

TOWN OF PREBLE

Local Law No. 1 of the Year 2014

A local law to amend and supplement
the Town of Preble Zoning Ordinance adopted March 10, 2008
(as heretofore amended),
by:

Confirming that any Uses not Expressly Permitted are Prohibited;
Adding Certain New Definitions, and Changing Certain Existing Definitions; and
Modifying, Clarifying, and Adding to the Provisions Regarding Variances.

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

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 Town of Preble Zoning Ordinance adopted March 10, 2008, as amended to date.

As used herein, the term this "Local Law" shall mean and be this Local Law No. 1 of 2014.

As used in Article II of this Local Law, the term “this Law,” “this chapter,” this “Chapter,” “this Zoning 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.

This Local Law is intended to supersede any provision of the New York State Town Law that is inconsistent herewith.

Article II. Amendments of Existing Zoning Law

2.1. Amendments to Article I of the Existing Zoning Law

A. Section 104 of the Existing Zoning Law is hereby amended, so as to delete the present text thereof (beginning “Should any section ...”) in the entirety, and to substitute the following text therefor:

“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.”

B. Section 106 of the Existing Zoning Law is hereby amended so as to delete the words “person, firm or corporation” from the first sentence thereof, and to substitute the word “person” therefor.

2.2. Amendments to Article II of the Existing Zoning Law

A. Section 200 of the Existing Zoning Law (Word Terms and Definitions) is hereby further amended, so as to delete the present sentence thereof regarding the word “person” (beginning “The word ‘person’ includes ...”) in the entirety, and to substitute the following text therefor:

“The word “person” means 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.”

B. Section 200 of the Existing Zoning Law is hereby further amended, so as to add the following new sentence thereto, said new sentence to be inserted immediately prior to the heading and text of Section 210 of the Existing Zoning Law:

“From and after the effective date of Preble Local Law No. 1 of the Year 2014, the words “special permit,” “Special permit,” and “Special Permit” are hereby deleted everywhere they appear in this Law, and the words “conditional permit,” “Conditional permit,” and “Conditional Permit” are hereby respectively substituted therefor.”

C. Section 210 of the Existing Zoning Law is hereby 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” and immediately before the definition of “Consumptive Use”:

“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, include, or authorize within the Town any Explicitly Prohibited Use.”

D. Section 210 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Comprehensive Plan” therein, said definition to be inserted immediately after the (newly added) text regarding the term “Commercial; Commercial Uses” therein and immediately before the definition of “Consumptive Use”:

“COMPREHENSIVE PLAN -- any document, styled comprehensive or master plan or otherwise, adopted by the Town Board for the protection, enhancement, growth, and development of the Town, immediate as well as long-range, specifically pursuant to § 272-a of the NYS Town Law, together with all other materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material, adopted by the Town Board, that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the protection, enhancement, growth and development of the Town.”

E. The definition of “Consumptive Use” is hereby amended so as to add the following sentence thereto, said additional sentence to be inserted immediately after the sentence that begins (Deep well injection ...), and immediately prior to the definition of “Development”:

“The preceding sentence is not intended and shall not be construed to authorize ‘deep well injection’ or Underground Injection as legal uses of land within the Town.”

F. Section 210 of the Existing Zoning Law is hereby further amended, so as to add the following text as the (new) second sentence of the definition of “Excavation (Quarry, Sand Pit, Gravel Pit, Top Soil Stripping),” to be inserted immediately prior to the definition of “Family”:

“Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms “excavation,” “excavation or mining,” or any variation thereof contained in this Law, be construed to mean, be, include, or authorize within the Town any Natural Gas And/Or Petroleum Extraction Activities, or any other Explicitly Prohibited Use.”

G. Section 210 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 definition of “Excavation (Quarry, Sand Pit, Gravel Pit, Top Soil Stripping)” (as amended above) and immediately before the present definition of “Family”:

“Explicitly Prohibited Use(s) -- Shall mean and be the Explicitly Prohibited Uses defined and described in Section 590 of this Law.”

H. The definition of “Hazardous Material” set forth at Section 210 of the Existing Zoning Law (beginning “Any substance ...”) is hereby amended, so as: (i) to delete the text “either 40 CFR 261, 40 CFR 302, 6 NYCRR 371, of 6NYCRR 597” in the entirety, and to substitute the following text therefor: “any of 40 CFR 261, 40 CFR 302, 6 NYCRR 371, or 6 NYCRR 597”; and (ii) to delete the text “alone or in combination, including but not limited to petroleum products” in the entirety, and to substitute the following text therefor: “and, whether or not listed in any of the foregoing regulations, any petrochemicals, petroleum products (such as asphalt, gaseous fuels, liquid fuels, fuel oils, lubricating oils and greases),”.

I. Section 210 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the terms “Industrial; Industrial Uses; Industry” therein, said text to be inserted immediately after the definition of “Home Occupation” and immediately before the present definition of “Junkyard”:

“INDUSTRIAL; INDUSTRIAL USES; INDUSTRY -- Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms “industrial,” “industrial uses,” “industry,” or any variation thereof contained in this Law be construed to mean, be, include, or authorize within the Town any Explicitly Prohibited Use.”

J. Section 210 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 newly-added text regarding the terms “Industrial; Industrial Uses; Industry” and immediately before the definition of “Junkyard”:

“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 of the hole, 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.”

K. Section 210 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 definition of “Lot”:

“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.”

L. Section 210 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Large Scale Propane Storage Facility” therein, said text to be inserted immediately after the newly inserted definition of “Land Application Facility” and immediately before the definition of “Lot”:

“LARGE SCALE PROPANE FACILITY” – Subject to the final sentence of this definition, any stationary or movable above ground or subsurface structure, cavern, facility, or complex intended or designed to be capable of holding (whether for transport, wholesale distribution, long-term, short-term or intermittent storage, or otherwise) *more than* 30,000 gallons (or 111,000 pounds, whichever is less) of propane, whether in a single cavern, container, or vessel (such as, but not limited to, a tank, cylinder, or rail car) or in a group of two or more caverns, containers, or vessels that are connected or stored or located in proximity to one another or otherwise, and whether or not the caverns, containers, tanks, vessels, etc. constitute a ‘single process’ for purposes of 40 CFR Part 68. Notwithstanding any provision hereof to the contrary, for purposes of this Local Law the term ‘Large Scale Propane Facility’ is not intended and shall not be construed to mean or include either: (a) any facility (regardless of capacity) used to store propane to be consumed as fuel on the site of such facility; or (b) any propane delivery vehicles (sometimes referred to as ‘bobtails’) having a maximum capacity of 3,200 gallons (or 12,000 pounds) or less and used to deliver product to retail propane customers.”

M. Section 210 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the terms “Mining” therein, said text to be inserted immediately after the definition of “Manufactured Home Park” and immediately before the present definition of “Mixed Use Dwelling Or Property”:

“MINING -- Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the term “mining” or any variation thereof contained in this Law be construed to mean, be, include, or authorize within the Town any Natural Gas And/Or Petroleum Extraction Activities, or any other Explicitly Prohibited Use.”

N. Section 210 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 “Motor Vehicle Repair Shop” and immediately before the definition of “Non-Conforming Lot”:

“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 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) natural gas or petroleum drilling fluids; (b) natural gas or petroleum exploration, drilling, production or processing wastes; (c) 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); (d) 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; (e) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (f) drill cuttings from natural gas or petroleum wells; or (g) 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.

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.

O. Section 210 of the Existing Zoning Law is hereby further amended, so as to delete the text of the definition of “Permitted Use (Or Use Of Right)” (which begins “ A land use...”) in the entirety, and to substitute the following text therefor:

“A land use allowed in the zoning district in question by virtue of Sections 502, 503, 512, 513, 522, 523, 532, 533, 542, or 543, as applicable.”

P. Section 210 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Propane” therein, said text to be inserted immediately after the definition of “Professional Offices” and immediately before the definition of “Public and Semi-Public Buildings and Grounds”:

“PROPANE – Any of the hydrocarbon gases (whether or not in liquid or vapor form or otherwise) commonly referred to as liquefied petroleum gas, LPG, LP Gas, or

liquid petroleum gas, typically consisting primarily of (or a mixture of) propane or a mixture of propane and butane.”

Q. Section 210 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Public Utility; Public Utility Station” therein, said text to be inserted immediately after the definition of “Public and Semi-Public Buildings and Grounds” and immediately before the definition of “Recreational Area”:

“PUBLIC UTILITY; PUBLIC UTILITY STATION -- An entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission. A public utility station, 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. “

R. Section 210 of the Existing Zoning Law is hereby further amended, so as to delete the (present) defined term and definition of “Conditional Permit Uses” in the entirety, and to substitute the following text therefor:

“CONDITIONAL PERMIT USE; CONDITIONAL PERMIT: -- A use that because of its unique characteristics requires individual consideration through a procedure of review by the Board of Appeals, in order to determine whether a Conditional Use Permit should be granted, conditionally granted, or denied in accordance with Article IX of this Law.”

S. Section 210 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 “Swimming Pool”:

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

T. Section 210 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Town Board” therein, said text to be inserted immediately after the definition of “Temporary Use” and immediately before the definition of “Toxic Substance”:

“TOWN BOARD – The Town Board of the Town of Preble, New York.”

U. Section 210 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 “Toxic Substance” and immediately before the definition of “Uniform Code”:

“UNDERGROUND INJECTION -- Subsurface emplacement of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, including emplacement 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, whether for the purpose of load balancing the production of natural gas or for any other reason, including without limitation short-term, long-term, or intermittent storage for product quality, processing, or transportation purposes, or because of market conditions. Without limitation, this term includes compression and dehydration facilities.”

V. Section 210 of the Existing Zoning Law is hereby further amended, so as: (i) to delete the present heading and definition of “Variance” in the entirety, and (ii) to insert the following respective definitions of “Variance,” “Variance, Area,” and “Variance, Use” in substitution thereof:

“VARIANCE – An area variance or a use variance, as the context may admit.

VARIANCE, AREA -- The authorization by the Board of Appeals for the use of land in a manner that is not allowed by the dimensional requirements of the applicable zoning regulations.

VARIANCE, USE -- The authorization by the Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.”

W. Section 210 of the Existing Zoning Law is hereby further amended, so as to delete the (present) defined term and definition of “Zoning Enforcement Officer” in the entirety, and to substitute the following text therefor:

“ZONING ENFORCEMENT OFFICER: -- The Code Enforcement Officer, or other person from time to time designated by the Town Board to administer and enforce this Law.”

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 Article (“Permits and Procedures”) with the words “Code Enforcement Officer; Building Permits; Operating Permits; Certificates of Occupancy.”

B. Article III of the Existing Zoning Law is hereby further amended, so as to delete the words “Uniform Code and Energy Code” everywhere they appear within Article III, and to substitute the words “Uniform Code, Energy Code, and this zoning law” therefor.

C. Article III of the Existing Zoning Law is hereby further amended, so as to delete the words “Uniform Code or Energy Code” everywhere they appear within Article III, and to substitute the words “Uniform Code, Energy Code, or this zoning law” therefor.

D. Article III of the Existing Zoning Law is hereby further amended, so as to delete the words

“Uniform Code and/or Energy Code” everywhere they appear within Article III, and to substitute the words “Uniform Code, Energy Code, and/or this zoning law” therefor.

E. Clause 3. of Section A. of Section 300 of the Existing Zoning Law is hereby amended so as to delete the words “to construction” from the first line thereof, and to substitute the words “to conduct inspections” therefor.

F. Clause 11. of Section B. of Section 301 of the Existing Zoning Law is hereby amended so as to add the following text thereto, said additional text to be inserted immediately after the words “for any period of time” (in clause (iii) thereof) and prior to the period that (presently) follows the word “time”:

“; or (iv) the removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which effects egress.”

G. Section B. of Section 301 of the Existing Zoning Law (‘Exemptions’) is hereby further amended, so as to delete the text of clause 12 thereof (beginning “The removal or change ...”) in the entirety, and to substitute the words “[Intentionally omitted.]” therefor.

H. Section 307 of the Existing Zoning Law is hereby amended so as to replace the present title of such Section (“Operating Permits”) with the words “Operating Permits Required; Explicitly Prohibited Uses Not Authorized.”

I. Section 307 of the Existing Zoning Law is hereby further amended, so as to delete the present first sentence thereof (beginning “Operating Permits shall be required ...”), and to substitute the following text therefor:

“This Section 307 is not intended and shall not be construed to authorize any Explicitly Prohibited Use to be conducted within the Town, or to authorize any other use that is not a legal use within the Town. No Operating Permit shall be issued for any Explicitly Prohibited Use. Even if any of the activities, uses or buildings set forth below are otherwise lawful within the Town, no such activities, uses, or buildings shall be conducted or used unless an Operating Permit is obtained and remains in effect:”

J. Section 307 of the Existing Zoning Law is hereby further amended, so as to delete the words “Uniform Code” from Section B. thereof (‘Applications for Operating Permits’), and to substitute the words “Uniform Code and this zoning law” therefor.

K. Section 307 of the Existing Zoning Law is hereby further amended, so as to delete the words “Uniform Code” from Section F. thereof (‘Revocation or suspension of Operating Permits’), and to substitute the words “Uniform Code or this zoning law” therefor.

2.4. Amendment to Article V of the Existing Zoning Law

A. Article V of the Existing Zoning Law is hereby amended so as to replace the present title of such Article (“District Regulations”) with the words “Zoning District Uses; Any Use Not Specifically Permitted Is Prohibited.”

B. Article V of the Existing Zoning Law is hereby further amended, so as to insert the following text immediately following the title of said Article (“Zoning District Uses; Any Use Not Specifically Permitted Is Prohibited”), and immediately prior to the number and heading of Section 500 of the Existing Zoning Law:

“Any use not specifically set forth as a permitted use (as of right or upon conditional 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 another district unless it is specifically set forth as a permitted use in said other district.

No building or land shall hereafter be used or occupied, and no building or part thereof shall be erected, moved or altered, unless in conformity with the regulations herein specified for the district in which it is located, and no building shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller rear yards, front yards, or side yards, than is specified herein for the district in which such building is located.”

C. Section 504 of the Existing Zoning Law is hereby amended so as to delete the words “ARTICLE VII” from the title thereof, and to substitute the words “ARTICLE IX” therefor.

D. Section 514 of the Existing Zoning Law is hereby amended so as to delete the words “ARTICLE VII” from the title thereof, and to substitute the words “ARTICLE IX” therefor.

E. Section 524 of the Existing Zoning Law is hereby amended so as to delete the words “ARTICLE VII” from the title thereof, and to substitute the words “ARTICLE IX” therefor.

F. Section 532 of the Existing Zoning Law is hereby amended so as to insert the following text immediately after the words “Business Services including warehousing and storage”:

“; provided, however, that in no event shall any Explicitly Prohibited Use be authorized by virtue of or pursuant to this Section 532.”

G. Section 532 of the Existing Zoning Law is hereby further amended so as to insert the following text at the end of the sentence which begins “Other business and commercial uses ...”, said new text to be inserted immediately after the words “those permitted above”, and before the period which presently follows the word “above”:

“; provided, however, that in no event shall any Explicitly Prohibited Use be authorized by virtue of or pursuant to this Section 532.”

H. Section 534 of the Existing Zoning Law is hereby amended so as to delete the words “ARTICLE VII” from the title thereof, and to substitute the words “ARTICLE IX” therefor.

I. Subsection C. of Section 542 of the Existing Zoning Law is hereby amended so as to insert the following text immediately after the words “Storage facilities/Warehouses”:

“; provided, however, that in no event shall any Explicitly Prohibited Use be authorized by virtue of or pursuant to this Section 542.”

J. Section 544 of the Existing Zoning Law is hereby amended so as to delete the words “ARTICLE VII” from the title thereof, and to substitute the words “ARTICLE IX” therefor.

K. Subsection A. of Section 545 of the Existing Zoning Law is hereby amended so as to insert the text thereof (beginning “Residential uses ...”) in the entirety, and to substitute the words “[Intentionally omitted.]” therefor.

L. Section 564 of the Existing Zoning Law is hereby amended so as to delete in the entirety the text of thereof (beginning “All uses currently permitted ... ”), and to substitute the following text therefor:

“The Aquifer Protection District is an overlay district, intended to provide additional protection of important environmental resources. The boundaries of the Aquifer Protection District may overlap different land use districts, but does not change the use and dimensional requirements of the underlying land use districts. “

M. Section 566 of the Existing Zoning Law is hereby amended so as to add the following text thereto, said additional text to be inserted as the (new) final sentence of said Section, to be inserted immediately prior to the number and heading of Section 567 of the Existing Law:

“I. All Explicitly Prohibited Uses.”

N. Section 567 of the Existing Zoning Law is hereby amended so as to add the following text thereto, said additional text to be inserted as the (new) final sentence of said Section, to be inserted immediately prior to the number and heading of Section 568 of the Existing Law:

“This Section 567 is not intended and shall not be construed to authorize any Explicitly Prohibited Use.”

2.5. Amendment to the Existing Zoning Law to Create New Article V-A

A. The Existing Zoning Law is hereby further amended, so as to add a new Article V-A thereto as set forth below, said new Article V-A and the title thereof to be inserted immediately following the end of the text of Section 582 of the Existing Zoning Law, and immediately preceding the text and heading of Article VI (‘Regulations Applicable to All Zoning Districts’) of the Existing Zoning Law:

**“ARTICLE V-A
Explicitly Prohibited Uses; Prohibition Against
Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.”**

B. The Existing Zoning Law is hereby further amended, so as to insert the following (new) Sections 590, 591, and 592 of (newly added) Article V-A, said new Sections to be inserted immediately after the heading of (newly added) Article V-A and immediately preceding the heading and title of Article VI ('Regulations Applicable to All Zoning Districts') of the Existing Zoning Law:

Section 590. EXPLICITLY PROHIBITED USES. Without limiting the generality of the statements elsewhere in this Law that uses not set forth in Article V hereof (as to a particular district) are not allowed uses in the Town, the following uses and activities 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:

- (i) Land Application Facility;
- (ii) Large Scale Propane Facility;
- (iii) Natural Gas And/Or Petroleum Exploration Activities;
- (iv) Natural Gas And/Or Petroleum Extraction Activities;
- (v) Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility;
- (vi) Natural Gas And/Or Petroleum Exploration, Extraction, Or Production Wastes Dump;
- (vii) Natural Gas Compression Facility;
- (viii) Natural Gas Processing Facility;
- (ix) Underground Injection; and
- (x) Underground Natural Gas Storage.

Any condition caused or permitted to exist in violation of this Section 590 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."

Section 591. PROHIBITION AGAINST NATURAL GAS AND/OR PETROLEUM EXPLORATION, EXTRACTION OR PRODUCTION WASTES. The Town of Preble hereby exercises its authority and right under NY ECL § 27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency

demonstrated by the fact that this Local Law complies “with at least the minimum applicable requirements” set forth in such statute, and the rules and regulations promulgated pursuant to said Article 27.

It shall be unlawful for any person to produce, store, inject, discard, discharge, dispose release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, disposed, released, or maintained, anywhere within the Town, any Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes.

Section 592. NO APPLICATION TO CUSTOMARY LOCAL DISTRIBUTION LINES, ETC. The prohibitions set forth above in Section 590 of this Article V-A 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 Farm, residential, business, commercial, and other uses within the Town.”

2.6. Amendment to Article VI of the Existing Zoning Law

Section 645 of the Existing Zoning Law is hereby amended: (i) so as to replace the present title of such Section (“Non-Conforming Uses, Lots, Structures”) with the words “Non-Conforming Uses, Lots, Structures; Pre-Existing, Legal Non-Conforming Natural Gas And/Or Petroleum Extraction Activities”; and (ii) so as to insert the following new Section K., said new Section K. to be inserted immediately following the text of present Section J. of Section 645, and immediately prior to Section 650 of the Existing Zoning Law:

“K. Pre-existing, legal non-conforming Natural Gas And/Or Petroleum Extraction Activities.

Notwithstanding any provision of this chapter to the contrary, any Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of Local Law 1 of 2014 shall be subject to the following:

And/Or permit(s) 1.a. If, as of the effective date of Local Law 2014 of 2013 substantive Natural Gas 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 regulating local, state, and federal governments, bureaus, or agencies, then and only then such Activity by or on behalf of the holder of the shall be considered a pre-existing, non-conforming use and shall be allowed to

continue, subject, however, to the provisions of Clauses 2. and 3. of this Section

K.

b. 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 1.a. of this Section K. shall not be grandfathered (or be permitted to continue or deemed lawful pre-existing uses).

2. 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 1.a. of this Section K., 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.

3. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause 1. a. of this Section K. 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 1.a. of this Section K. "

2.7. Amendments to Article VIII of the Existing Zoning Law

A. Section B. of Section 800 of the Existing Zoning Law is hereby amended so as to delete the word "International" therefrom.

B. Section A. of Section 801 of the Existing Zoning Law is hereby amended so as to delete the words "this Ordinance" therefrom, and to substitute the words "Article III hereof" therefor.

C. The text of Section A. of section 833 of the Existing Zoning Law is hereby deleted in the entirety, and the following text is substituted therefor:

A. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the ZBA finds that otherwise applicable zoning regulations and restrictions have caused unnecessary hardship as set forth herein.

1. Unnecessary Hardship. In order to prove the existence of an unnecessary hardship for purposes hereof the applicant is required to clearly demonstrate to the ZBA's satisfaction 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: (w) 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; (x) 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; (y) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (z) that the alleged hardship has not been self-created.

2. Reasonable Rate of Return. In evaluating whether the applicant can realize a reasonable rate of return, the ZBA shall 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 project). No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the ZBA finds that the applicant has clearly demonstrated, by detailed, written "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).
3. Unique Hardship. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the ZBA finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the area.
4. Essential Character of the Neighborhood. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the ZBA finds that the proposed project will not alter the essential character of the neighborhood. In making its determination of whether the proposed project will alter the essential character of the neighborhood, the ZBA shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (a) the rural residential, agricultural and historic character of the Town, (b) its irreplaceable recreation and tourism sites, (c) the extent of hazard to life, limb or property that may result from the proposed project, (d) health impacts, (e) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (f) the impact on property values, and (g) whether the applicant will use a style of development that will result in degradation to the air quality, water quality or scenic and natural resources of the Town. In order to find that the proposed project does not alter the essential character of the neighborhood, the ZBA 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.
5. Self-Created Hardship. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the ZBA finds that the

alleged hardship was not self-created. The ZBA may find that the applicant suffers from a self-created hardship in the event that the ZBA finds that (x) 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; (y) 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 (z) when the applicant purchased the property, the applicant knew or should have known the property was subject to the zoning restrictions.

B. The ZBA, 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.

C. The ZBA, 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.

2.8. Amendments to Article IX of the Existing Zoning Law

Section 900 of the Existing Zoning Law is hereby amended so as to delete the text thereof (which begins "It is the intent of ...") in the entirety, and to substitute the following text therefor:

"Conditional permit uses are uses for which approval of the Board of Appeals is required and for which conformance to additional standards is required, in addition to all other requirements of this Law. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific case or use shall be considered as an individual case that requires consideration of the merits and details of each proposed use to assure that such proposed use is in harmony with this Law and the Comprehensive Plan, and that such proposed use will not adversely affect the general character of the surrounding area if the conditions of the conditional use permit are met."

2.9. 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.

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.

Adopted by the Preble Town Board on _____

I hereby certify that the local law annexed hereto, designated as Local Law No. _____ of 2013 of the Town of Preble, 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 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.

(Seal)

Jane Davenport, Town Clerk

Date: _____, 2014