a significant number of yearly visitors. Caledonia seeks to attract even more visitors, and that strategy has the potential to be a significant economic development driver, provided that Caledonia protects its scenic and other natural resources and does not instead devote its open space to industrial-scale gas extraction drilling and associated large-scale industrial activities.
2. Many residents are dependent upon aquifers and wells for life-sustaining water; maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy.
3. Preservation of the Town's irreplaceable recreational and scenic sites, high-quality agricultural land, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the people who visit here.
4. The Town's rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic, recreational, 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.
5. Allowing the activities prohibited by Section 4. of the Local Law without first obtaining more education and information may impair the existing character of the Town, because by their nature, such activities may 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 industries.
6. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, traffic generated thereby may be

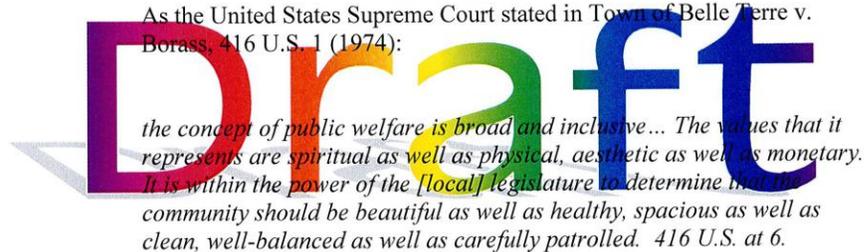
hazardous or inconvenient to the inhabitants of the Town and may be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Roads are a critical public resource and constitute a major investment of the public's money. The Town is not in a position to bear the potential high costs associated with the possible road use impacts that accompany many of the activities prohibited by Section 4. of the Local Law. 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.

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7. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, the air pollution, dust and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) may be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the public health.
  8. Allowing one or more of the activities prohibited by Section 4. of the Local Law to be conducted within the Town may 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 may be time and cost intensive, and may not restore the water resource to a quality acceptable for domestic use.
  9. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, noise, vibrations, and light pollution typically caused by such Activities may be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, and vibration may have negative effects on human health and negatively impact wildlife.
  10. The creation, generation, keeping, storage or disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at Section 3. of the Local Law) within the Town, may have a negative impact on the public health, safety and welfare of the inhabitants of the Town.
  11. The high costs associated with the disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at Section 3. of the Local Law) in our Town, could 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.

12. The explicit proscription of the activities prohibited by Section 4. of the Local Law is a legitimate goal of land use laws. There is no question that exclusion of specified industrial activities 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 word "Draft" is written in a large, multi-colored font (purple, red, orange, yellow, green, blue) across the center of the page. It is semi-transparent, allowing the text underneath to be seen. The letters are bold and have a slight shadow effect.

*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.)*

- C. Purpose - The purpose of the Local Law is to enable the Town of Caledonia to stay the construction, operation, and establishment of, and the submission and processing of applications for permits, zoning permits, special use permits, zoning variances, building permits, operating permits, site plan approvals, subdivision approvals, certificates of occupancy, certificates of compliance, temporary certificates, and other Town-level approvals relating to the activities prohibited by Section 4. of the Local Law, for a reasonable time, so as to allow the Town time

to study the impacts, effects, and possible controls over such activities and to consider amendments to the Town's zoning laws to appropriately address the same within the proper confines of New York State law. The Town Board finds that a moratorium of twelve (12) months duration, coupled with a mechanism for an 'unnecessary hardship' variance procedure, will achieve an appropriate balancing of interests between (on the one hand) the public need to safeguard the character and other resources of the Town of Caledonia and the health, safety and general welfare of its residents, and the rights of individual property owners or businesses desiring to conduct such activities (on the other) during such period.

### Section 3. Definitions

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

# Draft

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

**Below-Regulatory Concern** – Radioactive material in a quantity or of a level that is distinguishable from background (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 box, 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 Volume Hydraulic Fracturing** – The stimulation of a vertical or horizontal well using 3000,000 gallons or more of water as the primary carrier fluid in the Hydraulic Fracturing Fluid used in the process of Hydraulic Fracturing.

**Horizontal Drilling** – The process of drilling a well from the surface to a subsurface location just above the target gas or oil reservoir, then deviating the well bore from the vertical plane around a curve to intersect the reservoir at the an entry point with a near-horizontal inclination, and remaining within the reservoir until the desired bottom hole location is reached.