

**ZONING LOCAL LAW
TOWN OF KIRKWOOD**

**ARTICLE VIII
AQUIFER PROTECTION DISTRICT
Adopted April 6, 1993**

SECTION 801. Purpose and Intent.

The purpose and intent of the Aquifer Protection District of the Town of Kirkwood, New York is to:

- A. Establish, protect, preserve, and promote the safe use of the existing and potential ground water supply from adverse developmental or land use practices that may adversely affect the quality or availability of water from the Town aquifers;
- B. Protect and preserve potential sources of future water supply for the public health, safety and general welfare; and
- C. Assure an adequate supply of suitable drinking water for the residents of the Town of Kirkwood, New York.

SECTION 802. Definitions.

For the purposes of this Article only, the following words shall be interpreted and defined as follows:

- A. Aquifer Protection District: That portion of the Town of Kirkwood designated by the Town Board of the Town of Kirkwood and delineated upon the Aquifer Map, a copy of which is attached hereto and made a part hereof.
- B. Agricultural Associated Animal Waste: Manure obtained from agricultural industries.
- C. Aquifer: The water-saturated subsurface geologic formations which can yield amounts of water to wells or springs and which, now or may subsequently be developed for use as public water supply source.
- D. Best Management Practices: Those methods and practices which are developed and adopted by the Town of Kirkwood, the NYS Department of Environmental Conservation, NYS Department of Transportation, and the NYS Department of Health.
- E. Chloride Salt: The solid compounds or solutions of potassium chloride (commonly used as fertilizer), calcium chloride (commonly used for winter-road maintenance) or sodium chloride (commonly used for water-softener regenerations).
- F. Construction and Demolition Dump: A site used for the deposition of wastes resulting from construction, remodeling, repair and demolition of structures, road building and land clearing as regulated under 6 NYCRR 360. Such wastes include, but are not limited to bricks, concrete and other masonry materials, soil, rock and lumber, road spoils, paving material and tree and brush stumps.
- G. Development: Any existing or proposed manmade structure or activity on or to improved or unimproved real estate, including but not limited to the construction or reconstruction of buildings and/or structures, excavation, dredging, filling, and/or grading of land.
- H. Environmental Impact Statement: As defined in 6 NYCRR part 617: a written evaluation prepared by a permit applicant which provides a description of a proposed project or development and a detailed analysis of its environmental effects.
- I. Fertilizers: Any commercially produced mixture generally containing phosphorus, nitrogen and potassium which is applied to the ground to increase nutrients to plants.

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- J. Ground Water: Any water beneath the land surface in the saturated zone that is under atmospheric or artesian pressure and that enters wells and springs.
- K. Herbicide: Any substance used to destroy plants or inhibit their growth.
- L. Hydrogeology Characteristics: The characteristics that describe the hydrology and the geology at a given site. This includes but is not limited by the: type, permeability, capability and origin of the surface and subsurface soil material; depth, rate of recharge, direction of flow and yield of ground water; and depth to bedrock.
- M. Human Excreta: Human feces and urine.
- N. Junkyard: Any business or activity, whether or not for profit, which involves the collection, storage, burning, dumping, disassembling, salvaging, sorting or otherwise handling or arranging for sale, resale, storage or disposal or otherwise of bodies, engines, or parts of autos, or of any other second-hand or used property of whatever material it is composed or any other waste material of wood, paper, cloth, cardboard, plastics, metal, stone, cement or otherwise, as regulated under an Local Law Licensing and Regulating Dealers, Businesses and Other Activities Relating to the Collection, Storage, and Sale of Junk adopted by the Town Board of the Town of Kirkwood on June 5, 1962.
- O. Manure: Animal feces and urine.
- P. Non conforming use: A building, structure or use of land existing at the time of enactment of this Article or subsequent amendments, and which does not conform to the regulations of the district or zone in which it is situated.
- Q. Nonagricultural Associated Animal Waste: Manure obtained from nonagricultural industries (i.e., kennel wastes).
- R. Pesticide: Any substance used to destroy pests or inhibit their growth, such as rodents and insects.
- S. Pollutant: Raw chemicals, dredge, spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, chemical waste, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial and municipal waste and agricultural and nonagricultural associated animal waste.
- T. Radiation: Ionizing radiation, that is, any alpha particle, beta particle, gamma ray, x-ray, neutron, high-speed proton, and any other atomic particle producing ionization, but shall not mean any sound or radio wave, or visible infrared, or ultraviolet light.
- U. Radioactive Material: Any material that emits radiation.
- V. Refuse: All putrescible and non-putrescible solid wastes, including garbage, manure, rubbish, ashes, incinerator residue, street cleaning residue, dead animals, offal and solid commercial and industrial wastes.
- W. Refuse Disposal Area: Any use of land as the same is regulated and defined under an Local Law Restricting and Regulating the Use of Lands in the Town of Kirkwood for Dumping enacted by the Town Board of the Town of Kirkwood, Broome County, New York, on the 4th day of May, 1965.

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- X. Sewage: Any liquid or solid waste matter from a domestic, commercial, private or industrial establishment which is normally carried off in sewers or waste pipes.
- Y. Sewerage Disposal System: Any system used for disposing of sewage and includes treatment works.
- Z. Sludge: Any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment, or air pollution control facility. Sludge does not include the treated effluent from a wastewater treatment plant.
- AA. Special Permit: The temporary, final and new operation permits issued by the Town Board, or its officers or duly appointed representatives pursuant to the compliance with this Article.
- AB. Storage of Toxic Substances: The storage of any toxic substance as set forth in Subdivision (30) of this section.
- AC. Storm Water Runoff: The natural and existing flow of overland runoff and excess water.
- AD. Toxic Substance: Any toxic substance as so defined by subdivision 2 of section 4801 of the Public Health Law.
- AE. Treatment Works: Any treatment plant, sewer, disposal field, lagoon, pumping station, septic system, construction drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfill, or other words not specifically mentioned in this paragraph, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage.
- AF. Underground Storage Tank: Any one or combination of tanks that are used to contain an accumulation of toxic substances and which are in contact with the surface of the ground at any point.
- AG. Violation: The failure to comply with or conform to the provisions of this Article.
- AH. Water Stabilization Pond or Lagoon: Any body of water used for the collection of storm water runoff, waste or sewage.
- AI. Wells: Any well or wells now used as a source of the Town's water supply as regulated pursuant to the Watershed Rules and Regulations of Kirkwood Water District No. 4, Town of Kirkwood, New York pursuant to Public Health Law §1100 and Title 10 (Health) Parts 102 §102.3 of the Official Compilation of Codes, Rules, and Regulations of the State of New York or any additional well which may be constructed within the zones established by this section and used as a source for this water supply or other supply.

SECTION 803. Scope and Authority.

The Aquifer Protection District shall be considered as overlaying any other zoning districts within the Town of Kirkwood, New York. Any uses permitted in the districts so overlaid shall be permitted only subject to all of the provisions of this district. In any case where conflicts arise between the Aquifer District regulations and any other existing regulations, the more restrictive regulations shall apply.

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SECTION 804. Permitted Uses.

The following uses are permitted within the Aquifer Protection District provided that all necessary permits, orders or approvals as required by the Town of Kirkwood, County of Broome, and the State of New York and United States of America shall have been obtained:

- A. All uses currently permitted under the Town of Kirkwood Zoning Local Law for the district in which the premises are situated as shown on the Schedules attached to said Zoning Local Law are permitted in the Aquifer Protection District subject to the provisions of this Article.
- B. Non-conforming uses:
 - 1. The lawful use of any building or the use of land existing at the time of the adoption of this Article may be continued, although such use or building may not conform to the provisions of this Article. A non-conforming use, however, may not be changed to a more intensive non-conforming use, nor shall a conforming use be changed to a non-conforming use. Any non-conforming use when changed to a conforming use shall not thereafter be changed back to a non-conforming use. A non-conforming use, building or structure shall not be enlarged, altered or extended or operated in any way which increases its threat to ground water quality or otherwise contravenes the purpose and intent of this Article.
 - 2. Whenever a non-conforming use has ceased for a period of one (1) year, any future use shall be in conformity with the provisions of this Article.
 - 3. Any person, firm or corporation maintaining a non-conforming use as defined under this section shall, within ninety (90) days of receipt of a request from the Enforcement Officer of the Town of Kirkwood, New York, supply in the detail as requested by said Enforcement Officer the nature, degree, and extent of any existing non-conforming use including, but not limited to, information as to the nature of the use, the extent and scope of said use, the presence of any toxic substances, sludges, chemical compounds, petroleum products, or any other material or substance prohibited under this Local Law, as well as any other information requested and deemed relevant by said Enforcement Officer. In addition said Enforcement Officer shall have the authority to inspect said non-conforming use or facility if in the said officer's judgment the same is necessary to establish the parameters and extent of said non-conforming use as the same existed at the time of the adoption of this Local Law.

SECTION 805. Prohibited Uses and Activities.

The following uses shall not be permitted in the Aquifer Protection District:

- A. Depositing of any refuse on or beneath the surface of the ground except as otherwise permitted by the Town of Kirkwood; (See Dumping Local Law on Page 1201)
- B. Operation or location of any commercial refuse disposal area;
- C. Storage or stockpiling of any agricultural or non-agricultural associated animal waste, except where provisions have been made for an approved handling system to prevent seepage to the groundwater,

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D. Discharging or allowing any sewage or polluted liquid of any kind to flow on or beneath the surface of the ground, except in watertight pipes connected to a sewerage disposal system for which a permit has been granted by the appropriate federal, state and county agency having jurisdiction over such facilities;

E. Operation or location of any new construction demolition dumps, junkyards, vehicle or metals salvage operations;

F. Commercial storage of petroleum and/or other refined petroleum products except where best management practices are in place. Best management practices include but are not limited to, above ground storage, secondary barriers, automatic alarm systems and ground water monitoring capabilities;

G. Installation of new underground heating oil storage tanks for residential use.

H. Stockpiling or dumping of snow containing deicing chemicals;

I. Excavations or cut-ins which expose ground water permanently or during maximum elevation of the water table, or which significantly reduce the thickness of the soil cover and thereby ease the entrance of contaminants into the ground water;

J. The new operation or expansion of existing sand and gravel mining or dredging operations;

K. Disposal or burial in the soil of any radioactive material;

L. The use of sewage system cleaners or additives, other than non-toxic enzymes and biological additives;

M. The construction and operation of any new well, except under permit by the Town Water Superintendent;

N. Commercial spreading of manure on frozen ground if there is any likelihood that surface runoff will be carried into streams;

O. The commercial storage of sludges and toxic substances except by special permit issued pursuant to this Zoning Local Law;

P. The disposal of seepage, municipal sludge, human excreta, industrial sludges and toxic substances spread upon or beneath the surface of the ground, or allowed to enter ground water except discharge from permitted waste water disposal and septic systems;

Q. The open storage of fertilizers for commercial or industrial use;

R. Pesticide and herbicide storage, use and application, except for domestic and noncommercial purposes except by special permit issued pursuant to this Zoning Local Law;

S. The storage of chloride salts except by special permit issued pursuant to this Zoning Local Law;

T. The use or storage of any chlorinated cleaning solvents or aromatics except by special permit issued pursuant to this Zoning Local Law;

U. The use or storage of any commercial or industrial chemicals except by special permit issued pursuant to this Zoning Local Law;

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V. Any use prohibited by the Watershed Rules and Regulations of Kirkwood Water District No. 4, Town of Kirkwood, New York pursuant to Public Health Law §1100 and Title 10 (Health) Part 102 §102.3 of the Official Compilation of Codes, Rules, and Regulations of the State of New York; and

W. Any land use development otherwise permitted in the Zoning Districts or District underlying this Aquifer Protection District, but which development, after a thorough environmental review pursuant to the State Environmental Quality Review Act (SEQRA) has been determined to present such adverse environmental impacts upon the quality and availability of ground water as to prohibit the development of said use under any circumstances.

SECTION 806. Other Requirements.

A. Any use permitted under Section 807 of this Article which commences on or after the effective date of these regulations may be required to install, at the direction of the Town Board of Kirkwood, a minimum of one ground water monitoring well, or other detection devices, in a direction up-gradient from on-site activities and one ground water monitoring well in a direction down-gradient from on-site activities. The specific location of these ground water monitoring wells shall be determined by a professional geologist, hydro geologist, engineer or other qualified expert trained and experienced in hydrogeology and approved by the Town Engineer of the Town of Kirkwood.

B. The frequency of required water quality sampling from monitoring wells shall be determined on a site specific basis by the Town Engineer of the Town of Kirkwood.

C. Access to monitoring wells shall be provided to the employees of the Town of Kirkwood and the Broome County Health Department for purposes of any additional water quality sampling deemed appropriate.

SECTION 807. Special Permits.

All permitted uses of property within the Aquifer Protection District pursuant to Sections 804 and 805 shall be allowed only upon obtaining a special permit from the Town Board of the Town of Kirkwood and meeting requirements of Section 806 above except the following uses shall not require issuance of such a permit:

A. Residential development of real property;

B. Commercial and industrial development not otherwise prohibited of real property of less than \$150,000.00 in development costs;

C. Any use not otherwise prohibited that anticipates an average daily outside water consumption of less than one thousand (1,000) gallons per day (GPD)

SECTION 808. Application for Special Permit.

Applicants for a special permit to develop in the Aquifer Protection District shall submit the following:

A. Name, address and telephone number of the applicant.

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- B. If the applicant is a corporation, the name, address and telephone number of all the corporate officers and directors.
- C. A map and report showing the location of the premises for which the permit is sought and plans prepared by a licensed professional engineer or architect showing all features of the system necessary for the satisfactory conveyance, storage, distribution, use and disposal of sanitary wastes, storm water wastes, process wastes, toxic substances and hazardous materials, solid wastes and incidental wastes within the property boundaries of the business or commercial establishment.
- D. A detailed environmental assessment form pursuant to Article 8 of the Environmental Conservation Law of the State of New York and applicable local laws of the Town of Kirkwood which assessment shall include a description and evaluation of the nature of the probable environmental impact, including specification of the predictable adverse effects on the natural environment and an evaluation of measures to mitigate adverse effects. Any Environmental Impact Statement required shall be submitted on electronic media in Microsoft Word format.
- E. Preliminary engineering plans with elevations showing the use, location and dimensions of proposed buildings and land areas, driveways, driveway intersections with streets, maneuvering areas, parking areas, utility and utility easements, signs and railroad sidings.
- F. A storm drainage and grading plan regarding proposed handling of surface water runoff and erosion control.
- G. A survey prepared by a licensed surveyor or engineer showing the precise site boundaries.
- H. Copies of any permits and applications to any other government agencies.
- I. Such other information as the applicant may consider relevant or as may be required by the Board. Copies of the application including the required information stated above shall be filed with the Town and shall be available for public inspection.
- J. Grading drainage plan, pertinent soil characteristics and watercourses, or, if applicable, a Stormwater Pollution Prevention Plan consistent with the requirement of Articles 1 and 2 of the Town of Kirkwood Stormwater Management and Erosion & Sediment Control Local Law (Local Law No. 7 of 2007). The approved site plan shall be consistent with the requirements of Articles 1 and 2 of the Town of Kirkwood Stormwater Management and Erosion & Sediment Control Local Law (Local Law no. 7 of 2007).
- K. Professional Fees: The establishment of an escrow account in an amount to be determined by the Town Board with the advice and recommendation of the Town Engineer and Building Inspector based on its evaluation of the nature and complexity of the application from which withdrawals shall be made to reimburse the Town for the costs of professional review services as shall be deemed reasonably necessary to enable it to review such application as required by law, including attendance at any regular or special public meetings of the Town Board of Planning Board. Charges made by such consultants shall be in accord with charges usually made for such services in the Broome County, New York region or pursuant to an existing contractual agreement between the Town and such consultant. (Added March 31, 2015)
- L. Application Fees: Any person applying for a special permit pursuant to this article shall pay to the Town Commissioner of Public Works, together with the application, a fee in the

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amount of \$100 and shall pay the cost of publication of the legal notice in the official town newspaper. (Added June 2, 2015)

SECTION 809. Referral and Public Hearing for a Special Permit

A. The Town Board shall refer an application for such Special Permit to the Town Planning Board, the County Planning Board, and the County Health Department for comments at least 30 days prior to the Town Board's decision.

B. A public hearing shall be held in regard to granting such Special Permit and notice of the public hearing in regard to the granting of such Special Permit shall be published in the official town newspaper and a copy of the notice of public hearing shall be mailed to each of the property owners of the subject property referred to in said notice and to all property owners on both sides of the street on which the property fronts and the adjoining property owners to the side and rear of the property affected immediately adjacent extending five hundred (500) feet therefrom not more than twenty (20) days and not less than five (5) days before the date of such public hearing. All uses specified above which would be subject to a Special Permit, except for the fact that such uses are governmental entities, shall nevertheless be subject to the public hearing requirements of this Section, and shall file an Environmental Assessment Form which shall be reviewed by the Town Board of the Town of Kirkwood in accordance with the provisions of the New York State Environmental Quality Review Act.

SECTION 810. Issuance of Special Permit.

A. The Town Board may grant the Special Permit, deny the Special Permit or grant the Special Permit with stated conditions. Any person applying for the renewal of a special permit pursuant to this section shall pay the cost of publication of the legal notice in the official town newspaper. (Amended June 2, 2015)

B. In the event that a Special Permit is granted or granted with stated conditions, it shall be a requirement that the applicant use the best available means to prevent the contamination of the ground water and the aquifers of the Town of Kirkwood. This shall be a continuing requirement.

SECTION 810A Renewal of Special Permit

A special permit issued by the Town Board must be renewed every two (2) years by the Commissioner of Public Works upon receipt of an application and review of the subject Property to be in full compliance with all the conditions of the initial permit issued by the Town Board. There shall be no charge to the applicant for such review and issuance of said renewal permit unless the engineer finds the property not to be in compliance with said conditions in which event the applicant shall reimburse the town in the amount set forth in Section 8(K) in order to obtain said renewal permit. (Added March 31, 2015)

SECTION 811. A Change in Use.

A. Where a Special Permit has been previously issued, a change in use requires application for a new Special Permit.

B. In the event that a change in ownership does not result in any change in use, the Special Permit shall nevertheless be applied for by the new owner. However, such permit shall be

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automatically granted and be considered an agreement between the Town Board and the new owner that the provisions of this Article shall be adhered to.

SECTION 812. Penalties.

Upon conviction, a violation of this Article shall be deemed a misdemeanor and shall be punishable by a fine not exceeding one thousand dollars (\$1,000.00) for each and every such offense, or imprisonment for a period not to exceed ninety (90) days, or both. Each day's violation shall constitute a separate and additional violation. In addition to the above-provided penalties and punishment, the Town Board in its discretion may immediately revoke any special permit previously issued or, in the alternative, may maintain an action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of such article.

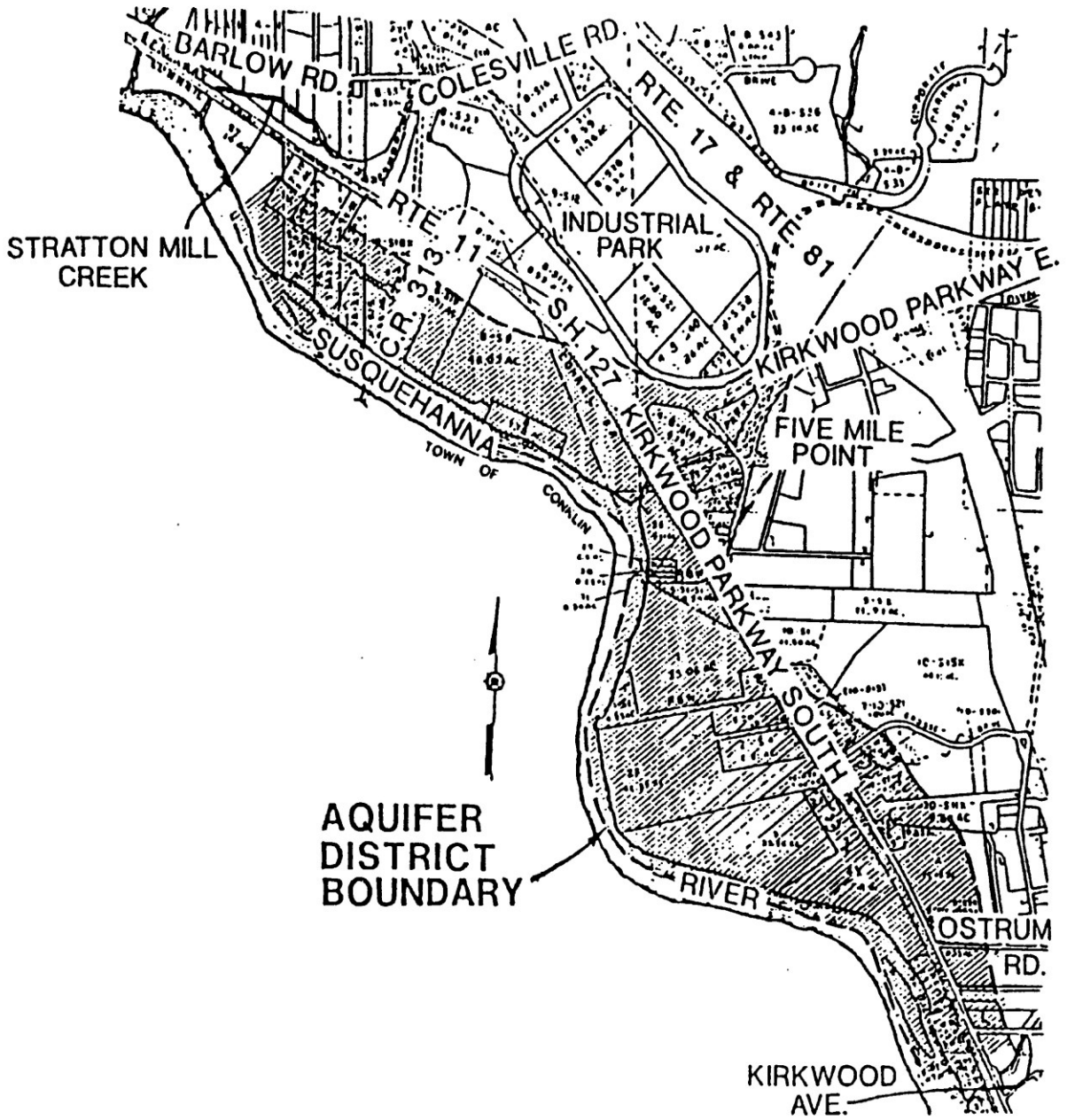
SECTION 813 Properties Within Aquifer Protection District

The following properties or portions thereof, as more specifically set forth on the Tax Map of said district which is delineated on the Town of Kirkwood Official Zoning Map, are hereby included within the Aquifer Protection (AP) District under said Local Law, subject to all regulations created and established relative to said Aquifer Protection (AP) District:

(See Aquifer Protection District Map on following page)

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AQUIFER PROTECTION MAP