LOCAL LAW FILING

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County
City

Town of Marbletown
Village

Local Law No. X of the year 2013

A local law to amend and supplement
the Zoning Law of the Town of Marbletown adopted May 24, 1989
(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; and
Modifying, Clarifying, and Adding to the Provisions Regarding Use Variances and Violations
and Penalties Generally.

Be it enacted by the Town Board of the

County
City

Town of Marbletown, as follows:
Village

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 Marbletown, New York adopted May 24, 1989, as amended to
date, including by: Local Law No. 1 of 1990, Local Law No. 1 of 1995, Local Law No. 2 of
No. 4 of 1999, Local Law No. 1 of 2002, No. 2 of 2003, No. 3 of 2003, No. 3 of 2004, No. 4 of
2009.

As used herein, the term this “Local Law” shall mean and be this Local Law No. 1(?)
of 2013.

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 Article I of the Existing Zoning Law

The Existing Zoning Law is hereby amended so as to add the following new § 200-3A
thereto, said new Section to be inserted immediately after the text of present § 200-3 of the
Existing Zoning Law, and immediately prior to the heading and text of Article II of the
Existing Zoning Law:

“§ 200-3A. SEVERABILITY.
If any word, phrase, sentence, part, section, subsection, or other portion of this Law,
or the application thereof to any person or to any circumstance, is adjudged or
declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board hereby declares that it would have enacted this Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable."

2.2. Amendments to Article II of the Existing Zoning Law

A. Article II of the Existing Zoning Law is hereby amended so as to delete the text presently below the Section heading "§ 200-5. Zoning Map" (beginning "The location and boundaries of said ... ") in the entirety, and to substitute the following text therefor:

"The boundaries of the zoning districts are shown on the map entitled "Zoning Map of the Town of Marbletown," which is hereby declared to be a part of this Law. The official Zoning Map shall be kept on file in the office of the Town Clerk. Unofficial reductions of this map shall be for reference purposes only. Changes may be made in district boundaries only by a zoning amendment adopted by the Town Board. Any such changes shall be noted by the Town Clerk on the official Zoning Map promptly after the Town Board adopts such an amendment. In the event of a conflict between the Zoning Map in the Town Clerk's office and the specific local law adopting a Zoning Map amendment, the specific local law shall be the controlling authority as to the current zoning status of lands, structures and uses in the Town."

B. Clause A. of § 200-6 of the Existing Zoning Law is hereby amended so as: (i) to delete the words (and punctuation) "or watercourses," from the present second line of text thereof; (ii) to delete the words "or watercourse" from the present fifth line of text thereof; and (iii) insert the following text as the (new) final two sentences of said Clause A.:

"Where the boundary of a district is indicated as following shorelines of ponds and lakes, said boundary line shall be construed to follow such shorelines and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline. Where the boundary of a district is indicated as following a stream or other watercourse, said boundary line shall be construed to follow the centerline of such stream or watercourse and, in the event of change in the same, shall be construed as moving with the actual stream or other watercourse."

2.3. Amendments to Article III of the Existing Zoning Law
A. Article III of the Existing Zoning Law is hereby amended so as to replace the present title of such Section ("Use Regulations") with the words "Use Regulations; Any Use Not Specifically Permitted Is Prohibited."

B. § 200-8 of the Existing Zoning Law is hereby amended so as to delete the present first sentence thereof (beginning "No building or premises shall be erected, altered ...") in the entirety, and to substitute the following text therefor:

"Any use not specifically set forth as a permitted use (as of right, as of right upon site plan approval, accessory, or upon special use permit, as the context may admit) in any zoning 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 a different district unless it is specifically set forth as a permitted use in said different district."

C. § 200-8 of the Existing Zoning Law is hereby further amended so as to delete the present second-to-last sentence thereof ("Economic activities not shown on this use schedule are also prohibited.") in the entirety, and to substitute the following two sentences therefor:

"Any use not specifically set forth as a permitted use (as of right, as of right upon site plan approval, accessory, or upon special use permit, as the context may admit) in any zoning 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 a different district unless it is specifically set forth as a permitted use in said different district."

D. § 200-9 of the Existing Zoning Law is hereby amended so as to replace the present title of such Section ("Prohibited industrial uses.") with the words "Explicitly Prohibited Uses; Prohibition Against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes."

E. § 200-9 of the Existing Zoning Law is hereby amended so as to: (i) place the letter "A." at the beginning of the present first paragraph of text of said § 200-9 (which begins "In any district..."); and (ii) delete the words "any district where manufacturing or light industry is permitted" from the first line of the first paragraph of text thereof, and substitute the words "each and every district within the Town" therefor.

F. § 200-9 of the Existing Zoning Law is hereby further amended so as to delete the words ", and this includes more specifically, but is not limited to, the following such uses:" from the (present) fifth line of the first paragraph of text thereof, and to substitute the following text therefor:

". Without limiting the generality of the foregoing, the following uses and activities are nonexclusive examples of those that 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:"

G. § 200-9 of the Existing Zoning Law is hereby further amended so as to include the following (prohibited) Use within the columnar listing of prohibited uses presently specified, said (prohibited) Use to be inserted in the column immediately after "Junkyard, except as permitted by Town ordinances" and immediately before "Lime, gypsum, cement, plaster, or plaster of paris manufacture, except the mixing of plaster": "Land Application Facility."

H. § 200-9 of the Existing Zoning Law is hereby further amended so as to include the following (prohibited) Uses within the columnar listing of prohibited uses presently specified, said (prohibited) Uses to be inserted in the column immediately after "Linoleum or oil cloth manufacture" and immediately before "Ore reduction or the smelting of iron, copper, tin, zinc, or lead:"

"Natural Gas And/Or Petroleum Exploration Activities

Natural Gas And/Or Petroleum Extraction Activities

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

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

Natural Gas Compression Facility

Natural Gas Processing Facility"

I. § 200-9 of the Existing Zoning Law is hereby further amended so as to include the following (prohibited) Uses within the columnar listing of prohibited uses presently specified, said (prohibited) Uses to be inserted in the column immediately after "Tobacco processing, exclusive of cigar or cigarette manufacture" and immediately before "Vinegar, pickle, or sauerkraut manufacture in bulk:"

"Underground Injection

"Underground Natural Gas Storage"

J. § 200-9 of the Existing Zoning Law is hereby further amended so as to insert the following text as and at the end of present § 200-9, immediately after "Yeast manufacture" and immediately before the words "§ 200-10. (Reserved)"

"Any condition caused or permitted to exist in violation of this § 200-9 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. The Town of Marbletown hereby exercises its authority and right under
NY Environmental Conservation Law (“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 Exploration, Extraction Or Production Wastes.

C. The prohibitions set forth above in this § 200-9 are not intended, and shall
not be construed, to prevent or prohibit the right to use roadways in
commerce or otherwise for travel; 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 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 Farm, residential, business, commercial,
and other uses within the Town.”

2.4. Amendments to Article IV of the Existing Zoning Law

A. Clause D. (2) of § 200-13 of the Existing Zoning Law (captioned “Commercial, service,
light industrial and other nonresidential uses.”) is hereby amended so as to insert the
following text as the final sentence of said Clause D. (2) of § 200-13, immediately after the
present sentence that begins “Consideration shall be given...”:

“Notwithstanding any provision of this Law to the contrary, in no event may
any Explicitly Prohibited Use be conducted within a Planned Unit
Development (PUD) District.”

B. Subsection (c) of Clause C. (1) of § 200-14 of the Existing Zoning Law is hereby amended
so as to delete the (present) reference contained therein to “§ 200-11”, and to substitute “§
200-13” therefor.

2.5. Amendments to Article VI of the Existing Zoning Law
A. Clause A. (6) of § 200-39 of the Existing Zoning Law (captioned “Off-street parking and loading regulations.”) is hereby amended so as to delete the (present) words “For uses not listed herein:”, and to substitute the following words therefor: “For uses that are legally permitted within the district in question but which are not specified above in this § 200-39:”.

B. § 200-40 of the Existing Zoning Law is hereby amended so as to delete the (present) text of subsection (b) of Clause C. (2) thereof (beginning “All prohibited industrial uses . . .”), and to substitute the following words therefor: “All Explicitly Prohibited Uses.”

C. Clause D. (7) of § 200-46 of the Existing Zoning Law is hereby amended so as to delete the present first sentence thereof (beginning “Electric or gas utility substations, transformer stations, […] .”) in the entirety, and to substitute the following text therefor:

“Public utility facilities such as electric or gas substations, transformer stations, water or sewage pumping stations, and similar structures; provided, however, that such term shall not mean, be, or include Natural Gas Compression Facilities or Natural Gas Processing Facilities.”

2.6. Amendments to Article VII of the Existing Zoning Law

A. Article VII of the Existing Zoning Law is hereby amended so as to replace the present title of such Article (“Nonconforming Buildings, Uses and Lots”) with the words “Nonconforming Buildings, Uses, and Lots; Pre-Existing, Legal Non-Conforming Natural Gas And/Or Petroleum Extraction Activities”.

B. § 200-54 of the Existing Zoning Law is hereby amended so as to insert the words “Subject always to the provisions of § 200-63 hereof” as the (new) beginning of the present first sentence of text of said § 200-54 (which presently begins beginning “Any lawful building, structure . . .”).

C. Article VII of the Existing Zoning Law is hereby further amended, so as to delete the word “(Reserved)” presently at § 200-63, and so as to insert the following text as the new § 200-63, said new § 200-63 to be inserted immediately following the text of present § 200-62, and immediately prior to “§ 200-64. (Reserved)” of the Existing Zoning Law:

“§ 200-63. 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 physically conducted in the Town as of the effective date of this Local Law shall be subject to the following:

a. If, as of the effective date of this Local Law, physical Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town, and those activities are in all
respects being conducted in accordance with all applicable laws and regulations, including without limitation the possession of valid, non-revoked permits for all matters for which permits are required, and including compliance with each, any, and all permit conditions, as are or may be required by the New York State Department of Environmental Conservation ("DEC") and/or all other applicable local, state, and federal governments, bureaus, or agencies, then and only then such Activity by or on behalf of the holder of the permit(s) shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses b. and c. of this § 200-63.

2. 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 a. 1. of this § 200-63 shall not be grandfathered (or be permitted to continue or deemed lawful pre-existing uses), and shall in all respects be prohibited as contemplated by § 200-9 hereof.

b. Upon the depletion, closing, or reclamation of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause a. 1 of this § 200-63, or upon any other substantive cessation of Natural Gas And/Or Petroleum Extraction Activities for a period of more than twelve (12) months, then and in either of such events the pre-existing and/or non-conforming use status (and any related 'grandfathering rights') of or relating to such Activity shall terminate, and thereafter such Natural Gas And/Or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by § 200-9 hereof.

c. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause a. 1. of this § 200-63 is not intended, and shall not be construed, to authorize or grandfather any Natural Gas And/Or Petroleum Extraction Activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this Local Law. Any expansion or attempted or purported expansion of such well, whether as to its production, depth, horizon(s) or otherwise, shall not be grandfathered under Clause a. 1. of this § 200-63 and instead shall in all respects be prohibited as contemplated by § 200-9 hereof.”

2.7. Amendments to Article XI of the Existing Zoning Law

A. § 200-89 of the Existing Zoning Law is hereby amended so as to insert the following definition of “Below-Regulatory Concern” therein, said definition to be inserted immediately after the definition of “Bed-And-Breakfast Establishment” and immediately before the present definition of “Billboard”:

"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.”

B. § 200-89 of the Existing Zoning Law is hereby further amended so as to insert the
following text regarding the terms “Commercial; Commercial Uses” therein, said text to be inserted immediately after the definition of “Club, Membership” and immediately before the definition of “Commercial Horse Boarding Operation”:

“COMMERCIAL; COMMERCIAL USES
Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms “commercial,” “commercial uses,” or any variation thereof, be construed to mean, be, or include Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, a Natural Gas Compression Facility, a Natural Gas Processing Facility, or any other Explicitly Prohibited Uses.”

C. § 200-89 of the Existing Zoning Law is hereby further amended so as to insert the following text regarding the terms “Excavation Operations; Quarrying” therein, said text to be inserted immediately after the definition of “Erosion Control Manual” and immediately before the definition of “Family”:

“EXCAVATION OPERATIONS; QUARRYING
Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms “excavation operations,” “excavation,” “quarrying,” or any variation thereof, be construed to mean, be, or include Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, a Natural Gas Compression Facility, a Natural Gas Processing Facility, or any other Explicitly Prohibited Uses.”

D. § 200-89 of the Existing Zoning Law is hereby further amended so as to insert the following definition of “Explicitly Prohibited Uses” therein, said definition to be inserted immediately after the (newly inserted) definition of “Excavation Operations; Quarrying” and immediately before the present definition of “Family”:

“EXPLICITLY PROHIBITED USES
Shall mean and be the Explicitly Prohibited Uses defined and described in § 200-9 of this Law.”

E. § 200-89 of the Existing Zoning Law is hereby further amended so as to insert the following text regarding the terms “Industrial; Industry; Industrial Uses” therein, said text to be inserted immediately after the definition of “Impervious Cover” and immediately before the present definition of “Industrial Stormwater Permit”:

“INDUSTRIAL; INDUSTRY; INDUSTRIAL USES
Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms “industrial,” “industry,” “industrial uses,” or
any variation thereof, be construed to mean, be, or include Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, a Natural Gas Compression Facility, a Natural Gas Processing Facility, or any other Explicitly Prohibited Uses.”

F. § 200-89 of the Existing Zoning Law is hereby further amended so as to insert the following definition of “Injection Well” therein, said text to be inserted immediately after the definition of “Infiltration” and immediately before the present definition of “Junk Yard”:

“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.”

G. § 200-89 of the Existing Zoning Law is hereby further amended so as to insert the following definition of “Land Application Facility” therein, said text to be inserted immediately after the definition of “Kennel” and immediately before the present definition of “Land Development Activity”:

“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.”

H. § 200-89 of the Existing Zoning Law is hereby further amended so as to insert the following definition of “Mining; Mineral Mining; Soil Mining” therein, said text to be inserted immediately after the definition of “Maintenance Agreement” and immediately before the present definition of “Mobile Home”:

“MINING; MINERAL MINING; SOIL MINING
See “Soil Mining; Mining; Mineral Mining.”

I. § 200-89 of the Existing Zoning Law is hereby further amended so as to insert the following sentence as the (new) final sentence of text of the present definition of “Land Development Activity”

“Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the term “Land Development Activity,” or any variation thereof, be construed to mean, be, or include Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, a
Natural Gas Compression Facility, a Natural Gas Processing Facility, or any other Explicitly Prohibited Uses."

J. § 200-89 of the Existing Zoning Law is hereby further amended so as to insert the following definitions of (i) "Natural Gas," (ii) "Natural Gas and/or Petroleum Exploration Activities," (iii) "Natural Gas and/or Petroleum Extraction Activities," (iv) "Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes," (v) "Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility," (vi) "Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump," (vii) "Natural Gas Compression Facility," and (viii) "Natural Gas Processing Facility" therein, said definitions to be respectively inserted immediately after the definition of "Motel" and immediately before the present definition of "Nonconforming Bulk":

"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, extracting, or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

NATURAL GAS AND/OR PETROLEUM EXPLORATION, EXTRACTION 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 Farm use.

NATURAL GAS AND/OR PETROLEUM EXPLORATION, EXTRACTION 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 EXPLORATION, EXTRACTION 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 in connection with Natural Gas And/Or Petroleum Exploration Activities or Natural Gas And/Or Petroleum Extraction Activities.

NATURAL GAS COMPRESSION FACILITY
A facility constructed or operated to compress natural gas that originates from a gas well or collection of such wells, operating as a midstream facility for delivery of gas from a gas field for entry into the transmission pipeline system; the term shall not include the transmission pipeline itself; 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.

K. § 200-89 of the Existing Zoning Law is hereby further amended so as to insert the following definition of "Public Utility" therein, said text to be inserted immediately after the definition of "Protected Open Space" and immediately before the present definition of "Recharge":

"PUBLIC UTILITY
Public Utility: An entity which typically operates as a monopoly, but in any event whose rates charged to customers are established by a utility commission. A public utility facility, structure, or use is a facility, structure, or use which is operated by a public utility, and which provides electric, gas, steam, CATV, telephone or other communication service, water or sewerage directly to the general public. In no event shall 'Public Utility' or 'Public Utility Facility' be construed to mean, be, or include a Natural Gas Compression Facility or a Natural Gas Processing Facility, or any other Explicitly Prohibited Use."

L. § 200-89 of the Existing Zoning Law is hereby further amended so as to insert the following definitions of (i) "Radiation," and (ii) "Radioactive Material" therein, said definitions to be respectively inserted immediately after the (newly inserted) definition of "Public Utility" and immediately before the present definition of "Recharge":

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

RADIOACTIVE MATERIAL
Material in any form that emits radiation. This definition specifically includes NORM (naturally occurring radioactive material), but only if such naturally occurring material has been moved from its naturally occurring location through a mechanical or other man-made 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."

M. § 200-89 of the Existing Zoning Law is hereby further amended so as to insert the
following definition of “Soil Mining; Mining; Mineral Mining” therein, said text to be inserted immediately after the definition of “Single Ownership” and immediately before the present definition of “SPDES General Permit For Construction Activities GP-02-02”:

“SOIL MINING; MINING; MINERAL MINING

Any of the following activities: (a) the extraction of overburden and minerals from the earth; (b) the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, sorting, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use (exclusive of any manufacturing processes at the mine location); (c) the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; (d) the disposition of overburden, tailings and waste at the mine location; or (e) any combination of the above activities. In no event shall “soil mining,” “mining,” or “mineral mining” be construed to mean, be, or include Natural Gas And/Or Petroleum Exploration Activities, Natural Gas And/Or Petroleum Extraction Activities, or any other Explicitly Prohibited Use,” nor shall “soil mining,” “mining,” or “mineral mining” include (i) the excavation, removal or disposition of minerals from the site of, and incidental to, a construction project as to which all required permits are in force and, or (ii) excavations incidental to bona fide Farm use activities. For the purpose of this definition:

(A) Minerals - mean any naturally formed, usually inorganic, solid material located on or below the surface of the earth. “Minerals” include, but are not limited to, peat, topsoil, gravel, and stone. For purposes hereof, Natural Gas and other subsurface hydrocarbons shall not be considered “minerals.”

(B) Overburden - means all of the earth, vegetation and other materials that lie above or alongside a mineral deposit.

(C) Spoil and Tailings - have the meanings given to them by Article 23 of the NY ECL or any similar or successor statute.”

N. § 200-89 of the Existing Zoning Law is hereby further amended so as to insert the following definition of “Subsurface” therein, said text to be inserted immediately after the definition of “Structure” and immediately before the present definition of “Surface Waters Of The State Of New York”:

“SUBSURFACE

Below the surface of the earth, or of a body of water, as the context may require.”

O. § 200-89 of the Existing Zoning Law is hereby further amended so as to insert the
following definitions of (i) "Underground Injection," and (ii) "Underground Natural Gas Storage" therein, said definitions to be respectively inserted immediately after the definition of "Trailer Camp; Trailer Park" and immediately before the present definition of "Use":

"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."

2.8. Amendment to Article IX of the Existing Zoning Law

Article IX of the Existing Zoning Law is hereby amended so as to delete in the entirety the title and text of present clause (2) of subsection B. of § 200-74 of the Existing Zoning Law, and to substitute the following text therefor:

"(2) Use Variances

1. If a use variance is granted, the applicant shall obtain site plan review approval from the Planning Board prior to commencing the use and prior to obtaining a Building Permit.

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

1. Unnecessary Hardship. In order to prove such unnecessary hardship the applicant is required to clearly demonstrate to the Board of Appeals that, with respect to every permitted use under the zoning regulations for the particular district where the property is located, each and every of the following four criteria is satisfied: (a) 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; (b) that 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; (c) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (d) that the alleged hardship has not been self-created.
2. The 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.

3. The 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 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.

2.9. Amendment to Article XII of the Existing Zoning Law

Article XII of the Existing Zoning Law is hereby amended so as to delete in the entirety the title and text of present § 200-92 of the Existing Zoning Law (“Penalties for Offenses”), and to substitute the following text therefor:

“§ 200-92. Violations and Penalties

A. Violation. Any person who violates or is accessory (as defined in the New York Penal Law, Section 20.00) to the violation of any provision of this Law (other than § 200-9 hereof), who owns, occupies or uses any building, structure or premises which is in violation of any provision of this Law (other than § 200-9 hereof), who fails to comply with any of the requirements thereof, or who erects, constructs, alters, enlarges, converts, moves, maintains or uses any building, structure or land in violation of any provision of this Law (other than § 200-9 hereof), shall be guilty of a violation as defined in Article 10 of the NYS Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than Three Hundred Fifty Dollars ($350) or imprisonment for not more than ten (10) days, or both, for the first offense. Any subsequent offense within a two-year period shall be punishable by a fine of not more than One Thousand Dollars ($1,000) or imprisonment for a period of not more than thirty (30) days, or both. For purposes of this § 200-92, each week (or portion thereof) that a violation exists shall constitute a separate and distinct offense.
B. Misdemeanor. Any person who violates or is accessory to the violation of any provision of § 200-9 hereof, who owns, occupies or uses any building, structure or premises which is in violation of any provision of § 200-9 hereof, who fails to comply with any of the requirements thereof, or who erects, constructs, alters, enlarges, converts, moves, maintains or uses any building, structure or land in violation of any provision of this § 200-9 hereof, shall be guilty of an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the NYS Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars ($2,500) or imprisonment for not more than ten (10) days, or both, for the first offense. Any subsequent offense within a three (3) month period shall be punishable by a fine of not more than Five Thousand Dollars ($5,000) or imprisonment for a period of not more than thirty (30) days, or both. For purposes of this § 200-92, each week (or portion thereof) that a violation of § 200-92 of this Law exists shall constitute a separate and distinct offense.

C. Injunction; Equitable Relief. In addition, an action or proceeding may be instituted in the name of the Town in any court of competent jurisdiction, to prevent, restrain, enjoin, correct, enforce, and/or abate any violation of, or non-conformance with, any provision or requirement of this Local Law. Additionally, any action may be so commenced to declare the rights of the Town and of any other Persons relative to any justiciable controversy arising from, under, or in relation to this Local Law, whether pertaining to its interpretation, application, legality, or enforceability, or otherwise. No such action or proceeding shall be commenced without the appropriate authorization from the Town Board. If equitable relief is requested in the form of an temporary restraining order, a temporary injunction, or an injunction, or by any other form of prohibition or similar relief, the Town shall not be required to post any bond or undertaking as a condition or requirement for or of such relief, and the Town shall not be required to prove or show a lack of an adequate remedy at law. No right, remedy, or penalty specified in this § 200-92 shall be the exclusive remedy of the Town, and each remedy or penalty specified in this § 200-92 shall be in addition to, and not in substitution for or in limitation of, any other remedies or penalties specified in this Local Law or permitted by any applicable law, rule, order, or regulation. Any remedy or penalty specified in this Local Law may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this § 200-92.

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

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

2.10. 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.

I hereby certify that the local law annexed hereto, designated as Local Law No. 3 of 2013 of the Town of Marbletown, was duly passed by the Town Board on ____________, 2013 in accordance with the applicable provisions of law.

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in above.

Katherine Cairo Davis, Town Clerk
Date: ____________

(Seal)

STATE OF NEW YORK
COUNTY OF ULSTER
(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

☐ County  ☐ City  ☑ Town  ☐ Village
(Select one.)

County: MARBLE TOWN

Local Law No. 3 of the year 2013

A local law TO BE KNOWN AS "HYDRAULIC FRACTURING BRINE PROHIBITION ACT"

Insert Title

Be it enacted by the TOWN BOARD of the

County  ☐ City  ☑ Town  ☐ Village
(Select one.)

County: MARBLE TOWN

as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)
Local Law Number [3] of 2013

Town of Marbletown

A Local Law of the Town of Marbletown, New York Known as the

“Hydraulic Fracturing Brine Prohibition Act”

BE IT ENACTED, by the Town Board of the Town of Marbletown, New York, as follows:

SECTION 1 A new Chapter, Chapter 129 is added to the Code of the Town of Marbletown to read as follows:

§129-1. Title.

This Local Law shall be known by and may be cited as the “Hydraulic Fracturing Brine Prohibition Act”.

§129-2 Purpose.

The purpose of this chapter is to protect the public health, safety and welfare by providing for the regulation of the use of Brine, as defined herein, on any properties, public roads, parking lots, sidewalks, streets, or bridges owned or controlled by the Town of Marbletown.

§129-3 Statutory authority.

This chapter is enacted pursuant to the authority vested in the Town of Marbletown by the Town Law, Municipal Home Rule Law, General Municipal Law, Public Health Law, and other applicable laws of the State of New York.

§129-4. Definitions.

As used in this Chapter, the following terms shall have the following meanings:

“Application” shall mean the physical act of placing Brine on one or more Town roads or one or more pieces of Town property. Each physical act shall be deemed separate when the person committing the act stopping for any reason the placement of the Brine for any purpose, including but not limited to stopping a vehicle used in the placement of the Brine, stopping work for any reason, re-loading or replacing any material or equipment necessary to apply the brine.

“Brine” shall mean: (a) production brine; or (b) produced waters; or (c) flowback; or (d) flowback fluids; (e) hydraulic fracturing fluid; or (f) derivatives of the foregoing, any or all, in liquid or solid form, which are generated as a result of drilling for, or seeking gas and/or oil in wells including but not limited to High Volume Hydraulic Fracturing, as defined herein.

“Flowback” shall mean liquids and solids produced during initial completion and cleanup of the well or clean-up of a well following a re-fracture or workover.
“Flowback fluids” shall mean liquids and solids produced following drilling and initial completion and clean-up of the well or clean-up of a well following a re-fracture of workover.

“High Volume Hydraulic Fracturing” shall mean a natural gas and/or oil well stimulation technique consisting of the injection into the earth of a water and chemical mix with the intent of increasing the ability to extract natural gas and/or oil from very tight rock.”

“Hydraulic fracturing fluid” shall mean fluid used to perform hydraulic fracturing and includes the primary carrier fluid and all applicable additives and derivatives.

“Production brine or produced waters” shall mean liquids and solids co-produced during oil and gas production.

“Property” shall mean real property, improved or otherwise, which the Town of Marbletown owns or controls.

“Roads” shall mean public roads, parking lots, sidewalks, streets, or bridges owned or controlled by the Town.

“Town” shall mean the Town of Marbletown in the County of Ulster, State of New York.

§129-5. Use of Brine Prohibited.

No Brine shall be applied to or placed upon Property or Roads of the Town. In any bid for materials, services, or equipment which relate to Property or Road maintenance, improvements, or construction, the Town in a bid specification or bid document describing the nature of the services or equipment sought, and any department or division of the Town, shall expressly state in capitalized, bold font, “THE PLACEMENT OF BRINE ON ANY ROADS OR PROPERTY OF THE TOWN OF MARBLETOWN IS UNLAWFUL. ANY BIDDER SHALL FILE A SWORN STATEMENT WITH THEIR BID THAT NO BRINE AS DEFINED BY LOCAL LAW OF THE TOWN WILL BE SOLD TO THE TOWN AS PART OF THE BID, OR UTILIZED ON OR PLACED ON ANY PROPERTY OR ROADS OF THE TOWN OF MARBLETOWN. BIDDERS ARE DIRECTED TO CHAPTER 129 OF THE LAWS OF THE TOWN OF MARBLETOWN FOR THE DEFINITIONS OF BRINE, PROPERTY, AND ROADS.”

§129-6. Statement to Be Included in Bid.

The Statement provided for in §129-3, which shall be a sworn statement under penalty of perjury, shall read substantially as follows:

“We, _______________ , hereby submit a bid for materials, equipment, or labor for the _______________ of _______________. The bid is for bid documents titled _______________. We hereby certify under penalty of perjury that no Brine will be used by the undersigned bidder or any contractor, sub-contractor, agent, or vendor thereof in connection with the bid; nor will the undersigned Bidder or any sub-contractor, agent, or vendor
thereof and/or therefor apply or supply any Brine to any Property or Road(s) of the Town of Marbletown as a result of the submittal of this bid if selected."
The Statement shall otherwise be sworn to under penalty of perjury in a form satisfactory to the Town Attorney.

§129-7. Duty of Employees to Be Familiar with this Chapter.
The Town Board or, at the Town Board's option and pursuant to an express delegation by the Town Board, a Town Department, Commission, or Board, is authorized to develop policies to ensure Town employees are familiar with this Chapter and take such steps as are directed by the Town Board or its delegate to ensure a diligent effort by the Town that materials supplied to the Town or used on Town roads or property comply with this Law. This shall not excuse non-compliance by a contractor or vendor of the Town.

§129-8. Enforcement; Penalties for Violations.

A. Criminal Penalties. Any prosecution for an alleged violation of this chapter shall be conducted in accordance with the requirements of the Criminal Procedure Law of the State of New York for the prosecution of a violation as that term is defined in the Penal Law of the State of New York. In addition to prosecution for, any person who violates this article or is accessory to the violation shall be guilty of an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the NYS Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars ($2,500) or imprisonment for not more than ten (10) days, or both, for the first offense.

Any subsequent offense shall be punishable by a fine of not more than Five Thousand Dollars ($5,000), imprisonment for a period of not more than thirty (30) days, or both. Each application of brine shall constitute a separate and distinct violation.

B. Bar. The Town Board or the judge or justice of any court of competent jurisdiction may bar a person convicted of a violation of this Chapter from submitting to the Town a bid for Property or Road maintenance, improvements, or construction for any period of time not exceeding one year. The order barring such person shall be in writing, shall contain the period of the bar, and shall become effective upon the personal service of a copy upon such person. Any violation of such order shall constitute a separate violation of this chapter and, if issued by a judge or justice, a contempt of court.

C. Civil Action. A violation of the provisions of this Chapter shall be deemed a breach of contract and shall authorize the Town Board in cooperation with the Town Attorney, and any other officer or employee of the Town deemed necessary by the Town Attorney, to commence a civil Breach of Contract action against the violator of the provisions of this Chapter. Damages sought shall be determined by the Town Attorney but may include, but shall not be limited to the cost of any consequential damages of the breach of contract. The Town Attorney is further authorized to commence any necessary action to enjoin any violation of this Chapter he or she believes to be occurring.
SECTION 2. Separability.
If any sentence, clause, paragraph, subdivision, subparagraph, part or provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the Town Board hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

§SECTION 3 Effective Date.
This act shall take effect immediately upon filing with the Secretary of State.
(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)
I hereby certify that the local law annexed hereto, designated as local law No. ___________________ of 2013 of the (County)(City)(Town)(Village) of ___________________ on ___________________ 2013, was duly passed by the TOWN BOARD of ___________________ on MAY 21, __________ 2013, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer.*)
I hereby certify that the local law annexed hereto, designated as local law No. ___________________ of 20___ of the (County)(City)(Town)(Village) of ___________________ on ___________________ 20___, was duly passed by the (Name of Legislative Body) (repassed after disapproval) by the ___________________ on ___________________ 20___, and was deemed duly adopted (Elective Chief Executive Officer*) on __________ 20[ ] , in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)
I hereby certify that the local law annexed hereto, designated as local law No. ___________________ of 20___ of the (County)(City)(Town)(Village) of ___________________ on ___________________ 20___, was duly passed by the (Name of Legislative Body) (repassed after disapproval) by the ___________________ on ___________________ 20___.

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on __________ 20___, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)
I hereby certify that the local law annexed hereto, designated as local law No. ___________________ of 20___ of the (County)(City)(Town)(Village) of ___________________ on ___________________ 20___, was duly passed by the (Name of Legislative Body) (repassed after disapproval) by the ___________________ on ___________________ 20___.

Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of __________ 20___, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.
5. (City local law concerning Charter revision proposed by petition.)
I hereby certify that the local law annexed hereto, designated as local law No.________________________ of 20____ of the City of ______________________ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on ______________ 20____, became operative.

6. (County local law concerning adoption of Charter.)
I hereby certify that the local law annexed hereto, designated as local law No.________________________ of 20____ of the County of ______________________ State of New York, having been submitted to the electors at the General Election of November __________ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)
I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph ______ above.

[Signature]
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body
Date: 08/02/2013

(Seal)
Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

☐ County  ☐ City  ☑ Town  ☐ Village
(Select one:)

of Marbletown

Local Law No. 1 of the year 2013

A local law ENEXTENDING THE EXISTING MORATORIUM ON AND PROHIBITION 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
(Name of Legislative Body)

☐ County  ☐ City  ☑ Town  ☐ Village
(Select one:)

of MARBLETOWN as follows:

Section 1:

The Town Board finds that a law regarding the Prohibition 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 is in the process of being drafted and reviewed and that same is near completion. The Town Board finds that a draft local law has been presented and is currently being reviewed by the Town Board. The Local Law is expected to be finalized and voted upon within the next six (6) months.

The Town Board finds that to lift the existing Moratorium on and Prohibition 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 would be detrimental to the efficiency of the government and the health, safety, and welfare of the town.

NOW THEREFORE, the Town Board hereby extends the existing Moratorium on and Prohibition of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes for a period for a period of six (6) months, during which time the Town Board will finalize and vote upon a proposed law and after which time it is anticipated that the moratorium will be lifted.

Section 2:

This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

(If additional space is needed, attach pages the same size as this sheet, and number each.)
(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)
I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2013 of the (County)(City)(Town)(Village) of Marbletown, was duly passed by the Town Board ______________________________ on March, 19, 2013, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)
I hereby certify that the local law annexed hereto, designated as local law No. __________________________ of 20___ of the (County)(City)(Town)(Village) of __________________________ on ___________ 20___, and was (approved)(not approved) (Elective Chief Executive Officer*)
(repassed after disapproval) by the __________________________ on ___________ 20___, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)
I hereby certify that the local law annexed hereto, designated as local law No. __________________________ of 20___ of the (County)(City)(Town)(Village) of __________________________ on ___________ 20___, and was (approved)(not approved) (Elective Chief Executive Officer*)
(repassed after disapproval) by the __________________________ on ___________ 20___.

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _______________ 20___, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)
I hereby certify that the local law annexed hereto, designated as local law No. __________________________ of 20___ of the (County)(City)(Town)(Village) of __________________________ on ___________ 20___, and was (approved)(not approved) (Elective Chief Executive Officer*)
(repassed after disapproval) by the __________________________ on ___________ 20___. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of ___________ 20___, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.
5. (City local law concerning Charter revision proposed by petition.)
I hereby certify that the local law annexed hereto, designated as local law No. __________________________ of 20____ of the City of ________________________ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on ________________ 20____, became operative.

6. (County local law concerning adoption of Charter.)
I hereby certify that the local law annexed hereto, designated as local law No. __________________________ of 20____ of the County of ________________________, State of New York, having been submitted to the electors at the General Election of November __________ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)
I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph #1 above.

[Signature]
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 09/09/13

(Seal)
APPENDIX A
ATTACHED TO AND FORMING A PART OF
TOWN OF MARBLETOON (NY) LOCAL LAW NO. __1__ of the YEAR 2012,
known as:

"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."

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” to which this Appendix A is attached is
herein sometimes referred to as “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 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 Marbletown
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 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.
Section 2. Findings of Fact.

1. Marbletown, New York is a small, picturesque, rural community in the Rondout and Esopus Creek valleys, situated between the Catskill and Shawangunk Mountains. It is located approximately one hundred miles north of New York City. The Town is home to abundant open space, farmland, wooded hillsides and meadows, clean water and wildlife. The Town is rich in agriculture and forests, and its boundaries encompass four significant ecosystems, which include rare, sensitive, and endangered plant and animal species.

2. Marbletown also boasts some of the most scenic landscapes in the Hudson Valley region which, along with the Town’s other assets, attract thousands of tourists year round, providing an economic base that helps sustain the entire community. These features also make Marbletown a desirable location for homeownership. Marbletown’s unique topography is completely interwoven with its heritage, image, character, and overall sense of place.

3. The Town’s residents want their farmland, forests, open spaces and ecosystems protected and preserved, as they are a critical part of the fabric of the community and contribute significantly to a quality of life which the residents cherish.

4. Almost all of Marbletown’s homes and businesses are dependent for their water on privately owned and maintained wells. 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.

5. Preservation of the Town’s irreplaceable recreational and scenic sites, high-quality agricultural land, air and water quality, and unique character is of significant value to the inhabitants of the Town and to the tourists who visit here.

6. 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.

7. Allowing the activities prohibited by Section 4. of the Local Law could impair the existing character of the Town, because by their very nature such activities have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities 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.
8. If one or more of the activities prohibited by Section 4. of the Local 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. The Town is not in a position to bear the high costs associated with the 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 injury and 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.

9. 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) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the public health.

10. Allowing one or more of the activities prohibited by Section 4. of the Local 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.

11. 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 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.

12. 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 could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.

13. 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) 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.

14. 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
NOTICE OF ADOPTION OF LOCAL LAW PLEASE BE ADVISED THAT AT
NOTICE OF ADOPTION OF LOCAL LAW PLEASE BE ADVISED that at a regularly scheduled Town of
Marbletown Town Board meeting held on September 18, 2012, at 7 p.m. at the Town Hall, 3775 Main
Street, Stone Ridge, New York, the Marbletown Town Board approved Local Law No. 1 of 2012, a Local
Law to effect a Moratorium and Prohibition Within the 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. Said Local Law becomes effective upon filing with the New
York Secretary of State. The text of this Local Law may be reviewed at the Town of Marbletown Town
Clerk's Office, 3775 Main Street, Stone Ridge, New York, during regular business hours. BY ORDER OF THE
TOWN BOARD TOWN OF MARBLETOWN Katherine A. Cairo Davis Town Clerk/Tax Collector 09/25/2012

Appeared in: Daily Freeman on Friday, 09/28/2012
Town Board Meeting - September 04, 2012 7:00 PM - 8:00 PM

Town of Marletown County of Ulster

Local Law No. 1 of the year 2012.

A local law "to effect a Moratorium and prohibition within the 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 Marletown, 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. The Town Board of the Town of Marbetown 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.

B. the Town Board has found, determined, and made the declarations of findings set forth at Section 2. Of Appendix A attached hereto.

C. The Purposes underlying the Town Board's passage of this Local Law, as articulated, found, and declared by the Town Board, are set forth at Section 3. of Appendix A attached hereto.

Section 3. DEFINITIONS

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

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

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

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.

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

Land Application Facility --- A site where any Natural Gas Exploration and/or Petroleum Production Wastes are applied to the soil surface or injected into the upper layer 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," or "hazardous" or "toxic" substances, materials, or wastes, and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, 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 And/Or Petroleum Support Activities --- Shall mean and be any one or more of the following: (a) Natural Gas Compression Facility; (b) Natural Gas Processing Facility; (c) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility; (d) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump; (e) Land Application Facility; (f) Underground Injection; or (g) Underground Natural Gas Storage.

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.

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

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.

Town --- The Town of Marbletown, Ulster County, New York.

Town Board --- The Town Board of the Town.

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.

Section 4. MORATORIUM AND PROHIBITION.

A. From and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance (except as contemplated by Section 8 of this Law), building permit, site plan approval, subdivision approval or other Town-level approval shall be approved, approved conditionally, or issued for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town for any of the following: (i) any Natural Gas And/Or Petroleum Exploration Activities; (ii) any Natural Gas And/Or Petroleum Extraction Activities; or (iii) any Natural Gas And/Or Petroleum Support Activities.

B. From and after the date of this Local Law, no Person shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town for any of the following: (i) any Natural Gas And/Or Petroleum Exploration Activities; (ii) any Natural Gas And/Or Petroleum Extraction Activities; or (iii) any Natural Gas And/Or Petroleum Support Activities.

C. The moratorium and prohibition set forth above in Sections A. and B. of this Section 4. 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. Unless extended by the Town, this moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is one year after said effective date, or (ii) the effective date of a duly enacted repeal of this Local Law.

E. This moratorium and prohibition shall apply to all real property within the Town.

F. Under no circumstances shall the failure of the Town Board of the Town, the Zoning Board of Appeals of the Town, the Planning Board of the Town, or the Code Enforcement Officer for the Town to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, site plan approval, subdivision approval, or other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

Section
5. PENALTIES.

A. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars ($1,500) or imprisonment for not more than 10 days, or both, for the first offense. Any subsequent offense within a three month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars ($2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A., each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

B. Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town by the Town Board. In the event the Town shall seek any such equitable relief, the Town shall not be required to: (i) show or prove the lack of an adequate remedy in law; or (ii) post any bond or undertaking.

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

Section
6. IN VALIDITY OF ANY CONFLICTING APPROVALS OR PERMITS.
Except as contemplated by Section 8 of this Local Law, no permit or approval issued by any local agency, department, commission or board shall be deemed valid when or to the extent that such permit or approval purports to allow or permit any activity that would violate the prohibitions set forth at Section 4 of this Local Law.

Section

7. HARDSHIP USE VARIANCE.

The Town of Maribetown Schedule of Use Regulations:200-8, currently does not allow the extraction of Natural Gas within the Town of Maribetown. During the period of the moratorium, should an application for extraction of Natural Gas be submitted to the CEO, it shall be referred to the Board of Appeals as a Use Variance. The Board of Appeals shall immediately upon receipt refer such application to the Town Board.

In the event that the enforcement of this moratorium should result in undue hardship or practical difficulties, the Town Board, in its' sole discretion, may waive or vary any provision of this local law consistent with the health safety and welfare of the community. Said application for a waiver shall be made to the Town Board in writing and shall be accompanied by a $10,000.00(ten thousand dollar) payment to be put into escrow to defray costs to the Town to evaluate the application.

No hardship waiver shall be granted by the Town Board without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.

A. Unnecessary Hardship. In order to prove such unnecessary hardship the applicant is required to demonstrate to the Town Board 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: (i) 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; (ii) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (iii) the requested use variance, if granted, will not alter the essential character of the neighborhood; and (iv) the alleged hardship has not been self-created.

B. Reasonable Rate of Return.

In evaluating whether the applicant can realize a reasonable rate of return,
the Town Board must examine whether the entire original or expanded property holdings of the applicant are incapable of producing a reasonable rate of return (and not just the site of the proposed development project). No hardship waiver shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Town Board finds that the applicant has clearly demonstrated, by detailed "dollar and cents" proof, the inability to obtain a reasonable return for the entire parcel (and not 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).

C. Unique Hardship. No waiver shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Town Board finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the area.

D. Essential Character of the Neighborhood. In making its determination of whether the proposed development project will alter the essential character of the neighborhood, the Town Board shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (i) the rural residential, agricultural and historic character of the area and the Town, (ii) its irreplaceable recreation and tourism sites, (iii) the extent of hazard to life, limb or property may result from the proposed development project, (iv) health impacts, (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (vi) the impact on property values, and (viii) whether the applicant will use a style of development that will result in degradation to the air quality, water quality and environment of the Town. In order to find that the proposed development project does not alter the essential character of the neighborhood, the Town Board 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.

E. Self-Created Hardship. The Town Board may find that the applicant suffers from a self-created hardship in the event that the Town 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 for the property, or that such inability arises from a poor investment decision; (ii) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought 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.
In the event the Town Board considers a request for a hardship waiver from the provisions of this Local Law to the applicant, the applicant shall be required to comply with all provisions of the Town's then applicable zoning laws and other laws and regulations, together with any amendments to such law or regulations which may be enacted during the term of this Local Law, including the requirements of a public hearing and notice to all parties within the 500' of boundary of said property. Any hardship waiver that is granted shall grant only the minimum variance that the Town Board deems necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Section 8. SEVERABILITY.

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

Section 9. SUPERSEDING INTENT AND EFFECT.

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

Section 10. GENERAL PROVISIONS.

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

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

Section 12. EFFECTIVE DATE.

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

I hereby certify that the local law annexed hereto, designated as Local Law No. __________________________ of 2012 of the Town of Marbletown was duly passed by the Town Board on _____________ in accordance with the applicable provisions of law.

I further certify that I have compared the preceding lo