

TOWN OF KENT

County of Putnam, State of New York
RESOLUTION

RESOLUTION INTRODUCING
LOCAL LAW_-2021 AND PROVIDING FOR PUBLIC NOTICE
AND HEARING

INTRODUCED BY: _____

SECONDED BY: _____

DATE OF CONSIDERATION ADOPTION: January 19, 2021

BE IT RESOLVED that an amendment to Kent Town Code Chapter 77 entitled "Zoning" and an amendment to Chapter 63 entitled "Soil Removal" to regulate the removal of soil from properties within the Town of Kent, is hereby introduced by Councilman Ruthven, as Introductory Local Law # of the year 2021 before the Town Board of the Town of Kent in the County of Putnam and State of New York, and

BE IT FURTHER RESOLVED, that copies of the aforesaid proposed Amendment, which is attached hereto, be laid upon the desk of each member of the Board, and

BE IT FURTHER RESOLVED, that the Town Board will hold a public hearing on said proposed Amendment at the Town Hall, in the Town of Kent, New York at 7:00 O'clock P.M. on _____, and

BE IT FURTHER RESOLVED, that the Town Clerk publish or cause to be published a public notice in the official newspaper of the Town of Kent of said public hearing at least five (5) days prior thereto.

UPON ROLL CALL VOTE:

Supervisor Fleming:

Councilwoman McGlasson:

Councilman Ruthven: Councilman Denbaum:

Councilman Huestis:

VOTE: RESOLUTION CARRIED BY A VOTE OF TO ABSTAIN

State of New York)

County of Putnam) ss:

I, Yolanda D. Cappelli Town Clerk of the Town of Kent, do hereby certify that the above is a true and exact copy of a Resolution adopted by the Town Board of the Town of Kent at a

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meeting of said Board on_____,2021

Dated: _____,2021

Yolanda D. Cappelli, Town Clerk

NOTICE OF HEARING

AMENDMENTS TO THE KENT TOWN CODE
REGARDING ZONING AND SOIL REMOVAL

PUBLIC NOTICE is hereby given that there has been introduced before the Town Board of the Town of Kent, New York, on January 19, 2021 an amendment to Kent Town Code amending Chapter 77 of the Code regarding Zoning and Chapter 63 of the Town Code regarding Soil Removal to regulate the responsible removal of soil 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 Sybil's Crossing, Kent, New York, on _____, 2021, 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:_____,2021

BY ORDER OF THE
TOWN OF KENT

BOARD OF THE

YOLANDA D. CAPPELLI, TOWN CLERK
AMENDMENT TO
CHAPTER 77 AND CHAPTER 63 OF THE KENT TOWN CODE

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BE IT ENACTED by the Town Board of the Town of Kent, Putnam County, New York, as follows:

Planning Board General Issues/Questions from February 4th meeting Specific Comments Highlighted

1. The IOC (Industrial Office Commercial) zoning district is in an area of substantial natural resource limitations. Specifically, the Route 52 corridor in this area has substantial areas of steep slopes and rock outcropping. As a result, entities seeking to develop in this area will of necessity consider substantial land disturbance including mining and soil removal to be required.
2. Clarification is needed about the intent of the proposed local law with regard to the concept of use or uses. Many land development projects include earthmoving and land contouring activities such as grading and excavation, sometimes involving rock removal. Such activities may be associated with the development of a single-family home on an existing lot as well as larger-scale land development projects. Regardless of the size of such developments, such application would typically include information about the volumes of: materials excavated, materials to be used on site, and the resulting balance of the volumes of such materials. Standards for land development would typically focus on the appropriate balance of excavation, encouraging the use of materials on site and discouraging removal of large amounts of material from a site. The focus of these standards would be related to the environmental effects of excavation, the potential change in community character near a site, safety issues related to truck traffic, noise, dust, etc. However, land contouring, grading, etc. is often viewed in regulations as an activity related to land development, but not a use in and of itself. So, it is not typical for the standards related to excavation or earthmoving to hinge on whether such activity is related to financial gain.
3. The requirement stated in existing zoning provisions in 77-6, subparagraph G., and proposed to be added to section 77-40, as new subsection G. pertain to uses and not necessarily to activities associated with land development that would result in a use. If the intent of proposed subsection 77-40. G. is to prohibit extensive excavation or mining, then mining or related terms must be defined. The intent is not clear.
4. There is no provision for mitigation to offset to the degree possible of the mining and soil removal activities. This would include tree replacement, preservation of ground water supplies (e.g., well water), etc. Additionally, there is no provision to provide benefits to the town/residents to offset impacts, such as reclamation to create a usable site that might result in property tax revenue. Such provisions should be added.
5. The Planning Board has extensive experience in environmental and site plan review. The Board feels it is prudent to develop a shared approach to mining review. The Town Board

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would be the permitting agency and refer the SEQRA review and environmental significance determination to the Planning Board.

6. Would it be clearer if the Town Board considered repealing Town of Kent Code Chapter 63 and incorporating the regulations into Chapter 77, Zoning, Article XII "Supplementary Use Regulations"?
7. How does the draft local law comport with NYCDEP stormwater (erosion and sediment control) threshold (5,000 square feet of soil disturbance) requirements (Chapter 66 of the Town Code)?

KCAC General Comments, All specific comments in Red

1. The term "soil" does not include rock. We suggest that the revised ordinance be titled "Soil Removal, Excavation, and Mining."

2. Although many municipalities have the Town Board as the reviewer for excavation permits, we urge the Town Board to adopt the model in the Carmel Town code, whereby the Planning Board makes the recommendation to the building inspector to issue the permit. There are several reasons why this model would be beneficial:

Efficiency: The planning board will already be familiar with the project for which the permit is being sought. Planning board members have training and readily available consultants and can evaluate the application as part of their overall review. Perhaps the requirements for information needed for the application could even be integrated with the overall application process for the building permit. We would not want this process to be a deterrent to potential applicants.

Expertise and Timeliness of Review: If the Town Board is the reviewer, time will be lost in seeking consultation from the planning board and/or consultants/experts. Moreover, the Town Board could opt to proceed without proper consultation, which could lead to a decision based on inadequate expertise and possibly bias for or against a particular project.

Communication: If the permit process is NOT integrated into Planning, how will the applicant know that a separate application must be submitted to the Town Board, and how will the Town Board know what projects are pending in order to monitor and ensure that the proper permits have been sought?

3. The proposed revised code lacks detail in a number of areas, including the application procedure/ required information, requirements for conduct of the operation, and requirements for the rehabilitation of the site. In some instances, the Kent code leaves requirements to the discretion of the town board rather than having specific criteria for, for example, when a perimeter fence is required for safety during construction, or the permitted hours of operation.

Zoning Board General Comment- No specific comments

Although there seemed to be no objections or issues raised regarding the changes as stipulated, there was some concern expressed over the language of 77-40 (e) as being too vague and prone to loose interpretation. It is my position that section 77-40 (e) was preexisting, and not part of what I believe we were asked to review.

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Section 1. Chapter 77 of the Kent Town Code entitled "Zoning", is amended to add a clarification to the Supplemental Use Regulations as follows:

S 77-40 Prohibited uses in all districts.

Any other provisions of this chapter notwithstanding, and except as provided here after, the following uses shall be prohibited in all districts.

- A. Any use which is noxious, offensive or objectionable by reason of the emission of smoke, dust, gas, odor or other of air pollution; or by reason of the deposit, discharge or dispersal of liquid or solid wastes, in any form, in a manner or amount so as to cause permanent damage to the soil or any stream or to adversely affect the surrounding area; or by reason of the creation of noise, vibration, electromagnetic or other disturbance perceptible beyond the boundaries of the lot on which it is situated; or by reason of illumination by artificial light or light reflection beyond the limits of the lot on or from which such light or light reflection emanates; or which involves any dangerous fire, explosive, radioactive or other hazard, or which can cause injury, annoyance or disturbance to any of the surrounding properties or to their owners and occupants; and any other process or use which is unwholesome and noisome and may be dangerous or prejudicial to health, safety or the general welfare.
- B. Lighting facilities of any kind with light sources visible beyond the lot lines.
- C. Junkyards, auto wrecking yards or dumps, except a dump established as an official Town dump by the Town Board.
- D. Mobile home parks.
- E. Manufacture or storage of ammunition, explosives or fireworks.
- F. Satellite dish antenna greater than one meter 111 maximum diameter in a residential district or greater than two meters 111 maximum diameter in a nonresidential district.
- G. The omission of a use or type of use from these regulations shall be deemed to be an exclusion thereof from all districts.

Regarding the proposed amendment to zoning section 77-40. Prohibited uses in all districts. To add subsection G., there is a concern about duplication of language within zoning. Similar language is found in Chapter 77. Zoning, section 77-6. Effect of establishment of districts., G., which reads: "Uses. Following the effective date of this chapter, any use not identified or listed as an allowed use in the district on which a proposed or existing building(s) or lot(s) is located shall be deemed to be a prohibited use. No building or lot shall be used for any purpose or in any manner except in conformity with the regulations, requirements and/or restrictions specified in this chapter

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for the district in which such building or lot is located." Section 77-6 provides parameters for use generally. Review proposed section 77-40. G. to prevent conflicting language.

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Section 2: Chapter 63 regarding Soil Removal is hereby amended to add the following provisions:

Consider revising the title of Code Chapter 63 to be “Soil Removal, Excavation and Mining”.

The Kent code should include the word “mining. We recommend that it be titled “Soil Removal, Excavation, and Mining.”

A regulatory code chapter would typically begin with some sort of declaration of policy, stated purposes or intent. Chapter 63 should be revised to include at the beginning of the Chapter, a declaration of policy, stated purposes or intent. By way of example, the Town Board should examine:

- a. Code Chapter 39A Freshwater Wetlands, section 39A-2;
- b. Chapter 66 Steep Slope Protection and Stormwater Management, section 66-2;
- c. Chapter 66A Subdivision of Land, Section 66 A-1; and
- d. Chapter 77, section 77 dash 2, which also includes reference to the town's comprehensive plan.

Existing Code Chapter 63 appears to be the only set of Town of Kent regulations that deals with excavation for the purpose of excavation only for removal of materials without corresponding land development project and/or construction of buildings and related improvements. Since it is not clear that Chapter 63, even if amended, would pertain to other types of activities or activities related to land development, a section should be added to the beginning to define applicability, for example:

“63- Applicability

All properties in the Town for which were the subject of a complete application to the relevant Town Agency at the time of adoption of this local law are exempt from the provisions of these amendments. A complete application is defined as an action for which a Negative Declaration has been issued or a Draft Environmental Impact Statement (EIS) has been accepted.”

Similarly, add a section at the beginning of Chapter 63 about conformance, for example:

“63- Conformance required; exceptions

No regrading, removal or excavation of topsoil or other natural resources from any property in the Town of Kent, New York, shall be commenced or carried out unless a permit therefore has been duly issued in accordance with the procedures set forth herein or except as necessary for proper operation of a municipal sanitary landfill. These provisions shall not be construed as prohibiting or limiting normal use of land for

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farming, gardening, or selective cutting of trees as it is related to agricultural or horticultural uses in any zoning district where such uses are permitted.

The permit procedures of this chapter shall not apply to the extractive mining of natural resources, if such activity involves more than 1,000 tons or 750 cubic yards of natural resources, whichever is less, within 12 consecutive calendar months, the activity of this dimension, is covered under and is subject to Article 23, Title 27, of the Environmental Conservation Law (the "Mined Land Reclamation Law"), or proposes the mining of over 100 cubic yards of natural resources from or adjacent to any body of water not subject to the jurisdiction of Article 15 of the Environmental Conservation Law."

Not being added- and probably should be – so that even small operations that do not require a separate permit are done correctly.

All excavation performed without the necessity of a permit shall nonetheless conform to the general regulations contained.....

S 63-1 Temporary permit.

The Town Board may grant a temporary permit for the excavation of sand, gravel, topsoil, rock and other natural material in accordance with the standards and procedures established in this chapter.

1. Section 63-1, includes the term "Temporary permit", which must be defined, and the duration, enforcement and conditions of suspension and revocation identified. Does the Board wish to consider a special use permit?
2. Consider defining the term "operation" or "operations" in references to soil removal, excavation and mining and using the term throughout the law, since most such activity precedes land development for a use on a site. Another term would be "activity".

General regulations. No excavation, regrading, filling, removal, stripping or disturbance of topsoil, earth, sand, gravel, rock or other substance from the ground, subsequently herein referred to as an "operation" or "operations," shall be commenced or carried on in the Town of Carmel unless, except as otherwise provided herein, a permit therefor has been duly issued in accordance with the procedure set forth elsewhere in this section.

Defining the term operation and using it throughout is a good idea. Some sections of the Kent code are ambiguous

Not being added- and probably should be – so that even small operations that do not require a separate permit are done correctly.

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All excavation performed without the necessity of a permit shall nonetheless conform to the general regulations contained.....

3. The paragraph at 63-1 should be expanded to incorporate referral to the Planning Board as follows:

“The Town Board in the review of any application presented to it shall refer such application to the Town of Kent Planning Board for review and recommendation including SEQRA processing of the application. The Planning Board shall complete the SEQRA process and shall return a report with recommendations and any conditions to the Town Board for their consideration in the issuance of the temporary permit. Upon issuance of the temporary permit by the Town Board, the Applicant shall return to the Planning Board for issuance of a relevant land use or other approval necessary for proper implementation and completion of the permit.”

Applications are reviewed by Planning Board rather than Town Board.

Advantages:

Saves effort because planning board members will already be familiar with the project.

Make the process faster: town board members don't have to review the project and then go back to planning board/consultants for more information.

Improves communication: If this remains the purview of the town board, is there a process for the planning board to ensure that the applicant seeks a permit from the town board? The town board will not know what projects are pending with the planning board and might not become aware of an operation that lacks a permit until work has started and operations have become a problem.

S 63-2 Application procedures; fee; map and plan.

A temporary permit may be issued upon the filing of a written application with the Town Board, together with all applicable fees as set forth in S 63-2.1 and a map and plan prepared by and bearing the seal of a land surveyor or professional engineer duly licensed to practice in the State of New York, said map and plan to designate the following:

1. Add to section 63-2 to require submittal of the following:
 - a. A statement of proposed work and the purpose thereof, including estimates for proposed site improvements and an estimate of a maximum quantities of materials to be excavated and/or removed; used for regrading or fill on-site.
 - b. The plan shall include: a location map; a tree survey for trees greater than six inches diameter at breast height (6" dbh); areas of rock cropping; Town of Kent

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jurisdictional wetlands, watercourses and waterbodies and their corresponding buffers; and a rock removal and blasting plan.

- c. Property information including the address and property owner(s) name(s) and address(es) and authorization for others to represent the owners, area of site, tax parcel information, area of proposed disturbance, rights of way, easements, annotations of land title restrictions that may have an effect on the proposed activity.

The portion of the property that is to be disturbed.

The estimated maximum quantity to be excavated and/or removed and the estimated part thereof that will be used for regrading or filling, computed from cross sections of a proposed excavation or disturbed area.

The location of any well and the depth thereof, and the location of natural watercourses, if any, located within 300 feet of the proposed disturbed area.

The location of any sewage disposal system, any part of which is within 300 feet of the proposed disturbed area.

- A. Existing contour lines on the premises and proposed contour lines resulting from the Intended excavation or removal of soil, shown on a map drawn to a scale of not less than 100 feet to the inch and with a contour Interval not to exceed two feet.
- B. Existing and proposed drainage on the premises.

The details of any drainage system proposed to be installed and maintained by the applicant, designed to provide for proper surface drainage of the land, both during the performance of the work applied for and after the completion thereof.

The location and present status of any previous operations of the type contemplated by this subsection on the property within the preceding five years.

- C. Existing rivers, streams or watercourses on or adjacent to the premise.

If a proposed excavation is for the purpose of making a lake or pond, the details of the proposed construction of the dam or other structure or embankment intended to impound the

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water, together with the details and location of proposed discharge of a valved outlet for drainage purposes. Upon the filing of an application hereunder, the applicant shall pay a filing fee established by resolution of the Town Board which shall be filed in the office of the Town Clerk. [Amended 9-14-1988 by L.L. No. 1-1988]

D. Adjoining Properties and Streets

Add to section 63-2. D. the Adjoining owner's names and tax parcel data; and improvements within three hundred feet (300') of the site boundary.

The location of that portion proposed to be disturbed and its relation to neighboring properties, together with buildings, roads and natural watercourses, if any, within 300 feet of the boundaries of said portion of said premises herein referred to shall be shown. An inset map at a reduced scale may be used, if necessary.

E. Proposed truck access to the property.

Add to section 63-2. E, regarding truck access, add language to address access location relative to sight distance and safety as well as tracking pads and hose down facilities.

F. A stormwater pollution prevention plan (SWPPP) consistent with the requirements of the Town of Kent Code, Chapter 66, Articles IV and V. The SWPPP shall meet the performance and design criteria and standards in Chapter 66, Article IV. The approved permit shall be consistent with the provisions of Chapter 66.

G. Such additional information as the Town Board may deem necessary in order to decide upon such application.

a. Include provisions for buffering from adjoining properties including plantings and fencing.

b. Insert a subsection between the truck access and stormwater subparagraphs to read "Construction details, including plans and profiles of existing and proposed slopes, summary of proposed volumes of topsoil, subsoil, rock to be excavated and removed."

Section 63-2 must include the requirements of Zoning Article XXII Environmentally Sensitive Lands; and Article XXIII Soil Hydrology. Alternatively, add reference to and require that these provisions must be addressed.

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A requirement for a reclamation plan must be incorporated in section 63-2, after the stormwater pollution prevention plan requirement; and before the “Such additional information ...” subparagraph. We recommend the following language:

“All permits issued hereunder shall include an approved reclamation plan for the entire parcel of land impacted by the material removal activities. The reclamation plan should contain sufficient information to properly rehabilitate the site including but not necessarily limited to final grades, cover material, and vegetative type, final disposition of all access drives and entry points and any onsite structures.

Reclamation plans shall include interim reclamation areas (or steps) so that reclamation may take place concurrently with ongoing material removal activities and that as sections are completed restoration may immediately follow.

Proposed reclamation plans should be consistent with the community’s land use regulations. In the event that any proposed reclamation plan includes a use or activity which requires a further land use approval for proper implementation such as site plan and or special use permit, obtaining that approval shall be a condition of permit issuance.”

Kent code does not stipulate these safety aspects. Is it safe/legal to apply oil to the driveways? I would suggest not adopting that part of this provision.

There shall be a maximum of two truck access drives to the site of the operation, which shall be located so as to minimize danger to traffic and nuisance to surrounding properties. Such drives shall be kept either wet or oiled or shall be treated with chemical dust deterrents or paved, to the extent necessary to prevent any dust nuisance to surrounding properties. All such access drives shall be clearly marked with signs which shall be posted approximately 200 feet on both sides of such access drives or other traveled areas. Such signs shall read "Caution, Trucks Entering" and shall be of size, type, coloring, lettering and format used by the Highway Department of the Town.

Kent code has a less specific clause that the town board may require a fence. Overall, Kent code is less specific, leaving more to the discretion of the town board.

At all times subsequent to the issuance of a permit and before completion of the final grading, as herein provided, any excavation having a slope steeper than one foot vertically for each one foot horizontally and having a depth greater than three feet or involving standing water of a depth greater than six inches shall be entirely enclosed by wooden or wire-mesh fence not less than four feet in height, measured from ground level, with a gate of the same height at each entrance thereto. If such fencing and gates are of wooden construction, each fencing board shall be separated by not more than seven inches and, if constructed of wire-mesh fencing, the mesh

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thereof shall not be greater than six inches by six inches. No such fence shall be so located as to obstruct visibility at the access drives. Gates shall be securely locked at all times when the project is not in operation.

Storage piles of materials, including waste material, shall at no time be located nearer than 50 feet to a property or street line or have a grade steeper than one foot vertically for each two feet horizontally.

All trucks and equipment stored on the site of the operation shall be set back at least 50 feet from the nearest property or street line.

The final grade shall be finished at a slope no steeper than one foot vertically for each two feet horizontally for any material other than rock, except where supported by a retaining wall or foundation. Finished excavated rock surface to fast rock shall have a slope no steeper than six feet vertically for each one foot horizontally.

Kent code does not specify a minimum, instead requires that the top 12 inches be saved and respread.

A minimum of four inches of topsoil shall be replaced over all ground surfaces exposed by any operation contemplated herein, except rock, roads, driveways, parking places, garden spaces and surfaces excavated below high water marks or lakes or ponds or streams, and then shall be seeded and planted as specified by the Planning Board to prevent erosion.

Upon completion of all rehabilitation work, the applicant shall so notify the Planning Board. The Planning Board shall make, or cause to be made, a field inspection of the site to determine if all work has been completed in accordance with the terms of the permit and the approved plans. The Planning Board shall make a report to the Town Board upon the completion of its investigation, describing the degree to which the operation is in conformance with the terms of the permit and plans, together with its recommendation as to the release of the performance bond posted.

S 63-2.1 Application fees.

All applications for a soil removal permit shall be accompanied by a fee which shall cover the reasonable cost associated with the processing and review of any such application submission or request, excluding SEQRA processing and review fees as set forth in Subsection E below.

- A. All application fees shall be nonrefundable and shall be in an amount set forth in a fee schedule established, and amended from time to time, by resolution of the Town Board. No

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fees shall be required from the Town or any of its districts. Fees shall be paid to the Town of Kent by certified check.

- B. The Town Board, in the review of any application presented to it, may refer such application to any planner, engineer, environmental expert, legal counsel or other professional as such Board shall deem reasonably necessary to assist it in the review of such application as required by law. Fees charged by such professionals shall be in accordance with fees usually charged for such services in the metropolitan New York region and pursuant to a contractual agreement between the Town and such professional. All such charges shall be paid by the Town upon submission of a Town voucher.
- C. The Town Board may suspend its review of an application if all required fees are not paid to the Town of Kent. A building permit or certificate of occupancy or use shall not be issued unless all applicable fees charged in connection with the applicant's project have been paid to the Town.
- D. No application or request shall be deemed complete for review purposes without payment of any and all applicable fees.
- E. In the event that a positive declaration is issued by the approval authority, in accordance with the provisions and procedures of the New York State Environmental Quality Review Act (SEQRA), regarding the subject application, the following procedures shall be followed for that portion of the application review process:
 - (1) The approval authority may require the establishment of a SEQR escrow account funded by the applicant, from which withdrawals shall be made to reimburse the Town for the cost of professional review services. An applicant, upon request, shall be provided with copies of any voucher for such services as they are submitted to the Town. Such reimbursable costs shall be in addition to any and all other required fees by this or any other section of this chapter or any other Town law, ordinance or regulation.
 - (2) The applicant shall deposit with the Town SEQR escrow account funds as follows:
 - (a) The applicant shall deposit an Initial escrow amount to be determined by the approval authority based on its evaluation of the nature and complexity of the application and the pending SEQR process. Said initial escrow amount is only an estimate and is for the convenience of the applicant and shall not be binding upon the approval authority.
 - (b) When the balance of a SEQR escrow account is reduced to 1/2 of the Initial escrow amount, the applicant shall deposit additional funds into such account to bring its balance up to 100 percent of the amount of the initial escrow amount, or to some lesser amount as deemed acceptable by the approval authority to complete the environmental review of the application. If such escrow account is not replenished within 20 days after the applicant is notified, in writing, of the requirement for such additional deposit, the approval authority may suspend its review of the application. A building permit or certificate of occupancy or use shall not be issued and no approval of plats, subdivisions, site plans, conditional use

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permits, special permits or any and all other development activities authorized by this chapter which are at the request of an applicant shall be granted unless all professional review fees charged in connection with the applicant's project have been reimbursed to the Town.

- (c) SEQR escrow fees shall not exceed the amounts allowed pursuant to SEQR 6 NYCRR Part 617, as may be amended from time to time.
- (d) After all pertinent professional service charges have been paid, the Town shall, upon request, refund to the applicant any funds remaining on deposit in the SEQR escrow account.

F. Collection of fees. All required fees shall be collected by the Clerk or Secretary of the Board having jurisdiction over the application.

S 63-3 Public hearing.

The Town Board, upon receipt of the completed application as aforesaid described, shall hold a public hearing after publication of notice thereof in the paper designated by the Town Board at least 10 days prior to the hearing. The applicant is to receive 10 days' notice of the hearing by mail. The contiguous and adjacent property owners shall be notified by regular mail by the Town Clerk.

S 63-4 Conditions of issuance.

A. The Town Board shall approve, modify and approve or disapprove the application within 30 days and may grant a temporary permit, not exceeding one year, if it shall find that such excavation will not result in an ecological change which is detrimental to the area in question, or the creation of any shall) declivities, pits or depressions or unsightly conditions, soil erosion, the destruction of the fertility of the land, depressed land values, or create any damage or sewerage problems or other conditions which would impair the use of the property in accordance with the Zoning Ordinance, and that such excavation will be in harmony with the general purpose and intent of the Zoning Ordinance, and if the Town Board further finds that the operation to be permitted is capable of being completed within the time provided in the permit.

B. No operation shall be commenced or carried on which is primarily for the purpose of the sale or exchange of excavated topsoil, earth, sand, gravel, rock or other substance from the ground.

- (1) A building permit for a building and/or its accessory structures shall be deemed

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to be a permit for such excavation and/or landfill necessary for the construction of that building and/or its accessory structures, provided that the volume of any excavated material removed from the property does not exceed two times the volume of the cellar and foundation of the dwelling and/or accessory structures for which the building permit was issued. The Building inspector shall endorse the building permit to the effect that such excavation and/or landfill is permitted, specifying the maximum volume of excavated material to be removed.

(2) In those cases where the Planning Board has approved, with or without conditions, The construction plans for proposed streets and drainage facilities in the new subdivisions and site plans, the approved construction plans shall be deemed to be a duly issued permit for such operation within the right-of-way and slope rights of the proposed streets and areas reserved for drainage facilities as may be necessary for the establishments, provided that if there is to be removal of excavated material, said removal shall be disclosed as an integral part of the approved plan and duly endorsed thereon. All operations outside such street rights-of-way and slope rights and drainage facilities shall be subject to the permit and approval requirements of this subsection.

C. Exception. Municipal and other public operations. The provision of this subsection shall not apply to operations of or conducted by the Town of Kent, County of Putnam or State of New York or any department or agency thereof.

D. Review Procedure. The Town Board, in making its determination, shall report whether or not the proposed operation meets the following criteria:

(a) That the location and size of the proposed operation, the nature and intensity of the work involved in or conducted in connection with it and the size of the site in relation to it are such that, upon completion of the operation and establishment of the permitted use, the site will be in harmony with the appropriate and orderly development of the district in which it is located.

(b) That the proposed operation will be incidental to the establishment, improvement or operation of a use permitted in the zoning district in which the property is located.

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The beginning of section 63-4. Conditions of issuance, must be revised to insert a phrase so that first line would read as follows:

“The Town Board, upon receipt of a recommendation from the Town Planning Board, shall approve, modify and approve or disapprove the application within 30 days and may grant a temporary permit, not exceeding one year, ...”

Revise proposed section 63-4. C regarding exceptions to add "Public Utilities" to the exception.

Revise section 63-4, so that if the mining activity is anticipated to be greater than one year or is approved to be sequenced, there will be provisions to accommodate or extend such activity.

Revise section 63-4 to insert the following provisions related reclamation plans:

“In those situations where the Planning Board has approved or approved with conditions a site plan, special use permit or other similar permit (Wetland or Steep Slope and Erosion Control Plan approval) for a commercial, industrial or multifamily residential project the final plan set signed by the Planning Board Chairman together with all related, permits, approvals, bonds and agreements shall be deemed to constitute a permit under this section with the approved development reflected thereon serving as the requisite reclamation plan.”

Revise section 63-4 to insert the following provisions for performance bonds and insurance:

“Performance bond

Before issuance of any approval for any activity subject to issuance of permit under this section, the Town Board shall require that a performance bond be filed by the applicant with the Town Clerk. This bond shall be secured by a letter of credit or surety bond in favor of the Town in the amount of at least \$2,000 per acre of approved mining area. All bond amounts shall be calculated by the Town Engineer, who shall report said recommendations to the Town Board.

The bond shall be conditioned that any affected land shall be restored in conformity with the approved reclamation plan and the standards set forth by this section.

In the event of default in compliance with the reclamation plan or the terms of this section, the letter of credit or surety bond shall be forfeited to the Town.

The Town shall return to the operator any bonded amount that is not needed to cover the expenses of restoration, administration and any other expenses reasonably incurred by the Town as a result of the applicant's failure to comply with the terms of the reclamation plan of this section.

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Said bond shall continue in full force and effect until a certificate of compliance releasing the bond shall have been issued by the Town Zoning Administrator.

In the event of a proposed transfer of a reclamation permit, the Town Board shall require the filing of a certificate from the surety company issuing the bond then in effect, continuing the same bond as to the new permit holder or certifying that a new bond has been issued. In the absence of such certificate, no transfer of a permit will be allowed.

The required bond amount pursuant to this subsection shall be reviewed on a yearly basis to assure that a fair and reasonable bond is available to the Town should any default in performance of the requirements of the permit or this section occur.

At its discretion, the Town may accept cash or certified check, negotiable bonds of the United States government, United States Treasury notes, United States Treasury certificates of indebtedness, United States Treasury bills, bonds or notes of the State of New York, bonds of any political subdivision in the agency or of other New York State agencies or authorities, or bonds of public corporations of the State of New York, and irrevocable bank letter of credit, a certificate of deposit, or other forms of financial security acceptable to the Town. Acceptable substitutes, if furnished, shall be kept on deposit with the Town Clerk for the duration of the bond period. Any cash received pursuant to this section shall be maintained in an interest-bearing account, which interest shall accumulate during the life of the account and shall be refunded to the depositor when the cash is refunded.

The Town Board may waive part, or all of the performance bond amounts and requirements hereunder to the extent that it determines that any reclamation bond required by the Department of Environmental Conservation will adequately safeguard the Town's interest in proper operation and reclamation of the site.

Insurance

After approval of the application and before issuance of any permit, the applicant shall present to the Town certificates of insurance evidencing liability insurance coverage. The minimum acceptable liability coverage for any permitted operation shall be \$2,000,000. The liability coverage shall be maintained throughout the period of permit activity. The certificates of insurance shall provide for a thirty-day minimum notice period to the Town before cancellation of coverage.”

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8. Revise section 63-4 to insert the following provisions for expiration of permitted activities:

“Expiration of permit.

A. All temporary permits shall expire upon completion of the activities specified and, unless otherwise indicated, shall be valid for a period of one year from the date of issue. No original permit granted pursuant to this chapter shall be valid for a period longer than three years from the date of issue. The approval authority may extend the time in which the activities specified in the permit must be completed if, in its opinion, such extension is warranted by the circumstances thereof for not to exceed two additional periods of 90 days each. A request for extension shall be made in writing to the approval authority at least 30 days prior to the expiration date of the original permit, or the first ninety-day extension.

B. Should a permittee fail to complete the activities specified in the permit prior to the expiration of the second ninety-day extension, the original permit shall become null and void and a new permit must be applied for. The request for a new permit shall follow the same form and procedure as the original application except that the approval authority shall have the option of not holding a hearing if the original intent of the permit is not altered or extended in a significant way.

C. Notice of change of ownership of the parcel covered by the permit must be filed with the Town Clerk within 30 days of the transfer, with a copy of the executed deed bearing the County Clerk filing data submitted to the Town Planning Board for inclusion in the project file. This shall be a condition attached to all permits issued under this chapter.”

S 63-5 Performance of work.

A temporary permit shall be granted subject to the work's being performed according to the following standards and conditions:

- A. The premises shall be excavated and graded in conformity with the proposed contour plan as approved.
- B. Slopes shall not exceed 15 degrees to the horizontal or such lesser slope that the Town Board may specify as necessary for the public health or safety, soil stability or for the reasonable use of the property after completion of the excavation.

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Subsection B. should refer to “Slope shall not to exceed 1 on 1½ or 15 degrees to the horizontal, or such lesser slope that the Town Board, on receipt of recommendation of the Planning Board, may specify, as necessary....”.

- C. No fixed machinery shall be erected or maintained in connection with the excavation and no building shall be erected on the premises except temporary shelters for machinery and a field office.
- D. There shall be no excavation or removal within 100 feet of any street or property line, except that where the property to be excavated is considerably above street grade at the street line, removal may take place at a lesser distance from the street line if approved by the Town Board.

At the end of subsection D, add the following: “..., on receipt of recommendation of the Planning Board.”

- E. There shall be no shall declivities, pits or depressions, and proper drainage will be provided to avoid stagnant water, soil erosion and water pollution during and upon completion of operations.
- F. After excavation or removal, the premises shall be cleared of debris within the time provided in the permit.
- G. The top layer of arable soil for a depth of 12 inches shall be set aside and retained on the premises and shall be respread over the premises, and a suitable ground cover shall be planted and grown to an erosion-resistant condition, upon the completion of the excavation or removal, in accordance with approved contour lines; and the permittee shall maintain and repair all streets and roads affected by the conduct of the excavation operations and by the transport of any and all materials to and from the site and within the site; and such work shall be completed within the time provided for in the permit.
- H. If required by the Town Board for the protection of health, safety and general welfare, the area to be excavated or a portion thereof shall be enclosed within a fence of such type, height and location as the Town Board may specify.
- I. The Town Board may establish a schedule, to be filed with the records of such application and temporary permit, showing:
 - (1) Limitations on the days of the week or the hours of the day during which any work may be performed on the premises.
 - (2) Limitations as to the size and type of machinery to be used on the premises.

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- (3) Place and manner of disposal of excavated material.
- (4) Requirements as to the control of dust, noise and lighting, if permitted, so as to prevent results injurious or offensive to the general public.
- J. The Town Board shall require the applicant to submit monthly reports, prepared by and bearing the seal of a land surveyor or professional engineer licensed to practice in the State of New York, showing the status and progress of the excavation.
- K. The Town Board may alter any standards or conditions provided herein if in its judgment such alteration is necessary to maintain the purpose and intent of this chapter.
- L. The Town Board may require the applicant to comply with the provisions of the "Selective Clearing" section of the Town of Kent Road Specifications, which provide for and establish minimum clearing of natural vegetation of road and building sites and prevention of storage, stockpiling and maintenance of shed, shelters or any other materials or equipment which will disturb the natural environment.
- M. The applicant shall file with the Town Board a performance bond, in such form and with such surety as shall be acceptable to the Town Board, in such amount as the Town Board may deem sufficient to ensure the faithful performance of the work to be undertaken.

S 63-6 Revocation of permit.

Regarding sections 63-6 and 63-7, revise language to identify the enforcement entity or entities and provide greater details including issuance of remedy and stop work orders, definition of field changes and thresholds, civil penalties, etc. Use provisions consistent with other Kent Code Chapters. For example, Chapter 66, Steep Slope Protection, Article VII Administration and Enforcement could be modified to fit permits issued under this code. It is similar in concept, form, and effect.

Any temporary permit issued pursuant to the provisions of this chapter may be revoked by the Town Board after notice in writing and a hearing, for the following reasons:

- A. Violation of any conditions of the temporary permit.
- B. Violation of any provisions of this chapter or any other law or regulation relating to the work permitted.
- C. The existence of any condition or the doing of any act constituting or creating a nuisance or endangering the life or property of another.

S 63-7 Penalties for offenses.

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Any person committing any offense against any provision of this chapter shall, upon conviction, be punishable as follows: by Imprisonment to a term not exceeding 15 days or by a fine not exceeding \$250, or by both such fine and imprisonment.

Section 5. 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 4: 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: _____ 2021

BY THE ORDER OF THE TOWN BOARD OF

THE TOWN OF KENT

The Town Board's proposed local law should be substantially revised to address the comments herein to create a comprehensive and defensible code chapter with stated purposes, requirements, and standards, which can be implemented by the Town Board in concert with the efforts and experience of the Planning Board. [REDACTED]

Alternatively, the Town Board may wish to review and consider the examples of mining and/or soil removal regulations attached to this letter from the zoning chapters of the Town of Amenia and the Town of Carmel. [REDACTED]

The Town of Amenia example would result in the option of establishing overlay zones where mining would be permitted via a process involving the Town Board with referral to and recommendation from the Planning Board. Please refer to the attached code sample from the Town of Amenia. Accordingly, such mining overlay zones would only be allowed in certain areas and prohibited in other areas (e.g., residential zones). [REDACTED]

The Planning Board recommends a joint Town Board and Planning Board meeting to discuss the Town Board's Local Law regarding Zoning and Soil Removal. [REDACTED]