**G.M.L. §239 REFERRAL TO THE YATES COUNTY PLANNING BOARD**

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<th>YCPD Referral #</th>
<th>2013-9</th>
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<th>February 19, 2013</th>
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**Referring Municipality:** TOWN OF MIDDLESEX  
**Referring Agency** (check one):  
- [ ] Municipal Board  
- [ ] Planning Board  
- [ ] Zoning Board of Appeals  

**Applicant** (Name & Address):  
TOWN OF MIDDLESEX TOWN BOARD  
(Lead Agency)  
Email: kptownclerk@aol.com  

**Property Owner** (IF different than Applicant):  
All Real Property located in the Town to include all current Zoning Districts  
Email

**Tax Map #:** All Real Property

**Type of Application:**  
- [ ] Use Variance  
- [ ] Area Variance  
- [ ] Special Use Permit  
- [ ] Subdivision Review  
- [ ] Site Plan Review  
- [ ] Zoning Text Amendment  
- [ ] Zoning Map Amendment (Rezoning)  
- [ ] Other

**Project Description:** We request to extend Local law #3 of 2011 for an additional term of 6 months beginning March 27, 2013 and to expire September 27, 2013.

**Detailed Description of Current Zoning & Explanation of Desired Relief:**  
To effect an extension for a "Moratorium and Prohibition within the Town of Middlesex of Natural Gas & Petroleum Exploration, 7 Extraction Activities, Underground Storage of Natural Gas, Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes."  

**Supporting Documentation Included with This Referral** (please check all that apply):  
- [ ] Municipal Application  
- [ ] SEQR Documentation  
- [ ] Project Narrative  
- [ ] Site Plan  
- [ ] Location Map  
- [ ] Subdivision Plan  
- [ ] Other  

**Certification:** With the following signature I certify that this application provides a complete description of the proposed local action and is a complete application pursuant to NYS General Municipal Law Article 12b, section 239-m, part c. Provision of required information is the responsibility of the applicant and referring agency. Failure to provide such information may result in a significant delay in processing.  

**Signature:** Lynn Lersch, Clerk  
2-19-2013
WHEREAS, a Local Law to effect a Moratorium and Prohibition within the Town of Middlesex 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 was duly filed with the New York Secretary of State as Local Law No. 3 of the Laws of 2011 on December 27, 2011 (the “Law”); and

WHEREAS pursuant to the Law, said moratorium is in effect for a period of nine months as of the filing of the Law with the NYS Department of State; and

WHEREAS the Town Board of the Town of Middlesex, as a matter of absolute legislative discretion, declares that it is advisable and prudent and in the best interest of the health, safety and welfare of the residents of the town to extend the moratorium 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 in the Town of Middlesex for an additional term of six months to enable the Town Board to complete its review and adopt appropriate laws in respect of the said natural gas and petroleum activities in the Town of Middlesex;

NOW, THEREFORE, be it enacted by the Town Board of the Town of Middlesex as follows:

1. Local Law No. 3 of 2011 to effect a Moratorium and Prohibition within the Town of Middlesex 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 shall be and is hereby extended for an additional term of six (6) months beginning September 27, 2012 through March 27, 2013.

2. If, however, the Town Board determines that it is in the best interests of the town to extend such time period, for reasons of accomplishing the purposes and intent stated in the Law, it shall do so for a reasonable time period, as deemed appropriate.

3. Should any section or provision of this local law be declared null, void, voidable or invalid, such decision shall not affect the validity of the remaining portions of this local law.

4. This local law shall be come effective upon the filing of the same with the Secretary of State of the State of New York.
WHEREAS, a Local Law to effect a Moratorium and Prohibition within the Town of Middlesex 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 was duly filed with the New York State Secretary of State as Local Law No. 3 of the Laws of 2011 on December 27, 2011 (the “Moratorium”) which Moratorium was in effect for a period of nine months from December 27, 2011 through September 27, 2012; and

WHEREAS, said Moratorium was extended by Local Law No. 2 of the Laws of 2012 duly filed with the New York State Secretary of State on August 23, 2012, for an additional period of six months from September 27, 2012 through March 27, 2013; and

WHEREAS, since the Moratorium was enacted on December 27, 2011, the Town Board of the Town of Middlesex has reviewed and considered the adoption of appropriate laws in respect of natural gas and petroleum activities in the Town of Middlesex by sponsoring resident focus groups and meeting with land use attorneys and staff of Genesee Finger Lakes Regional Planning Council, but that said review is not yet complete;

WHEREAS, New York State Department of Environmental Conservation is nearing completion of its consideration of state-wide regulations affecting natural gas and petroleum exploration and extraction activities, underground storage of natural gas, and disposal of natural gas or petroleum extraction, exploration and production within the State of New York which regulations will affect such activity in the Town of Middlesex; and

WHEREAS the Town Board of the Town of Middlesex, as a matter of absolute legislative discretion, declares that it is advisable and prudent and in the best interest of the health, safety and welfare of the residents of the town to extend the moratorium 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 in the Town of Middlesex for an additional term of six months to enable the Town Board to complete its review and adopt appropriate laws in respect of the said natural gas and petroleum activities in the Town of Middlesex

NOW, THEREFORE, be it enacted by the Town Board of the Town of Middlesex as follows:

1. Local Law No. 3 of 2011 to effect a Moratorium and Prohibition within the Town of Middlesex 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 shall be and is hereby extended for an additional term of six (6) months beginning March 27, 2013 through September 27, 2013.
2. If, however, the Town Board determines that it is in the best interests of the town to extend such time period, for reasons of accomplishing the purposes and intent stated in the Law, it shall do so for a reasonable time period, as deemed appropriate.

3. Should any section or provision of this local law be declared null, void, voidable or invalid, such decision shall not affect the validity of the remaining portions of this local law.

4. This local law shall be come effective upon the filing of the same with the Secretary of State of the State of New York.
Timeline of Town of Middlesex - Hydro & Gas Fracking Protection

2011
July: Town Board votes to pass “Adopt Road Preservation Use and Repair Policy Agreement” for
developers using Town Roads.
8/31/2011: Middlesex Community Meeting with Local Legislators, Town officials to discuss Hydro-
fracking concerns, and gather data for research.
9/08: Resident Study Group (VV) present to Town Board – “Hydraulic Fracturing”
10/20: Email Contact with Ms. Helen Slottje to set meeting with PB/TB/Town Atty. in reference to
Hydro-Fracking.
County Looking Forward” by Mr. Trancik which included Middlesex’s vision/plan for future. Parts of this
study were adopted into our current Master Plan 1999.
10/29: Vine Valley Hydrofracking Study Group submits Comprehensive Report to Town of Middlesex:
“Summary of Problems with Slick Water Hydrofracking of Horizontal Gas Wells.” and handout brochure,
entitled, “What you should know about Propane Fracking (and why it matters)”
11/2: Town Attorney completes rewrite from Draft Law of Moratoria from Ms. Helen Slottje:
Moratorium on Hydrofracking – Local Law #2 of the Year 2011 known as:
“Moratorium on 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”
11/7: Middlesex submit Law to Yates County Planning Board for 11/17 review
11/17: YCPB Referral #2011-65 : APPROVED
12/8: Public Hearing – TB passes Moratorium: Local Law #2 of the Year 2011
FILED: 12/27/2011 : Filed with NYS as Local Law #3 of 2011 – 9 month Moratorium up 9/27/12

2012
Multiple requests were sent from Planning Board, Town Attorney to Slottje Lawyers.
June – September: MiddlesexTown officials met with resident focus groups that met weekly during the
summer at Vine Valley Community Center to work on Fracking research, attending seminars, town
meetings and trips to Albany to meet with State Legislators & Governor Cuomo.
6/14: Initial response received from Ms. Helen Slottje, Land Use Lawyer to contact us for meeting
6/19: Middlesex submits Extension with Yates County Planning Board for 6/28 review
6/28/2012 – YCPB Referral # 2012-39: APPROVED to extend Local Law #3 of 2011
FILED: 8/23/12 : Filed with NYS - 6month Moratorium Extension up 3/27/13
12/6/2012: Additional contact requests to Slottje Lawyers from Town Lawyer – without confirmation.no
Town initiated contact with Mr. David Zorn of Genesee Finger Lakes Planning Council to work on
updates to Master Plan & Zoning Law Amendments pertaining to Hydro & Gas Fracking Drilling and
Exploration etc.

2013
1/7/2013: Land Use Lawyer, Mr. David Slottje response to Planning Board: will produce a document by
January 18th.
1/21: Draft 2L Amendments received from Mr. Slottje : email with Transmittal, Law and Appendix for
Zoning Law Amendments for the Town of Middlesex.
1/29: County Planning facilitates Hydro & Gas Fracking Forum. Town Councilman Dunton attends
2/01: Process reviewed by Planning Board to make Moratoria deadlines. Extension advised.
2/14: Draft Law rewrite from Town Attorney sent to Mr. Slottje for review
2/14: Town Board reviews Town Atty’s Draft Law. Agreement by Town Board to request an extension to allow time to complete review work with Slottje Land Use Lawyers, clarify Draft Law’s intent, hold a Public Hearing, resident input /review on Town’s current Master Plan (seasonal residents incl) for protection from Hydro & Gas Fracking. Plan is to have Genesee Finger Lakes Regional Planning Council work with the Town of Middlesex Planning Board and Town Residents to update Master Plan.
2/2: YCPB Review:
G.M.L. §239 REFERRAL TO THE YATES COUNTY PLANNING BOARD

From: The Town of Middlesex Planning Board
To: Yates County Planning Board, 417 Liberty St., Penn Yan, NY 14527
Applicant: The Town of Middlesex, New York

1. Location: all real property
2. Tax Map #: 2012-39
2a. Zoning District: all

3. Type of Application or Proposal:

☐ Use Variance
☐ Area Variance
☐ Special Use Permit
☐ Subdivision Review
☐ Site Plan Review
☐ Zoning Text Amendment
☐ Zoning Map Amendment (Rezoning)
☐ Other (Extension-Limitation)

3b. Date of meeting at which the local board expects to take final action: 6/14/2012

4. Applicable Sections of Zoning Code: Article XI, Section 1104

5. Description: Local Law 3 of 2011 to effect an additional extension of a term being six months beginning 12/31/2012 to June 30, 2013

6. Reason Referred: 500’ from

7. Enclose the complete application including the following:

☐ SEQR Documentation
☐ Detailed Description
  • Type of Business
  • Hours of Operation
  • Number of Employees
  • Anticipated Traffic
☐ Site Plan
  • Title, Scale, North Arrow, Dimensions
  • Portion of the Property to be Developed
  • Streets, Easements, Utilities
  • Driveways, Parking (Existing & Proposed)
  • Structures (Existing & Proposed)
  • Landscape Features (i.e., streams, ponds, hedges) (Existing & Proposed)
  • Lighting & Signage (Location and content)
  • Grading Plan, Drainage & Erosion Control (During & After Construction)

As declared in G.M.L. §239-l, m, and n, it is in the public interest to have the Yates County Planning Board review certain actions that may have inter-community and countywide impacts. Within thirty days of a complete submittal of the referred matter (or at least two days before the referring board’s final action), the County Planning Board shall report its recommendations thereon to the referring agency. If the County Planning Board fails to report within 30 days, the body having jurisdiction to act may do so without such report.

REVISED: November 19, 2004
WHEREAS, a Local Law to effect a Moratorium and Prohibition within the Town of Middlesex 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 was duly filed with the New York Secretary of State as Local Law No. 3 of the Laws of 2011 on December 27, 2011 (the “Law”); and

WHEREAS pursuant to the Law, said moratorium is in effect for a period of nine months as of the filing of the Law with the NYS Department of State; and

WHEREAS the Town Board of the Town of Middlesex, as a matter of absolute legislative discretion, declares that it is advisable and prudent and in the best interest of the health, safety and welfare of the residents of the town to extend the moratorium 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 in the Town of Middlesex for an additional term of six months to enable the Town Board to complete its review and adopt appropriate laws in respect of the said natural gas and petroleum activities in the Town of Middlesex;

NOW, THEREFORE, be it enacted by the Town Board of the Town of Middlesex as follows:

1. Local Law No. 3 of 2011 to effect a Moratorium and Prohibition within the Town of Middlesex 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 shall be and is hereby extended for an additional term of six (6) months beginning September 27, 2012 through March 27, 2013.

2. If, however, the Town Board determines that it is in the best interests of the town to extend such time period, for reasons of accomplishing the purposes and intent stated in the Law, it shall do so for a reasonable time period, as deemed appropriate.

3. Should any section or provision of this local law be declared null, void, voidable or invalid, such decision shall not affect the validity of the remaining portions of this local law.

4. This local law shall be come effective upon the filing of the same with the Secretary of State of the State of New York.
G.M.L. §239 REFERRAL TO THE YATES COUNTY PLANNING BOARD

From: Town of Middlesex
To: Yates County Planning Board, 417 Liberty St., Penn Yan, NY 14527

Applicant: Town of Middlesex (Town Board as Lead Agency)

1. Location: All real property located in the Town of Middlesex
2. Tax Map #: 2a. Zoning District: all districts
3. Type of Application or Proposal:
   - Use Variance
   - Area Variance
   - Special Use Permit
   - Zoning Map Amendment (Rezoning)
   - Subdivision Review
   - Site Plan Review
   - Zoning Text Amendment
   - Other Moratoria Law - Hydrofracking

3b. Date of meeting at which the local board expects to take final action: 11/21 – Town Board would like to set a public hearing on 12/8. Need time for public notice of such.

4. Applicable Sections of Zoning Code: Art. XI, Sect. #1104.0

5. Description: A Moratoria Local Law #2 of 2011, to expire (1) one year from and after the filing of this law. Also submitted and part of this law is Appendix A which states in Section #1, the Authority & Intent of the law, and in Section #2 gives the Purpose of the Law. The Law itself is known as “Local Law #2 of Year 2011: Moratorium on & 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 of Wastes.”

6. Reason Referred: County review of a Moratoria Law for the Town of Middlesex

7. Enclose the complete application including the following: Moratoria Law as submitted.
   - SEQR Documentation
   - Detailed Description
     - Type of Business
     - Hours of Operation
   - Site Plan
     - Title, Scale, North Arrow, Dimensions
     - Portion of the Property to be Developed
     - Streets, Easements, Utilities
     - Driveways, Parking (Existing & Proposed)
     - Structures (Existing & Proposed)
   - Number of Employees
   - Anticipated Traffic
   - Landscape Features (i.e., streams, ponds, hedges) (Existing & Proposed)
   - Lighting & Signage (Location and content)
   - Grading Plan, Drainage & Erosion Control (During & After Construction)

As declared in G.M.L. §239-l, m, and n, it is in the public interest to have the Yates County Planning Board review certain actions that may have inter-community and countywide impacts. Within thirty days of a complete submittal of the referred matter (or at least two days before the referring board’s final action), the County Planning Board shall report its recommendations thereon to the referring agency. If the County
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 of Middlesex
Village

Local Law No. 2 of the year 2011.

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

County
City
Town of Middlesex, as follows:
Village

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 Middlesex 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).

Below-Regulatory Concern --- Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR §20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

Gathering Line, Or Production Line --- Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve box, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission’s jurisdiction under section 1(b) of the Natural Gas Act, and which does not meet the definition of a “Major utility transmission facility” under the Public Service Law of New York, Article 7, §120(2)(b).

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 ninety (90) percent or more of such fluids do not return to the surface within a period of ninety (90) days. The definition of Injection Well does not include: (a) single family septic systems that receive solely residential waste; (b) drainage wells used to drain surface fluids, primarily storm runoff, into the ground; (c) geothermal wells associated with the recovery of geothermal energy for heating or production of electric power; or (d) bore holes drilled to produce potable water to be used as such.

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," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Agriculture Use.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility --- Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) arc 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) Non-Regulated Pipelines; (g) Underground Injection; or (h) 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.

Non-Regulated Pipelines --- Those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

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.

Pipeline --- All parts of those physical facilities through which petroleum, gas, hazardous liquids, or chemicals move in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), whether or not laid in public or private easement or private right of way within the Town. This includes, without limitation, gathering lines, production lines, and transmission lines.

Radioactive Material --- Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is "radioactive material" for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.

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

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

Town --- The Town of Middlesex, Yates County, New York.

Transmission Line --- A pipeline that transports oil, gas, or water to end users as a public utility and which is subject to regulation either by: (a) the Federal Energy Regulatory Commission's
jurisdiction under section 1(b) of the Natural Gas Act, or (b) as a “Major utility transmission facility” under the Public Service Law of New York, Article 7, §120(2)(b).

Underground Injection --- Subsurface emplacement of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes by or into an Injection Well.

Underground Natural Gas Storage --- Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines.

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, building permit, site plan approval, subdivision approval or other Town-level approval shall be accepted, processed, 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. 1. 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.

2. The prohibitions set forth above in Clause 1. of this Section 4. B. are not intended, and shall not be construed, to: (y) prevent or prohibit the transmission of natural gas through utility pipes, lines, or related appurtenances for the limited purpose of supplying natural gas utility services to residents of or buildings located in the Town; or (z) prevent or prohibit the incidental or normal 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, so long as such uses do not involve any Natural Gas And/Or Petroleum Exploration Activities, Natural Gas And/Or Petroleum Extraction Activities, or Natural Gas And/Or Petroleum Support Activities.

C. 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 Town Board resolution affirmatively stating the Town Board has determined that the need for this moratorium and prohibition no longer exists.

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

E. 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.

C. 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 attorney's fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the property(ies) within the Town on which the violation occurred, by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

Section 6. ‘GRANDFATHERING’ OF LEGAL, PRE-EXISTING NON-CONFORMING USE

Notwithstanding any provision hereof the contrary, any Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law shall be subject to the following:

A.1. Where, as of the effective date of this Local Law, substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation all valid permits required to be issued by the New York State Department of Environmental Conservation (“DEC”) and all other regulating agencies, then and only then such Activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses B. and C. of this Section 6.

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 Section 6 shall not be grandfathered, and shall in all respects be prohibited as contemplated by Section 4 hereof.

B. Upon the depletion of any well or mine which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause A. 1. of this Section 6, or upon any other
substantive cessation of Natural Gas And/Or Petroleum Extraction Activities (otherwise grandfathered by virtue of Clause A. 1. of this Section 6) for a period of more than twelve (12) months, then and in such event the non-conforming use status of such Activity shall terminate, and thereafter such Natural Gas And/Or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by Section 4 hereof.

C. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause A. 1. of this Section 6 is not intended, and shall not be construed, to authorize or grandfather any Natural Gas And/Or Petroleum Extraction Activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this Local Law. Any expansion or attempted or purported expansion shall not be grandfathered under Clause A. 1. of this Section 6, and instead shall in all respects be prohibited as contemplated by Section 4 hereof.

Section 7. HARDSHIP USE VARIANCE.

The Town Board of the Town is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of law and of this Local Law) requests for a hardship use variance from application of the provisions of this Local Law by persons aggrieved hereby.

No such use variance 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 rural, hamlet, or other 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 use variance 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 use variance 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 and agricultural character of the Town, (ii) its irreplaceable recreation, historic, 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 engage in a type of development that will result in degradation to the air quality, water quality or scenic or other natural resources 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 Board finds that (i) the applicant’s inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (ii) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or (iii) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

In the event the Town Board grants a hardship use variance 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. Any hardship use variance 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 herefrom, 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. SUPERSEDMG 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 Code of the Town of Middlesex; and (d) any inconsistent provisions of any and all other local ordinances, local laws or local resolutions of the Town of Middlesex.

Section 10. 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. 2 of the Year 2011 of the Town of Middlesex, was duly passed by the Town Board on ________, 2011 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 paragraph 1 above.

(Town Clerk)
Date: 

(Seal)

STATE OF NEW YORK
COUNTY OF YATES

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

______________________________
Alaine T. Espenscheid, ESQ.

TOWN ATTORNEY

TOWN OF MIDDLESEX

Date: 

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APPENDIX A
ATTACHED TO AND FORMING A PART OF
TOWN OF MIDDLESEX (NY) LOCAL LAW NO. 2 of the YEAR 2011,
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 Middlesex 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)(iii)(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).

In 1992 the Town Board of the Town of Middlesex adopted a Master Plan for the Town of Middlesex pursuant to Town Law Section 263 for a comprehensive plan for the general physical development of the Town of Middlesex. Since then, the Town of Middlesex, by the efforts of the Town Board, the Zoning Board of Appeals, and the Planning Board, has sought to administer, enact, and approve development in the Town of Middlesex consistent with such Master Plan and the Planning and Zoning laws, ordinances, and regulations of the Town of Middlesex.
On February 11, 1999, the Town Board adopted the restated Town of Middlesex Zoning Law, which law was filed with the NYS Department of State as Local Law No. 1 of 1999 on February 26, 1999.

This Law is a police power and land use regulation. This Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive “incidental control” of a zoning law and land use law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community.

Section 2. Findings of Fact.

1. Middlesex is a community in the Finger Lakes Region of the State that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, and scenic, recreational, and other natural resources.

2. Residents are dependent upon Canandaigua Lake, aquifers, and wells for life-sustaining water; maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy.

3. Preservation of the Town’s irreplaceable scenic, historic, and recreation sites, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the tourists who visit here.

4. The Town’s rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic, recreational, historic, 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 people will want to live in and visit a place.

5. Allowing the activities prohibited by Section 4. of the Local Law would impair the existing character of the Town, because by their very nature such activities have the potential to produce a combination of negative impacts upon the environment and 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.

6. 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 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.

7. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, the air pollution, dust and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the public health.

8. Allowing one or more of the activities prohibited by Section 4. of the Local Law to be conducted within the Town 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.

9. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, noise, vibrations, and light pollution typically caused by such activities 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.

10. The creation, generation, keeping, storage or disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined at Section 3. of the Local Law) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.

11. The high costs associated with the disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined at Section 3. of the Local Law) 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.

12. The explicit proscription of the activities prohibited by Section 4. of
the Local Law is a legitimate goal of land use laws. There is no question that
exclusion of specified industrial uses is a legitimate goal of such laws:

As the United States Supreme Court stated in Town of Belle Terre v. Borass, 416 U.S.
1 (1974):

the concept of public welfare is broad and inclusive.... The values that it represents are
spiritual as well as physical, aesthetic as well as monetary. It is within the power of the
(local) legislature to determine that the community should be beautiful as well as
healthy, spacious as well as clean, well-balanced as well as carefully patrolled.
416 U.S. at 6.

And see also Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia, 87 N.Y. 2d
668 (1996), where the Court of Appeals, New York State's highest court, evaluated a
claim that a town's prohibition of mining throughout the town was in effect
unchronstitutional 'exclusionary zoning,' and held as follows:

We have never held, however, that the ... ['exclusionary zoning'] test, which is
intended to prevent a municipality from improperly using the zoning power to
keep people out, also applies to prevent the exclusion of industrial uses. A
municipality is not obliged to permit the exploitation of any and all
natural resources within the town as a permitted use if limiting that use
is a reasonable exercise of its police power to prevent damage to the
rights of others and to promote the interests of the community as a
whole. 87 N.Y. 2d at 683, 684. (emphasis added.)

Section 3. Purposes. The purpose of the Local Law is to enable the Town of
Middlesex to stay the construction, operation, and establishment of, and the
submission and processing of applications for permits, building permits, zoning
permits, special permits, zoning variances, building permits, site plan
approvals, subdivision approvals, certificates of occupancy, certificates of
compliance, and other Town-level approvals respecting, the activities prohibited
by Section 4. of the Local Law, for a reasonable time, so as to allow the Town
time to study the impacts, effects, and possible controls over such activities
and to consider amendments to the Town's zoning laws to address the same.
The Town Board finds that a moratorium of one year's duration, coupled with a
mechanism for an 'unnecessary hardship' variance procedure, will achieve an
appropriate balancing of interests between (on the one hand) the public need to safeguard the character and other resources of the Town of Middlesex and the health, safety and general welfare of its residents, and the rights of individual property owners or businesses desiring to conduct such activities (on the other) during such period.