

TOWN OF KENT
NOTICE OF HEARING

AMENDMENTS TO THE KENT TOWN CODE
REGARDING MINING

PUBLIC NOTICE is hereby given that there has been introduced before the Town Board of the Town of Kent, New York, on October 29, 2019 an amendment to Kent Town Code amending Chapter 77 of the Code regarding Zoning to regulate Mining in the Town of Kent.

NOW THEREFORE, pursuant to Section 20 of the Municipal Home Rule Law, the Town Board of the Town of Kent, New York will hold a public hearing on the aforesaid Amendment at the Town Offices, 25 Sybilø Crossing, Kent, New York, on November 19, 2019, at 7:00 p.m. in the evening of that day at which time all persons interested therein shall be heard. The Town Board will make every effort to assure that the hearing is accessible to persons with disabilities. Anyone requiring special assistance and/or reasonable accommodations should contact the Town Clerk.

Dated October 30, 2019

BY ORDER OF THE TOWN BOARD OF THE
TOWN OF KENT

YOLANDA D. CAPPELLI, TOWN CLERK

TOWN OF KENT
AMENDMENT TO
CHAPTER 77 OF THE KENT TOWN CODE

BE IT ENACTED by the Town Board of the Town of Kent, Putnam County, New

York, as follows:

Section 1. Chapter 77 of the Kent Town Code entitled "Zoning", is amended to add a new Article VIII(C) regarding Mining, as follows as follows:

ARTICLE VIII(C)

§77-26. 11. Definitions.

ABANDONMENT

The discontinuance of use by not performing the normal functions associated with the mining operation for an eighteen-month period.

AFFECTED AREA

The sum of that surface area of land or land under water which is to be disturbed by the mine.

EXCAVATION

The permanent removal of overburden and minerals, as defined herein, from the ground in the affected area.

HAULAGEWAY

All roads utilized for mining purposes, together with that area of land over which material is transported that are located within the permitted area.

MINE

Any excavation from which a mineral is to be produced for sale or exchange, or for commercial, industrial or municipal use; all haulageways and all equipment above, on or below the surface of the ground used in connection with such excavation, and all lands included in the life of the mine review by the DEC.

MINERAL

Peat, topsoil, sand and gravel shall be considered minerals.

MINING FLOATING ZONE

The area in which mining may occur within the Town's _____ Zones and particular solely to each individual application.

MINING OPERATION/MINING

The excavation of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location.

MINING PLAN

A description of the applicant's mining operation which shall include maps, plans, written materials and other documents as required by the Town and/or the DEC.

OPERATOR and OPERATOR THEREOF

Any person, corporation, firm, partnership or other entity conducting a mining operation as defined herein with the Town of Kent, Putnam County, New York, and shall include any owner of land or other premises situated within the said Town who permits or consents to the use of such land or other premises by any person, corporation, firm, partnership or other entity for a mining operation unless such other person, corporation, firm, partnership or other entity is conducting the same on such premises under a lease granting him sole occupancy, use and possession of such premises for a term of at least one year and is a permittee hereunder.

OVERBURDEN

All of the earth, vegetation and other materials which lie above or alongside a mineral deposit.

RECLAMATION

The conditioning of the affected land to make it suitable for any productive use, including but not limited to the planting of forests, the planting of crops for harvest, the seeding of grass and legumes for grazing purposes, the protection and enhancement of wildlife and aquatic resources, the establishment of recreational, residential, commercial, industrial and historical sites or for other uses demonstrated to be consistent with the policy of the Town and/or the DEC.

RECLAMATION PLAN

A description of operations to be performed by the applicant to reclaim the land to be mined over the life of the mine. The reclamation plan shall include maps, plans, the schedule for reclamation, written material and other documents as required by the Town and/or the DEC.

§77-26.12. Mining, Floating M Zone.

Mining of all kinds is prohibited throughout the Town of Kent except as specifically set forth in this section. The Town Board seeks to promote the safety, health and general welfare of the residents of the Town of Kent by removing the danger to health, safety and life caused by creation of excessive noise and/or light; excessive quantities of dust; deep excavations remaining in the ground; traffic dangers; exposure of the bare earth to wind action and other natural elements; creation of artificial pools of water; pollution of water; danger to the groundwater, watershed, wildlife resources, including flora and fauna, and destruction of natural drainageways. A Mining Floating Zone, hereinafter also referred to as an "M" Zone, is hereby established for such use. It is designed to mitigate impacts and to assure that any mining is compatible with the character of the surrounding community, and to prevent excessive noise; prevent land from being left in a hazardous state; prevent soil erosion; protect the natural vegetative cover of such land; and prevent destruction of natural drainageways. At the same time, it is recognized that the mining provided for in this Mining Floating Zone is necessary and useful and should be allowed when not in conflict with the express purposes of this section. There is hereby created a Mining Floating Zone located as shown and so designated on the Zoning Map of the Town of Kent, which is a part of the Code of the Town of Kent, and shall be added to § 77-3 thereof. Enactment of a local law by the Town Board is required to locate an M Zone. An M Zone may be created only within the _____ Zones.

Lot Size, Density and Yard Dimensions

Minimum Yard Dimensions

(feet)

Minimum Lot Size

Minimum Area/

<u>Area</u>	<u>Width</u>	<u>Family</u>	<u>Front</u>	<u>Each Side</u>	<u>Rear</u>
<u>(acres)</u>	<u>(feet)</u>	<u>(acres)</u>			
<u>10</u>	<u>400</u>	<u>--</u>	<u>200</u>	<u>200</u>	<u>200</u>

A. Application process.

- (1) A person seeking to locate an M Zone shall file an application with the Town Clerk, signed by the owner or owners of the property or a by a duly designated and authorized agent of said owner or owners.
- (2) Once the Town Board has received a complete application to locate an M Zone, it may decide to meet with the applicant to discuss the application and determine whether additional information is needed. The Town Board may, at its discretion, decline to consider

any application for a Mining Floating Zone. The Board may also, at its discretion, decide to hold informational meeting(s) to obtain public input on the proposal.

- (3) If the Town Board decides to consider the application to locate an M Zone, it shall transmit a copy of the complete application to both the Zoning Board of Appeals and the Planning Board for a review and recommendation. The Boards shall officially respond to the Town Board's referral within 45 days of the receipt of the application from the Town Board, unless either Board requests an extension and such extension is granted by the Town Board. In addition, the complete application shall be referred to the Putnam County Planning Department as may be required by the New York State General Municipal Law.
- (4) The Town Board shall comply with all State Environmental Quality Review Act requirements.
- (5) If the Town Board decides to consider the application to locate an M Zone, the Town Board shall schedule a public hearing on the proposed M Zone application in compliance with all applicable sections of Town Law. The Zoning and Planning Boards' recommendation and the referral from the Putnam County Planning Department, if any, shall be introduced at the public hearing and become a part of the official meeting minutes.
- (6) Within 60 days after completion of the public hearing, the Town Board shall determine whether to approve, approve with conditions or deny the application. In considering an application for designation of an M Zone, the Town Board must determine that the application meets the following:
 - (a) The use shall be designed, located and operated so as to protect the public health, safety and welfare of the community.
 - (b) The location, size, nature and intensity of the use, the size of the site in relation to the use and the location of the site, with respect to streets giving access to the use, shall assure that the use will be in harmony with the appropriate and orderly development of the neighborhood in which the use will be located and the nature and height of the buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.
 - (c) The use shall be designed, located and operated so as to protect the groundwater; any residential or commercial water supply; drainage; nearby wetlands and nearby critical environmental areas as defined in the State Environmental Quality Review Act.
 - (d) The use shall not be more objectionable to nearby properties, by reason of aesthetic or visual impact, noise, fumes, vibration or flashing lights, than would any permitted use in the area.

Comment [1]: Editor's Note: See the New York State Environmental Conservation Law, § 8-0101 et seq.

Comment [NT2]:

Comment [NT3]:

- (e) The use shall not generate undue traffic congestion, create a traffic hazard or impact the safety of children on school bus routes.
- (f) The use shall have adequate road frontage and safe access directly onto a paved Town, county or state highway.
- (g) The use shall be designed in accordance with the approval standards specified in Subsection D below.
- (7) If the Town Board decides to grant the application for an M Zone, this chapter shall be amended to reflect the changes to the text of the zone regulations, and the zone, appropriately labeled, shall be shown on the Zoning Map. The boundaries of the M Zone shall be no less than 200 feet from the property line of the adjacent properties.
- (8) Within six months after the Town Board has adopted a zoning amendment creating an M Zone, the applicant shall apply to the Planning Board for site plan approval pursuant to this chapter. The Planning Board shall grant approval if it finds that the site plan satisfies the standards and criteria of this section and this chapter. If more than six months elapse between Town Board approval and the submission of a site plan application, the M Zone designation shall expire, and the property shall revert to its previous zoning classification, following notice to the applicant and owner and a public hearing, unless an extension is granted to the applicant by the Town Board.
- (9) If, after the passage of one year from the date of site plan approval by the Planning Board the mining operation has not started, the M Zone designation shall expire and the property shall revert to its previous zoning classification, unless the applicant shall obtain an extension from the Town Board.

B. Application information.

- (1) An applicant for a Mining Floating Zone and site plan approval under this section shall file 25 copies with the Town Clerk. The application shall state the specific intended use for the property and shall include a schematic site plan depicting the approximate size, height and location of the proposed structures, parking areas, roads, open space and other facilities. An application for an M Zone shall also include a completed short or full environmental assessment form as required by SEQRA, Article 8 of the Environmental Conservation Law and Part 617 of Title 6 of the New York Codes, Rules and Regulations. Each copy thereof shall set forth and include:
 - (a) Copy of any document submitted to or received from the New York State Department of Environmental Conservation (the "DEC") in connection with an application submitted to such agency, including but not limited to the applicable mining permit granted by the said

DEC.

- (b) A detailed statement of the nature of the proposed operation and the manner in which it is proposed to be conducted, and of the number of acres of land to be used in connection therewith.
- (c) A statement as to the nature and type of any structure to be used in such operation and either presently on the area of proposed operations or to be built thereon.
- (d) A statement as to the source of required water to be utilized in the operation and the amount of such use annually.
- (e) A statement as to the amount of minerals proposed to be removed and the manner of removal thereof during the permit period and during any subsequent period.
- (f) A statement as to the period of time required to complete the proposed mining operation, including any proposed restoration and reclamation.
- (g) A proposed plan of reclamation of the area proposed for such usage, with a statement as to the amount of such reclamation proposed to be accomplished within the permit period, and a time schedule as to reclamation proposed to be accomplished subsequent to the permit period. Where no reclamation is proposed, a statement to that effect will be submitted stating the reason or reasons that reclamation is not proposed. Where a proposed plan of reclamation is submitted, an easement executed and acknowledged by the owner or, if more than one, the owners, running to the Town and permitting entry on the land to perform reclamation in the event of the failure of the applicant to the Town's satisfaction shall be submitted.
- (h) A statement setting forth the proposed hours of operation; the level of traffic to be produced and the proposed routes to be used by such traffic during such time.
- (i) An abstract of title or other satisfactory evidence of the ownership of the land on which the operation is to be conducted.
- (j) A statement as to the existing groundwater level, and the methodology for arriving at such statement, at the location proposed for the M Zone.
- (k) A topographical map showing the boundary of the total property on which the operation is proposed to be conducted and all other adjacent property and streets and highways within 500 feet of the perimeter of the land on which the operation is proposed to be conducted and, also, showing all structures within the area of the map, the owners of all land shown on the map and the zoning classification of all such land. Such map shall show contour elevations at two-foot intervals using United States Geological Survey data. Such map may

be referred to as the "topographical site map."

- (l) A statement as to the current zoning classification of the land on which the operation is proposed to be conducted.
- (m) A topographical map showing the boundary of the total property on which the operation is proposed to be conducted distinctly outlined and all property within 500 feet thereof, with contour elevations at two-foot intervals using United States Geological Survey data and showing, in a distinctive fashion, proposed contour elevations at two-foot heights after reclamation, if any is proposed, and after each stage thereof. Such map may be referred to as the "reclamation plan map."
- (n) The written, notarized consent of each nonapplicant owner of the premises on which the operation is proposed to be conducted.
- (o) A statement setting forth the record of compliance for any prior mining activities of the applicant or any related person.
- (2) Each such map shall be prepared by either a professional engineer duly licensed by the State of New York or by a surveyor duly licensed by the State of New York and shall be certified to the Town as to the accuracy thereof by such preparer. Such certification shall be provided within 30 days of the date of the application to the Town Board and shall be recertified within 30 days of the date of the site plan review application, unless such site plan review application is made within 30 days of the enactment by the Town Board of the M Zone. Each such map shall be drawn in a scale of not greater than one inch to 100 feet nor less than one inch to 20 feet.
- (3) Upon acceptance of the application and the deeming of same to be complete by the Town Board, the applicant shall by certified mail notify all landowners whose land is adjacent to the perimeter of the proposed zone, or within 500 feet thereof, of the application.
- C. Public hearing. No new M Zone may be located and no approval under this section shall be issued under this section until after a public hearing by the Town Board, in accordance with the Town Code. Before the Town Board public hearing, the Town Code Enforcement Officer shall investigate the facts and circumstances of the application and submit a report in writing to the Town Board prior to the public hearing, which report shall either be read at the public hearing or made available for public inspection during the hearing and which shall include but not be limited to a recommendation regarding whether the application complies with the zoning requirements and whether all items required herein have been submitted. Nothing contained in the preceding sentence shall be deemed to limit the power of the Town Board to act on the application if the Town Code Enforcement Officer fails to submit such a report. The Town Board may hold a preliminary hearing or hearings or a

preliminary conference or conferences with the applicant or his representative, and any such preliminary conference or preliminary hearing may be held without public notice.

D. Approval standards. Each local law locating an M Zone shall include, but not be limited to, the following provisions:

- (1) Mining operations may only be conducted between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday and between the hours of 8:00 a.m. and 12:00 noon on Saturdays. Mining operations may not occur on any Sunday or legal holidays as set by the Town Board.
- (2) All access points and roadways to the affected area shall be from a paved Town, county or state highway. No vehicles utilizing or accessing the affected area shall stop, stand, park or idle outside the affected area.
- (3) All mining operations shall be conducted without unnecessary noise and shall at all times be in conformity with then-enacted portions of the Town Code relating to noise.
- (4) Barriers shall be erected and maintained around the area of operation and shall have no openings other than a gate or gates for ingress and egress, and each such gate shall be kept locked at all times except during the working hours of the operation when the operator or an owner of the land or an agent or employee of the operator or of the owner is inside. Such barrier shall be maintained until reclamation of the area is complete, and after reclamation such barrier shall be maintained around each and every pit or excavation exceeding six feet in depth. This standard may be waived or modified with respect to any particular mining operation, provided the Town Board finds that the public safety will not be jeopardized, and subject to such conditions as the Town Board may impose.
- (5) At no time shall any mining operations be conducted within 200 feet of any adjacent property line or the boundary of any public street or highway.
- (6) At no time shall any mining operations, parking of vehicles or equipment or stockpiling of mineral, overburden or other product of the mining operation be conducted within 200 feet of any residence or business structure.
- (7) All mining operations shall be conducted in a safe manner, and all slopes shall be excavated and maintained at safe angles to prevent collapse of upper grade surfaces and danger to children.
- (8) No excavation shall adversely affect groundwater levels of other properties.
- (9) All haulageways shall be paved with blacktop or similar material for a minimum of 250 feet from intersection with the public roadway. All other haulageways shall be topped and

maintained with materials of no less quality than item four gravel, or comparable quality, within the affected area.

- (10) Any vehicle entering a public road shall be free of exterior dirt, mud or other debris and shall be washed prior to leaving the limits of any affected area, if necessary to remove same.
- (11) Overburden removed in connection with any such operation shall not be removed from the premises and shall be arranged in a berm-like condition in a manner designed to help prevent noise, dust, and other emissions from escaping the mine. In the event that topsoil is the product being removed from the mining operation, sufficient reserves of such material shall be kept within the affected area sufficient to complete the reclamation plan.
- (12) Topsoil shall be re-spread upon the surface of the land from which such minerals have been removed unless this requirement is expressly waived by the Town Board.
- (13) All haulageways shall be at all points at least 200 feet from any residence or public building, provided that this standard may be waived or modified by the Town Board.
- (14) All materials used as fill shall be free from garbage, refuse, offal or other deleterious or unwholesome matter.
- (15) All areas on which overburden has been re-spread, as required hereinabove, or by any approved plan of reclamation, shall be prepared for and seeded with grass, unless other vegetation or planting with vines or other covering is specified in an approved plan of reclamation.
- (16) All trucks hauling materials from any operation regulated or licensed under this section shall be loaded in such a manner as not to spread or spill such materials on any street or highway within the confines of the Town.
- (17) No removal of earth from the ground shall be made in such manner as to undermine, weaken or deprive of support other lands in the vicinity or so as to substantially obstruct, impede or change the course of or the natural movement or flow of surface water therein, or otherwise adversely affect any public waterway, public body of water, wetland, lake, pond, river, creek, waterway or body of water which is used as a part of any drainage system.
- (18) All facilities, including but not limited to that used for the crushing, screening, washing, stockpiling or processing of minerals, shall at all times be located only in an area approved by the Planning Board.
- (19) In order that the Town be in an assured position to enforce the provisions of the Mining Floating Zone issued hereunder, and have the completed excavation meet provisions of such zone and other applicable laws or ordinances of the Town, the applicant, upon the creation

of a Mining Floating Zone hereunder, shall grant to the Town, its officers or employees, the license to enter upon the premises to determine that the provisions of the new zone are being fulfilled and require such work to be done as may be necessary to meet the conditions of the zone.

- (20) Maintenance, repair and fueling of vehicles and equipment shall be conducted so as to minimize and prevent lubricant and fuel spills to the maximum practicable extent. Mine vehicles and mining equipment shall be maintained in proper operating condition.
- (21) All discharges of silt, sediment or process water shall be confined within the permit area unless prior approval from the New York State Department of Environmental Conservation Regional Water Quality Engineer is obtained.
- (22) No chemical additions to processing water shall occur at any time unless prior approval from the New York State Department of Environmental Conservation Regional Water Quality Engineer is obtained.
- (23) No pollution of the groundwater or surface waters shall occur.
- (24) The applicant shall agree to engage in a program of mine site security through the use of gates and barriers to prevent unauthorized entry to the mine property.
- (25) The applicant shall agree to report to the Town Code Enforcement Officer all spills of chemicals, including gasoline, motor oil or hydraulic fluids, in excess of one gallon at any one time, within one hour of discovery of such spill.
- (26) The applicant shall agree to file, annually, at least 30 days prior to the anniversary date of the enactment of a certification that all conditions imposed by the respective Boards are met, that the mining operation continues to be in compliance therewith and proof that any bond required is in effect.

E. Bond/insurance.

- (1) In the event the Town Code Enforcement Officer or other designated Town officer shall determine that the bond required by any entity having jurisdiction over the use proposed in the application is insufficient to complete its contemplated purpose, or in the event the use does not fall within the jurisdiction of any other governmental body or agency having superior jurisdiction to that of the Town Board or the Planning Board, as the case may be, the filing of a performance bond may be required as follows:
 - (a) Before the location of any new M Zone or the issuance of any permit hereunder, the Town Board shall, unless it shall have first determined that no bond is required, require that a bond be executed and filed by the applicant and by any and all owners of the premises on

which said operation is to be conducted. Such bond shall be issued by a surety company licensed to do business in the State of New York. Such bond shall be in an amount equal to twice the estimated cost of such reclamation or \$5,000, whichever be the greater sum. Such bond must be approved by the Town Attorney prior to the enactment of any local law locating an M Zone hereunder. Such bond shall provide that in case of any failure or default to perform the work required to be performed the bond shall be called, upon written notice to the principal or principals and to the surety sent by certified mail to their addresses as shown in the bond, unless such failure be corrected within 90 days of the mailing of such notice to the principal (or principals) and surety. The ninety-day notice of such default or failure may be given at any time after such default or failure.

- (b) If said default is not cured within the ninety-day period, the Town shall, upon written request to the surety, receive the full amount of the bond and commence reclamation.
- (c) Said bond may not be cancelled for any reason unless authorized in writing by the Town.
- (d) If the surety notifies the principal or Town of its desire to cancel the bond, such notice must be at least 120 days in advance of the cancellation. This notice shall hereinafter be referred to as "cancellation notice."
- (e) The principal must replace any cancelled bond within 90 days of the receipt of cancellation notice, and the failure to do so is a default under this section, triggering the principal's requirement to commence reclamation. If reclamation is not completed before the expiration of the cancellation notice period, the Town may call the bond due as stated in Subsection E(1)(b) above.
- (f) Said bond shall remain in full force and effect until released by the Town, except that the Town Board or Planning Board may reduce the amount thereof in a proper case. Prior to any such release the Town Board or Planning Board may require a statement showing the manner of compliance with the plan of reclamation, and a topographical map of the area on which the mining operation was conducted and the area within 300 feet of the perimeter of the area of operation, showing contour elevations at intervals of heights of two feet. The Town Board shall refer any request for release of any such bond to the Town Code Enforcement Officer, who shall report on compliance with the plan of reclamation within 15 days of such referral.
- (g) Said bond shall also provide that the time for compliance with any such plan of reclamation shall be deemed to be accelerated and terminate 120 days after the date of revocation of such permit pursuant to the provisions of this section as in effect at the time of such revocation.
- (h) In lieu of such bond, the Town Board or Planning Board may permit a letter of credit or a

cash deposit to be made with the Town, subject to the approvals, conditions and forfeitures specified hereinabove in the case of a bond.

(2) Before the enactment of a local law hereunder, the applicant shall present, to the Town, certificates of insurance evidencing the acquisition of liability insurance coverage in the amounts deemed by the Town Board to be appropriate and by resolution for death/bodily injury and property damage. Said insurance shall be maintained throughout the life of the Mining Floating Zone and for a three-year period after reclamation has been completed, and the aforementioned certificates shall provide for 120 days' notice to the Town prior to cancellation by the carrier.

F. Exceptions. The following operations and uses are hereby excepted from the application of § 77-26.12:

(1) All existing mines permitted by the Town and operating on the date of enactment hereof shall continue to be operated pursuant to the terms and conditions of their respective permits.

(2) Excavation or removal of earth, mineral or rock incident to highway, sidewalk or driveway construction to the extent such topsoil, sand, earth and/or gravel is removed solely from the bed of said highway, sidewalk or driveway.

(3) The moving of earth, mineral or rock from one portion of premises to another portion of the same premises as an incident to construction of a building or other improvement to land or as an incident to farming or landscaping, subject to the requirements for obtaining a steep slope permit set forth at §66-6 of this code.

(4) Removal of earth, mineral or rock from the area of a subdivision granted final approval by the Planning Board of the Town of Kent pursuant to any then-applicable zoning ordinance of the Town of Kent, provided that any such removal be in accordance with plans and specifications approved by said Planning Board.

(5) Construction of sewage-disposal systems.

(6) Any of the exceptions set forth in the New York State Agriculture and Markets Law.

(7) Any sanitary landfill or dump operation conducted by the Town of Kent or on its behalf.

(8) Any mining operation conducted by the Town of Kent.

(9) Steep slope permits as defined in § 66-6 of this code.

G. Posting and entry on posted premises.

(1) The operator under this section shall cause the outside perimeter of the premises on which the mining operation is conducted, or the outside perimeter of that portion of the premises on which such operation is conducted, to be posted with appropriate notices having dimensions of not less than 11 inches square, containing, with letters of not less than one inch in height, the following language:

"No trespassing. These premises are subject to a local law of the Town of Kent, Putnam County, New York. Unauthorized entry upon these premises constitutes an offense punishable by a fine not exceeding \$100 or imprisonment for not more than six months, or both."

(2) Such notices shall be posted not farther apart than 100 feet and shall be posted on each side of each entrance into the premises on which such operation is being conducted. No person, other than those lawfully engaged in operations thereon or the Town Code Enforcement Officer, police officer or authorized Town representative, shall enter onto any such posted premises.

H. Reimbursement of review costs; indemnification.

(1) The applicant under this section shall be required to establish an escrow account to reimburse the Town of Kent for the legitimate costs of review associated with the use of professionals qualified to review the required plans, reports and other technical information submitted in support of an application for a mining operation or small-scale mine. The initial amount of the escrow account shall be determined on a case-by-case basis, but in no case shall be less than \$3,000 or such larger amount estimated by the Town Board and/or Planning Board to be reasonable and necessary to cover the cost of the review to be incurred by the Town. All necessary reviewing professionals assisting the Town in such reviews shall provide an estimate of the approximate cost of review services. The Town shall submit an itemized bill to the applicant at least five business days prior to any deduction of such amount billed from the escrow account. The respective Boards may periodically and at their discretion require the replenishment of the escrow account established hereunder. Upon completion of the application and review process, any balance remaining in the escrow account shall be refunded to the applicant within 30 days of the submission and payment of the final bill by the Town and payment in full of all application and approval fees.

(2) In any approval hereunder, the respective Boards shall require an irrevocable commitment from the owner of the mine and related facilities, the owner of the land upon which the mine is located, and any and all lessees and the affiliates of any of the above, to defend, indemnify, and hold the Town of Kent, its boards, officials, employees and agents, free and harmless from judgments or costs, including reasonable attorneys' fees, arising directly or indirectly from the construction, use, operation and/or reclamation of the mining operation and affected areas except as to those arising from the Town's own negligence.

- I. Complaints. Any person may file a complaint of any violation of this section, in writing, with the Town Code Enforcement Officer, who shall investigate the same and report thereon to the Town Board within 10 days.
- J. Abandonment of use; rescission or suspension of local law authorizing Mining Floating Zone.
- (1) If the Town Code Enforcement Officer, or any authorized representative of the Town, finds that any mining operation permitted hereunder is not being conducted in accordance with the provisions of this section or of the site plan approval under which such operation is conducted, issued either under this section or prior to the effective date hereof, or is abandoned as defined herein, such facts shall be reported, by such Town Code Enforcement Officer or other Town representative, to the Town Board, which may direct that an order in writing be served upon the applicant directing that the conditions therein specified as being in violation of this section or such permit be remedied within five days after date of service of such order.
 - (2) Such order may be served either by personal delivery upon the operator in the same manner as a personal delivery of a summons or by certified mail. If served by certified mail, service shall be deemed to have been made five days after mailing thereof. If such conditions are not remedied within five days after such service, the Town Board may cause a notice in writing to be served upon the operator directing him to appear before the Town Board on a date and at a place within the Town specified in such notice and show cause why such local law or permit should not be rescinded or suspended.
 - (3) Such notice may be served either by personal delivery on the operator in the same manner as a summons or by certified mail; if served by certified mail, service shall have been deemed to have been made five days after mailing thereof. The hearing shall be set for a date at least 10 days and not more than 30 days after service of the notice. The Town Board may hold such hearing and testimony of witnesses may be heard thereat.
 - (4) The Town Board, after such hearing, may elect to rescind such local law or site plan approval or suspend the same. Such suspension may, by its terms, lead to a rescission of the local law upon failure of the operator to comply with the terms of suspension.
 - (5) No rescission or suspension of such local law or site plan approval hereunder shall be ordered by such Board in the absence of a finding of a violation thereof. An order of suspension or revocation hereunder shall be served upon the operator either by personal delivery to the operator or by certified mail and shall be effective immediately upon service; if service is made by certified mail, service of such order shall be deemed completed five days after mailing. All service by certified mail under this action shall be mailed to the operator at his address as shown in the application under this local law and, in addition, if a

more current address be known, to such current address. This section shall not preclude the Town from enforcing this section by any other lawful means, including any action for a penalty, for injunctive or other relief hereunder.

- K. Termination of Mining Floating Zone. In the event that the Town Board elects to rescind a local law or revoke a site plan approval enacted or granted in accordance with the above provisions; the Town Board deems the mining operation to be abandoned in accordance with the definition herein; or the Town Code Enforcement Officer certifies that reclamation has been completed in accordance with the reclamation plan for the M Zone, the Mining Floating Zone created by local law authorized herein shall terminate and the land within the said zone shall return to its former zoning designation set forth in the Town Code of the Town of Kent.
- L. Penalties for offenses. Each and every violation of the provisions of this section or of the conditions and/or restrictions of a permit issued hereunder or of a permit issued under the Code of the Town of Kent, New York, prior to the effective date hereof, for a mining operation shall be deemed an offense against this section and shall be punishable by a fine of not more than \$250 or imprisonment for not more than six months, or both. Each day's continued violation of this section shall constitute a separate and additional violation.
- M. Injunctive relief. Nothing contained herein shall prohibit the Town Board from maintaining, and the Town Board is authorized to maintain, an action or proceeding in the name of the Town in any court of competent jurisdiction to compel strict compliance with the provisions of this section and the conditions of any permit issued hereunder or any valid permit issued by the Planning Board and/or Zoning Board of Appeals prior to the effective date of this section, or to restrain by injunction the violation of any provision of this section or of any such permit.
- N. Administrative rules and regulations. The Town Board may, at any time and from time to time, by resolution, adopt procedural rules and regulations with respect to applications hereunder and with respect to the administration and enforcement of this section, provided the same are not in conflict with this section.
- O. Severability. If any clause, sentence, paragraph, section or part of this section shall be adjudicated by any court of competent jurisdiction to be invalid, such judgment shall not affect the remainder of this section but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.
- P. Miscellaneous
- (1) This section is expressly adopted pursuant to the relevant sections of the New York State

Town Law and the New York State Municipal Home Rule Law.

(2) All other provisions of the Code of the Town of Kent shall remain in full force and effect.

(3) This section shall be effective immediately upon filing with the Secretary of State.

Q. Fees. Fees for applications and reviews provided for by this section shall be in the amount or amounts as established by the Town Board from time to time. Said fees shall be posted in the Town Hall on the official Schedule of Fees for the Town of Kent.

Section 3. New Zoning District. Chapter 77 of the Kent Town Code entitled "Zoning", Section 3 regarding "Enumeration of districts" is amended to add a new zoning district:

§ 77-3 Enumeration of districts.

A. The Town of Kent is hereby divided into the classes of districts listed below:

One-Family Residence District	R-80
One-Family Residence District	R-40
One-Family Residence District	R-10
Planned Residential Development District	PRD
Commercial District	C
Industrial/Office/Commercial District	IOC

B. In addition to the above districts, the following overlay districts and floating zones are hereby created. Any overlay maps adopted or modified under this chapter shall be adopted or modified by zoning amendment pursuant to the procedures specified in the Home Rule Law. The overlay districts impose requirements that supplement those in the underlying districts listed in this chapter above and do not supersede the provisions of those districts, except insofar as the overlay districts may impose more restrictive requirements. The overlay districts are as follows:

Towner's Road Overlay District	TRO
Business Park Overlay District	BPOD
<u>Mining Floating Zone</u>	<u>M</u>

Section 4. Severability.

If any part or provision of this local law or the application thereof to any person or

circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons or circumstance, and the Town Board of the Town of Kent hereby declares that it would have passed this local law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 5: Effective Date.

This local law shall take effect immediately upon filing in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

Dated: _____, 2019

BY THE ORDER OF THE TOWN BOARD OF

THE TOWN OF KENT