

# Local Law Filing

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

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

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

of Marshall, Oneida County New York

Local Law No. 2 of the year 20 22

A local law THE TOWN OF MARSHALL COMMERCIAL EXCAVATION & SMALL SCALE MINING LAV  
(Insert Title)

Be it enacted by the Town Board of the  
(Name of Legislative Body)

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

of Marshall

as follows:

SEE ATTACHED LOCAL LAW

(If additional space is needed, attach pages the same size as this sheet, and number each.)

**(Complete the certification in the paragraph that applies to the filing of this local law and  
strike out that which is not applicable.)**

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2022 of  
the ~~(County)(City)(Town)(Village)~~ of Marshall was duly passed by the  
Town Board on June 14 2022, in accordance with the applicable  
*(Name of Legislative Body)*  
provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective  
Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of  
the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the  
\_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)  
*(Name of Legislative Body)*  
(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted  
*(Elective Chief Executive Officer\*)*  
on \_\_\_\_\_ 2022, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of  
the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the  
\_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)  
*(Name of Legislative Body)*  
(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_.  
*(Elective Chief Executive Officer\*)*

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

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of  
the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the  
\_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)  
*(Name of Legislative Body)*  
(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local  
*(Elective Chief Executive Officer\*)*  
law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_  
20\_\_\_\_, in accordance with the applicable provisions of law.

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there  
be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is  
vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

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

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

Mary G. Slout, Town Clerk  
Clerk of the county legislative body, City, Town or Village Clerk or  
officer designated by local legislative body

Date: 8/3/22

(Seal)

TOWN OF MARSHALL Local Law No. 2 of 2022

## THE TOWN OF MARSHALL - COMMERCIAL EXCAVATION & SMALL SCALE MINING LAW

BE IT ENACTED by the Town Board of the Town of Marshall, Oneida County, as follows:

### SECTION 1: AUTHORITY

This law is enacted pursuant to the authority granted under Section 10 of the Municipal Home Rule Law.

### SECTION 2: PURPOSE

A. It is an essential goal of the Town, in conformance with the Town's Comprehensive Plan, to protect its residents by safeguarding residential and agricultural land, water resources and natural environmental features while maintaining a rural town character, encouraging and supporting small family farms and protecting the environment. The Town further recognizes that its residents are dependent on groundwater supplies for domestic use.

B. In recognition of its obligation to protect the public health, welfare and safety of persons within the Town and consistent with Environmental Conservation Law § 23-2701 et seq., (the Mined Land Reclamation Law, hereinafter "MLRL"), presently existing land uses, zoning districts and the Town's Comprehensive Plan, the Town hereby establishes this policy with regard to criteria for Natural Products districts and for regulating the operation of mineral extraction operations to the extent permitted by New York state law.

### SECTION 3: DEFINITIONS

For the purpose of this local law, the following terms shall apply:

**Agriculture:** All agricultural operations and activities related to the growing or raising of crops, livestock or livestock products, and agricultural products, as such terms are defined in or governed by the New York State Agriculture and Markets Law on lands qualified under the NYS law for agricultural exemption by the assessor of the Town of Marshall.

**Mineral:** Any naturally formed, organic or inorganic, solid material located on or below the surface of the earth. For the purposes of this definition, overburden, peat, topsoil, subsoil, sand, gravel and other stone materials shall be considered minerals.

**Mining:** The extraction of minerals from the earth for offsite use; the preparation and processing of any minerals, including washing, cleaning, crushing, stockpiling or other processing of minerals for offsite use; or the onsite disposition of overburden, tailings and waste.

**Large Scale Mining:** Mining operations that require a NYSDEC Permit under the New York Mined Land Reclamation Law (Environmental Conservation Law Article 23, Title 27). A NYSDEC permit is required for extraction of more than: 1,000 tons or 750 cubic yards of minerals, whichever is less, during 12 successive months, (Approximately 40-50 tandem axle, 10 wheeler, dump truck loads.), or 100 cubic yards of minerals removed in or adjacent to any water body not subject to the jurisdiction of the Protection of Waters Program or the Public Lands Law.

**Small Scale Mining:** Mining operations that involve the extraction of more than 100 cubic yards but fewer than 1,000 tons or 750 cubic yards of minerals from the earth within 12 successive calendar months.

#### SECTION 4: EXCEPTIONS

The following operations and uses are hereby excepted from the application of this article:

##### A. General construction exception

(1) Nothing contained herein shall prohibit excavation incidental to construction of a driveway, private road, walk, wall or building or part thereto, or accessory thereto, for which any required building permits have been issued, where the excavation occurs on the same or contiguous parcel as the construction. In cases of real estate subdivision, the cut and fill of on-site soils are expected to be in balance and not hauled off the building site, except as provided below. Provision shall be made to restore an effective cover crop to any area of land from which topsoil has been removed or covered with fill within the first growing season following the start of such operation.

(2) Any person who proposes the removal of more than 100 cubic yards of minerals from the earth within 12 successive months and where a mining permit is not required pursuant to the Mined Land Reclamation Law (Environmental Conservation Law Article 23, Title 27, § 23-2701 et seq.), through waiver, exemption, or otherwise, must obtain a special use permit from the ZBA for small-scale mining pursuant to the provisions set forth herein.

##### B. General farming exception

Nothing contained herein shall prohibit excavation for the purpose of moving topsoil, soil or earth from one location to another location on the same or contiguous parcel for grading, improving or draining said land, provided that such excavation is necessary for, or accessory to, farming operations.

##### C. Sewage disposal and underground storage tanks exception

Nothing contained herein shall prohibit excavation for sewage disposal systems or underground storage tanks.

##### D. Fire and farm pond exception

Nothing contained herein shall prohibit construction of private farm ponds with a tributary drainage area of less than one square mile, farm ditches and fire ponds. However, construction must meet all criteria required by the Department of Environmental Conservation (DEC) concerning classified waterways.

##### E. Existing permit holders

Landowners who hold the legal, permitted right to conduct mining or excavation in A - 1 Zones at the time of the adoption of this law (to include but not limited to the following NYS DEC mining permits with the following mine ID numbers: 60710, 60118, 61133 and 60041) shall be exempt from the permitting requirements of this law. However, any previously permitted mining activity that falls under the 1,000 ton/750 cubic yard threshold for Small Scale Mining shall be subject to the Standards and Procedures for Small Scale Mining as per Section 6 of this law herein.

G. Town of Marshall Highway Department

The Town of Marshall Highway Department shall be exempt from the procedural requirements of the article.

H. Emergency Actions

Emergency actions and measures necessary to protect human life and preserve property, such as clearing rock slides, creating a fire break to fight fire, or other situations in which public health, safety and welfare are threatened.

SECTION 5: Large Scale Mining

A. Permitted uses

Large Scale Mining shall be a permissible land use exclusively within the natural products (NP) zoning district as defined in the Town of Marshall Zoning Map.

B. Requirements and procedures for applying for a Large Scale Mining Permit

(1) An application for a Large Scale Mining Permit for land in a NP zoning district must be made in accordance with the provisions of this article and said permit shall only be granted if the objectives and provisions of this law, the laws of Oneida County and State of New York have been satisfied after joint review by the Town Board and the Planning Board.

(2) Approval by the State of New York of a mining permit under the MLRL does not constitute approval by the Town of Marshall for a Large Scale Mining Permit.

(3) The process for compliance with the State Environmental Quality Review (SEQRA), Environmental Conservation Law, Article 8, and regulations as required under this law and other applicable and relevant portions of the Town Zoning Ordinance for permission to operate a Large Scale Mine shall be independent of that which is required in accordance with an application to the State of New York for a mining permit under the MLRL.

The Town Board shall serve as lead agency under SEQRA with respect to the application for a permit to operate a Large Scale Mine. The Town Board shall not be required to take any action with respect to an application to operate a Large Scale Mine if an application is not complete. An application for a Large Scale Mining permit is complete upon the earlier of:

(a) The date that the Town Board/ as lead agency, determines that a draft environmental impact statement (DEIS) shall be dispensed with and the negative declaration is issued upon finding that the proposal will not significantly affect the environment; or

(b) The date that a DEIS has been filed and accepted by the Town Board as lead agency as satisfactory in scope and content.

(4) An application for a Large Scale Mining permit, together with a metes and bounds description of the parcels upon which the Large Scale Mining operation will operate, the duration of time for which the mine will be operational and a completed SEQURA form shall be submitted by the applicant to the Town Clerk. The

applicant shall furnish the Town with a copy of the application for a mining permit which the applicant plans to submit to DEC.

(5) The Town Clerk shall transmit the application, including the environmental assessment form and all other supporting documentation filed by the applicant to the Town Planning Board, for its recommendation as to the classification of the action under SEQRA.

(6) Upon receipt of the classification recommendation from the Town Planning Board, the Town Board shall conduct a coordinated review of the application for SEQRA purposes. After making a determination of significance, and after affirming that the application is complete, the Town Board shall refer the application to the Planning Board for review in accordance with this law.

(7) Any applicant seeking to acquire a permit to operate a Large Scale Mine shall have the burden of demonstrating to the satisfaction of the Town Planning Board and Town Board that the criteria specified herein have been met. In addition, the applicant shall procure and provide other data, such as, but not limited to, surveys, maps, mining and reclamation plans, traffic studies, noise studies, noise, dust and runoff mitigation plans, as may be required for thorough review of the application. The applicant shall also provide Town Planning Board and Town Board with all information in their possession which might affect its decision. All costs incurred in the process of acquiring and providing the Town of Marshall Planning Board and/or the Marshall Town Board the materials and information required for its deliberations shall be the sole responsibility of the applicant, inclusive of legal fees incurred by the Town of Marshall in the process of their review. Submission of an application shall serve as agreement by the applicant to this financial responsibility.

In their interpretation and application, the provisions of this law shall be held to be minimum requirements adopted for the promotion of the public health, safety or the general welfare. Whenever the requirements of this law are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances or local laws, the more restrictive provisions or those imposing the higher standards shall govern.

(8) Security.

(a) Escrow Agreement. The Town shall require the applicant to fund an escrow agreement to cover the amount of the Town's cost to review the applicant's application, costs of funding the applicant's reclamation plan.

(b) The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of adequate security deemed acceptable to the Town attorney and/or engineer, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the successful completion of the approved reclamation plan. The amount of the bond or security shall be 125% of the cost of and restoration of the property together with an annual escalator as is deemed appropriate under the circumstances.

(c) In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or adequate security shall be forfeited to the Town which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the reclamation plan is completed.

(d) If a bond is posted to meet this requirement, the bond issuing company must have a current A.R. Best rating of A- or higher. All mine reclamation and land restoration fund requirements must be met before a Large Scale Mining Special Use Permit is issued.

C. Procedure and criterion for review of an application for a Large Scale Mining Permit

(1) The Town Planning Board, before making its recommendation, and the Town Board, before making its determination, shall assess the effect of the proposed operation of a Large Scale Mine on the general health, safety and welfare of residents.

(2) The Town's determination shall consider, but not be limited to, the following:

(a) Impact on local traffic.

(b) Impact on the aesthetic and natural environment of the site of excavation and surrounding areas.

(c) Impact and/or potential impact upon groundwater; any residential, agricultural or commercial water supply; drainage; nearby wetlands as defined by the NYS Department of Environmental Conservation; and nearby Environmentally Sensitive areas.

(d) The potential impact on the overall quality life of landowners in the area around the proposed site of mining.

(e) The compatibility with the character of surrounding land uses before, during and after the proposed mining operations.

(f) Proposed buffers and setbacks from adjoining landowners, hours of operations and operational procedures to mitigate dust, noise and visual impact.

(3) The Planning Board and the Town Board in their evaluation of the application shall also consider whether the proposed mining would result in a mining operation with:

(a) The planned use of sand or gravel processing equipment within 1 mile radius of the property line of the proposed site of operation of a Large Scale Mine of any nonowner-operator residence, school, playground, daycare facility, public gathering place or other place of employment (to include those who work from home).

(b) The proposed site of operation of the mine complies with the following setbacks: Five Hundred feet (500) feet from road and property lines; One quarter mile (1/4 mile) from occupied structures, nonowner-operator residence, school, playground, daycare facility, public gathering place or other place of employment (to include those who work from home); and Five Hundred (500) feet from a designated wetland or critical environmental area.

E. Public Hearing, Approval, Approval with Conditions or Disapproval of Application and Permitting

Upon acceptance and review of all required documents along with any requested supplementary documentation and supporting information, the Town Board, can at their discretion, and by majority vote, schedule a public hearing to receive comment about the proposed application for operation of a Large Scale Mine. Said public hearing shall be advertised publicly in print media and on the Town website no fewer than 2

weeks prior to the date of the hearing. The landowner's application for a Large Scale Mining Permit along with all required and requested supplementary documentation and supporting information will be available for review prior to the public hearing.

Upon the acceptance of public comment and the closing of the public hearing the Town Board will issue a written decision approving, approving with modification or denying the application for a Large Scale Mining Permit. A disapproval shall be accompanied by a written justification. A decision of approval or approval with modification will be accompanied by an official Town Permit to be publicly displayed for the duration of the operation of the Large Scale Mine. Additionally, the operation of a Large Scale Mine is contingent on obtaining a mining permit from the New York State DEC.

#### SECTION 6: SPECIAL USE PERMIT REQUIRED FOR SMALL-SCALE MINING.

Any person who proposes the removal of more than 100 cubic yards and fewer than 1,000 tons or 750 cubic yards of minerals from the earth within 12 successive calendar months must obtain a Small Scale Mining Special Use Permit from the Zoning Board of Appeals, pursuant to the provisions set forth herein.

#### SECTION 7: STANDARDS AND PROCEDURES FOR SMALL-SCALE MINING IN A1 and NP DISTRICTS

##### A. Standards

Before granting a Small Scale Mining Special Use Permit in an A1 or NP Zoning District, the Zoning Board of Appeals shall determine that:

- (1) All lands to be covered by the permit are owned and controlled by the applicant.
- (2) The proposed excavation, quarrying and/or associated activity will not endanger the stability of adjacent structures nor constitute a detriment to public health, safety, welfare or convenience by reason of excessive dust, noise, traffic or other conditions before, during or after extraction.
  - (a) Drilling, blasting, chemical extraction or other similar methods are prohibited as extractive methods for small scale mining.
- (3) The extraction site will not substantially encircle any residential or other use without the written consent of the owners and residents.
- (4) The operation will not adversely affect any wetland, watercourse or residential, commercial or municipal water supply or sewage disposal system.
- (5) The operation will not adversely affect any valuable environmental, cultural or historic features in the area.
- (6) Screening may be required in such a manner as to screen all activities from public view to the extent feasible.
- (7) No excavation or other mine-related activities will be conducted within:
  - (a) Sevenhundredfifty(750) feet of any school, playground, daycare facility, public gathering place or residence

(b) Five Hundred (500) feet of any designated wetlands as determined by DEC.

(c) One hundred feet (100) of any right-of-way.

(d) Two hundred and fifty feet (250) of any property line or boundary.

(8) The slope of material in such topsoil, sand, gravel, clay and other earth shall not exceed the normal angle of repose (the natural angle at which the pile of material would land if left to its own devices) of such material.

(9) No mining or other mine-related activities will be conducted on Saturdays, Sundays or holidays, nor between the hours of 5:00 p.m. and 7:00 a.m. on Mondays through Saturdays. Further restrictions may be placed on the permit.

(10) Mining activities at the site are restricted to excavation and removal of minerals from the site. Processing of minerals (i.e., washing, screening or mixing with materials from off site, etc.), commercial sale and/or removal of materials from the parcel to which the special use permit is requested shall be prohibited.

(11) A minimum of 90 days prior to the initiation of any permitted mining operation, the applicant will bear the following responsibilities.

(a) Written notification, sent via certified mail, to all property owners within ½ mile radius of the property on which the mine will operate the intended start date, hours and days of the week of operation, phone number, mailing address and email address of the property and any party responsible for the mining operations.

(b) Paying, in full, the cost of testing of the function of well(s) and water quality from said well(s) by a firm certified through the NYSDOH Environmental Laboratory Approval Program, for any property owner(s) within ½ mile radius of the property on which the mine will operate who elects to have their well(s) and water tested. (Ask about the legality of requiring the mining operator to pay for annual testing).

#### B. Procedures for small-scale mines

(1) In addition to the application required by this law and fulfilling the stated requirements of this law, the applicant shall submit with the application the following documents:

(a) A completed SEQRA form, a mining plan (including a metes and bounds description of the proposed area to be mined), and a plan for a phased reclamation, satisfactory to the Zoning Board of Appeals, of the proposed extraction area. In no case shall the mining plan and plan for reclamation (inclusive) be for a period in excess of five years. In the event that an abandoned mine is activated under this permit, reclamation of the entire affected area shall be considered part of reclamation requirements.

(b) A plan for safeguarding the public health, safety and welfare of surrounding and nearby residents during extraction and related activities. This plan shall be approved by the Zoning Board of Appeals prior to issuance of a special use permit.

(c) The fee as established by the Town Board.

(2) The Town shall bear no costs for outside consultant reviews deemed necessary by the Town pertaining to the project or the permitting process. Prior to the Town incurring any costs necessary for its deliberations and chargeable to the applicant, the Zoning Board of Appeals shall advise the applicant of said costs and obtain the applicant's agreement to bear such costs.

(3) The applicant shall furnish the Zoning Board of Appeals with all information in their possession which might affect its decision. In addition, the applicant shall be responsible for promptly providing the Zoning Board of Appeals with any new information or circumstances after the date of filing the original application.

(4) If approved, the special use permit shall be issued by the Zoning Board of Appeals for a maximum of five years, subject to inspection by the Zoning Board of Appeals or its designee and to immediate revocation for a finding of noncompliance with any condition of the permit.

(5) Any permit, when issued, shall explicitly state all operating conditions which are necessary to assure compliance with this section and applicable Town and state laws, ordinances, regulations and operational procedures designed to minimize physical and aesthetic damage to the environment.

(6) Each extraction site shall be governed by an individual permit. If an operating group conducts extraction operations at more than one site in the Town, its conduct at all sites shall be considered in determining the provisions of each special permit and may be grounds for denial or restriction of such permit.

#### SECTION 8: RENEWAL OF SPECIAL USE PERMITS FOR SMALL-SCALE MINES

A. Permit renewals may be granted at the discretion of the Zoning Board of Appeals if the activity is proceeding in accordance with the provisions of the initial plan. The renewal shall be subject to annual inspection by the Zoning Board of Appeals or its designee.

B. All holders of permits shall advise the Zoning Board of Appeals of any change of facts and conditions which might affect their ability to operate under the permit.

C. Immediately after any change of ownership of any Small Scale Mining site or of the persons or entities directly responsible for its operation, the new owner/operator shall notify the Zoning Enforcement Officer of the change in ownership.

D. Each site shall be inspected for compliance by the Zoning Enforcement Officer prior to any permit renewal. A written report of such inspection and its findings shall be made to the Zoning Board of Appeals. Such inspection(s) shall be financed by a fee system as established by the Town Board.

E. Each permit shall contain provisions which affect its suspension in the event of a finding of noncompliance with any term or condition of operation.

#### SECTION 9: RECLAMATION STANDARDS AND REQUIREMENTS FOR SMALL-SCALE MINES .

Before issuing a special use permit, the Zoning Board of Appeals must find that the reclamation plan meets the following standards and requirements:

A. Timetable

Reclamation is normally to take place after the removal of up to 750 cubic yards/1,000 tons of mineral unless the Zoning Board of Appeals determines that a different reclamation schedule is more appropriate.

#### B. Drainage and water resource protection

All final site drainage shall be designed, sloped, revegetated or treated by other measures so that drainage patterns, including volume and outflow points, will be the same as before the mining occurred, unless an alteration of patterns would improve drainage in the surrounding area. Measures must be specified to prevent erosion and sedimentation of wetlands, watercourses and ponds, and an erosion and sedimentation control plan recommended by the federal Natural Resources Conservation Service (NRCS) must be approved by the Zoning Board of Appeals. The pre-mining quality of any underlying aquifer must be preserved.

#### C. Slopes

Gravel slopes shall be left with a grade that independently maintains stability and no slope shall have a slope greater than 1 to 1 or its normal angle of repose for all other materials.

#### D. Reclamation material

All restoration material used in the final grading of the site shall be free from refuse or toxic contaminants and shall be compacted as much as is practical, such as by installation in layers. Stumps, boulders and nontoxic debris generated by the mining operation shall be removed from the site and disposed of or buried and covered with a minimum of two feet of soil. All toxic debris and waste, including petroleum products, shall be removed from the mining site for proper disposal.

#### E. Soil cover

Final soil depths and types shall be appropriate for the expected reuse specified in the application. Subsoil and topsoil shall be re-spread over the excavated area to a minimum depth of one foot: six inches of topsoil and six inches of subsoil. If the original soil depth was less than one foot, restoration shall be to a minimum of the original depth. This restored soil shall be treated with lime and fertilizer and seeded with a grass or legume mixture prescribed by the federal Natural Resources Conservation Service.

#### F. Topsoil preservation

All topsoil shall be stripped from the active excavation area and stockpiled on site and seeded for use in accordance with the reclamation plan. Such stockpiles shall be treated to minimize the effects of erosion by wind or water upon public roads, streams or adjacent property.

#### G. Revegetation

Revegetation of the site to control dust and erosion and to restore the natural character is required. The operator shall maintain the vegetation for two growing seasons to ensure viability. Standards and specifications for revegetation shall be in accordance with recommendations of the NRCS-approved technical guides for actual area seeding.

#### H. Security

##### (1) Financial Responsibilities

(a) Escrow Agreement. The Town shall require the applicant to fund an escrow agreement to cover the amount of the Town's cost to review the applicant's application

(b) Reclamation Plan. The Town shall require the applicant to file with the Town Clerk a bond, or other form of adequate security to fully fund the approved reclamation plan.

(2) The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of adequate security deemed acceptable to the Town attorney and/or engineer, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the successful completion of the approved reclamation plan. The amount of the bond or security shall be 125% of the cost of and restoration of the property together with an annual escalator as is deemed appropriate under the circumstances.

(3) In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or adequate security shall be forfeited to the Town which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the reclamation plan is completed.

(4) If a bond is posted to meet this requirement, the bond issuing company must have a current A.R. Best rating of A- or higher. All mine reclamation and land restoration fund requirements must be met before a Small Scale Mining Special Use Permit is issued.

## SECTION 10. Enforcement and Violations

### A. Enforcement

This Law shall be enforced by the ZEO. They shall be authorized and have the right in the performance of duties to enter upon any property in the process of being mined, or in the process of being reclaimed after mining to investigate any complaint or violation of this law. Such entrance and inspection shall be initiated at reasonable times and in emergencies whenever necessary to protect the public interest. Note: Many of the following items are regulated by other agencies and have been included for informational purposes for public knowledge. Any complaints regarding items already regulated by other agencies will have those complaints forwarded to appropriate regulating agencies by the ZEO.

### B. Additional Town Actions

In addition to the above provided penalties, the Town Board may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this law.

### C. Financial Responsibility for Legal Fees

The property owner and mining contractor shall be held fully responsible for the violation and shall be responsible for the Town's reasonable attorney fees and any associated court costs.

## SECTION 11. MISCELLANEOUS

### A. Liability

Neither the issuance of a permit, nor the compliance with the provisions hereof or

with any conditions imposed in the permit issued hereunder, shall relieve the permittee from the full responsibility for any damage whatsoever to other persons or property, nor impose any liability upon any officer, agent or employee of the Town for damage to persons or property.

#### B. Severability

If Any section, paragraph, subdivision or provisions of this Law shall be declared invalid, such invalidity shall apply only to the section, paragraph, subdivision or provisions adjudged invalid and the rest of this Law shall remain valid and effective.

#### C. Repealers

This law replaces and supercedes the following portions of the Town of Marshall Zoning Regulations:

(1) Section 11 (A-1 Agricultural Zones), letter b (uses permitted by SUP by ZBA, number 2 (Commercial Excavation, if less than 5 acres).

(2) Section 20 Commercial Excavation

#### D. Effective Date

This local law shall become effective upon the date it is filed in the Office of the New York Secretary of State.