

## **ARTICLE 19**

### **EI, EXTRACTIVE INDUSTRIAL DISTRICT**

#### **SECTION 19.00 INTENT**

The Michigan Legislature enacted Act 113, PA 2011 ("Act 113") to establish a specialized requirements, standards, and review for applications seeking approval to conduct the land use of extracting natural resources. Because of the nature and requirements in Act 113, it is important for the Township to establish a review and approval procedure consistent with Act 113 in order to provide a basis for considering an application, and making a record of decision making that coincides with the specialized requirements and standards in the Act.

In addition, it is necessary for the Township to recognize rights previously granted to other parties under the Extractive Industrial District in effect prior to the amendment creating the new provisions required by Act 113. The intent of the Township, as provided in this Article 19, is that the Extractive Industrial approval(s) previously granted prior to this amendment, and each approval granted under this amendment, shall be deemed to be properties which have been and will be recognized as independent EI, Extractive Industrial Districts, based on the approval, conditions, and limitations then established.

Unless and until determined, there is no land in the Township which was not previously approved as such that has the zoning classification of EI, Extractive Industrial, District. If and when an approval is granted under the amended regulations established in this Section of the zoning ordinance, the land so approved shall be classified EI, Extractive Industrial, District, and regulated under this Section, and other applicable regulations then in effect.

It is the further intent and requirement that zoning approval under this Section shall not replace or supersede the requirement to apply for and secure regulatory approval of the natural resource extraction operation under the Township's Extractive Industrial Regulatory Ordinance No. 21.

#### **SECTION 19.01 PRINCIPAL PERMITTED USE**

Land previously approved for Extractive Industrial District use under the EI, Extractive Industrial District in effect prior to this amendment shall be the deemed principal permitted use(s) under this District. Such use(s) shall be permitted to continue according to the terms, provisions, and conditions of the approval granted under the EI, Extractive Industrial District then in effect prior to this amendment.

#### **SECTION 19.02 [reserved for future use]**

#### **SECTION 19.03 SPECIAL LAND USE**

##### **A. Underlying Foundation of this Section**

This Section 19.03 of the Zoning Ordinance is intended to provide the requirements, procedures, and standards for the review and approval of applications seeking permission to conduct the land

use of extracting natural resources in Tyrone Township in accordance with MCL 125.3205(3), et seq., enacted by Act 113. As described and explained in this Section, approval of an application shall require special land use approval based on the ultimate determination that the proposed extraction operation would result in “no very serious consequences,” as that term is understood in Act 113. Due to the specialized treatment for the natural resource extraction use in Act 113, the standards in this Section shall apply to applications for extracting natural resources by mining rather than the usual standards in Article 22 of this Zoning Ordinance for the review and approval of other special land use applications.

The provisions of Act 113 direct that:

In subsection MCL 125.3205(3), it is directed that an ordinance shall not prevent the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources.

In subsection MCL 125.3205(4), it is directed that a person challenging a zoning decision under subsection (3) has the initial burden of showing that there are valuable natural resources located on the relevant property, that there is a need for the natural resources by the person or in the market served by the person, and that no very serious consequences would result from the extraction, by mining, of the natural resources

Act 113 further specifies that the standards in *Silva v Ada Township*, 416 Mich. 153 (1982) ("*Silva*") shall be applied in reviewing an application to permit the extraction of natural resources.

Based on the authority provided to the Township Board in MCL 125.3202(1) to “provide by ordinance for the manner in which the regulations and boundaries of districts or zones shall be determined and enforced or amended,” the Township Board finds that review and approval of a special land use application for the extraction of natural resources would be most effective and efficient if based on the procedures and terms of this Section.

Accordingly, in conformance with Act 113, the application and approval process under this Section shall be divided into two parts.

First, an application will be required and a preliminary public hearing will be held, to determine the extent of need for and public interest in the natural resource(s) sought to be extracted on the applicant’s property. This part of the process is required as explained by the Michigan Court of Appeals in order to determine the precise calibration for the standard of review under the “very serious consequences” test (as explained in greater detail below in this Section).

After the preliminary proceedings are completed, an application may be filed, and a second public hearing and review will be conducted, to determine whether the special land use for the extraction of natural resources proposed in the application would result in “no very

serious consequences.” The Planning Commission shall conduct the public hearing and submit its findings and a recommendation to the Township Board, and the Township Board shall make the final special land use determination.

**B. PRELIMINARY REVIEW PROCESS TO DETERMINE THE EXTENT OF NEED FOR AND PUBLIC INTEREST IN THE NATURAL RESOURCES PROPOSED TO BE EXTRACTED**

1. The purpose for having a preliminary hearing and review is founded on direction given by the Michigan Supreme Court and Michigan Court of Appeals consistent with the requirement in MCL 125.3205(4) that a showing of “need” for the resources to be extracted is to be the *initial burden* that must be met by the applicant. While it might be argued that a showing of need is not required until a party challenges a zoning decision denying a proposed use, the Michigan Court of Appeals explains that the “need” issue is relevant in order to inform the “very serious consequences” review standard. In the adoption of the “no very serious consequences” standard in its *Silva v Ada Township* opinion, the Michigan Supreme Court discussed a *variable level of public interest*, that is, need for the resources proposed to be extracted: “[t]he public interest of the citizens of this state who do not reside in the community where natural resources are located requires closer scrutiny of local zoning regulations which prevent development.” 416 Mich at 160. A more detailed explanation on this point was provided by the Court of Appeals in *American Aggregates Corp v Highland Township*, 151 Mich App. 37, 42-46 (1986), where it was clarified that the public interest, that is, the “need” factor, is required to inform the ultimate decision on “no very serious consequences,” noting that the entire foundation of the stricter “no very serious consequences” test (as compared to the “reasonableness” standard that applies to nearly all other uses) rests on the important public interest involved in extracting and using natural resources. Therefore, the degree and extent of need and demand for the extraction of the specific natural resources located on the applicant's land is a relevant factor in reviewing the “no very serious consequences” issue. The Court referred to this as a sliding scale determination of the ultimate issue of whether “very serious consequences” exist in the applicant's specific situation. If the need for the specific landowner's resource is very high, the consequences resulting from the extraction of the resource will not reach the level of “very serious” as readily as in the case where need in the specific resource is relatively low. Accordingly, this Section 19.03 makes provision for a preliminary determination on the extent of need for the applicant's resources in order to inform the level of consequences which must be reached in order to be “serious” as part of making the ultimate decision on whether the applicant's proposal would result in “no very serious consequences.”
2. This preliminary proceeding shall be commenced by the filing of an application for a determination with regard to the extent of Need for and public interest in the Natural Resources proposed to be extracted on the property. Act 113 specifies that the “need” for the natural resources shall be determined with regard to the need for the resources by the person or in the market served by the person. Need must be reviewed based on the extent that the particular natural resources proposed to be extracted from applicant's property can be reasonably supplied from other viable sources within the geographic area expected to be served by the property at issue, that is, within the geographic area in which there would be other extractive

operations available to provide a supply of the same natural resources. The geographic area for this analysis is to be determined by considering factors including, but not limited to, the economic feasibility of transporting the natural resources to the locations of demand, as well as other factors relevant to feasibly providing a supply of the natural resources to the locations of demand.

3. The application with respect to the “need” for the proposed operation, including haul route, to allow the Township to make a determination consistent with the standard provided in MCL 125.3205(4), shall include:
  - a. A professionally drawing, to scale, depicting the Use Plan, which shall include a plan reflecting the intended location and use of the property which is the subject of the application.
  - b. The Use Plan shall also include the location of all proposed haul routes, the percentage of use on each haul route, and the anticipated average number of trips per day on each haul route.
  - c. A description of each type of natural resources proposed to be mined, and the best understanding based on research undertaken on the quantity of each type of natural resources proposed to be mined.
  - d. The average number of total trips per day to be generated from the extraction site, along with the number of trips per day on the busiest of days, including the average and maximum number of loaded trucks per day anticipated to leave the proposed operation on a full business day during the operating season.
  - e. A description of the names and locations of all entities and locations anticipated to create the need, that is the demand, for the natural resources from the property within the foreseeable future, including the type of use to be made by the resources, such as building construction, road building, and the like. For each entity anticipated to create need, specify:
    - (1) The distance from the proposed extraction site.
    - (2) The route that will be used for transport from the extraction site to the source of demand, and the number of trips per day to the source of demand.
    - (3) The expected annual quantity of materials expected to be demanded from each source of demand.
  - f. A description of the names and locations of all properties and operations which exist, or have been approved, for the extraction of any of the natural resources proposed to be extracted on the property, along with a specification with regard to each property of the type of natural resource extracted, and an estimate of the remaining useful life for the particular natural resource on each of such other properties and operations.

- g. Calculations and facts leading to a conclusion with regard to the extent of need which is not being met, and could not reasonably be met, from the existing sources for each type of natural resource proposed to be extracted on the property.
  - h. A fact-based estimate of the expected duration of the proposed extraction operation on the property, including the shortest, longest, and most likely duration.
- 4. For purposes of this preliminary administrative review process, the Planning Commission shall conduct a public hearing on the application. Prior to the hearing, the Township shall review the application and documentation submitted in support of the application, and report any deficiencies to the applicant within a reasonable time. The hearing shall not be noticed until the applicant has cured all deficiencies found to exist in the application. The applicant may request a meeting with the Planning Commission to discuss the application, procedure, and method for conducting the hearing.
  - 5. This preliminary hearing shall begin with an introduction by the person designated by the Planning Commission chairperson. The applicant shall then be given the opportunity to present proofs on the need issue consistent with the application submitted. The presentation shall include, but shall not be limited to, explanations with regard to each element of information required in the application, as summarized above. At the completion of the applicant's presentation the Township, through its representatives, may address and offer evidence or argument on relevant issues, and provide guidance to the Planning Commission. Members of the public shall then have the opportunity to address and offer evidence or argument on the need issues. If requested, the applicant shall be provided with an opportunity to respond to the evidence and argument presented, but for efficiency purposes shall not be permitted to duplicate evidence on matters included in applicant's earlier presentation. Likewise, any new matters addressed by the applicant may be rebutted by representatives of the Township and members of the public. The hearing shall then be closed.
  - 6. Following completion of the hearing, either at the same meeting at which the hearing was held, or at a later meeting, the Planning Commission shall, based on the record made, adopt findings and recommendations on the extent of need demonstrated by the applicant. Township representatives may assist the Planning Commission with the articulation of its findings and recommendations.
  - 7. The Planning Commission shall forward its findings and recommendation on the extent of need for the applicant's natural resources to the Township Board which shall, taking into consideration the evidence from the hearing and the Planning Commission's findings and recommendation, then make its own findings and conclusions on the extent of need demonstrated, both by the person (applicant) or by the market, or both if relied on by the applicant for need purposes. The Township Board may conduct a further hearing at its discretion, and make a final decision on the extent of need for the resources from the property demonstrated by the applicant.

8. Because the matter of the extent of need for the natural resources is relevant to the ultimate determination of “very serious consequences,” the findings and conclusions made by the Township Board on the need issue may be appealed by the applicant or other interested party to the circuit court prior to the next part of the process at which the Township must determine the issue of “very serious consequences.” Such appeal must be brought within 35 days of the date on which the minutes of the Township Board with the statement and vote of decision are approved.

**C. DETERMINATION OF WHETHER THE PROPOSED EXTRACTION OF NATURAL RESOURCES WOULD RESULT IN VERY SERIOUS CONSEQUENCES**

1. Once the Township Board has made a final decision on the extent of need for the natural resources proposed to be extracted in accordance with subsection B, above, the applicant may apply for a special land use approval under this subsection C. A decision on the application shall be determined on the basis of whether the applicant has made the required showing under MCL 125.3205(4) that no very serious consequences would result from the extraction, by mining, of the natural resources as proposed on the property.
2. Proceedings for this purpose shall be commenced by the applicant filing an application for a determination with regard to the very serious consequences issue, on which a public hearing shall be held by the Planning Commission, with further proceedings by the Township Board. The application with respect to the very serious consequences issue, shall include the following, however, if the applicant believes that one or more of the items of information is not relevant for decision making, each of the specific items of information not addressed shall be identified at the beginning of the application in bolded and underlined type, including a reference to the paragraph number specified below containing the information requirement.
  - a. The name, address and other contact information for the owner as well as the operator of the proposed site, along with a boundary survey of the property proposed to be mined, sealed by a registered land surveyor or engineer, and a general description of the materials, methods, and techniques that will be utilized for the mining operations. The application must address each of the “Act 113 Standards,” as specified below in paragraph C.4.
  - b. A site plan, at a scale of at least one (1) inch per two hundred (200) feet, drawn on a topographic map with the same scale, showing the location of the perimeter of the site, buildings, equipment, processing area, parking for equipment, area for truck stacking and loading, stockpiles, roads, berms, or other features necessary to the mining operations. The site plan shall also include an aerial photograph showing the property in substantially the condition as on the date of the application, enlarged to a scale of one (1) inch equals 200 feet, from original photograph flown at a negative scale no smaller than one (1) inch equals 660 feet. The date of the aerial photograph shall be shown, and shall have been flown at such time as the foliage shall be off of on-site trees. The site plan shall show or demonstrate all of the following:

- (i) A setback of the mining area from the nearest public roadway or adjoining property line of not less than 200 feet.
  - (ii) All of the following minimum setbacks of equipment used for screening and crushing:
    - (A) Not less than 300 feet from the nearest public roadway.
    - (B) Not less than 200 feet from the nearest adjoining non-residential property line, and 400 feet from the nearest residential property line.
    - (C) Not less than 500 feet from the nearest residential dwelling on adjacent property as of the date of submittal of the plan for extraction.
  - (iii) A setback of 150 feet from the perimeter of the site to internal roads, and 300 feet from the perimeter of the site to all stockpiles and processing equipment, including wash plant.
  - (iv) Stockpiling is the component of a mining operation that allows the operator to have a ready supply of extracted material. No stockpile shall be higher than 25 feet above the grade of the area situated between the stockpile and adjoining property (with the understanding that the height of a stockpile and the nature of the materials stockpiled shall not result in materials recurrently blowing from a stockpile onto adjacent property).
  - (v) Description, materials, height, and location of berms or other equivalent screening and buffering of the active mining area shall be established along the boundary lines of the premises where such lines abut a public highway, abut adjoining property which is improved for residential or commercial purposes, and at such places as are necessary to screen or buffer processing equipment from the view and impact of a person standing at ground level on any parcel of land improved for residential purposes located adjacent to or which fronts on any of the roads forming the boundaries of the mining site. When constructed along public highways, the berm shall be of a sufficient height to screen processing equipment from the view of the general public using the highway.
  - (vi) Location of all internal roads, including those for the stacking of waiting trucks, and processing activities shall be provided, including, but shall not be limited to, the equipment to be utilized for washing, screening, transporting, crushing, and blending of stone, sand, gravel, and other materials
- c. A description of all proposed haul routes to be used to transport natural resources from the mining area to all freeways or state trunk line highways proposed to transport natural resources to destinations, other than for local deliveries. All extraction operations shall be located near an all-season primary road, and best efforts shall be made to minimize the increase in truck traffic through areas developed primarily for residential purposes. In this regard, trucks used to transport the natural resources shall follow a route that poses the

least interference with other traffic, minimizes traffic through residential areas, and uses public streets constructed for high volumes of heavy truck traffic. Truck traffic shall comply with any truck route ordinances and all road commission regulations.

- d. The maximum number of trucks leaving the extraction property on any one day shall be certified by the applicant in the application.
- e. A description of mining and processing activities shall be provided, including, but shall not be limited to, the equipment to be utilized for mining (including any proposed dredging), washing, screening, transporting, crushing, and blending of stone, sand, gravel, and other materials. In describing the wash plant, the design and other specifications, including depth and water transportation facilities, and the amount, depth and source of water to be utilized in processing, and the anticipated means and location of disbursement of such water following use. If dredging is to be part of the proposed operation, the depth of dredging shall be specified, and a hydrological analysis on the impact on the aquifer(s) potentially affected, along with a report disclosing the impact on all wells on properties served by the potentially impacted aquifer(s).
- f. A general description and location of each type and anticipated quantity of natural resources deposits proposed to be extracted.
- g. The sequence of mining, including proposed phasing of both mining and reclamation, if applicable.
- h. Surface overburden removal and storage plans.
- i. A description of the minimum and maximum depth from grade level from which each type of natural resource will be excavated, with each location and depth shown on the site plan.
- j. The estimated and maximum range of time to complete operations, including reclamation, recognizing that market conditions will impact such estimate.
- k. A plan for the post-mining reclamation of the property, including:
  - (i) The plan for reclamation, including:
    - A. A general plan shown on an aerial photograph;
    - B. An approximate but reasonably reliable reclamation contour map; and
    - C. A description of reclamation methods and materials proposed for renewal of topsoil and replanting, including a proposed sequence of reclamation, indicating the time sequence within which each area to be mined will be reclaimed as mining operations progress.
  - (ii) The general plan for reclamation shall be presented on a series of drawings showing the conditions before commencing operations and also showing the alterations to be



made. The drawings shall have the same scale as the vertical aerial photograph (required in the application), showing the acreage for each item shown:

- A. Each phase of reclamation, reflecting the sequence of each phase in relation to all others;
  - B. Location and boundaries of all permanent water areas; and
  - C. Distances of all reclamation areas and water areas from property boundaries.
  - D. An approximate restoration contour map shall be prepared to the same base as site plan required above to indicate the grade and slopes to which excavated areas shall be reclaimed, and a general indication of the distance of such reclaimed areas from the property boundaries. Such grade and slope designations shall be included with respect to areas proposed to be beneath the surface of permanent water areas. Side slopes around the active extraction-area perimeter shall have a grade not exceeding one (1) vertical foot per three (3) horizontal feet. The banks adjacent to any submerged areas shall have a grade not exceeding one (1) vertical foot per five (5) horizontal feet, out to a depth of five (5) feet.
  - E. A description of the methods and materials proposed for reclamation shall include topsoiling and the amount and type of plantings.
3. The standards for determining whether the proposed extraction of natural resources would result in "very serious consequences" shall be the Silva standard, as articulated in Act 113.
- a. Act 113 specifies that the Township shall not prevent the extraction, by mining, of valuable natural resources from any property unless it would result in very serious consequences. The applicant shall have the initial burden of showing that no very serious consequences would result from the extraction, by mining, of the natural resources. In determining under this Section whether very serious consequences would result from the extraction, by mining, of natural resources, the standards set forth in *Silva v Ada Township*, 416 Mich 153 (1982), shall be applied, as directed in Act 113.
  - b. The standards provided in subsection C.4 are based on the standards in Act 113, with examples (not intended to be exhaustive) to assist in the understanding of the applicable considerations by the Planning Commission, Township Board, the applicant and the public, and shall guide the interpretation and decision of "no very serious consequences" with regard to an application for special land use approval under this Section.

4. Act 113 Standards of Review

The following guiding standards are provided. These standards are based on the framework provided in Act 113, MCL 125.3205(5) (a)- (f) for the purpose of determining whether the applicant has proven that "no very serious consequences" would result from the applicant's

proposed extractive operation and haul route. These standards are intended to assist the Township in reviewing an application under the Act 113, and shall guide decision making on the ultimate determination on whether the applicant has proven that "no very serious consequences" would result from the applicant's proposed extractive use and haul route. The determination by the Township Board shall take into consideration the extent of need and public interest in the specific natural resources on applicant's property determined in accordance with the process specified in subsection B, above, as well as all other relevant facts and circumstances. The review shall examine the evidence presented with regard to the anticipated impact and consequences on the following:

- a. Existing Land Uses – Following are some (but not necessarily all) examples of considerations relating to potential existing land use consequences:
  - (i) The relationship and impact of applicant's proposed use and associated activities with and upon existing land uses anticipated to be impacted, particularly those properties in the vicinity of the property and along the haul route(s).
  - (ii) The impact upon the public health, safety and welfare from the proposed use, including haul route(s), considering, among other things, the proposed design, location, layout and operation in relation to existing land uses.
  - (iii) The visual, noise, vibration, and other impacts upon surrounding land uses, including the likely impact on local aquifers and wells if dredging is to be a part of the proposed operation, taking into consideration any mitigation proposals offered to be utilized and financed by the applicant.
- b. Property Values – Following are some (but not necessarily all) examples of considerations relating to potential property value consequences:
  - (i) The impact of applicant's proposed use and associated activities on property values in the vicinity of the property and along the proposed haul route(s) serving the property.
  - (ii) The effect on the general demand for and value of properties in the Township anticipated to be caused by the proposed use, including use of the haul route(s).
  - (iii) The impacts considered in this subsection b may taking into consideration: the number and type of vehicles proposed; machines and equipment to be used in the operation; location and height of buildings, equipment, stockpile or structures; location, nature and height of walls, berms, fences and landscaping; and all other aspects of the proposed use.
- c. Pedestrian and Traffic Safety – Following are some (but not necessarily all) examples of considerations relating to potential pedestrian and traffic safety consequences:

- (i) The impact of the proposed use and associated activities on pedestrian and traffic safety in the vicinity of the property and along the proposed haul route(s) serving the property.
  - (ii) Consistency with and authorization of the proposed use and haul route(s) under state, county, and/or local regulations that have been established for roadways, including regulations applicable to the use of roads for proposed haul route(s).
  - (iii) The impact of the proposed use, including haul route(s), on vehicular and pedestrian traffic, particularly in relation to hazards reasonably expected in the district(s) impacted, taking into consideration the number, size, weight, noise, and fumes of vehicles, vehicular control, braking, and vehicular movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location and driveways and other means of access, off-street parking and provisions for pedestrian traffic. Consideration shall be given to the interaction of heavy vehicles used for the use with children, the elderly and the handicapped.
  - (iv) Whether the proposed use and associated activities would result in a hazard to children attending schools or other activities within the Township.
  - (v) Overall, the impact of the proposed use, including haul route(s), on children, older persons, and handicapped persons, with consideration to be given to the extent to which such persons shall be required to forego or alter their activities.
- d. Identifiable Health, Safety, and Welfare Interests – Following are some (but not necessarily all) examples of considerations relating to potential identifiable health, safety, and welfare interest consequences:
- (i) If the property has been designated in the Master Plan as an appropriate site for heavy industrial use, this shall weigh in favor of the applicant under this provision, subject to consideration of the specific scope and impact of the operation and associated activities. Similarly, if the property has been designated in the Master Plan for non-industrial use, this shall weigh in favor of determining that the proposed Use would result in a very serious adverse consequence.
  - (ii) The impact of applicant's proposed use and associated activities on identifiable health, safety, and welfare interests in the Township.
  - (iii) Impact of applicant's proposed use on local wells and aquifer.
  - (iv) The impact of the proposed use, including haul route(s), upon surrounding property in terms of noise, dust, fumes, smoke, air, water, odor, light, and/or vibration. In determining whether a proposed use amounts to a very serious consequence, the standards for the stated impacts contained within the

Township's regulatory ordinance, as the same may be amended, will be considered, along with any one or a combination of components proposed for the use that have unique qualities relating to these impacts (such as crusher noise and vibration).

- (v) The extent of impact of the proposed use, including haul route(s), on economic development and on the character and features that defines the community, or on development in other units of government that will be impacted by the use, including haul route(s).
- (vi) The impacts of the proposed use on the planning, functioning and spirit of the community, factoring into such consideration whether the proposed use would be likely to render the applicable regulations in the zoning ordinance on other properties in the area unreasonable. This review shall analyze whether the heavy industrial nature of the proposed use would undermine reciprocity of advantage by creating impacts and character that would raise a reasonable question whether residential zoning restrictions on area property would represent arbitrary limitations on the use and enjoyment of such area property.
- (vii) The operation of the proposed use, including the haul route(s), shall be evaluated in light of the proposed location and height of buildings or structures and location, nature and height of stockpiles, walls, berms, fences and landscaping, and all other proposed aspects of the overall use, including whether such improvements would interfere with or discourage the appropriate development and use of adjacent land and buildings.
- (viii) The extent to which the proposed use, including haul route(s), would be likely to cause limitations on the use and enjoyment of other property in the vicinity (zoning district or districts, as impacted) in which it is to be located and along the haul route(s), and the extent to which the proposed use would likely be detrimental to existing and/or other permitted land uses and future redevelopment in the manner specified in the Master Plan.
- (ix) The extent to which the proposed use, including haul route(s), would likely be detrimental to the development of new land uses in the zoning districts impacted.
- (x) The burden from the proposed use, including haul route(s), on the capacity of public services, infrastructure or facilities.
- (xi) The burden of the proposed use, including haul route(s), on retail uses, arts and culture, equestrian activities, non-motorized vehicle travel or recreation, school use, parks, playgrounds, residential uses, and the likely creation of physical vulnerability or degradation of any uses and resources, including the creation of the need for added public or private expenditures for maintenance of buildings, structures, and infrastructure.

- (xii) The extent to which the proposed use, including haul route(s), would cause diesel fumes, dust, truck noise or physical/mental health issues, including along the haul route(s).
  - (xiii) The nature and extent of impact from the proposed use, including haul route(s), in relation to environmental resources in the Township, including air, ground water, surface water, soils, and wetlands. In determining impacts, the cumulative effect upon all environmental resources shall be evaluated.
- e. Overall Public Interest in the Proposed Extraction – Following are some (but not necessarily all) examples of considerations relating to potential public interests in the proposed extraction:
- (i) The overall public interest in the extraction of the specific natural resources on the property both in absolute terms and in relative terms in relation to the need for resources and the adverse consequences likely to occur.
  - (ii) Public interest in the proposed use, as measured against any inconsistencies with the interests of the public as are proposed to be protected in Master Plan for the area to be impacted by the use and haul route(s).
  - (iii) Public interest in the proposed extraction, as measured against any inconsistencies with regard to physical, historic, and economic interests in relation to the use and haul route(s).
  - (iv) Public interest in the proposed extraction, as measured against any likely creation of valid environmental concerns, including without limitation impairment, pollution and/or destruction of the air, water, natural resources and/or public trust therein.
  - (v) Public interest in the proposed extraction, as measured against public costs likely to be caused by the proposed use, including haul route(s), considering alternative supplies of natural resources.

#### 5. Decision on Special Land Use Application

- a. A decision on the special land use application shall be made by applying the Act 113 standards, above, and determining whether the proposed extraction operation will result in “no very serious consequences.”
- b. The decision may consist of an approval, an approval with conditions, or a denial.
- c. An approval, with or without conditions, shall be deemed to incorporate the site plan and associated specifications in the record approved by the Planning Commission,

including the application submitted in accordance with paragraph 2, above, and any additional materials filed by the applicant, and all representations made by the applicant in the review proceedings.

- d. An approval shall state a termination date for the effect of the approval consistent with the application and proceedings conducted in response to the application.
  - e. The decision shall include a statement of reasons why the applicant has been approved, or why it has failed to satisfy its burden of proof based on the standard of "no very serious consequences."
6. Review Process at the Planning Commission Regarding "No Very Serious Consequences" Issue
- a. Prior to conducting a public hearing on the application, the Township shall review the application and documentation submitted in support of the application and report any deficiencies to the applicant and the Planning Commission within a reasonable time. The public hearing on the application shall not be noticed until the applicant has cured the deficiencies found to exist in accordance with this procedure. The Planning Commission may request a preliminary presentation for informational purposes prior to conducting a public hearing.
  - b. The Planning Commission shall conduct a public hearing on the application to determine whether the applicant can and does satisfy the applicant's burden of proof that "no very serious consequences" shall result from applicant's use of the property and haul route(s) by applying the Act 113 standards above. The hearing shall begin with an introduction by the Planning Commission chairperson, or a person designated by the chairperson. The applicant shall then be given the opportunity to make the showings required in this ordinance, and shall include all of the elements in the application, and all Act 113 standards for review, as applicable, specified above. At the completion of the applicant's presentation, either at the same meeting or at a subsequent meeting if additional time is needed in order to thoroughly address the subject matter, the Township, through its representatives, may address and offer evidence or argument on the issues. Members of the public shall then have the opportunity to address and offer evidence or argument on the issues. If requested, the applicant shall be provided with an opportunity to respond to evidence and argument presented, but for efficiency purposes shall not be permitted to duplicate evidence on matters included in applicant's earlier presentation. Likewise, any new matters addressed by the applicant may be addressed by representatives of the Township and members of the public. The public hearing shall then be closed.
  - c. After the public hearing has been closed, either at the same meeting at which the public hearing was completed, or at a later meeting held within a reasonable time, the Planning Commission shall, based on the evidence presented, adopt findings and recommendations on whether the applicant has made a sufficient showing on whether there would be "no very serious consequences" as a result of the proposed use, including haul route(s),

applying the Act 113 standards, above, as interpreted in accordance with applicable principles and law. Township representatives may assist the Planning Commission with the articulation of such findings and recommendations.

- d. Following all of the hearing procedures and requirements specified above, the Planning Commission shall forward to the Township Board its findings and recommendations on whether the proposed mining operation will result in very serious consequences.

7. Review Process at the Township Board

- a. The Township Board shall, taking into consideration the evidence from the public hearing, the Planning Commission's recommendation, and any additional evidence presented to the Township Board, act on the application for special land use approval based on the determination whether the proposed extractive use on the property will result in "no very serious consequences."
- b. The Board's action may consist of approval, approval with conditions, or denial, and the Board shall state the reasons for its decision, which shall be based on the evidence in the record.
- c. An approval shall also state in detail, or reference, the specifications of the approval. Township representatives may assist the Township Board with the articulation of its determination.

**E. EFFECT OF APPROVAL**

1. Approval of a special land use under this Section 19.03 shall authorize the owner of the property to apply for a consideration and approval for construction and operation of the use under the Township's Regulatory Ordinance, which is Ordinance 21 of the Township's Ordinance Code.
2. The approval under this Section 19.03 shall expire following a period of two (2) years from the date of the minutes in which the approval is granted, unless:
  - a. The period for securing approval under Ordinance 21, or other required governmental approvals, e.g., road commission approval, and commencing bona fide construction is extended by the Township Board for good cause within the effective period; or
  - b. Approved bona fide development for the approved operation pursuant to building and other required permits and approvals issued by the Township under this Section 19.03 and the Township's Regulatory Ordinance 21, commences within such two (2) year period and proceeds diligently and in good faith as required by the approval to completion.

- c. The applicant has filed with the Township Clerk as-built plans, showing the establishment of the locations of mining, processing, and roads (with each component called out on the plans).
3. In the event that bona fide development has not commenced within the permissible period of time calculated under sub-paragraph 2 above (and any extension granted), the special land use shall be void and of no effect.

**F. FEES**

The applicant for a special land use under this Section 19.03 shall pay as a fee the Township's costs and expenses incurred in the review and evaluation of and action on the application. An escrow shall be established in an amount specified by Township Board resolution (based on the review requirements of the specific application, as estimated by the Township's consultants and experts), and additional reasonable amounts shall be contributed as required in order to complete the process of review and approval. Any unexpended amounts from such escrow shall be returned to the applicant.





**RESOLUTION #250404  
TYRONE TOWNSHIP, LIVINGSTON COUNTY**

**TO ADOPT AMENDMENTS TO  
REGULATORY ORDINANCE NO. 21 EXTRACTIVE INDUSTRIAL  
AND  
ZONING ORDINANCE NO. 36:  
ARTICLE 17 M-2 HEAVY INDUSTRIAL DISTRICT;  
ARTICLE 19 E-I, EXTRACTIVE INDUSTRIAL DISTRICT**

*(See attachment for full text)*

Regulatory Ordinance No. 21 Extractive Industrial is amended and replaces the entirety of the previous language.

The amendment to Zoning Ordinance #36, Article 17 M-2 Heavy Industrial District adds a completely new section 17.03.L Concrete Crushing Operation.

The amendment to Zoning Ordinance #36, Article 19 E-I Extractive Industrial District amends and replaces the entirety of the previous language.

The amendments to the Zoning Ordinance #36, Articles 17 and 19, were written in conjunction and coordination with the adopted Regulatory Ordinance No. 21 Extractive Industrial amendments. The regulatory ordinance regulates the actual mining operation, whereas Article 17 and 19 applies to the zoning regulation of the land.

**RESOLVED BY:** Treasurer Eden

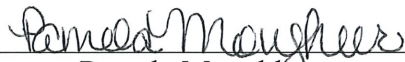
**SUPPORTED BY:** Trustee Ropeta

**VOTE:** Carnes, yes; Ropeta, yes; Eden, yes; Ferguson, yes; Dollman-Jersey, yes; Moughler, yes; Haase, absent.

**ADOPTION DATE:** April 1, 2025

**CERTIFICATION OF THE CLERK**

The undersigned, being the duly qualified and acting Clerk of Tyrone Township, Livingston County, Michigan, hereby certifies that (1) the foregoing is a true and complete copy of a resolution adopted by the Township Board at a regular meeting, held on April 1, 2025, at which meeting a quorum was present and remained throughout, (2) the original thereof is on file in the records in my office, (3) the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with the Open Meetings Act (Act No. 267, Public Acts of Michigan, 1976, as amended) and (4) minutes of such meeting were kept and will be or have been made available as required thereby.



Pamela Moughler  
Tyrone Township Clerk



*Resolution #250404*

*To Adopt Amendments to Zoning Ordinance #36, Articles 17 and 19 and  
Amendments to Extractive Industrial Regulatory Ordinance No. 21*

**PUBLIC NOTICE  
TYRONE TOWNSHIP**

**REVISIONS TO ZONING ORDINANCE #36  
AND TO THE  
EXTRACTIVE INDUSTRIAL REGULATORY ORDINANCE #21**

Notice is hereby given the Tyrone Township Board, during a regular meeting held April 1, 2025, adopted amendments to Zoning Ordinance #36, Articles 17 and 19 and to the Extractive Industrial Regulatory Ordinance #21. All ordinances are available to the public for review during regular business hours at the Tyrone Township Hall, 8420 Runyan Lake Rd, Fenton, Michigan 48430 and can also be accessed from the township's website at [www.tyronetownship.us](http://www.tyronetownship.us). A summary of the revisions follows:

**ARTICLE 17 M-2 HEAVY INDUSTRIAL DISTRICT:**

Section 17.03 - Adds a new special land use as subsection L.

**ARTICLE 19 E-I EXTRACTIVE INDUSTRIAL DISTRICT:**

- In general, an amendment to conform with the requirements of the Michigan Zoning Enabling Act, MCL 125.3205(3)-(7) with regard to the mining of natural resources ("the Act").
- Deleting provisions of the current Article 19 which are not fully consistent with the Act.
- Adding provisions which are intended to carry out the intent of the Act.

The above amendments to the Tyrone Township Zoning Ordinance #36 shall take effect the day following the date of publication of this notice. (*Effective April 21, 2025*)

**EXTRACTIVE INDUSTRIAL REGULATORY ORDINANCE #21:**

The amendments include provisions determined by the Planning Commission to be needed and protective of the Township in light of the Amendment of Zoning Ordinance Article 19.

The above amendments to the Extractive Industrial Regulatory Ordinance #21 shall take effect 30 days following the date of publication of this notice. (*Effective May 20, 2025*)

**Published 4/20/25**