

**ARTICLE I**  
**SHORT TITLE AND APPLICATION**

**Section 101. Title.** This Ordinance may be known and may be cited and referred to as the “Lake County Zoning Ordinance” to the same effect as if the full title were stated.

**Section 102. Jurisdiction.** Pursuant to SDCL 11-2, 1967, as amended, the provisions of this Ordinance shall apply within the unincorporated areas of Lake County, South Dakota, as established on the map entitled “The Official Zoning Map of Lake County, South Dakota.”

**Section 103. Provisions of Ordinance Declared to be Minimum Requirements.** In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Wherever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, Ordinances, ordinances, deed restrictions, or covenants, the most restrictive or that imposing the higher standards, shall govern.

## **ARTICLE II DEFINITIONS**

For the purpose of this ordinance, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural and the plural the singular; the word "building" shall include the word "structure," and the word "shall" is mandatory and not discretionary; the word "may" is permissive; the word "person" includes a firm, association, organization, partnership, trust, company or corporation, as well as, an individual; the word "lot" includes the word plat or parcel; and the words "used" or "occupied" include the words intended, designed, or arranged to be used or occupied. Any word not herein defined shall be as defined in any recognized Standard English dictionary.

**Accessory Buildings and Uses.** A subordinate use which is incidental to that of the main building or to the main use of the premises.

**Adult Amusement or Entertainment.** Amusement or entertainment which is distinguished or characterized by an emphasis on material depicting, describing or relating to 'specified sexual activities' or 'specified anatomical areas' or which features topless dancers, exotic dancers, strippers, male or female impersonators, or similar entertainment.

**Adult Bookstores.** An establishment having, as a substantial portion of its stock in trade, books, magazines, films or videotapes for sale or viewing on the premises by use of motion picture devices or other coin-operated means, and other periodicals which are distinguished by their emphasis on matter depicting, describing or relating to specified Sexual Activities or Specified Anatomical Areas as such terms are defined in this section, or an establishment with a segment or section devoted to the sale or display of such material. Adult bookstores may alternatively or in conjunction with the above stock in trade sell undergarments and other clothing designed for the display of Specified Anatomical Areas or for the enhancement of Specified Sexual Activities. Further, an adult bookstore may alternatively or in conjunction with the above stock in trade sell prosthetic devices, dolls, candles, vibrators and other objects for sexual gratification which take the form of Specified Anatomical Areas and for the purpose of enhancing Specified Sexual Activities.

**Adult Entertainment Cabaret.** Means an establishment offering to its patrons, as entertainment, any exhibition or display or any theatrical or other live performances which include topless or go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers, or any persons singing, reading, posing, modeling, or serving food or beverages, where the exhibition, performance, display or dance is intended to sexually arouse the entertainer or the patrons, or where the attire of persons involved is such as to expose specified anatomical areas, as defined in this section.

**Adult Motion Picture Theater.** An enclosed building, regardless of its seating capacity, which is used to present for public view on the premises, films, movies, previews, trailers or advertisements which are distinguished by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined in this section.

**Adult Photo Studio.** An establishment which, on payment of a fee, provides photographic equipment and/or models for the purpose of photographing "specified anatomical areas", as herein defined.

**Adult Use.** The term "adult use" shall include adult entertainment cabaret, adult bookstores, adult motion picture theaters, and adult photo studios as defined in this section.

**Agribusiness.** A business operation embracing the processing and distribution of agricultural products and/or the manufacture of ag-related farm machinery, equipment, and supplies.

**Agricultural Product Processing Facility.** A business activity customarily designed to process raw agricultural products into value added products. Agricultural processing facilities include, but are not limited to, feed mills, ethanol plants, soy bean processing facilities, cheese plants, milk processors, packing plants and rendering facilities.

**Agriculture.** The use of land for agricultural purposes including farming, dairying, raising, breeding, or management of livestock, poultry, or honey bees, truck gardening, forestry, horticulture, floriculture, viticulture, and the necessary accessory uses for packaging, treating or storing the produce providing that the operation of any such accessory use shall be secondary to the normal agricultural activities. This definition shall not include intensive agricultural activities such as concentrated animal feeding operations and/or agribusiness activities.

**Airport.** A place where aircraft can land and take off, usually equipped with hangars, facilities for refueling and repair, and various accommodations for passengers, including Heliports.

**Animal Husbandry.** The dairying, raising of livestock, breeding or keeping of animals, fowl or birds as a business for gainful occupation.

**Appeal Board (In reference to Section 1112).** The board which shall decide appeals from the regulations described herein. The Lake County Board of Adjustment shall serve as the Appeal Board.

**Applicant.** An individual, a corporation, a group of individuals, partnership, joint venture, owners, or a business who request or seeks application approval under the terms of this ordinance.

**Application.** The process by which the owner of a parcel of land within Lake County submits a request to use, develop, construct, build, modify upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to Lake County concerning such a request.

**Aquaculture.** Land devoted to the hatching, raising and breeding of fish or other aquatic plants or animals for sale or personal use.

**Area of Special Flood Hazard.** The land in the flood plain within a community subject to a one (1) percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

**Automotive Tow Business.** A business engaged in removing or delivering to public or private property a motor vehicle, or an item that was being transported or towed by a motor vehicle, by towing, carrying, hauling, or pushing, including automotive service stations or an auto repair shop that has a tow truck and repairs vehicles on-site and shall comply with Section 1219.

**Base Flood.** Base Flood means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

**Base Flood Elevation (BFE).** The water surface elevation of the one (1) percent annual chance flood. The height in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.

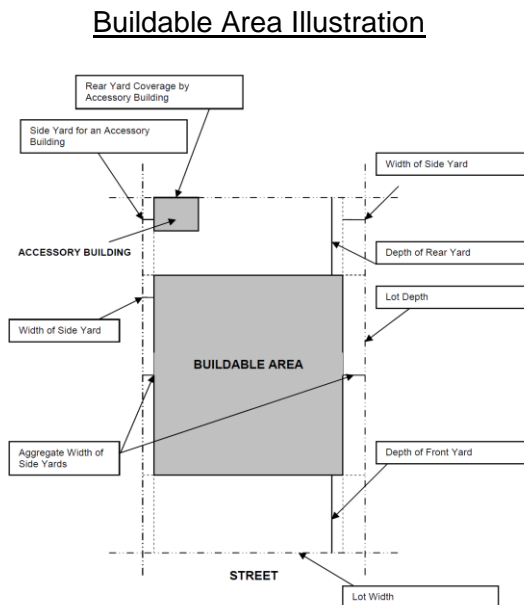
**Basement.** A basement has more than one-half (½) of its height below grade. A basement is counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes. Also, in reference to Section 1112, a basement is any area of the building having its floor subgrade (below ground level) on all sides.

**Bed and Breakfast (B & B's).** A private single-family residence, which is used to provide, limited meals and temporary accommodations for a charge to the public. Such establishments should be located where there will be minimal impact on surrounding properties and must comply with Section 1222.

**Board of County Commissioners.** The governing body of Lake County.

**Breakaway Wall.** A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

**Buildable Area.** The buildable area of a lot is the space remaining after the minimum setback requirements of this Ordinance have been complied with. The diagram below illustrates the buildable area of a hypothetical lot. This diagram is for reference only. Setbacks and other requirements vary from district to district. (see illustration below).



**Building.** The word building includes the word structure (permanent or temporary) and is a structure which is entirely separated from any other structure by space or by walls in which there are no communicating doors or windows or similar openings and is designed for the support, shelter and protection of persons, animals, or property.

**Buildings, Height of.** The vertical distance from the grade to the peak (highest point of the structure).

**Cannabis (or Marijuana).** In addition to any definition in SDCL chapter 34-20G, all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state except for drying or curing, and crushing or crumbling; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds. The term does not include fiber produced from the mature stalks of the plant, or oil or cake made from the seeds of the plant, or the resin when extracted from any part of the plant or cannabidiol in a drug product approved by the United States Food and Drug Administration. The term does not include the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

**Cannabis Cultivation Facility.** In addition to any definition in SDCL chapter 34-20G, this term is further defined as a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

**Cannabis Dispensary.** In addition to any definition in SDCL chapter 34-20G, this term is further defined as a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

**Cannabis Establishment.** A cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

**Cannabis Product Manufacturing Facility.** In addition to any definition in SDCL chapter 34-20G, this term is further defined as a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

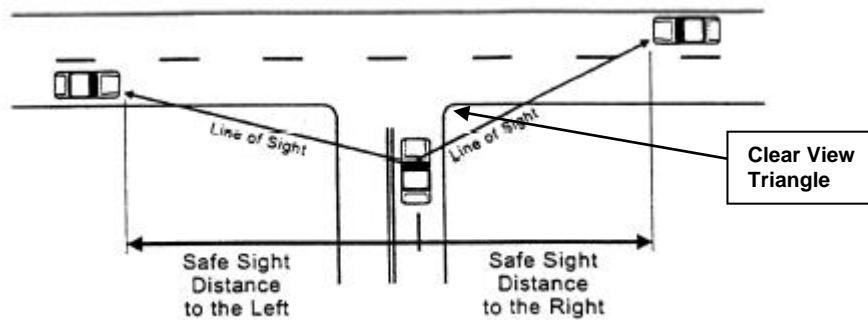
**Cannabis Products.** Any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures.

**Cannabis Testing Facility.** in addition to any definition in SDCL chapter 34-20G, this term is further defined as a legally licensed entity authorized to analyze the safety and potency of cannabis.

**Cemetery.** A place where burials have been or will continue to be made in the future.

**Church.** A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such place for worship and religious activities.

**Clear View Triangle.** A triangular-shaped portion of land established at street intersections and ingress/egress points in which there are restrictions on things erected, placed or planted which would limit or obstruct the sight distance of motorists entering or leaving the intersection (see illustration below).



**Comprehensive Plan.** The adopted long-range plan intended to guide the growth and development of Lake County.

**Concentrated Animal Feeding Operation.** (See Article XIII. Concentrated Animal Feeding Operation Regulations.)

**Contractor Shops and Yards.** Those facilities to include structures and land areas where the outdoor storage of equipment and supplies used for various types of construction are stored. Examples of equipment and supplies include but are not limited to the following – road construction, building construction, gravel operations, and general contracting services.

**Conditional Use.** A conditional use is a use that would not be appropriate generally or without restriction throughout the zoning division or district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning division or district as conditional uses, as specific provisions for such uses is made in this zoning Ordinance. Conditional uses are subject to evaluation and approval by the Board of Adjustment and are administrative in nature.

**Convenience Store.** Any retail establishment offering for sale pre-packaged food products, household items, and other goods commonly associated with the same, at which a customer typically purchases only a few items during a short visit.

**Development (In reference to Section 1112).** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment or materials.

**District.** A section or sections of the County for which regulations governing the use of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform.

**Dwelling.** Any building, including seasonal housing structures, or a portion thereof, which is designed and used exclusively for residential purposes.

**Dwelling, Farm.** Any dwelling farmer owned or occupied by the farm owners, operators, tenants, or seasonal or year-around hired workers.

**Dwelling, Non-Farm.** Any occupied dwelling which is not a farm dwelling.

**Dwelling, Single-Family.** A building occupied exclusively by one (1) family.

**Dwelling, Multiple.** A building occupied by two (2) or more families.

**Dwelling Unit.** One (1) or more rooms, containing sleeping quarters, in a dwelling occupied as separate living quarters by a single family.

**Electric Utility.** Any person operating, maintaining, or controlling in this state, equipment or facilities for providing electric service to or for the public including facilities owned by a municipality.

**Electrical Substation.** A premises which may or may not contain buildings, where the interconnection and usual transformation of electrical service takes place between systems. An electrical substation shall be secondary, supplementary, subordinate, and auxiliary to the main system.

**Eligible Building Site (Building Eligibility).** A site which fulfills the requirements for the construction or placement of a building.

**Engineer.** means any engineer licensed by the State of South Dakota.

**Erosion (In reference to Section 1112).** The process of the gradual wearing away of land masses. This peril is not per se covered under the Program.

**Essential Public Utilities and Services.** Overhead or underground electrical, gas, petroleum products (i.e. gas, natural gas, oil), steam or water transmission or distribution systems and structures, or collection, communication, supply or disposal systems and structures used by public for protection of the public health, safety or general welfare, including towers, poles, wires, mains drains, sewers, pipes, conduits, cables, satellite dishes, and accessories in connection therewith.

**Established Residence (in reference to Article XIII.** A non-seasonal dwelling established before the siting of new concentrated animal feeding operation or the expansion of an existing animal feeding operation which requires a conditional use permit.

**Existing Construction (In reference to Section 1112).** For the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures.”

**Existing Farmstead.** The following criterion may be considered in defining an identifiable parcel as an existing farmstead:

1. Evidence that the proposed site was once used for human habitation within the last fifty (50) years. This may be determined by existence of buildings/foundations or wells and/or an established shelterbelt or by tax records.

2. Information regarding the location of flood plain, access to roads and utilities, and other appropriate site information may be considered in determining the suitability of the parcel for development.
3. Evidence that the proposed site was used as a farmstead supporting normal farming operations prior to January 3, 1975.
4. Evidence that the proposed site was used in the past as a farmstead for normal farming operation for at least five (5) years.

**Existing Manufactured Home Park or Subdivision (In reference to Section 1112).** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**Expansion to an Existing Manufactured Home Park or Subdivision. (In reference to Section 1112).** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**Extended Home Occupation.** A home occupation conducted outside of the residence and/or in an accessory building and shall comply with Section 1209.

**Family.** One (1) or more persons related by blood, marriage, or adoption occupying a dwelling unit as an individual housekeeping organization. A family may include two (2), but not more than two (2) persons not related by blood, marriage or adoption.

**Farm.** An area with or without a dwelling which is used for the growing of the usual farm products, such as vegetables, fruit, trees and grain, and their storage on the area, as well as for the raising, feeding, or breeding thereon of the usual farm poultry and farm animals, such as horses, cattle, sheep and swine. The term "farming" includes the operating of such an area for one or more of the above uses, including dairy farms with the necessary accessory uses for treating or storing the produce; provided, however, that the operation of such accessory uses shall be secondary to that of the normal farming activities.

**Farm Equipment Repair and Sales.** The use of any building or land area for the display and sale of new and used farm equipment, including any warranty repair work and other repair service conducted as an accessory use. See Section 1229.

**Farm Unit.** All buildings and structures needed in an agricultural operation, including dwellings for owners, operators, and other family members.

**Fence.** A structure used as a boundary, screen, separation, means of privacy, protection or confinement, and is constructed of wood, plastic, metal, wire mesh, masonry or other similar material and is used as a barrier of some sort.

**Flood or Flooding.** Means a general and temporary condition of partial or complete inundation of normally dry land areas from:



1. The overflow of inland or tidal waters and/or
2. The unusual and rapid accumulation of runoff of surface waters from any source.
3. Mudslides (i.e., mudflows) which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current; Or the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

**Flood Elevation Determination.** A determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one (1) percent or greater chance of occurrence in any given year.

**Flood Insurance Rate Map (FIRM).** An official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study or Flood Elevation Study.** An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

**Flood Plain or Flood-Prone Area.** Any land area susceptible to being inundated by water from any source (see definition of "flooding").

**Flood Proofing.** Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**Floodway.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**Frontage.** All the property on one (1) side of a street or road.

**Functionally Dependent Use (In reference to Section 1112).** A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Game Lodge.** A building or group of two (2) or more detached, or semi-detached, or attached buildings occupied or used as a temporary abiding place of sportsmen, hunters and fishermen, who are lodged with or without meals, and in which there are sleeping quarters.

**Garage, Private.** An accessory building used for the storage of not more than four (4) vehicles owned and used by the occupant of the building to which it is necessary.

**Golf Course.** A tract of land for playing golf, improved with tees, greens, fairways, hazards, and which may include clubhouses and shelters.

**Grade.** is established by the average natural grade within fifty (50) feet of the structure.

**Greenhouse.** A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of delicate or out-of-season plants for subsequent sale or for personal enjoyment.

**Group Home.** A supervised living or counseling arrangement in a family home context providing for the twenty-four (24) hour care of children or adults.

**Highest Adjacent Grade (In reference to Section 1112).** The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Historic Structure (In reference to Section 1112).** Any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic reservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior or
  - b. Directly by the Secretary of the Interior in states without approved programs.

**Home Occupation.** An occupation engaged in by the occupants of a dwelling subject to Section 1223.

**Horticultural services.** Commercial services which are oriented to support the science or practical application of the cultivation of fruits, vegetables, flowers, and plants.

**Impound Lot.** A lot for the temporary storage of automobiles, trucks, buses, recreational vehicles, and similar vehicles. This use excludes vehicle repair, junkyard/salvage yard or dismantling and must comply with Section 1219.

**Institution Farm.** Agricultural land wholly owned by a government agency, federal, state, county, or municipality, and used to grow an agricultural commodity.

**Junkyards/Salvage Yards.** The use of more than one thousand (1,000) square feet of any land, building, or structure, for commercial purposes, where waste, discarded materials such as scrap metals, used building materials, used lumber, used glass, discarded or inoperable vehicles, paper,

rags, rubber, discarded appliances, cordage, barrels, and other similar materials are stored.

**Kennel.** Any premise or portion thereon where more than five (5) dogs, cats, or other household pets are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

**Levee.** A man-made structure usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

**Levee System.** A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**Lodging House.** A building or place where lodging is provided (or which is equipped to provide lodging regularly) by prearrangement for definite periods, for compensation, for three (3) or more persons in contradistinction to hotels open to transients.

**Lot, Buildable.**

1. A parcel of land occupied or intended for occupancy by a use permitted in this Ordinance including one (1) main building together with its accessory buildings, the open spaces and parking spaces required by this ordinance.
2. A lot which is a part of a subdivision, the plat of which has been recorded in the office of the Register of Deeds at the time of the adoption of this Ordinance, or an irregular tract lot described by a deed recorded in the office of the Register of Deeds at the time of the passage of this Ordinance; provided that if a lot has less width or area as required by this Ordinance, the lot is not a buildable lot.

**Lot, Corner.** A lot abutting upon two (2) or more streets at their intersection.

**Lot, Depth of.** The average horizontal distance between the front and rear lot lines.

**Lot, Double Frontage.** A lot having a frontage of two (2) streets as distinguished from a corner lot.

**Lowest Floor.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Section 1112.

**Manufactured Home.** See Section 1207.

**Manufactured Home (In reference to Section 1112).** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

**Manufactured Home Park.** Any premises used or set apart for supplying to the public parking space for one (1) or more Manufactured Homes for living and sleeping purposes, and which include

any buildings, structures, vehicles or enclosures used or intended for use by park residents.

**Manufactured Home Park or Subdivision (In reference to Section 1112).** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Map (In reference to Section 1112).** The Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Agency.

**Mean Sea Level (In reference to Section 1112).** For purposes of the National Flood Insurance Act/Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**Mineral.** An inanimate constituent of the earth in a solid, liquid or gaseous state which, when extracted from the earth, is useable in its natural form as a metal, metallic compound, a chemical, an energy source, or a raw material for manufacturing or construction material. For the purpose of these regulations, this definition does not include surface or subsurface water, geothermal resources, or sand, gravel and quarry rock.

**Mineral Extraction.** The removal of a mineral from its natural occurrence on affected land. The term includes, but is not limited to, underground and surface mining.

**Modular Home.** See Section 1207.

**Motel/Hotel.** A series of attached, semi-attached, or detached sleeping or living units, for the accommodation of transient guests and not customarily including individual cooking or kitchen facilities, said units having convenient access to off-street parking spaces for the exclusive use of guests or occupants.

**New Construction (In reference to Section 1112).** For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**New manufactured home park or subdivision (In reference to Section 1112).** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

**Nonconforming Use.** Any building or land lawfully occupied by a use at the time of passage of this Ordinance or amendment thereto, which does not conform after the passage of this Ordinance or amendment.

**Nursery.** A place where trees, shrubs, vines and/or flower and vegetable plants are grown and/or are offered for sale, to be transplanted onto the lands of the purchaser by the purchaser or by the nursery establishment itself.

**Orchard.** Land dedicated to the growing and management of fruit trees, nut trees, shrubs, or species of maple trees for food production.

**Outdoor Storage.** The keeping, in an unroofed area, of any object or material associated with the business being operated on the property in the same place for more than seventy-two (72) hours.

**Parking Space.** An area, enclosed or unenclosed, sufficient in size to store one (1) automobile, together with a driveway connecting the parking space with a street or alley.

**Parks and Recreation Areas.** Public non-commercial recreation facilities open to the general public and requiring minimal structural development, including, but not limited to playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, public campgrounds swimming pools, and wildlife and nature preserves, along with any necessary accessory facilities, rest rooms, bath houses, and the maintenance of such land and facilities, but not including private, commercial campgrounds, commercial recreation and/or amusement centers.

**Permit.** A permit required by these regulations unless stated otherwise.

**Permitted Use.** Any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

**Plat.** The map, drawing or chart on which the subdivider's plan of subdivision is legally recorded.

**Premises.** A lot or parcel of land, improved or unimproved.

**Principal Structure.** The structure in which the principal use of the lot is conducted. For Example a dwelling on a residential lot.

**Principal Use.** The primary use to which the premises are devoted.

**Private Recreation Areas.** Any open space or recreational area, other than a public park, owned and operated or maintained in whole or in part for profit by a private individual(s), club or fraternal organization for members only, and may include therein one or more of the following activities: swimming, boat facilities, picnic area, tennis courts, outdoor skating rinks, athletic fields, walking, riding and cross-country skiing, snowmobiling, but does not include the racing of animals, motor vehicles, motorcycles or snowmobiles.

**Private Shooting Preserves.** An acreage of at least one hundred and sixty (160) acres and not exceeding one thousand two hundred and eighty (1,280) acres either privately owned or leased on which hatchery raised game is released for the purpose of hunting, for a fee, over an extended season.

**Private Wind Energy Conversion System (PWECS).** A Wind Energy System designed for the purpose of converting wind energy into electrical or mechanical power to be consumed substantially by the permittee. No PWECS installed in accordance with the requirements of these regulations will generate power as an electric utility as defined by SDCL 49-34A-1

**Range (Target/Shooting).** Shall be defined as an area for the discharge of weapons for sport under controlled conditions where the object of the shooting is an inanimate object such as, but not limited to, paper, metal or wooden targets. The term range includes archery ranges. This term only applies to commercial ranges or ranges open to the public. See Section 1220.

**Range Officer.** Means the person designated to be responsible at a Range at any given time during any activity. A Range Officer shall be present on site at any Range when the range is in use.

**Recreational Vehicle.** A motor home, travel trailer, truck camper, or camping trailer, with or without motor power, designed for human habitation for recreational or emergency occupancy. A recreational vehicle does not include manufactured homes.

**Regulatory Floodway (In reference to Section 1112).** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**Religious Farming Community.** A corporation formed primarily for religious purposes whose principle income is derived from agriculture and/or a farm which may or may not be held in collective ownership, in which multiple families reside on-site and use or conduct activities upon the property which are participated in, shared, or used in common by the members of the group residing thereon.

**Repair Shop, General Vehicle and Equipment.** A service commercial or general industrial establishment for the repair or replacement of parts including, but not limited to the following: auto body repair, shocks, transmissions, gears, brakes, clutch assemblies, steering assemblies, radiators, heating or cooling systems, ignition systems, mechanical or electrical parts or systems, the installation of undercoating, engine tuning, lubrication and engine conversion or replacement. A repair shop does not include a junkyard/salvage yard, an impound lot, or an automobile gas/service station, or vehicle sales. See Section 1228.

**Resort.** This category provides commercial hospitality lodgings in spacious settings that are principally intended for vacationing, relaxation and conference activities for visitors to the community.

**Rubble Site.** A site for the disposition of refuse as defined by the South Dakota Department of Environment and Natural Resources.

**Sale or Auction Yard or Barn.** A place or building where the normal activity is to sell or exchange livestock. Livestock normally in yard or barn for one (1) day during sale or auction.

**Sand, Gravel, or Quarry Operation.** An operation which uses surface excavation techniques in order to extract sand and/or gravel. If the operation is not used for commercial purposes or owned by a governmental entity, the operation is deemed to be a private sand gravel or quarry operation. See Section 1224.

**Sanitary Landfill.** A government-owned site for the disposal of garbage and other refuse material. See Section 1225.

**School.** Any building or part thereof, whether public or private, which is designed, constructed, or used for instruction in early childhood, elementary, or secondary education.

**Seasonal Camp Trailers or Recreational Vehicles.** A vehicle designed for temporary seasonal living quarters.

**Service Station.** Any building or premises where automotive fuels are stored and made available for sale and dispensing through fixed equipment into fuel supply tanks or motor vehicles and where automotive supplies and accessories may or may not be available.

**Setback.** The setback of a building is the minimum horizontal distance between the street line and

the front line of the building or any projection thereof, except cornices, unenclosed porches, and entrance vestibules and window bays projecting not more than three and one-half (3 1/2) feet from the building and having no more than fifty (50) square feet area and not extending above the first story of the building.

**Setback Between Uses.** Unless specifically mentioned within this ordinance, the setback or separation distance between uses is the minimum horizontal distance measured from the wall line of a neighboring principal building to the wall line of the proposed building/structure/ use.

**Shelterbelt.** A strip or belt of trees or shrubs established to reduce soil erosion and to protect yards, lots, buildings, livestock and residences, recreation and wildlife from wind. Ornamental trees, generally used in front yards and spaced further than 13 feet apart and further do not extend lineally for a distance of over one hundred fifty (150) feet, are not considered shelterbelts. Ornamental trees maybe placed within fifty (50) feet of the public road right-of-way subject to section 1208.

**Sign.** Any device or structure, permanent or temporary, which directs attention to business, commodity, service or entertainment but excluding any flag, badge or insignia of any government agency, or any civic, charitable, religious, patriotic or similar organizations.

**Sign. Off-premises.** Any sign identifying or advertising a business, person, activity, goods, products or services at a location other than where such sign has been erected.

**Sign, On-premises.** Any sign identifying or advertising a business, person, activity, goods, products or services located on the premises where the sign has been erected.

**Sign Structure.** Any structure which supports, has supported, or is capable of supporting a sign, including decorative cover.

**Sleeping Quarters.** A room or an area contained within a dwelling unit utilized for the purpose of sleep.

**Special Flood Hazard Area.** See "area of special flood hazard".

**Special Hazard Area.** An area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M, or E.

**Stable.** A building for the shelter and feeding of domestic animals, especially horses and cattle.

**Stable, Commercial.** A building for the shelter and feeding of domestic animals, especially horses and cattle where such domestic animals are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

**Start of Construction (In reference to Section 1112).** For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the

placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Street, Arterial.** A street designated as such on the Major Street Plan of the Comprehensive Land Use Plan of Lake County, South Dakota.

**Street, Collector.** A street designated as such upon the Major Street Plan of the Comprehensive Land Use Plan of Lake County, South Dakota.

**Street, Highway or Road.** All property acquired or dedicated to the public and accepted by the appropriate governmental agency for street, highway or road purposes.

**Street, Highway or Road Right-of-Way (ROW) Line.** A dividing line between a lot or parcel of land and a contiguous street, highway or road. The location of a street, highway or road line shall be as shown on the County Section Plat.

**Street, Local.** Any street which is not an arterial street or collector street.

**Structure.** Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on or below the ground.

**Structure, Temporary.** Anything constructed or erected, or placed, the use of which requires temporary location on or below the ground or attached to something having a temporary location on or below the ground.

**Substantial Damage (In reference to Section 1112).** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement (In reference to Section 1112).** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either:

1. Before the improvement or repair is started, or
2. If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this designation, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:
  - a. Any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
  - b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places



**Temporary Fireworks Sales Stand.** A structure utilized for the licensed resale of fireworks during the time period allowed by South Dakota State Law.

**Tree Farm.** Land dedicated to the growing and management of forest crops for commercial purposes. For the purposes of this ordinance, a tree farm does not include a tree nursery.

**Tree, Ornamental.** A deciduous tree which is typically grown because of its shape, flowering characteristics, or other attractive features, and which grows to a mature height of about twenty-five (25) feet or less.

**Truck Garden.** A farm where fruit and vegetables are grown for market.

**Variance.** A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conforming in the zoning district or uses in an adjoining zoning district.

**Veterinary Clinic.** A building or part of a building used for the care, diagnosis, and treatment of sick, ailing, infirm, or injured animals, and those who are in need of medical or surgical attention. Such clinics may or may not provide long-term lodging for ill or unwanted animals, or lodging for healthy animals on a fee basis.

**Violation (In reference to Section 1112).** The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 1112 of this Ordinance is presumed to be in violation until such time as that documentation is provided.

**Water surface elevation (In reference to Section 1112).** The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

**Wind Energy System (WES).** A commonly owned and/or managed integrated system that converts wind movement into electricity. All of the following are encompassed in this definition of system:

1. Tower or multiple towers, including foundations;
2. Generator(s);
3. Blades;
4. Power collection systems, including padmount transformers;
5. Access roads, meteorological towers, on-site electric substation, control building, and other ancillary equipment and facilities; and
6. Electric interconnection systems or a portion thereof dedicated to the WES.

**Yard.** An open space on the same lot with a building, unoccupied and unobstructed. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and bearing wall of the main building shall be used.

**Yard, Front.** A yard extending across the front of a lot between the sideyard lines, and being the minimum horizontal distance between the road right-of-way line and the main bearing wall of the main building or any projections thereof other than the projections of the usual steps, unenclosed balconies or open porch. There shall be a front yard on each street which a lot abuts regardless of zoning district.

**Yard, Rear.** Any yard extending across the rear of a lot measured between the side lot lines, and being the minimum horizontal distance between the rear lot line and the rear of the main building or bearing wall or any projections other than steps, unenclosed porches, or unenclosed balconies. On corner lots the rear yard may be to the rear of either street, provided that the minimum rear yard depth requirement shall be calculated on the longest average lot dimension. On interior lots the rear yard shall in all cases be at the opposite end of the lot from the front yard.

**Yard, Side.** A yard between the main building and the side line of the lot being the minimum horizontal distance between the bearing wall of the building and the side yard line, and extending from the front lot line to the rear yard line.

**ARTICLE III  
ESTABLISHMENT OF DISTRICTS**

**Section 301. Districts.** For the purpose of this Ordinance, the unincorporated areas of the County may be divided into any of the following zoning districts: A--Agricultural; CI--Commercial/Industrial; NR--Natural Resources; PD Planned Development; LP--1 Lake Park 1; LP--2 Lake Park 2; LP--3 Lake Park 3; and TD--Town. In addition to zoning districts, the AP-Aquifer Protection, CP-Corridor Preservation, and FP-Flood Damage Prevention zoning overlay districts impose special regulations on the property that may fall within these districts without abrogating the requirements imposed by the underlying land use district regulations.

**Section 302. Provision for Official Zoning Map.**

1. The unincorporated area of the county is hereby divided into zones, or districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the Chairman of the Board of County Commissioners attested by the Auditor, and bearing the seal of the County under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 302 of the Ordinance 02-37 adopted on August 19, 2002 by Lake County, South Dakota."

If, in accordance with the provisions of this Ordinance, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Board of County Commissioners, with an entry on the Official Zoning Map as follows: "On \_\_\_\_\_ by official action of the Board of County Commissioners, the following change(s) were made in the Official Zoning Map:" (brief description of nature of change), which entry shall be signed by the Chairman of the Board of County Commissioners and attested by the Auditor. No amendment to this Ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on said map.

No changes of any nature shall be made on the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance.

2. In the event the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the Board of County Commissioners may, by resolution, adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map shall be identified by the signature of the Chairman of the Board of County Commissioners attested by the Auditor, and bearing the seal of the County under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) for Lake County, South Dakota."

Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved, together with all available records pertaining to its adoption or amendments.

**Section 303. Interpretation of District Boundaries.**

1. A district name or letter symbol shown on the district map indicates that the regulations pertaining to the district designated by that name or symbol extend throughout the whole area in the unincorporated portions of the County bounded by the district boundary lines.
2. In cases where the boundary line is given a position within a street, road, or non-navigable stream, it shall be deemed to be in the center of the street, road, or stream, and if the actual location of such street, road, or stream varies slightly from the location as shown on the district map, then the actual location shall control.
3. In cases where a boundary line is shown as being located a specific distance from a street line or other physical feature, this distance shall control.
4. In cases where a boundary line is shown adjoining or coincident with a railroad, it shall be deemed to be in the center of the railroad right-of-way and distances measured from the railroad shall be measured from the center of the designated mainline track.
5. Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be the lot lines and where the districts designated on the Official Zoning Map accompanying and made a part of this Ordinance are bounded approximately by lot lines, said lot lines shall be construed to be the boundary of such districts unless said boundaries are otherwise indicated on the map or by resolution.
6. In unsubdivided property, unless otherwise indicated, the district boundary line on the Official Zoning Map accompanying and made a part of this Ordinance shall be determined by the use of the scale contained on such map.

**Section 304.** All territory which may hereafter become a part of the unincorporated area of the County by the disincorporation of any village, town or city, or for some other reason may fall within the zoning jurisdiction of the County, shall automatically be classified in the "A" Agricultural District until within a reasonable time following disincorporation, or acquisition of zoning jurisdiction, the territory shall be appropriately classified by Ordinance.

**Section 305. Application of District Regulations.** Except as hereafter provided:

1. No building shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used except for a purpose permitted in the district in which the building or land is located.
2. No building shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height limit established for the district in which the building is located.
3. No building shall be erected, converted, enlarged, reconstructed, or structurally altered except in conformity with the area and parking regulations of the district in which the building is located.

4. The minimum yards and other open spaces, including lot area per family, required by this Ordinance for each and every building at the time of passage of this Ordinance or for any building hereafter erected shall not be encroached upon or considered as yard or open space requirements for any other buildings, nor shall any lot area be reduced beyond the district requirements of this Ordinance.
5. All sign sizes, lighting, and locations shall, at a minimum, meet all State and Federal laws and regulations.

**Section 306. Prohibited Uses.**

All uses and structures not specifically listed as a permitted use, **special permitted use**, or as a conditional use in a particular zoning district or overlay district shall be prohibited in said district

**ARTICLE IV  
NONCONFORMING USES OR LOTS OF RECORD**

**Intent:** Within the districts established by this Ordinance or amendments that may later be adopted, there exist lots, structures, uses of land and structures, and characteristics of use, which were lawful before this Ordinance was passed or amended but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. It is the intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

**Section 401.** If no structural alterations are made, any nonconforming use of a structure or structure and premises, may, as a conditional use, be changed to another nonconforming use provided that the Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is more appropriate to the district than the existing nonconforming use. In determining such a change, the Board of Adjustment may require appropriate conditions and safeguards in accord with the provisions of this Ordinance. When a nonconforming use has been changed to a conforming use, it shall not be changed subsequently to any nonconforming use.

**Section 402.** In the event that a nonconforming use of any building or premises is, in fact, discontinued or its normal operation stopped for a period of one (1) year, the Board may adopt, after notice by registered or certified mail to the property owners, an amortization schedule to bring about the gradual elimination of such nonconforming use or occupancy.

**Section 403.** No existing building devoted to a use not permitted by this Ordinance, in the district in which such building is located, except when required to do so by law, shall be enlarged, extended, converted, reconstructed or structurally altered, unless such use is changed to a use permitted in the district in which the building is located.

**Section 404.** When a building, the use of which does not conform to the provisions of this Ordinance, is damaged by fire, explosion, or the public enemy, to the extent of more than sixty percent (60%) of its fair market value, it shall not be restored except in conformity with the regulations of the district in which the building is situated.

**Section 405.** Nothing in this Ordinance shall be interpreted as authorization for, or approval of, the continuance of the use of a building or premises in violation of zoning regulations in effect at the time of the effective date of this Ordinance.

**Section 406.** If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendments of this Ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of any parcel be made which creates a lot width or area below the requirements stated in this Ordinance.

**Section 407.** On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repairs or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the nonconformity of the structure shall not be increased.

**Section 408.** If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to the lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

**ARTICLE V  
APPEALS, VARIANCE, AND CONDITIONAL USES**

**Section 501.** Within Lake County outside of incorporated municipalities, the power and jurisdiction related to this article shall be executed by the Board of Adjustment.

1. The County Commission shall act as the Board of Adjustment.
  - a. The Board of County Commissioners shall appoint two (2) alternates to the Board of Adjustment. If a County Commissioner acting as a Board of Adjustment member is unable to participate in a meeting, the alternate, or second alternate in turn, shall serve in the absent County Commissioner's place. The term of the Alternate shall be for three (3) years.
2. Before taking action on any appeal, variance or conditional use, the Planning Commission shall make a recommendation on such request to the Board of Adjustment.
3. The Chairman, or in his or her absence the Acting Chairman, may administer oaths and compel the attendance of witnesses in order to execute the purposes of this article.
4. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Auditor and shall be public record. The Board of Adjustment shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

**Section 502. Appeals, Record of Appeal, Hearing and Stays.** Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the County or city/town affected by any decision of the administrative officer. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board of Adjustment by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property.

In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the office from whom the appeal is taken and on due cause shown.

The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

**Section 503. Power and Jurisdiction Relating to Administrative Review.** The Board of Adjustment shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location of structures or to interpret any map.



**Section 504. Powers and Jurisdiction Relating to Conditional Uses.** The Board of Adjustment shall have the power to hear and decide, in accordance with the provisions of this Ordinance, requests for conditional uses or for decisions upon other special questions upon which the Board of Adjustment is authorized by this Ordinance to pass; to decide such questions as are involved in determining whether special conditions and safeguards as are appropriate under this Ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this Ordinance. A conditional use shall not be granted by the Board of Adjustment unless and until:

1. A written application for a conditional use is submitted, indicating the section of this Ordinance under which the conditional use is sought and stating the grounds on which it is requested.
2. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
4. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the conditional use, and that the granting of the conditional use will not adversely affect the public interest.
5. Before granting any conditional use, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangements have been made concerning the following, where applicable:
  - a. Entrance and exit to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
  - b. Off-street parking and loading areas where required, with particular attention to the items in (a) above and the economic, noise, glare or other effects of the conditional use on adjoining properties and properties generally in the district.
  - c. Utilities, refuse and service areas, with reference to locations, availability, and compatibility.
  - d. Screening and buffering with reference to type, dimensions and character.
  - e. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district.
  - f. Required yards and other open space.
  - g. General compatibility with adjacent properties and other property in the district.
6. The concurring vote of four (4) members of the Board of Adjustment is required to pass any application for a Conditional Use.

**Section 505. Powers and Jurisdiction Relating to Variances.** The Board of Adjustment shall have the power, where, by reason of exception, narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantially impairing the intent and purpose of this Ordinance.

1. The County Zoning Officer may require the applicant for a variance to notify property owners by certified or registered mail of the variance request or in lieu of this obtain written consent from adjoining landowners. Any party may appear in person, or by agent or by attorney; the Board of Adjustment shall make findings that the requirements of this section have been met by the applicant for a variance; the Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; the Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
2. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under the terms of this Ordinance.
3. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.
4. The concurring vote of four (4) members of the Board of Adjustment is required to pass any variance.

**Section 506. Board of Adjustment has Powers of Administrative Officer on Appeals: Reversing Decision of Administrative Officer:** In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appeal from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the office from whom the appeal is taken.

The concurring vote of four (4) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination upon which it is required to pass under this Ordinance or to effect any variation in this Ordinance.

**Section 507. Appeals to a Court of Record.** Any person or persons, jointly or severally aggrieved by a decision of the Board of Adjustment or any taxpayer, landowner, or any officer, department, board, or bureau of the County may appeal as provided by State law.

**ARTICLE VI**  
**DUTIES OF COUNTY ZONING OFFICER, BOARD OF COUNTY COMMISSIONERS, AND**  
**COURTS ON MATTERS OF APPEAL**

**Section 601.** It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the County Zoning Officer, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the administrative official, and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by law.

**ARTICLE VII**  
**SCHEDULE OF FEES, CHARGES, AND EXPENSES**

**Section 701.** The Board of County Commissioners shall, by resolution, establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, and other matters pertaining to this Ordinance, The schedule of fees shall be posted in the office of the County Zoning Officer and may be altered or amended only by the Board of County Commissioners.

Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

## ARTICLE VIII ENFORCEMENT

**Section 801. Enforcing Officer.** The provisions of this Ordinance shall be administered and enforced by a County Zoning Officer appointed by the Board of County Commissioners, who shall have the power to make inspection of building or premises necessary to carry out his duties in the enforcement of this Ordinance.

**Section 802. Building Permit.**

1. Building Permit Required. It shall be unlawful to commence the excavation for or the construction of any building or any accessory building, or to commence the moving or alteration of any buildings, including accessory buildings, until the County Zoning Officer has issued a building permit for such work. A building permit is also required for any filling, grading, lagooning, or dredging. Furthermore, it shall be unlawful to commence work until the building permit is displayed in a conspicuous place visible from public right-of-way.
2. Issuance of a Building Permit. In applying to the County Zoning Officer for a building permit, the applicant shall submit a dimensioned sketch or a scale plan indicating the shape, size, and height and location of all buildings, to be erected, altered, or moved and of any building already on the lot. He shall also state the existing and intended use of all such buildings, the location of existing or proposed water and sewer facilities, and supply such other information as may be required by the County Zoning Officer for determining whether the provisions of this Ordinance are being observed. If the proposed excavation or construction as set forth in the application are in conformity with the provisions of this Ordinance, and other regulations of the County then in force, the County Zoning Officer shall issue a building permit for such excavation or construction. If a building permit is refused, the County Zoning Officer shall state such refusal in writing, with the cause, and shall immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application. The County Zoning Officer shall grant or deny the permit, based upon the recommendation of the County's Building Permit Review Committee, within a reasonable time from the date the application is submitted.
3. The issuance of a building permit shall, in no case, be construed as waiving any provisions of this Ordinance. A building permit shall become void twelve (12) months from the date of issuance unless substantial progress has been made by that date on the project described therein.

**Section 803. Violation and Penalty.** Violations of the ordinance shall be treated in the manner specified below.

1. Any person who starts work for which a permit is required by this Zoning Ordinance, without first securing such permit and paying the prescribed fee, shall be charged according to the provisions of this section. All fees assessed there under shall be rounded to the nearest whole dollar.
  - a. Upon finding such violation, Lake County Planning and Zoning Staff shall notify the owner of property involved verbally or by sending a written notification of the requirement that a permit be obtained to the owner of the property involved by certified mail with return receipt requested. If application for said permit is filed within seven (7) working days from the verbal notification or date of receipt of the letter, an administrative fee shall be assessed in the amount of one hundred percent (100%) of the fee for the building permit plus the cost of

the postage for mailing the aforementioned notice. In no case shall this administrative fee be less than five dollars (\$5.00), including the postage costs.

- b. If application for said permit is filed after the deadline of seven (7) working days following the verbal notice or receipt of the notification of the requirement therefore, there shall be imposed an administrative fee in the amount of two (2) times the building permit fee. The payment of the administrative fee shall not relieve such person from the provisions of paragraph (2) below.
  - c. Any administrative fee or penalty imposed under the provisions of this Zoning Ordinance shall be in addition to any other fees or charges required under this Zoning Ordinance.
2. It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the Board of County Commissioners pursuant thereto. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any provision of this Zoning Ordinance may be subject to a civil or criminal penalty. The penalty for violation of this Zoning Ordinance shall be two hundred dollars (\$200.00) or imprisonment for not more than thirty (30) days, or both, and in addition the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification may constitute a separate offense. All fines for violation shall be paid to the Auditor and shall be credited to the General Fund of the County.
  3. In the event, any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of Lake County in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation, and it is the duty of the State's Attorney to institute such action.
  4. Any taxpayer of the County may institute mandamus proceedings in Circuit Court to compel specific performance by the proper official or officials of any duty required by these regulations.

## ARTICLE IX AMENDMENTS

**Section 901. Petition by Individual Landowner for Change in Zoning -- Notice to Abutting Landowners.** An individual landowner may petition the Board to change the zoning of all or any part of his property. Such petitioning landowner shall also notify all other abutting landowners by registered or certified mail of the petitioned zoning change at least one (1) week prior to any public hearing held thereon by the Board of County Commissioners. Property shall be considered as abutting even though it may be separated from the property of the petitioner by a public road or highway.

**Section 902. Hearing by County Commissioners.** Following receipt of any petition as provided in Section 901, the Board shall hold a public hearing after notice in a newspaper of general circulation. The Auditor shall publish a notice once a week for two (2) successive weeks of the time and place when and where such hearing shall be held and a notice that all interested persons may appear and be heard. The notice shall be published once ten (10) days prior to the hearing.

**Section 903. Adoption or Rejection by County Commissioners -- Publication of Change.** The Board of County Commissioners shall thereafter by resolution or ordinance, as appropriate, either adopt or reject such amendment, supplement, change, modification or repeal, and if it is adopted by the Board of County Commissioners, a summary of the same shall be prepared by the Planning Commission, reviewed by the States Attorney, and published once in the official newspaper in such County and take effect on the twentieth (20th) day after its publication.

**Section 9.04 Zoning Amendments.** Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the Planning Commission, as provided herein, the Board of County Commissioners may change zoning district boundaries, use groups, or the regulations established by this ordinance. A proposed change of zoning district boundaries or regulations may be initiated by the Board of County Commissioners, the Planning Commission, or by application of one or more of the owners of property within the area requested to be changed. However, no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published once ten (10) days prior to the date of the meetings as provided in South Dakota Compiled Laws Chapter 11-2, and its and Amendments. Unless otherwise provided for in these regulations, any change in these regulations, shall require Board of County Commissioners approval of an ordinance describing said changes. The Board of County Commissioners may not consider said ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said ordinance amendment.

The following procedure for requesting a Zoning Amendment or Zoning District Boundary Change shall be followed:

1. The landowner or other person(s) requesting the Amendment/Boundary change shall complete an application, available from the Zoning Officer. Completed applications shall be returned to the Zoning Officer for review. To be considered by the Planning Commission and Board of County Commissioners, the application form shall be completed and shall be accompanied by the following items:
  - a. Any required attachments and fees, including Registered or Certified Mail.

- b. Any additional information, as requested by the Zoning Officer, as lawfully may be required to determine conformance with and provide for enforcement of this ordinance.
- c. The Zoning Officer shall review the application, and shall forward a summary of the application, and his/her comments regarding said application, to the Planning Commission for their review.
- d. The Zoning Officer shall set the date, time, and place for public hearings to be held by the Planning Commission and Board of County Commissioners. The Zoning Officer shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed amendment; such notice shall be published not less than ten (10) days prior to each board's (Planning Commission, Board of Adjustment, Board of County Commissioners) public hearing. If the proposed amendment will change the boundaries of a zoning district, the Zoning Officer shall notify all owners of property within 250 feet of the proposed boundary change, by Registered or Certified Mail at the expense of the applicant, at least one (1) week before the public hearing.
- e. The public hearing shall be held. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the office of the Zoning Officer.
- f. The Planning Commission shall either recommend or not recommend approval of the amendment to the Board of County Commissioners.
- g. The Board of County Commissioners shall either approve or not approve the ordinance describing the proposed changes to these zoning regulations, in accordance with standard procedures for reading, approval, publication, and effective date.
- h. When the Board of County Commissioners approves a proposed amendment affecting the zoning classification of property, affected property owners may file a written protest to stop such an amendment from taking effect. If the protest meets the following standard, such amendment shall not become effective unless the amendment is approved by two-thirds (4 votes) of the Board of County Commissioners.

Protest Standard: The protest shall be signed by at least 40% of the owners of equity in the parcels in the area affected by the amendment, and the parcels or parts of parcels within 250 feet of the area affected by the amendment.

- i. After passage the Ordinance Amendment shall take effect on the 20th day after its publication in the official newspaper of the County.



**ARTICLE X**  
**LEGAL STATUS PROVISIONS**

**Section 1001. Separability.** Should any article, section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

**Section 1002. Purpose of Catch Heads.** The catch heads appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose of an index and they shall be wholly disregarded by any person, officer, court or other tribunal in construing the terms and provisions of this Ordinance.

**Section 1003. Effective Date.** This Ordinance shall take effect and be in force from and after its passage and publication according to law.

## **ARTICLE XI ZONING DISTRICTS**

### **Section 1101. "A" Agricultural District**

#### **1101.01. Purpose**

This district is established to preserve open space and maintain and promote farming and related activities within an environment which is generally free of other land use activities. The Agricultural District is further characterized as land areas not yet ready for further development. Residential development, other than single-family farming units, will be discouraged to minimize conflicts with farming activities and reduce the demand for expanded public services and facilities.

#### **1101.02. Permitted Uses**

1. Agricultural activities and farm related buildings, excluding Concentrated Animal Feeding Operations.
2. Single-family dwellings, including modular homes, and Type A and Type B manufactured homes. Dwellings may be farm or non-farm.
3. Fisheries services and game propagation areas (Public wildlife production areas).
4. Public parks and recreation areas.
5. Temporary structures used for the sale of fireworks between June 27 -July 5 and between December 28 - January 1 provided that there have been no past complaints or violations regarding previous sales.
6. Temporary structures used for the sale of produce raised on-premises provided that there have been no past complaints or violations regarding previous sales.
7. Home occupations. (See Section 1223.)
8. Accessory buildings and uses subordinate to uses listed as a permitted use or conditional use.

#### **1101.03. Conditional Uses**

1. Airports and airstrips.
2. Church or cemetery.
3. Golf course, golf driving range, and golf clubhouse.
4. Sand, gravel or quarry operation; mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants provided that they meet the requirements of Section 1224 as applicable.
5. School.
6. Game Lodge.

7. Sanitary landfills, rubble sites, composting sites, waste tire sites, restricted use sites, and other sites governed by the South Dakota Department of Environment and Natural Resources permits for solid waste provided they meet the requirements of Section 1225.
8. Land application of petroleum-contaminated soils.
9. Institution farms, including religious farming communities.
10. Bed and breakfast home. (See Section 1222.)
11. Domestic sanitary sewage treatment plants/facility; provided they meet the requirements of Section 1221.
12. Class A, Class B, Class C, Class D, and Class E Concentrated Animal Feeding Operations. (See Concentrated Animal Feeding Operations, Article XIII.)
13. Commercial stables.
14. Veterinary clinics.
15. Junkyards/salvage yards, provided that they meet the requirements of Sections 1226.
16. Public utility and public service structure including transmission lines, substations, gas regulator stations, pipelines, community equipment buildings, water pumping stations, elevated tanks and similar essential public utilities and service structures.
17. Wireless telecommunications towers and facilities.
18. Commercial public entertainment enterprises not normally accommodated in commercial areas, including but not limited to, the following: music concerts, rodeos, tractor pulls, and animal and vehicle races;
19. Group homes.
20. Extended home occupation (see Section 1209).
21. Caretaker residences associated with public or private enterprise.
22. Livestock sales barns.
23. Seasonal retail stands – including produce and fireworks – utilizing a permanent structure.
24. Fur farms and kennels.
25. Private shooting preserves
26. Wind Energy System (WES). (See Section 1212).
27. Commercial orchards, tree farms, nurseries and greenhouses.
28. Animal husbandry service.

29. Horticultural services.
30. Contractor shops and yards.
31. Temporary structures used for the sale of fireworks between June 27-July 5 and between December 28-January 1 which have had past complaints or violations regarding previous sales.
32. Private wind energy conversion system (PWECS). (See Section 1218.)
33. Target range. (See Section 1220.)
34. Automotive tow business/Impound lot (See Section 1219.)
35. On-premise and off-premises signs. (See Section 1227).
36. Repair shops, general vehicle and equipment (See Section 1228.)
37. Agricultural product processing facilities.
38. Aquaculture.
39. Private recreation areas.
40. Farm equipment repair, sales and service. (See Section 1229.)

#### **1101.04 Area Regulations.**

All buildings/structures shall be set back from road right-of-way lines and lot lines to comply with the following requirements:

##### 1. Front Yard

Structures on all corner lots shall observe two (2) front yards. The depth of the front yard on each street which the lot abuts, shall be not less than seventy-five (75) feet from the road right-of-way and in no case shall an accessory building be located or extended into the front yard.

##### 2. Side Yard

There shall be a side yard on each side of building/structure having a width of not less than thirty (30) feet.

##### 3. Rear Yard

There shall be a rear yard having a depth of not less than fifty (50) feet or twenty percent (20%) of the depth of the buildable lot at the time of the passage of this Resolution.

#### 4. Intensity of Use

Each buildable lot must contain at least one (1) acre (the Aquifer Protection Overlay District requires at least five (5) acres) not counting the road right-of-way. In addition, there shall be no more than four (4) dwellings per quarter of a quarter section of land, not including existing farmsteads:

- a. The minimum size of buildable lots are further to be distinguished by their physical location within the County. In order to protect agricultural operations, the minimum lot size for single-family dwellings in the areas of the county identified in the comprehensive land use plan as Areas of Development Stability shall be twenty (20) acres. Any parcel under twenty (20) acres shall be platted.
- b. The minimum lot size for single-family dwellings in the areas of the county identified in the Comprehensive Land Use Plan as "Areas of Development Stability Waiver Required", and "Areas of Development Stability No Waiver Required" shall be at least one (1) acre (the Aquifer Protection Overlay District requires at least five (5) acres) not counting the road right-of-way. In addition, there shall be no more than four (4) dwellings per quarter of a quarter section of land, not including existing farmsteads.
- c. The Board of Adjustment may allow a smaller minimum lot requirement for the "A" Agricultural District under the following conditions:
  - i. Where a permit for a single family home is requested on an existing farmstead, provided:
    - a. The dwelling is located on the same legal description as the existing farmstead.
    - b. The maximum number of dwelling units within the existing farmstead will not exceed two (2).
    - c. The dwelling is to be occupied by employees or relatives of the farm owner (existing farming operation).
    - d. The additional single-family farm dwelling shall be removed in the event the structure becomes a non-farm dwelling.
  - ii. Where an existing farmstead is to be divided from adjacent farmland into a single separate parcel of five (5) acres or more.

5. Lot Width - All lots shall have a minimum width of one hundred fifty (150) feet.

#### **1101.05. Height Regulations**

No main buildings shall exceed two and one-half (2 ½) stores or thirty-five (35) feet in height. Exceptions include the following:

1. Agricultural buildings.
2. Chimneys, smokestacks, cooling towers.

3. Wireless Telecommunications Towers and Facilities.
4. Water tanks.
5. Elevators.
6. Wind energy systems (WES).
7. Private wind energy conversion systems (PWECS).
8. Others, providing that they are not used for human occupancy.

#### **1101.06. Covenants/Waivers**

1. A right to farm notice covenant must be filed with Register of Deeds on all property to be used as a site for a newly constructed residence (farm and non-farm) prior to issuance of a building permit. See Section 1215.
2. In areas identified in the Comprehensive Land Use Plan as Areas of Development Stability-Waiver Required: Applicants for residential development (farm and non-farm) are required to obtain a written waiver from the owner/operator of any existing farm which is closer than one-half (1/2) mile from the proposed residential building site. If the applicant is unable to obtain the written waiver, he/she shall be required to file a waiver with the Register of Deeds waiving any or all common law challenges to future expansions of the said existing concentrated animal feeding operation. This waiver shall be filed with the Register of Deeds. See Section 1216.

#### **1101.07. Access**

1. The location of driveways accessing individual parcels shall be separated from adjacent driveways on the same side of the road by the following separation distances:
  - a. Roads identified on the Major Street plan as:
    - i. Local road: One hundred (100) foot separation distance.
    - ii. Collector road: Three hundred (300) foot separation distance.
    - iii. Arterial road: Five hundred (500) foot separation distance
2. For all proposed uses and structures adjacent to a State highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the filing of a plat or the issuance of a building/use permit

## **Section 1102. "CI" Commercial/Industrial District**

### **Purpose**

The "CI" District is intended for commercial and industrial uses which due to their size and nature require highway access.

### **Permitted Use**

1. Permitted uses in the "A" Agricultural District except residential dwellings
2. Gas, oil and liquid propane stations including bulk stations.

### **Conditional Uses**

1. Implement sales and service.
2. Truck terminals and freight warehouses.
3. Seed sales and grain storage, fertilizer and chemical storage and sales.
4. Highway and street maintenance shops.
5. Welding and machine shops.
6. Public and private utilities.
7. Livestock sales.
8. Contractors' shops and yards.
9. Wholesale distributing companies.
10. Restaurants.
11. Motels.
12. Conditional uses in the "A" Agricultural District except residential dwellings.
13. Adult Uses.
14. Cannabis Dispensary. (See Section 1230.)

### **Area Regulations**

1. Lot Area

Lot area shall be determined by need, setback, side yards, rear yards, parking requirements, freight handling requirements, building site and future expansion; however, in no case shall a lot have less than two (2) acres. An applicant for a conditional use shall provide a proposed site plan which can be reviewed by the Board of Adjustment. For commercial and industrial uses,

building shall occupy no more than twenty-five percent (25%) of the lot.

a. Front Yard

Structures on all corner lots shall observe two (2) front yards. The depth of the front yard on each street which the lot abuts, shall be not less than one hundred (100) feet in depth.

b. Side Yards

On lots adjacent to a residential area, all buildings and incidental areas shall be located so as to provide a minimum side yard of one hundred (100) feet, which shall be landscaped on the side adjacent to the residential area. All other side yards shall be a minimum of fifty (50) feet.

c. Rear Yards

No building shall be constructed within fifty (50) feet of the rear lot line. The rear yard shall be one hundred (100) feet if the lot abuts a major highway.



## **Section 1103. "LP-1" Lake-Park District-1**

### **Purpose**

The Lake-Park District-1 is established to provide for orderly residential and recreational development, together with certain public facilities, customary home occupations, and certain recreation oriented commercial establishments, along lakeshores.

### **Permitted Uses**

1. Single-family residential usage.
2. Public parks and recreation areas.
3. Agriculture and horticulture uses.
4. Type A Manufactured Homes with permanent foundations.
5. Home occupations.
6. Attached garages, unattached garages and accessory buildings shall be limited to maximum dimensions of 1,200 square feet, and shall have sidewalls that either conform to the design of the house or have a maximum height of twelve (12) feet, whichever is greater.
7. Satellite dish meeting setback requirements.

### **Conditional Uses**

1. Private parks and campgrounds.
2. Resorts.
3. Restaurants.
4. Boat houses adjacent to lake shore.
5. Multiple family dwellings, including condominiums.
6. Unattached garages and accessory buildings with sidewalls greater than twelve (12) feet and/or dimensions greater than 1,200 square feet.
7. Commercial Campground.
8. Home Occupations.

**Area Regulations:** See Schedule of Regulations.

## **Shoreline Alterations**

These regulations shall apply to the LP-1 and LP-2 Districts. These regulations are deemed necessary along the shores of natural waters to protect scenic beauty, control erosion and reduce effluent and nutrient flow from the shoreland.

### 1. Removal of Shore Cover

Tree and shrub cutting in a strip paralleling the shoreline and extending twenty-five (25) feet inland from all points along the ordinary high water mark of the shoreline shall be limited in accordance with the following provisions:

- a. Cutting shall leave sufficient cover to screen cars, dwellings, and accessory structures, except boathouses, as seen from the water, to preserve natural beauty and to control erosion.
- b. Natural shrubbery shall be preserved as far as practicable, and where removed it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.
- c. The removal of natural shrubbery and its replacement shall require the granting of a permit by the Zoning Officer. Petition for such permit shall be accompanied by a plan showing the work to be accomplished. The granting of such conditional use shall be conditional upon a contract requiring the petitioner to give to the Zoning Officer, within one (1) year after the date of grant, satisfactory evidence of compliance with such plan or pay for the cost of such compliance by the County.

## **Filling, Grading, Lagooning and Dredging**

1. Filling, grading, lagooning or dredging which would result in substantial detriment to natural waters by reason of erosion, sedimentation or impairment of fish and aquatic life is prohibited.
2. A permit shall be required for any filling or grading. This requirement does not apply to soil conservation practices such as terraces, runoff diversions and grassed waterways which are used for sediment retardation.
3. Building permits shall be required for all retaining walls or structures.

## **Section 1104. "LP-2" Lake Park District-2**

### **Purpose**

The Lake-Park District-2 is established to provide for orderly low-density residential and recreational development, together with certain public facilities, customary home occupations, and certain recreation oriented commercial establishments, along lakeshores.

### **Permitted Uses**

1. Single-family residential usage.
2. Public parks and recreation areas.
3. Agriculture and horticulture uses.
4. Type A and B Manufactured Homes with permanent foundations.
5. Home occupations.
6. Attached garages, unattached garages and accessory buildings shall be limited to maximum dimensions of 1,200 square feet, and shall have sidewalls that either conform to the design of the house or have a maximum height of twelve (12) feet, whichever is greater.
7. Satellite dish meeting setback requirements.

### **Conditional Uses**

1. Private parks and campgrounds.
2. Resorts.
3. Restaurants.
4. Boat houses adjacent to lake shore.
5. Unattached garages and accessory buildings with sidewalls greater than twelve (12) feet and/or dimensions greater than 1,200 square feet.
6. Multiple family dwellings, attached to a central sewer operated by a sanitary sewer district.
7. Commercial Campground.
8. Home Occupations.

**Area Regulations:** See Schedule of Regulations.

## **Section 1105. "LP-3" Lake-Park District-3**

### **Purpose**

The Lake-Park District-3 is established to provide for oversized private and commercial storage facilities.

### **Permitted Uses**

2. Private and Commercial Storage Facilities containing no more than four thousand (4,000) square feet and do not have sidewalls with a height greater than fourteen (14) feet.

### **Conditional Uses**

1. The Board of Adjustment may permit other uses which in its opinion are not detrimental to other uses and are in the general character of the other uses in the LP-3 District.

**Area Regulations:** See Lake Park District 3 Schedule of Regulations.

**LAKE PARK DISTRICTS 1 AND 2  
SCHEDULE OF REGULATIONS**

	Minimum Density (Sq Ft/du)  (1)	Minimum Lot Sq. Ft.	Minimum Lot Width	Minimum Side Yard	Minimum Front Yard (Road Front) (2)	Minimum Rear Yard (Lake Front) (3)	Maximum Height
<u>Central Sewer/Rural Water</u>							
Single Family Dwelling	9,600	9,600	75'	9'	30'	25'	30'
Multiple Family Dwelling	2,500	10,000	75'	10'	30'	25'	45'
Commercial	N/A	20,000	125'	10'	30'	25'	45'
<u>Rural Water/Septic Tank or Holding Tank</u>							
Single Family Dwelling	20,000	20,000	75'	10'	30'	25'	30'
<u>Well/Septic Tank</u>							
Single Family Dwelling	43,560	43,560	75'	20'	30'	25'	30'

(1) d.u. -- Dwelling Unit

(2) Side of lot facing road right-of-way or access easement.

- a. Permitted uses shall not have a front yard (road front) of less than thirty (30) feet when adjacent to a public road. Permitted uses shall not have a front yard (road front) of less than ten (10) feet when adjacent to a private road or platted public alley. However, the front setback may be specified to equal the average of existing setbacks on lots located on the same side of the street in the same block as the lot proposed to be built on. But in no case shall the setback line be less than twelve (12) feet from the front lot line.
- b. Structures on all corner lots shall observe two (2) front yards. However a building may be erected or reconstructed or altered in such a way as long as a portion thereof may not be closer to the street line than the average improved building front on that street in that block, but in no case shall the set-back line be less than twelve (12) feet from the front lot line.
- c. Accessory buildings may be built in a required front yard but such accessory building shall not occupy more than thirty percent (30%) of a required front yard and shall not be nearer than two (2) feet to any side or rear lot line, except that when a garage is entered from an alley it shall not be located closer than ten (10) feet to the alley line. If a garage is located closer than ten (10) feet to the main building the garage shall be regarded as part of the main building for the purpose of determining side and rear yards and the distance back from the front property line.

- (3) a. All structures, except boathouses, in addition to meeting the 25-foot setback from ordinary high water mark adjacent to lakes must also be four (4) feet above ordinary high water mark.
- b. Where adjoining lots are developed with a setback greater than twenty-five (25) feet, the required setback shall be the average of the setback of the adjoining lots.
- c. Lot width is the distance between side lot lines measured at the rear of the required front yard on a line parallel with a line tangent to the road right-of-way line.

**LAKE PARK DISTRICT 3  
SCHEDULE OF REGULATIONS**

	Minimum Lot (Sq Ft)	Minimum Lot Depth.	Minimum Lot Width	Minimum Side Yard	Minimum Front Yard (Road Front)	Minimum Rear Yard	Maximum Height
Storage Facility	8,000	160	50'	2'	20'	10'	30'

- a. All structures, except boathouses, in addition to meeting the 25-foot setback from normal high water mark adjacent to lakes must also be four (4) feet above normal high water mark.
- b. Here adjoining lots are developed with a setback greater than twenty (20) feet, the required setback shall be the average of the setback of the adjoining lots.
- c. Structures on all corner lots shall observe two (2) front yards. However a building may be erected or reconstructed or altered in such a way as long as a portion thereof may not be closer to the street line than the average improved building front on that street in that block, but in no case shall the set-back line be less than twelve (12) feet from the front lot line.
- d. Lot width is the distance between side lot lines measured at the rear of the required front yard on a line parallel with a line tangent to the road right-of-way line.
- e. Required yards shall be measured from the face of the building to the property line.
- f. Where any permitted use is adjacent to any residential use, said permitted use may be required to be appropriately screened.

## **Section 1106. "Fences in the LP-1, LP-2 and LP-3 , & TD Districts"**

### **1. Purpose**

The regulation of fences is intended to protect the public safety and welfare, provide privacy, buffer noise, and allow adequate air, light and vision.

### **2. Permit required**

- a. Permits to construct fences exceeding thirty-six (36) inches in height shall be required in the LP-1, LP-2, and LP-3 Districts.

### **3. Location/Construction Requirements**

- a. Notwithstanding other provisions of this Ordinance, fences, walls, trees, and hedges may be permitted in any required yard. Except fences and hedges which are more than thirty (30) percent solid shall not be located within fifty (50) feet of an intersection per Section 1202. , A fence, wall, tree, or hedge shall not be constructed within twenty (20) feet of a public right-of-way or ten (10) feet of a private road.
- b. Fences, with a maximum height of not more than eight (8) feet, may be erected on any part of a lot other than in the required front yard (road front), and not closer than twenty-five (25) feet back from the OHWM (Ordinary High Water Mark).
- c. The County does not provide surveying services. The property owner is responsible for locating property lines.
- d. Fences may be built up to the property line, in the required side yard, but it is recommended that the applicant leave enough area to remove vegetation and maintain the fence along the fenceline. Fences constructed within an identified easement face the potential of removal in the event of necessary work to be conducted within the easement. Replacement of the removed fence is the responsibility of the owner of said fence.
- e. The "finished side" of the fence shall face neighboring properties or the road.
- f. Approved fencing materials include stone, brick, finished wood, vinyl, and chain link.
- g. Hedges or other plantings which create a fence effect are subject to the same regulations as fences.
- h. Fences can be built on the property line when the fence is shared between property owners.

**Section 1107. "TD" Town District**

**Purpose**

The Town District is established to provide for orderly low-density residential development, together with certain public facilities, and commercial/industrial uses which are not detrimental in the unincorporated towns of Rutland, Junius, Franklin, Chester, and Winfred.

**Permitted Uses**

1. Single-family residential usage, including Type A and Type B Manufactured Homes.
2. Public parks.
3. Agriculture and horticulture uses, excluding feedlots.
4. Home occupations.

**Conditional Uses**

1. Retail and service businesses.
2. Light manufacturing.
3. Bar or tavern.
4. Warehouse.
5. Multi-family housing.
6. Contractors' offices, shops, and yards.

**Area Regulations**

Structures on all corner lots shall observe two (2) front yards. The depth of the front yard on each street which the lot abuts, shall be as follows:

**Residential**

Minimum Yard Requirements:	Front-----Twenty-five (25) feet
	Side-----Six (6) feet
	Rear-----Twenty-five (25) feet

**Accessory Building Requirements:**

No part of the structure can be closer than 2' to any property line



### Commercial

Lot size shall be determined by off-street parking needs; availability of water and sewage disposal systems; adjacent land uses; need for screening; and type of business. Front, side and rear yards shall be determined by the Board of Adjustment after recommendation from the Planning Commission.

### Industrial

Lot size shall be determined by off-street parking needs; impact on adjoining land uses and need for screening or buffering from residential areas; availability of water and sewage disposal facilities; type of manufacturing or storage facilities.

## **Section 1108. "NR" Natural Resources District**

### **Intent**

The intent of the NR Natural Resource District is to provide the County with an area to be preserved for its natural beauty, historic quality, open character, and wildlife propagation and to guard against flood damage.

### **Area**

All lands, unless otherwise zoned, within three hundred (300) feet of the lower three (3) miles of East Fork Vermillion and that portion of Silver Creek in Lake County. Also, the meandered lakes of Badus, Round, Milwaukee, Twin and that portion of Long Lake not included in the Lake Madison Sanitary District are to be included in the "NR" Natural Resources District.

### **Permitted Uses**

The following uses and structures shall be permitted in the "NR" Natural Resources District:

1. Historic sites and/or monuments, designated natural prairies.
2. Wildlife production areas and forest reserves, public hunting and fishing access areas, game refuges.
3. Golf courses, summer camps.
4. Agricultural and horticultural activity, but excluding dwelling units.

### **Conditional Uses**

1. Essential services.

### **Shoreline Alterations**

These regulations are deemed necessary along the shores of natural waters to protect scenic beauty, control erosion and reduce effluent and nutrient flow from the shoreland.

1. Removal of Shore Cover

Tree and shrub cutting in a strip paralleling the shoreline and extending thirty-five (35) feet inland from all points along the normal high water mark of the shoreline shall be limited in accordance with the following provisions:

- a. Cutting shall leave sufficient cover to screen cars, dwellings, and accessory structures, except boathouses, as seen from the water, to preserve natural beauty and to control erosion.
- b. Natural shrubbery shall be preserved as far as practicable, and where removed it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.

- c. The removal of natural shrubbery and its replacement shall require the granting of a permit by the Zoning Officer. Petition for such permit shall be accompanied by a plan showing the work to be accomplished. The granting of such conditional use shall be conditional upon a contract requiring the petitioner to give to the Zoning Officer, within one (1) year after the date of grant, satisfactory evidence of compliance with such plan or pay for the cost of such compliance by the County.

#### **Filling, Grading, Lagooning and Dredging**

1. Filling, grading, lagooning or dredging which would result in substantial detriment to natural waters by reason of erosion, sedimentation or impairment of fish and aquatic life is prohibited.
2. A permit shall be required: For any filling or grading of any area which is within three hundred (300) feet horizontal distance of a natural water and which has surface drainage toward the water and on which there is:
  - a. Filling of more than five hundred (500) square feet of any area which is contiguous to the water.
  - b. Filling or grading on all slopes of twenty percent (20%) or more. (This does not apply to soil conservation practices such as terraces, runoff diversions and grassed waterways which are used for sediment retardation.)
  - c. Where more than ten thousand (10,000) square feet of the bank of a natural body of water is exposed by grading.
  - d. A permit shall be required before constructing, dredging or commencing work on an artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway which is within three hundred (300) feet of the high water mark of a natural body of water. (This requirement does not apply to soil conservation practices such as terraces, runoff diversions and grassed waterways which are used for sediment retardation.)

## **Section 1109. "PD" Planned Development District**

### **Intent**

The intent of the "PD" Planned Development District is to provide for the development of large tracts of land as integrated and harmonious units, and to provide for certain modifications in the standards of these regulations to promote such development. To be eligible for consideration under the provision of this district, the proposed planned development must be:

1. Consistent with the County Comprehensive Plan.
2. Composed of such uses, to such a degree, as are necessary for the integrated functioning of the planned development unit and the County.
3. So designed as to produce an attractive and desirable environment complementing the surrounding neighborhood.
4. A minimum of ten (10) acres in land area.

### **Application Procedure**

1. An applicant for consideration under the terms of this district, who must be owner, lessee or the holder of a written purchase option of the tract of land under consideration, shall submit to the Board of County Commissioners a plan for the proposed planned development unit. The plan shall indicate:
  - a. The location and extent of the proposed planned development unit, including its relationship to surrounding properties.
  - b. The exact nature and extent of improvements to be developed or erected upon the tract, including contoured site plans, building plans and elevations, and plans for landscaping and paved areas.
  - c. Such other information as may be required by the Board of County Commissioners to determine if the proposed development unit is consistent with the intent of the district.
2. The Board of County Commissioners shall, within sixty (60) days of receiving the plan for the proposed development unit, consider such plan at a minimum of one (1) regular Board of County Commissioners meeting. Upon consideration and after receiving written recommendation from the Planning Commission, the Board of County Commissioners shall inform the applicant in writing of its approval or denial of the plan.

In the event of denial, the Board shall inform the applicant of the reason(s) for denial including any recommended modifications in the plan which would cause the Board to reconsider.

3. Upon approval of the plan by the Board of County Commissioners they shall consider the amendment of the Official Zoning Map, as provided elsewhere in these regulations, so that the tract be designated as "PD" Planned Development District.

4. Following amendment of the Official Zoning Map by the Board of County Commissioners, the County Zoning Officer may, upon proper application, issue a building permit for the construction of the planned development unit in accordance with the approved plan.

#### **Subsequent Performance**

Following issuance of a building permit for the planned development unit by the building inspector, the applicant shall begin construction within a period of six (6) months. Failure to do so shall invalidate the building permit. Construction shall follow precisely the plan approved by the Board of County Commissioners to which modifications may be granted only by the Board of County Commissioners upon the filing of an amended plan. Failure to follow the approved plan on the part of the applicant or his agent shall be considered a violation of these regulations, punishable as herein prescribed.

## **Section 1110. Aquifer Protection Overlay District**

### **Purpose and Intent:**

The Planning Commission and Board of County Commissioners recognize (1) that residents of Lake County rely on ground water for a safe drinking water supply and (2) that certain land uses in Lake County can contaminate ground water particularly in shallow aquifers.

The purpose of the Aquifer Protection Overlay District is to protect public health and safety by minimizing contamination of the shallow aquifers of Lake County.

It is the intent to accomplish aquifer protection, as much as possible, by public education and securing public cooperation. Appropriate land use regulations will be imposed, however, which are in addition to those imposed in the underlying zoning districts or in other county regulations. Any use existing at the time this ordinance is adopted is grandfathered.

### **Definitions for Aquifer Protection Overlay District:**

1. Abandoned Well: A well no longer used or intended to be used as a water source.
2. Concentrated Animal Feeding Operation: (See Concentrated Animal Feeding Operations, Article XIII.)
3. Best Management Practices: Measures contained in Soil Conservation Service South Dakota Technical Guide, either managerial or structural, that are determined to be the most effective, practical means of preventing or reducing pollution inputs from nonpoint sources to water bodies.
4. Chemigation: The process of applying agricultural chemicals (fertilizer or pesticides) through an irrigation system by injecting the chemicals into the water.
5. Class V Injection Well: A conduit through which potentially contaminated but generally non-hazardous fluids can move below land surface into or above an aquifer. The types of primary concern in Lake County are 5W20--industrial process water and waste disposal wells and 5X28--automobile service station disposal wells. Typically, 5W20 types are commercial/ industrial facility septic tanks used to dispose of more than domestic wastewater. 5X28 types are dry wells for wastes from repair bay drains at facilities servicing internal combustion vehicles and equipment.
6. Contamination: The process of making impure, unclean, inferior or unfit for use by introduction of undesirable elements.
7. Contingency Plans: Detailed plans for control, containment, recovery and clean up of hazardous materials released during floods, fires, equipment failures, leaks and spills.
8. Development: The carrying out of any surface or structure construction, reconstruction or alteration of land use or intensity of use.
9. Facility: Something built, installed or established for a particular purpose.

10. Hazardous Materials: A material which is defined in one or more of the following categories:
- a. Ignitable: A gas, liquid or solid which may cause fire through friction, absorption of moisture, or which has low flash points. Examples: white phosphorous and gasoline.
  - b. Carcinogenic: A gas, liquid or solid which is normally considered to be cancer causing or mutagenic. Examples: PCBs in some waste oils.
  - c. Explosive: A reactive gas, liquid or solid which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.
  - d. Highly Toxic: A gas, liquid or solid so dangerous to man as to afford an unusual hazard to life. Examples: parathion and chlorine gas.
  - e. Moderately Toxic: A gas, liquid or solid which through repeated exposure or in a single large dose can be hazardous to man. Example: atrazine.
  - f. Corrosive: Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.
11. Manure Storage Area: An area separate from pens or building where animal manure is stored for more than one year.
12. Leaks and Spills: Any unplanned or improper discharge of a potential contaminant including any discharge of a hazardous material.
13. Pasture: A field providing continuous forage to animals and where the concentration of animals is such that a vegetative cover is maintained during the growing season.
14. Primary Containment Facility: A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.
15. Secondary Containment Facility: A second tank, catchment pit, pipe or vessel that limits and contains a liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery systems are required.
16. Shallow Aquifer: An aquifer vulnerable to contamination because the permeable material making up the aquifer (1) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (2) extends to near the land surface and lacks a sufficiently thick layer of impermeable material on the land or near the land surface to limit percolation water from transporting contaminants from the land surface to the aquifer.
17. Ten Year Time of Travel Distance: The distance that ground water will travel in ten years. This distance is a function of aquifer permeability and water table slope.
18. Zone of Contribution: The entire area around a well or wellfield that contributes water to the well or wellfield.

## **Establishment/Delineation/Regulation of Aquifer Protection Overlay Zones**

Boundaries for the aquifer protection zones for the Aquifer Protection Overlay District are shown on maps prepared by the East Dakota Water Development District (EDWDD), Brookings, South Dakota. Said maps are hereby adopted by reference as part of this Ordinance as if the maps were fully described herein.

The Aquifer Protection Overlay District is divided into two zones. The critical impact zone, Zone A, was mapped by the East Dakota Water Development District with South Dakota Geological Survey (SDGS) technical assistance using techniques outlined in the U.S. Environmental Protection Agency publication "Guidelines for Delineation of Wellhead Protection Areas," June, 1987. The shallow/ surficial aquifer boundary for Zone B was mapped by the South Dakota Geological Survey.

### **ZONE A -- AQUIFER CRITICAL IMPACT ZONES**

Zone A, the wellhead protection area, is the mapped zone of contribution around all public water supply wells or wellfields in shallow/surficial aquifers and includes land upgradient from the well or wellfield to the ten year time of travel boundary.

#### **Permitted Uses in Zone A:**

The following uses are permitted provided they meet appropriate performance standards outlined for aquifer protection overlay zones.

1. Agriculture.
  - a. Application of manure is permitted with approved nutrient management plan.
2. Horticulture.
3. Parks, greenways or publicly owned recreational areas.
4. Necessary public utilities/facilities designed so as to prevent contamination of groundwater.

#### **Conditional Uses in Zone A:**

The following uses are permitted only under the terms of a conditional use and must conform to provisions of the underlying zoning district and meet Performance Standards outlined for Aquifer Protection Overlay Zones.

1. Expansion of existing uses to the extent they remain or become nonconforming and to the extent allowed by the underlying district. The Board of Adjustment shall not grant approval unless it finds the proposed expansion does not pose greater potential for groundwater contamination than the existing use.
2. All uses not permitted or not prohibited in Zone A may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones.
3. Manure storage areas may be allowed provided they meet all Department of Environment and Natural Resources criteria.



### **Prohibited Uses in Zone A:**

The following uses are expressly prohibited in Zone A.

1. Residential development with a density greater than one dwelling per five acres where septic tanks are used.
2. New septic systems within 500 feet of a public water supply well.
3. New Concentrated Animal Feeding Operations, including Class A, Class B, Class C, Class D, and Class E.
4. Existing Concentrated Animal Feeding Operations will not be able to expand beyond a total of 300 animal units.
5. Disposal of solid waste except spreading of manure.
6. Outside unenclosed storage of road salt.
7. Disposal of snow containing de-icing chemicals.
8. Processing and storage of PCB contaminated oil.
9. Car washes.
10. Auto and equipment service, repair or painting facilities and junk or salvage yards.
11. Disposal of radioactive waste.
12. Graveyards or animal burial sites.
13. Detonation sites.
14. Open burning except ditches, fields and non-hazardous yard and household wastes such as paper, wood and leaves.
15. Fall application of nitrogen fertilizer except spreading of manure, on the following soil types: Delmont, Dumpster, Enet, Graceville, Henkin, Talmo and Volga.
16. Land spreading of petroleum contaminated soil.
17. Land spreading or dumping of waste oil.
18. Industrial process water and waste disposal wells--5W20 type Class V injection wells.
19. Automobile service station disposal wells--5X28 type Class V injection wells.
20. All other facilities involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or waste having a potentially harmful impact on ground water quality.

## **ZONE B -- AQUIFER SECONDARY IMPACT ZONES**

Zone B is the remainder of the mapped shallow/surficial aquifer in the County not included in zone A. Zone B also includes any delineated lands adjacent to Zone A not underlain by the shallow aquifer but with sufficient slope that contaminated surface water could flow directly onto Zone A.

Zone B is being protected because (1) the aquifer is a valuable natural resource for future development, (2) the aquifer provides drinking water supply for individual domestic users, (3) contamination is not justified just because this area is not currently used for public water supply, and (4) contaminants from this area could eventually enter Zone A.

### **Permitted Uses in Zone B:**

1. All conditional uses allowed in underlying districts, with the exception of those expressly prohibited in Zone B, may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zone.
2. Earthen storage basins and lagoons.
3. New Class D and expansion of existing Class D up to 999 animal units (Class C).

### **Prohibited Uses in Zone B:**

The following uses are expressly prohibited in Zone B:

1. Fall application of nitrogen fertilizer on the following soil types: Delmont, Dempster, Enet, Graceville, Henkin, Talmo and Volga.
2. Land spreading of petroleum contaminated soil.
3. Land spreading or dumping of waste oil.
4. Industrial process water and waste disposal wells--5W20 type Class V injection wells.
5. Automobile service station disposal wells--5X28 type Class V injection wells.
6. New and expansions of Class A and Class B Concentrated Animal Feeding Operations.

## **PERFORMANCE STANDARDS FOR AQUIFER PROTECTION OVERLAY ZONES:**

The following standards shall apply to land uses in Zones A and B of the Aquifer Protection Overlay Districts:

1. New or replacement septic tanks and associated drain fields for containment of human wastes must conform with regulations established by the State Department of Environment and Natural Resources.
2. Commercial or industrial liquid waste ponds containing any solid or liquid material or waste will not be permitted without a secondary containment system except for community wastewater lagoons.

3. Manure storage areas must be constructed in conformance with Soil Conservation Service South Dakota Engineering Standard for Waste Storage Ponds (425) or Waste Storage Structures (313).
4. Petroleum products stored at one locality in a tank or series of tanks must be elevated; such tanks must have a secondary containment system where it is deemed necessary by the County Zoning Office.
5. When pastured animals are concentrated for winter feeding and the number of animal units exceeds two hundred (200) within 1/4 mile of a public water supply well or five hundred (500) in the remainder of Zones A and B, measures shall be employed to prevent runoff of manure.
6. Owners/operators of active or abandoned feedlots shall handle and dispose of manure in accordance with Soil Conservation Service South Dakota Engineering Standard for Nutrient Management System (680). (See Appendix 4)
7. Discharge of industrial process water is prohibited without County Zoning Office approval.
8. Auto service, repair or painting facilities and junk or salvage yards shall meet all State and Federal standards for storage handling and disposal of petroleum products and shall properly dispose of all other potentially hazardous waste materials.
9. Any facility required to file material safety data sheets as part of SARA Title III must prepare and have on file in the County Zoning Office an acceptable contingency plan for preventing hazardous chemicals from contaminating the shallow/surficial aquifer. Agricultural operations are exempt unless they have more than 10 employees.
10. Any non-agricultural commercial or industrial facility involving collection, handling, manufacture, use, storage, transfer or disposal of hazardous materials, in excess of 1,000 pounds or 100 gallons, must be constructed to prevent hazardous materials from contaminating the shallow aquifer should equipment failure, floods, fire or other natural catastrophes occur. Stored petroleum products are exempt from this performance standard. Facilities must meet specifications under Title III.
11. The County Zoning Office and Department of Environment and Natural Resources shall be informed within 12 hours of any leak, spill or release of materials that might potentially contaminate groundwater.
12. Since it is known that improperly abandoned wells can become a direct conduit for contamination of groundwater by surface water, all abandoned wells should be plugged in conformance with South Dakota Well Construction Standards, Chapter 74:02:04:67-70.

### **EXCEPTIONS**

1. Storage of liquids, chemicals and fertilizers used in agricultural operations during planting and crop cultivation are exempt from the requirements of this ordinance March 1 to October 1. However, Best Management Practices are encouraged, particularly in Zone A.
2. Tanks used for chemigation are exempt from secondary containment regulations but secondary containment is encouraged.

3. Storage of liquid or dry fertilizer in amounts equal to or less than 1,000 pounds or 100 gallons, stored indoors by each farm operator is exempt from the requirements of this ordinance.
4. A non-conforming use in Zone A will become a prohibited use if such feedlot is inactive for five years.
5. A proposed facility not permitted in Zones A or B may be allowed by conditional use provided the applicant can show the facility will not be located over the shallow aquifer and runoff of all potential contaminants will be contained on site. A minimum of three test holes must be drilled to a minimum depth of 30 feet.

**GRANT OF PERMIT, ALTERATION OF USE:**

Before a permit is granted, the County Zoning Officer must examine an application and determine that the proposed use, activity or development meets the provisions of this ordinance.

When securing a use permit, the owner/developer agrees to make future improvements which may become necessary to prevent contamination of shallow aquifers and the owner/developer must allow County personnel to inspect any improvements to verify they meet the performance standards.

Whenever any person has an existing use, activity or development and thereafter desires alteration or expansion of the authorized use, such persons shall apply for a permit except for the normal upkeep, replacement and repair of existing facilities. The owner may appeal a County Zoning Officer's decision to modify or deny a requested permit to the Planning Commission/Board of Adjustment.

**LIMITATION OF COUNTY LIABILITY:**

Nothing in this ordinance shall be construed to imply that Lake County, by issuing a permit, has accepted any of an owner's/developer's liability if a permitted development contaminates water in shallow/surficial aquifers.

**UNDERLYING ZONES:**

Underlying zoning restrictions apply along with restrictions set forth in the Aquifer Protection Overlay District.

**SAVING CLAUSE:**

Should any section or provision of this ordinance be declared invalid, such decision shall not affect the validity of the ordinance as a whole or any other part thereof.

## **Section 1111. CP - Corridor Preservation Overlay District**

### 1. Purpose and Intent:

Lake County is committed to manage the orderly development within the County and is dedicated to the provision of adequate transportation services for its citizens.

South Dakota Highway 34 is a significant transportation corridor in Lake County. While the road is currently a hybrid two-lane undivided, and four-lane divided highway, improvements are planned. It is anticipated that South Dakota Highway 34 will be improved from a two-lane undivided to a four-lane divided highway from 462<sup>nd</sup> Avenue to 466<sup>th</sup> Avenue. While the time frame for these improvements have not been established the importance of preserving available public right-of-way remains.

The purpose of the Corridor Preservation Overlay District is to protect public right-of-way, existing and proposed, from development which may have the potential to encroach proposed transportation improvements of South Dakota Highway 34 from 462<sup>nd</sup> Avenue to 466<sup>th</sup> Avenue.

It is the intent to accomplish corridor preservation protection, as much as possible, by public education and securing public cooperation. Appropriate land use regulations will be imposed, however, which are in addition to those imposed in the underlying zoning districts or in other county regulations. Any use existing at the time this ordinance is adopted is grand fathered.

### 2. Boundaries of Corridor Preservation Zone

Boundaries for the Corridor Preservation Overlay District are shown on the Corridor Preservation Overlay District Map prepared by the First District Association of Local Governments. Said map is hereby adopted by reference as part of this Ordinance as if the maps were fully described herein.

### 3. Definitions

Section Line – A dividing line between two sections of land as identified delineated by the United States Public Land Survey or a government lot per such survey.

### 4. Permitted Uses

- a. All permitted uses in the underlying zoning districts.

### 5. Conditional Uses

- a. All conditional uses permitted in the underlying zoning districts.

### 6. Area Regulations

- a. Area regulations of the underlying zoning districts apply along with the following restrictions:
  - 1) Minimum Front Yard Setback in the “A” Agricultural and “PD” Planned Development Districts: All structures shall be set back two hundred twenty-five (225) feet from the Section Line or one hundred fifty (150) feet from the road right-of-way line existing as of January 1, 2007, whichever setback distance is greater.

- 2) Minimum Front Yard Setback in the "CI" Commercial-Industrial Zoning District: All structures shall be set back two hundred fifty (250) feet from the Section Line or one hundred seventy-five (175) feet from the road right-of-way line existing as of January 1, 2007, whichever setback distance is greater.

## **Section 1112. Flood Damage Prevention Overlay District**

### 1112.01. Statutory Authorization, Findings of Fact, Purpose and Methods

#### 1112.01.01. Statutory Authorization.

The Legislature of the State of South Dakota has in (statutes) SDCL 9-36 and 7-18-14 delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the County Commissioners of Lake County, SD, does ordain as follows:

Lake County elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program, established in the aforesaid act, provides that areas of the town having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. The National Flood Insurance Program was broadened and modified with the passage of the Flood Disaster Protection Act of 1973 and other legislative measures. It was further modified by the National Flood Insurance Reform Act of 1994. The National Flood Insurance Program is administered by the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security.

#### 1112.01.02. Findings Of Fact

(1) The flood hazard areas of Lake County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety, and general welfare.

(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

#### 1112.01.03. Statement Of Purpose

It is the purpose of these regulations to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

6. Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas;
7. Ensure that potential buyers are notified that property is in a flood area; and
8. Ensure that those who occupy the areas of special flood hazards assume responsibility for their actions.

#### 1112.01.04. Methods of Reducing Flood Losses

1. In order to accomplish its purposes, these regulations use the following methods:
2. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
3. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
4. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
5. Control filling, grading, dredging and other development which may increase flood damage;
6. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

#### 1112.02 General Provisions

##### 1112.02.01 Lands to Which These Regulations Apply.

These regulations shall apply to all areas of special flood hazard within the jurisdiction of Lake County.

##### 1112.02.02. Basis for Establishing the Areas of Special Flood Hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Lake County," dated September 2, 2009 with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of these regulations.

##### 1112.02.03. Compliance.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of these regulations and other applicable regulations.

##### 1112.02.04. Abrogation and Greater Restrictions

These regulations are not intended to repeal, abrogate, or impair any existing easements,



covenants, or deed restrictions. However, where these regulations and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

#### 1112.02.05. Interpretation.

In the interpretation and application of these regulations, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any other powers granted under State statutes.

#### 1112.02.06. Warning and Disclaimer or Liability.

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on these regulations or any administrative decision lawfully made thereunder.

### 1112.03 Administration

#### 1112.03.01. Designation of the Floodplain Administrator

The Zoning Official is hereby appointed the Floodplain Administrator to administer and implement the provisions of these regulations and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

#### 1112.03 .02. Duties and Responsibilities of the Floodplain Administration

##### 1. Designation of the Zoning Official

The Zoning Official is hereby appointed to administer and implement the provisions of these regulations and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

##### 2. Duties and Responsibilities of the Zoning Official

Duties of the Zoning Official shall include but not be limited to:

###### i. Permit Review

- i. Maintain and hold open for public inspection all records pertaining to the provisions of these regulations.

- ii. Review permit application to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
  - iii. Review, approve or deny all applications for development permits required by adoption of regulations.
  - iv. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
  - v. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
  - vi. Notify, in riverine situations, adjacent communities and the State Coordinating Agency, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
  - vii. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- ii. Uses of Other Base Flood Data
- i. When base flood elevation data has not been provided in accordance with Section 1112.02.02 "Basis for Establishing the Areas of Special Flood Hazard", the zoning Official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring that new construction, substantial improvements, or other development in Zone A are administered in accordance 1112.04.02 Specific Standards
  - ii. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
  - iii. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

### 3. Information to be Obtained and Maintained

- a. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- b. For all new or substantially improved floodproofed structures:
  - i. Verify and record the actual elevation (in relation to mean sea level) to which the structure has been floodproofed.
  - ii. Maintain the floodproofing certification.
- c. Maintain for public inspection all records pertaining to the provisions of these regulations.

### 4. Alteration of Watercourses

- a. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- b. Notify adjacent communities and State Coordinating Agency prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- c. Require that maintenance be provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

### 5. Interpretation of FIRM Boundaries

Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be conflict between a mapped boundary and actual field conditions).

#### 1112.03.03. Establishment of a Development Permit.

A development permit/building permit shall be obtained before construction or development begins within any area of special flood hazard. )Application for a Development Permit/Building Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

1. Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
2. Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
3. A certificate from a registered professional engineer or architect that the nonresidential

floodproofed structure shall meet the floodproofing criteria of 1112.04;

4. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
5. Maintain a record of all such information in accordance with Article IV. Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of these regulations and the following relevant factors:
  - a. The danger to life and property due to flooding or erosion damage;
  - b. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - c. The danger that materials may be swept onto other lands to the injury of others;
  - d. The compatibility of the proposed use with existing and anticipated development;
  - e. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - f. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
  - g. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
  - h. The necessity to the facility of a waterfront location, where applicable;
  - i. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - j. The relationship of the proposed use to the comprehensive plan for that area.

#### 1112.03.04 Variance Procedures

1. The Board of Adjustment shall hear and render judgment on requests for variances from the requirements of these regulations.
2. The Board of Adjustment shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of these regulations.
3. Any person or persons aggrieved by the decision of the Board of Adjustment may appeal such decision in the courts of competent jurisdiction.
4. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency and the State Office of Emergency Management upon request.
5. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in 1112.03.03.2 of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
6. Upon consideration of the factors noted above and the intent of these regulations, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to

further the purpose and objectives of these regulations 1112.01.03.

7. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
8. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
9. Prerequisites for granting variances:
  - a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - b. Variances shall only be issued upon:
    - i. Showing a good and sufficient cause;
    - ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
    - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
  - c. Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
1. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
  - a. The criteria outlined in 1112.03.04 are met, and
  - b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

#### 1112.03.05 Conditional Letter of Map Revision (CLOMR)

A CLOMR is required only for those projects that will:

1. BFE/no floodway (demonstrate <1.0 ft increase)
  - a. A project on a stream or river that has been studied through detailed hydrologic and hydraulic analyses and for which Base Flood Elevations (BFEs) have been specified, but a floodway has not been designated. If the developer/property owner/community

proposes to allow development that would result in more than a 1.0 foot increase in the BFE, a CLOMR must first be obtained.

- b. 44 CFR 60.3 (c)(10): Result in an increase in the base flood water-surface elevation (WSEL) of greater than 1.00 foot for streams with BFEs specified but no regulatory floodway designated.

## 2. BFE/floodway (no-rise)

- a. The second situation requiring a CLOMR is for a project on a stream or river for which detailed analyses have been conducted and BFEs and a floodway have been designated. If the community proposes to allow development totally or partially within the floodway that would result in any (greater than 0.0 foot) increase in the BFE, a CLOMR must be obtained.
- b. 44 CFR 60.3 (d)(3): Result in any base flood WSEL increase from proposed construction within a regulatory floodway.

## 1112.04. Provisions for Flood Hazard Reduction

### 1112.04.01. General Standards

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

1. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
3. All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
4. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
7. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

#### 1112.04.02. Specific Standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 1112.02 the following provisions are required:

1. Residential Construction - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to one (1) foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section 1112.03 is satisfied.
2. Nonresidential Construction - new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to one (1) foot above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.
3. Enclosures - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
  - a. A minimum of two (2) openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
  - b. The bottom of all openings shall be no higher than one foot above grade.
  - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
4. Manufactured Homes.
  - a. Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
  - b. Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites

- i. Outside of a manufactured home park or subdivision,
  - ii. In a new manufactured home park or subdivision,
  - iii. In an expansion to an existing manufactured home park or subdivision, or
  - iv. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- c. Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of this section be elevated so that either:
- i. The lowest floor of the manufactured home is at one foot above base flood elevation, or
  - ii. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
5. Recreational Vehicles - Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:
- a. Be on the site for fewer than one hundred eighty (180) consecutive days,
  - b. Be fully licensed and ready for highway use, or
  - c. Meet the permit requirements of Section 1112.06 , and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

#### 1112.04.03. Standards for Subdivision Proposals.

1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with these regulations.
2. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of 1112.03 and the provisions of 1112.04 of these regulations.
3. Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than fifty (50) lots or five (5) acres, whichever is lesser, if not otherwise provided pursuant to these regulations.



4. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
5. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

#### 1112.04.04. Floodways.

Located within areas of special flood hazard established in Section 5.0206(2) is an area designated as the floodway. The floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris, potential projectiles, and erosion potential. The placement of buildings, structures and other flood barriers, as well as the accumulation of flood debris, in the floodway will increase water and erosion hazards due to increased flood heights and flow velocities. Therefore, the following provisions apply to the floodway:

1. Appropriate land uses include those compatible with open space, recreation, wildlife habitat, or wetlands management practices, all without structures or other obstructions that may tend to impede the flow of water. In general, such uses may include, but not necessarily be limited to, parks for outdoor recreational activities such as golf courses, tennis courts without fences, driving ranges, archery ranges, picnic grounds, wildlife and nature preserves, fishing areas, pedestrian and horseback riding trails, plant nurseries, gardens, lawn areas, and other uses of similar nature.
2. Encroachments, including fill, new construction, substantial improvements, and other development are prohibited unless:
  - a. the applicant of the floodplain development permit provides written certification and documentation, prepared by a professional engineer licensed in South Dakota and qualified in the fields of hydrology and hydraulics, demonstrating that the proposed encroachment and development in the floodway:
    - i. will not result in any increase in flood levels during the occurrence of the base flood at any location within any of the watercourse reaches included and covered by the Flood Insurance Rate Map and Flood Insurance Study report, and
    - ii. will not result in the relocation of the floodway boundary as indicated in the Flood Insurance Rate Map. Proposed development in the floodway that requires or results in relocation of the floodway boundary shall be considered as an alteration or relocation of the watercourse subject also to the provisions of these regulations.
  - b. the applicant of the floodplain development permit provides written certification and documentation, prepared by a professional engineer licensed in South Dakota and knowledgeable of the natural geometric tendencies and stability requirements of rivers and streams, demonstrating that the proposed encroachment and development in the floodway will not result in increased erosion and sedimentation potential at any location within any of the watercourse reaches included and covered by the Flood Insurance Rate Map and Flood Insurance Study report, and

- c. the applicant of the floodplain development permit enters into a maintenance agreement with the City providing for the applicant's responsibility to perform maintenance activities in the floodway located on the applicant's property as may be necessary to ensure conveyance capability and channel stability throughout any of the watercourse reaches included and covered by the Flood Insurance Rate Map and Flood Insurance Study report. The applicant shall file the maintenance agreement with the parcel or parcels of land in question at the office of the Lake County Register of Deeds as a covenant that runs with the land pursuant to state statute.
3. All new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions.
4. New construction and substantial improvements in the floodway shall not be for permanent residential use.
5. Pipeline watercourse crossings shall be buried in the streambed and banks, or otherwise sufficiently protected, to prevent damage due to flood flows, associated floating debris, and channel degradation and meandering.
6. Owners of property located in the floodway are responsible for the perpetual maintenance of the channel and adjacent floodplain areas of the floodway to ensure that the flood carrying capacity of the subject watercourse is not diminished over time. The floodway shall be maintained in its natural condition and in accordance with a floodplain development permit issued by the Administrative Official.

## ARTICLE XII GENERAL REQUIREMENTS

Pursuant to the purpose of this regulation are certain general requirements that are not provided for under Article XI Zoning Districts. These requirements are set forth under this Article. Requirements listed relating to a conditional use are the minimum requirements, and the Board of Adjustment may assign other conditions or requirements as deemed appropriate.

**Section 1201. Screening.** Where any "CI" use is adjacent to any residential use, that use (building, parking or storage) shall be appropriately screened from the residential use district by planting, except where planting may be in conflict with vision clearance.

**Section 1202. Vision Clearance on Corner Lots.** On a corner lot in any zoning district, no planting, structure, or obstruction to vision between the range of three (3) and eight (8) feet in height measured from the center line of the road shall be placed or maintained within the triangular area formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line each of which is fifty (50) feet distance from the point of intersection (Clear View Triangle).

**Section 1203. Refuse.** In all zoning districts, refuse (rubbish, garbage, trash, wastes, or debris) shall be kept within a complete enclosed building or specially designed closed container made for such purpose. Owners of vacant lots shall be responsible for keeping their property free of trash. Normal farming operations excluded.

**Section 1204. Unlicensed Vehicles.** Vehicles not in use and without current license may not be kept in any uncovered area other than a designated junk, salvage yard, or designated collection site. EXCEPTION: Antique cars being refurbished shall not be required to be kept in a covered area or in above designated areas.

**Section 1205. Moved in Buildings.**

1. Any building to be moved requires a building permit.
2. Any residence moved into any use district must have signature by petition of one hundred percent (100%) of the adjoining landowners and one hundred percent (100%) of the landowners within two hundred (200) feet. EXCEPTION: A new residence to be used for first occupancy, constructed off the property and moved to location shall not require adjoining landowners' approval.

**Section 1206. Minimum Water and Sewer Requirements:** A water and sewer system cannot be approved until it meets the following standards:

1. All public utilities and facilities shall be located, elevated, and constructed to minimize or eliminate flood damage; and
2. All new or replacement water supply systems and sanitary sewage systems, in addition to meeting the requirements of the South Dakota Department of Environment and Natural Resources, must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

## **Section 1207. Manufactured Home and Modular Home Regulations.**

1. A Type A Manufactured Home shall:
  - a. Have more than one thousand two hundred (1,200) square feet of occupied space in a double-section or larger multi-section unit.
  - b. The age of the manufactured house may not exceed fifteen (15) years from the date of manufacture.
  - c. Be placed on a permanent foundation.
  - d. Utilize a permanent perimeter enclosure in accordance with approved installation standards.
  - e. Be anchored to the ground in accordance with the Defense Civil Preparedness Agency, TR-75, issued June, 1972, and the U.S. Department of Defense or in accordance with manufacturer's specifications or as prescribed by the NFPA 225 Model Manufactured Home Installation Standards.
  - f. Have a gabled roof with a pitch of at least 2/12 feet.
  - g. Have siding material of a type customarily used on site-constructed residence.
  - h. Have roofing material of a type customarily used on site-constructed residences.
2. A Type B Manufactured Home shall:
  - a. Have more than 700 square feet of occupied space in a single, double, expando or multi-section unit.
  - b. Utilize a permanent perimeter enclosure in accordance with approved installation standards.
  - c. Be anchored to the ground in accordance with the Defense Civil Preparedness Agency, TR-75, issued June, 1972, and the U.S. Department of Defense or in accordance with manufacturer's specifications or as prescribed by the NFPA 225 Model Manufactured Home Installation Standards.
  - d. The age of the manufactured house may not exceed fifteen (15) years from the date of manufacture.
  - e. Be placed on a support system, in accordance with approved installation standards.
3. Foundation/Skirting
  - a. Permanent Perimeter Enclosure as required for Type A Manufactured Homes. Those manufactured homes designated in this Ordinance (Type A), as requiring a permanent perimeter enclosure must have footings and crawl space or basement walls. The space between the floor joints of the home shall be completely enclosed with the permanent perimeter enclosure (except for required openings).

The foundation shall be (a) an approved wood basement constructed of 2 x 6 frame-work and treated with water resistant materials; or (b) a foundation shall be constructed with eight inches poured concrete or concrete block.

The footing to be a minimum of eight (8) inches thick by sixteen (16) inches wide poured concrete with top of footing to be sixteen (16) inches below grade. The space between the floor joints of the home shall be completely enclosed with the permanent perimeter enclosure (except for required openings).

- b. All manufactured homes without a permanent perimeter enclosure shall have an approved foundation siding/skirting enclosing the entire perimeter of the home.

#### 4. Support System

- a. Type A manufactured homes shall be installed with load bearing foundations in conformance with the manufacturer's installation specifications.
- b. Type B manufactured homes not placed on a permanent foundation shall be installed on a support system in conformance with the manufacturer's installation specifications or with the support systems regulations in the NFPA 225 Model Manufactured Home Installation Standards.

#### 5. Replacement of Nonconforming Homes.

Type A and Type B Manufactured Homes located upon any lot or lots of record at the time of the adoption of this Ordinance may be replaced by Type A and/or Type B Manufactured Homes of like dimensions and said replacement shall not be deemed to have changed the use thereof from a non-conforming to a conforming use. If a replacement Type A and/or Type B Manufactured Home is of larger dimension than the replaced Type A and/or Type B Manufactured Home, then application must first be made to the County Board of Adjustment for conditional use permit.

#### 6. Variance from Maximum Age Requirement

Type A and Type B manufactured homes may receive a variance from the maximum age requirement (Section 1207). The Board of Adjustment may grant a variance if the applicant requesting the placement of the manufactured home meets the following requirements:

- a. The applicant shall provide a photograph of the manufactured home's exterior and interior.
- b. That it shall have been shown to the satisfaction of the Board of Adjustment that the said manufactured home complies with the gas, plumbing, electrical, and construction requirements of Lake County.
- c. That the applicant shall obtain, and present to the Board of Adjustment, the written consent of all property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site.

7. Modular homes shall meet the following regulations.
  - a. Modular homes shall meet or exceed Uniform Building Codes.
  - b. Modular homes will include all off-site constructed homes, which may be transported to the site in one or more sections.
  - c. Modular homes shall have more than one thousand (1,000) square feet in ranch style and eight hundred fifty (850) square feet split and be placed on a permanent foundation.
  - d. Modular homes shall not have attached running gear and a trailer hitch or the capacity to have attached running gear and trailer hitch.
  - e. Modular homes shall have a minimum of a 4/12-roof pitch.
  - f. Have siding material of a type customarily used on site-constructed residences.
  - g. Have roofing material of a type customarily used on site-constructed residences.

**Section 1208. Shelterbelt Setback Requirements.**

A shelterbelt, consisting of one (1) or more strips of trees shall not be established in the "A" Agricultural District within one hundred (100) feet of a public road right-of-way line. Shelterbelts at right angles to roads shall provide a minimum turnaround of fifty (50) feet measured from the road right-of-way. Shelterbelts shall not be established within fifty (50) feet of adjoining property lines without written permission of adjoining property owners.

**Section 1209. Extended Home Occupation.** There are significant differences between home occupations and extended home occupations. Specifically a home occupation is conducted within the primary structure (residence) while an extended home occupation is conducted in an accessory building. The nature of resources available for use, the benefits and disadvantages created by home/extended home occupations, and the problems generated necessitate a distinction between urban home/extended home occupations and farm home/extended home occupations. While each use is based on supplementing income, the location and type of business in which each is practiced has unique characteristics. For the aforesaid reasons, different home/extended home occupations may be permitted in agricultural zoning districts than are permitted in the urban residential districts.

All extended home occupations must meet the following performance standards:

- a. An extended home occupation may not conflict with adjoining land uses.
- b. Individuals engaged in such extended home occupation shall consist of family members residing on the premises and up to three (3) non-family employees.
- c. The extended home occupation must be accessory to the principal use of the property (residence).
- d. Extended home occupations must be conducted in an accessory building.

- e. There shall be no change in the outside appearance of the buildings or premises, or other visible evidence of the conduct of such extended home occupation other than one on-premise sign, not to exceed sixteen (16) square feet in area, non-illuminated.
- f. Off premise signage for extended home occupations shall be limited to South Dakota Department of Transportation (SDDOT) commercial, directional signs, also known as "TOD Signs". These signs, with SDDOT approval, may be located adjacent to State and Federal Highways.
- g. There shall be no outdoor storage of materials, vehicles, etc. related to the extended home occupation unless the aforementioned storage is placed behind a fence, or as approved by the Board of Adjustment.
- h. The only retail sales allowed shall consist of the sale of commodities/products prepared on the premises in connection with such extended home occupation. Exception: Seed Sales.
- i. No traffic shall be generated by such extended home occupation in greater volumes than would normally be expected in a residential neighborhood. Prior to the issuance of a conditional use permit for an extended home occupation, County Highway Superintendent and/or Township approval shall be required.
- j. Any need of off-street parking generated by the conduct of such extended home occupation shall be provided off the street and other than in a required front yard.
- k. No equipment or process shall be used in such extended home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference offensive to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.
- l. An extended home occupation may not be changed to another extended home occupation except by the issuance of a separate conditional use permit.

**Section 1210. Soil Erosion and Sedimentation Control.** Before issuing a building permit, the County Zoning Officer may require a filing of a certificate of intent to adhere to the county soil loss standards developed by the Lake County Conservation District. The Zoning Officer shall consult the Lake County Soil Erosion and Sedimentation Control Ordinance that was developed pursuant to SDCL 38-8A before determining if the proposed activity requires such a certificate of intent.

If a complaint is received regarding a violation of the county soil loss standards caused by non-agricultural activity, the Zoning Officer shall undertake those actions outlined in the Lake County Soil Erosion and Sedimentation Control Ordinance in order to bring about compliance.

**Section 1211. Mineral Exploration and Development.** Separate permits are required for mineral extraction and milling. Sand and gravel operations are excluded from these regulations. The applicant for a permit must meet the following minimal conditions as they pertain to the permit for which application is made.

1. The applicant shall provide:
  - a. A description of the mineral or minerals which are the subject of the mining or milling.
  - b. Maps showing the general area within which the mining or milling operation will be conducted.
  - c. A detailed description of the regional environmental conditions, to include surface land use and vegetation as well as a detailed description of the area's geologic formations and hydrology from the best available scientific sources are required for mining or milling permits.
  - d. An environmental assessment which establishes base line conditions for radioactive and toxic material in air, ground and surface water, soil, vegetation and animals is required for mining or milling permits.
2. The applicant shall provide maps indicating the location of the affected sites to the nearest section of land, a technical description of the mining or milling process, the types of equipment to be used, and the estimated timetable for each phase of work and for final completion of the program.
3. The applicant shall provide:
  - a. A description of the major environmental impacts upon air quality, water quality and quantity, and land use modification presented by the proposed mining or milling.
  - b. A description of the proposed plan to address the identified environmental impacts to include all measures to be taken to prevent soil erosion, water contamination, air contamination, disruption of the area's ecological balance and any other related hazard to public health and safety.
4. The applicant shall provide for a plan for land reclamation of the land after mining is completed. Measures to be taken for surface reclamation shall take into account the impact on adjacent land uses and natural resources, and the proposed future use of the lands mined and adjacent lands. The reclamation plan shall include:
  - a. A reclamation schedule.
  - b. Methods of plugging drill holes.
  - c. Methods of severing and returning topsoil and subsoil.
  - d. Methods of grading, backfilling and contouring of exploration sites, access roads, and mining sites.
  - e. Methods of waste management and disposal, including liquid and solid wastes.
  - f. Method of revegetation.



5. The applicant shall post a surety performance bond in an amount to be determined by the County Commission to assure that sufficient funds will be available to carry out required reclamation and, if necessary, decontamination of affected ground and surface waters. The amount shall be set by the County Commission based on an estimate of the cost of reclamation and decontamination. The bond shall be released five (5) years after mining and milling has ceased unless the Commissioners find, for good cause shown, that the water quality of the affected area has not been restored or the reclamation plan has not been completed. The amount of the surety bond may be reduced by the Commissioners if a bond is held by the State of South Dakota for the same purpose, by the same amount of the latter bond.
6. The applicant shall identify specific phases when monitoring and inspection of the mining and milling activities shall be conducted by County, State, or Federal personnel or their representatives to assure compliance with all applicable rules and regulations. If the special use permit is granted, the permit shall identify such inspection and it shall be the responsibility of the applicant to notify said agency when monitoring or inspection is required. The applicant shall bear the burden of the cost of the monitoring and inspection program as determined by the Planning Commission.
7. A conditional use permit shall be issued only after all conditions specified herein have been met. Evidence of violation of the regulations, including but not limited to air and water contamination, shall be cause for an immediate cessation of mining and milling activities.
8. Solution mining - mining of an ore body with circulation of chemicals through injection and recovery wells, for minerals is prohibited.

### **Section 1212. Wind Energy System (Wes) Requirements**

#### 1. Intent

The requirements of these regulations apply to all WES facilities except PWECS facilities.

#### 2. Federal And State Requirements

All WESs must meet or exceed standards and regulations of the Federal Aviation and South Dakota State Statutes and any other agency of federal or state government with the authority to regulate WESs.

#### 3. General Provisions

##### a. Mitigation Measures

- i. Site Clearance. The permittees may disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the WES.
- ii. Topsoil Protection. The permittees must implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
- iii. Compaction. The permittees must implement measures to minimize compaction of all lands during all phases of the project's life and must confine compaction to as small an

area as practicable.

- iv. Livestock Protection. The permittees must take precautions to protect livestock during all phases of the project's life.
- v. Fences. The permittees must promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the affected landowner.
- vi. Roads
  - 1. Public Roads. Prior to commencement of construction, the permittees must identify all state, county or township "haul roads" that will be used for the WES project and notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body must be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways must be used for all activities associated with the WES. Where practical, all-weather roads must be used to deliver cement, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.
  - 2. The permittees must, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees must notify the County of such arrangements upon request of the County.
  - 3. Turbine Access Roads. Construction of turbine access roads must be minimized. Access roads must be low profile roads so that farming equipment can cross them and must be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainageways, the access roads must be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.
  - 4. Private Roads. The permittees must promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
  - 5. Control of Dust. The permittees must utilize all reasonable measures and practices of construction to control dust.
  - 6. Soil Erosion and Sediment control Plan. The permittees must develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County. The Soil Erosion and Sediment Control Plan must address the erosion control measures for each project phase, and must at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize

the area of surface disturbance. Other practices must include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan must identify methods for disposal or storage of excavated material.

- b. Setbacks. Wind turbines must meet the following minimum spacing requirements.
  - i. Distance from existing off-site residences, businesses, churches, and buildings owned and/or maintained by a governmental entity must be at least one thousand (1,000) feet. Distance from on-site or lessor's residence must be at least five hundred (500) feet. Distance is measured from the wall line of the neighboring principal building to the base of the WES tower.
  - ii. Distance from centerline of public roads must be at least five hundred (500) feet or one hundred ten percent (110%) the height of the wind turbines, whichever distance is greater, measured from the ground surface to the tip of the blade when in a fully vertical position.
  - iii. Distance from any property line must be at least five hundred (500) feet or one hundred ten percent (110%) the height of the wind turbine, whichever distance is greater, measured from the ground surface to the tip of the blade when in a fully vertical position unless wind easement has been obtained from adjoining property owner.
  - iv. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established instances identified above, if the adjoining landowners agree to a lesser setback/separation distance. If approved, such agreement is to be recorded and filed with the Lake County Zoning Official.
- c. Electromagnetic Interference. The permittees must not operate the WES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the WES or its operation, the permittees must take the measures necessary to correct the problem.
- d. Lighting. Towers must be marked as required by the Federal Aviation Administration (FAA). There must be no lights on the towers other than what is required by the FAA. This restriction does not apply to infrared heating devices used to protect the monitoring equipment.
- e. Turbine Spacing. The turbines must be spaced no closer together than three (3) rotor diameters (RD) (measurement of blades tip to tip) within a string. If required during final micro siting of the turbines to account for topographic conditions, up to ten (10) percent of the towers may be sited closer than the above spacing but the permittees must minimize the need to site the turbines closer.
- f. Footprint Minimization. The permittees must design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems must be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.

- g. **Collector Lines.** Collector lines are the conductors of electric energy from the Wind Energy System to the feeder lines. When located on private property, the permittees must place electrical lines, known as collectors, and communication cables underground between the WES and feeder lines. The exception to this requirement is when the total distance of collectors from the substation requires an overhead installation due to line loss of current from an underground installation. Collectors and cables must also be placed within or immediately adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.
- h. **Feeder Lines.** Feeder lines are the conductors of electric energy from the collector lines to the main electric terminal. The permittees must place overhead electric lines, known as feeders, on public rights-of-way or private property. When placing feeders on private property, the permittees must place the feeder in accordance with the easement negotiated with the affected landowner. The permittees must submit the site plan and engineering drawings for the feeder lines before commencing construction. Feeder line support structures (power poles) must be placed on private property where concrete or other similar materials are used as an exposed or above-ground permanent foundation.
- i. **Decommissioning/Restoration/Abandonment**
  - i. **Cost Responsibility.** The owner and operator of a WES are responsible for decommissioning the facility and for all costs associated with decommissioning that facility and associated facilities.
  - ii. **Decommissioning Plan.** Within one hundred twenty (120) days of completion of construction, the permittees must submit to the County a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan must include the estimated decommissioning cost per turbine and a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees must ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation.
  - iii. **Financial Assurance.** After the tenth (10<sup>th</sup>) year of operation of a WES facility, the Board may require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board to cover the anticipated costs of decommissioning the WES facility.
  - iv. **Site Restoration.** The decommissioning of the WES must begin within eight (8) months of the expiration of this permit, or earlier termination of operation of the WES and be completed within eighteen (18) months of the expiration of this permit or earlier termination of operation of the WES. The permittees must have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead collector and feeder lines, foundations, buildings and ancillary equipment to a depth of four (4) feet. To the extent possible the permittees must restore and reclaim the site to its pre-project topography and topsoil quality. All access roads must be removed unless written approval is given by the affected landowner requesting that one or more

- roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal must be recorded with the County and show the locations of all such foundations. All such agreements between the permittees and the affected landowner must be submitted to the County prior to completion of restoration activities. The site must be restored in accordance with the requirements of this condition within eighteen (18) months after expiration.
- v. Failure to Decommission. If the WES facility is not decommissioned as required by these provisions, the Board may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement must constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board may take such action as may be necessary to decommission a WES facility.
  - vi. Abandoned Turbines. The permittees must advise the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require the permittees to decommission any abandoned turbine.
  - j. Height from Ground Surface. The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, must be twenty-five (25) feet.
  - k. Towers.
    - i. Color and Finish. The finish of the exterior surface must be non-reflective and non-glass.
    - ii. All towers must be singular tubular design.
  - l. Noise. Noise level must not exceed fifty (50) dBA, average A-weighted Sound pressure including constructive interference effects at the perimeter of the principal and accessory structures of existing off-site residences, businesses, and buildings owned and/or maintained by a governmental entity.
  - m. Permit Expiration. The permit will become void if no substantial construction has been completed within three (3) years of issuance.
  - n. Required Information for Permit.
    - i. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other map as appropriate.
    - ii. Map of easements for WES.
    - iii. Affidavit attesting that necessary easement agreements with landowners have been obtained.
    - iv. Map of occupied residential structures, businesses, churches and buildings owned and/or maintained by a governmental entity.
    - v. Preliminary map of sites for WES, access roads and collector and feeder lines. Final map of sites for WES, access roads and utility lines to be submitted sixty (60) days prior

- to construction.
- vi. Proof of right-of-way easement for access to utility transmission lines and/or utility interconnection.
  - vii. Location of other WES in general area.
  - viii. Project schedule.
  - ix. Mitigation measures.
  - x. Project-specific environmental concerns (e.g. native habitat, rare species, and migratory routes). This information must be obtained by consulting with state and federal wildlife agencies. Evidence of such consultation must be included in the application.
  - xi. Final haul road agreements to be submitted sixty (60) days prior to construction.

### **Section 1213. WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES**

#### **Section 1213.1 Purpose.**

The general purpose of this Section is to regulate the placement, construction, and modification of Towers and Telecommunications Facilities in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the County.

Specifically, the purposes of this Ordinance are:

1. To regulate the location of Towers and Telecommunications Facilities in the County;
2. To protect residential areas and land uses from potential adverse impact of Towers and Telecommunications Facilities;
3. To minimize adverse visual impact of Towers and Telecommunications Facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
4. To promote and encourage shared use/collocation of Towers and Antenna Support Structures as a primary option rather than construction of additional single-use Towers;
5. To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new Tower structures to support antenna and Telecommunications Facilities;
6. To avoid potential damage to property caused by Towers and Telecommunications Facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and
7. To ensure that Towers and Telecommunications Facilities are compatible with surrounding land uses.

## **Section 1213.2. Definitions.**

The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

1. *Antenna Support Structure* means any building or structure other than a Tower which can be used for location of Telecommunications Facilities.
2. *Applicant* means any Person that applies for a Tower development permit.
3. *Application* means the process by which the Owner of a parcel of land within the County submits a request to develop, construct, build, modify, or erect a Tower upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an Applicant to the County concerning such a request.
4. *Engineer* means any engineer licensed by the State of South Dakota.
5. *Owner* means any Person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within the County who desires to develop, or construct, build, modify, or erect a Tower upon such parcel of land.
6. *Person* is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.
7. *Stealth* means any Tower or Telecommunications Facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and Towers designed to look other than like a Tower such as light poles, power poles, and trees. The term Stealth does not necessarily exclude the use of uncamouflaged lattice, guyed, or monopole Tower designs.
8. *Telecommunications Facilities* means any cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications which a Person seeks to locate or has installed upon or near a Tower or Antenna Support Structure. However, Telecommunications Facilities shall not include:
  - a. Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial; or
  - b. Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category.
9. *Tower* means a self-supporting lattice, guyed, or monopole structure constructed from grade which supports Telecommunications Facilities. The term Tower shall not include amateur radio operators' equipment, as licensed by the FCC.

## **Section 1213.3. Development Of Towers.**

1. Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of one hundred and fifty (150) feet. Towers may be permitted in excess of one hundred and fifty (150) feet in accordance with "Criteria for Site Plan Development Modifications."

2. No new Tower shall be built, constructed, or erected in the County unless the Tower is capable of supporting three other Persons' operating Tele-communications Facilities comparable in weight, size, and surface area to the Telecommunications Facilities installed by the Applicant on the Tower within six (6) months of the completion of the Tower construction. No tower shall charge co-location fees in excess of commercially reasonable industry amounts. Each tower constructed shall upon the request of Lake County mount law-enforcement or public safety communications apparatus.
3. An Application to develop a Tower shall include:
  - a. The name, address, and telephone number of the Owner and lessee of the parcel of land upon which the Tower is situated. If the Applicant is not the Owner of the parcel of land upon which the Tower is situated, the written consent of the Owner shall be evidenced in the Application.
  - b. The legal description, folio number, and address of the parcel of land upon which the Tower is situated.
  - c. The names, addresses, and telephone numbers of all owners of other Towers or usable Antenna Support Structures within a one-half ( $\frac{1}{2}$ ) mile radius of the proposed new Tower site, including County-owned property.
  - d. A description of the design plan proposed by the Applicant. Applicant must identify its utilization of the most recent technological design, including microcell design, as part of the design plan. The Applicant must demonstrate the need for Towers and why design alternatives, such as the use of microcell, cannot be utilized to accomplish the provision of the Applicant's telecommunications services.
  - e. An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to install or collocate the Applicant's Telecommunications Facilities on Towers or usable Antenna Support Structures owned by other Persons located within a one-half ( $\frac{1}{2}$ ) mile radius of the proposed Tower site. In the event that one reason for the unsuccessful efforts to install or collocate is that fees to be charged are not commercially reasonable, an explanation shall be provided why said charges are commercially unreasonable.
  - f. Written technical evidence from an Engineer(s) that the proposed Tower or Telecommunications Facilities cannot be installed or collocated on another person's Tower or usable Antenna Support Structures owned by other Persons located within one-half ( $\frac{1}{2}$ ) mile radius of the proposed Tower site.
  - g. A written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.
  - h. Written, technical evidence from an Engineer(s) that the proposed structure meets the standards set forth in, "Structural Requirements," of this Ordinance.
  - i. Written, technical evidence from a qualified Engineer(s) acceptable to the Fire Marshall and the building official that the proposed site of the Tower or Telecommunications Facilities



does not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.

- j. The FCC has sole jurisdiction of the field of regulation of RF emissions and does not allow the County to condition or deny on the basis of RF impacts the approval of any Telecommunications Facilities (whether mounted on Towers or Antenna Support Structures) which meet FCC standards. In order to provide information to its citizens, the County shall make available upon request copies of ongoing FCC information and RF emission standards for Telecommunications Facilities transmitting from Towers or Antenna Support Structures. Applicants shall be required to submit information on the proposed power density of their proposed Telecommunications Facilities and demonstrate how this meets FCC standards.
  - k. No application shall be accepted from landowners or on property on which there are current or past unresolved violations outstanding.
4. The Board of Adjustment may require an Applicant to supplement any information that the Board considers inadequate or that the Applicant has failed to supply. The Board of Adjustment may deny an Application on the basis that the Applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the Board in a prompt manner and all decisions shall be supported in writing setting forth the reasons for approval or denial.

#### **Section 1213.4 Setbacks.**

1. All Towers up to one-hundred (100) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of one hundred (100) feet in height shall be set back one (1) additional foot per each foot of Tower height in excess of one hundred (100) feet.
2. Setback requirements for Towers shall be measured from the base of the Tower to the property line of the parcel of land on which it is located.
3. Setback requirements may be modified, as provided in, when placement of a Tower in a location which will reduce the visual impact can be accomplished. For example, adjacent to trees which may visually hide the Tower.

#### **Section 1213.5 Structural Requirements.**

All Towers must be designed and certified by an Engineer to be structurally sound and, at minimum, in conformance with the Building Code, and any other standards outlined in this Ordinance. All Towers in operation shall be fixed to land.

#### **Section 1213.6 Separation or Buffer Requirements.**

For the purpose of this Section, the separation distances between Towers shall be measured by drawing or following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan of the proposed Tower.

Proposed Towers must meet the following minimum separation requirements from existing towers or towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Ordinance:

1. Monopole Tower structures shall be separated from all other Towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet.
2. Self-supporting lattice or guyed Tower structures shall be separated from all other self-supporting or guyed Towers by a minimum of fifteen hundred (1,500) feet.
3. Self-supporting lattice or guyed Tower structures shall be separated from all monopole Towers by a minimum of seven hundred and fifty (750) feet.
4. The separation requirements contained in 5.17.5.A shall not be required of existing Towers or Towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Ordinance.

#### **Section 1213.7. Method Of Determining Tower Height.**

Measurement of Tower height for the purpose of determining compliance with all requirements of this Section shall include the Tower structure itself, the base pad, and any other Telecommunications Facilities attached thereto which extend more than twenty (20) feet over the top of the Tower structure itself. Tower height shall be measured from grade.

#### **Section 1213.8. Illumination.**

Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA.

#### **Section 1213.9. Exterior Finish.**

Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, as approved by the appropriate reviewing body.

#### **Section 1213.10. Modification Of Towers.**

1. A Tower existing prior to the effective date of this Ordinance, which was in compliance with the Count's zoning regulations immediately prior to the effective date of this Ordinance, may continue in existence as a nonconforming structure. Such non-conforming structures may be modified or demolished and rebuilt without complying with any of the additional requirements of this Section, except for Sections "Separation or Buffer Requirements", "Certification and Inspections", and "Maintenance," provided:
  - a. The Tower is being modified or demolished and rebuilt for the sole purpose of accommodating, within six (6) months of the completion of the modification or rebuild, additional Telecommunications Facilities comparable in weight, size, and surface area to the discrete operating Telecommunications Facilities of any Person currently installed on the Tower.

- b. An Application for a development permit is made to the Board of Adjustment which shall have the authority to issue a development permit without further approval. The grant of a development permit pursuant to this Section allowing the modification or demolition and rebuild of an existing nonconforming Tower shall not be considered a determination that the modified or demolished and rebuilt Tower is conforming.
- c. The height of the modified or rebuilt Tower and Telecommunications Facilities attached thereto do not exceed the maximum height allowed under this Ordinance.

**Section 1213.11. Certifications And Inspections.**

- 1. All Towers shall be certified by an Engineer to be structurally sound and in conformance with the requirements of this ordinance and all other construction standards set forth by federal and state law. For new monopole Towers, such certification shall be submitted with an Application pursuant to of this Ordinance and every five (5) years thereafter. For existing monopole Towers, certification shall be submitted within sixty (60) days of the effective date of this Ordinance and then every five (5) years thereafter. For new lattice or guyed Towers, such certification shall be submitted with an Application pursuant to of this Ordinance and every two (2) years thereafter. For existing lattice or guyed Towers, certification shall be submitted within sixty (60) days of the effective date of this Ordinance and then every two (2) years thereafter. The Tower owner may be required by the County to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the Tower is jeopardized.
- 2. The County or its agents shall have authority to enter onto the property upon which a Tower is located, between the inspections and certifications required above, to inspect the Tower for the purpose of determining whether it complies with this ordinance and all other construction standards provided by federal and state law.

The County reserves the right to conduct such inspections at any time, upon reasonable notice to the Tower owner. All expenses related to such inspections by the County shall be borne by the Tower owner.

**Section 1213.12. Maintenance.**

- 1. Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- 2. Tower owners shall install and maintain Towers, Telecommunications Facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
- 3. All Towers, Telecommunications Facilities, and Antenna Support Structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any Person.
- 4. All maintenance or construction of Towers, Telecommunications Facilities, or Antenna Support Structures shall be performed by licensed maintenance and construction personnel.

5. All Towers shall maintain compliance with current RF emission standards of the FCC.
6. In the event that the use of a Tower is discontinued by the Tower owner, the Tower owner shall provide written notice to the County of its intent to discontinue use and the date when the use shall be discontinued.

**Section 1213.13. Criteria For Site Plan Development Modifications.**

1. Notwithstanding the Tower requirements provided in this Ordinance, a modification to the requirements may be approved by the Board of Adjustment as a conditional use in accordance with the following:
  - a. In addition to the requirement for a Tower Application, the Application for modification shall include the following:
    - i. A description of how the plan addresses any adverse impact that might occur as a result of approving the modification.
    - ii. A description of off-site or on-site factors which mitigate any adverse impacts which might occur as a result of the modification.
    - iii. A technical study that documents and supports the criteria submitted by the Applicant upon which the request for modification is based. The technical study shall be certified by an Engineer and shall document the existence of the facts related to the proposed modifications and its relationship to surrounding rights-of-way and properties.
    - iv. For a modification of the setback requirement, the Application shall identify all parcels of land where the proposed Tower could be located, attempts by the Applicant to contract and negotiate an agreement for collocation, and the result of such attempts.
    - v. The Board of Adjustment may require the Application to be reviewed by an independent Engineer under contract to the County to determine whether the antenna study supports the basis for the modification requested. The cost of review by the County's Engineer shall be reimbursed to the County by the Applicant.
2. The Board of Adjustment shall consider the Application for modification based on the following criteria:
  - a. That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.
  - b. Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.
  - c. In addition, the board may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower and mitigate any adverse impacts which arise in connection with the approval of the modification.

3. In addition to the requirements of subparagraph (2) of this Section, in the following cases, the Applicant must also demonstrate, with written evidence, the following:
  - a. In the case of a requested modification to the setback requirement, that the setback requirement cannot be met on the parcel of land upon which the Tower is proposed to be located and the alternative for the Person is to locate the Tower at another site which is closer in proximity to a residentially zoned land.
  - b. In the case of a request for modification of the separation and buffer requirements from residential use of land of, if the Person provides written technical evidence from an Engineer(s) that the proposed Tower and Telecommunications Facilities must be located at the proposed site in order to meet the coverage requirements of the Applicant's wireless communications system and if the Person is willing to create approved landscaping and other buffers to screen the Tower from being visible to residentially used property.
  - c. In the case of a request for modification of the height limit for Towers and Telecommunications Facilities or to the minimum height requirements for Antenna Support Structures, that the modification is necessary to:
    - i. Facilitate collocation of Telecommunications Facilities in order to avoid construction of a new Tower; or
    - ii. To meet the coverage requirements of the Applicant's wireless communications system, which requirements must be documented with written, technical evidence from an Engineer(s) that demonstrates that the height of the proposed Tower is the minimum height required to function satisfactorily, and no Tower that is taller than such minimum height shall be approved.

#### **Section 1213.14. Abandonment.**

1. If any Tower shall cease to be used for a period of 365 consecutive days, the Planning Commission shall notify the Owner, with a copy to the Applicant, that the site will be subject to a determination by the Planning Commission that such site has been abandoned. The Owner shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence, that the Tower has been in use or under repair during the period. If the Owner fails to show that the Tower has been in use or under repair during the period, the Planning Commission shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the Owner shall, within seventy-five (75) days, dismantle and remove the Tower.
2. To secure the obligation set forth in this Section, the Applicant [and/or Owner] may be required to post a bond.

#### **Section 1214. Animal Units On Small Acreages**

On parcels of land of one (1) acre or less, a maximum of one (1) animal unit per acre will be allowed. Designated commercial feedlots excluded.

**Section 1215. Right To Farm Notice.**

The following document is to be utilized as a requirement for farm and non-farm residential development within the Agricultural and Planned Development Districts.

Prepared by:  
Lake County Zoning Official (or by Grantor or Grantor's Attorney)  
Zoning Official Address (or Grantor's or Grantor's Attorney's address)  
Madison, SD 57042 (or Grantor's or Grantor's Attorney's city)

RIGHT TO FARM NOTICE

You are hereby notified that the property for which you are applying for a Lake County residential building permit is located within or near agriculturally zoned land. You are also notified that you may be subject to inconvenience or discomfort from lawful agricultural uses permitted by Lake County zoning regulations. Agricultural uses permitted by Lake County may include, but are not limited to, the following: the cultivation, harvesting, and storage of crops; livestock production; ground rig or aerial application of pesticides or herbicides; the application of fertilizer, including animal waste; the operation of machinery; the application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. Discomforts and inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. If you live within or near an agriculturally zoned area, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector. You are also notified that there is the potential for Lake County approved agricultural uses to expand. This notice does not abdicate your rights as a landowner to object to agricultural uses permitted by Lake County. Nor does this notice allow for agricultural uses permitted by Lake County to be conducted in an illegal manner. This notification shall extend to all landowners, their heirs, successors or assigns. This notice is a requirement for obtaining a Lake County building permit for residential development and may not be removed from the record title without consent of the Board of Lake County Commissioners.

Legal Description \_\_\_\_\_  
Signature \_\_\_\_\_

STATE OF SOUTH DAKOTA LAKE COUNTY

On this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that \_\_\_\_\_ executed the same for the purposes contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_ My commission expires \_\_\_\_\_

**Section 1216. Waiver of Setback from Existing Concentrated Animal Feeding Operation Covenant**

The following covenant is to be utilized as required for farm and non-farm residential development in the Agricultural and Planned Development Zoning Districts which are located within one-half mile of an existing concentrated animal feeding operation in the Agricultural Zoning District

Prepared by:  
Lake County Zoning Official (or by Grantor or Grantor's Attorney)  
Zoning Official Address (or Grantor's or Grantor's Attorney's address)  
Madison, SD 57042 (or Grantor's or Grantor's Attorney's city)

WAIVER OF SETBACK FROM  
EXISTING CONCENTRATED ANIMAL FEEDING OPERATION COVENANT

The following covenant is to be used when a dwelling (Farm or Non-Farm) is proposed to be constructed within one-half (1/2) mile of an existing Concentrated Animal Feeding Operation. The ~~waiver~~ covenant shall be filed with the Register of Deeds. Grantors are the owner(s) of property applying for the proposed residential development. (See 3.04.03.9.b)

1. Purpose. This covenant is required for any dwelling to be constructed within one-half (1/2) mile of an existing concentrated animal feeding operation as defined by the Lake County Zoning Ordinance.

2. Waiver:

("Grantors") are the owners of real property described as follows:

In accordance with the conditions set forth in the decision of Lake County, dated \_\_\_\_\_ 20\_\_\_\_, approving a plat with a residential dwelling development right or by the issuance of a permit for a residential dwelling either to be located within one-half (1/2) mile of the existing concentrated animal feeding operation located \_\_\_\_\_ at \_\_\_\_\_ the \_\_\_\_\_ following \_\_\_\_\_ property, \_\_\_\_\_ and in consideration of such approval, Grantors agree to the perpetual non-exclusive easement as follows:

A. The Grantors, their heirs, successors, and assigns acknowledge that the location of a residential development/dwelling on (legal description) is within one-half (1/2) mile of an existing concentrated animal feeding operation. This covenant waives the Grantors, their heirs, successors, and assigns common law rights to object to the existing concentrated animal feeding operation's, located at the above legal description, potential need for a variance from the setback requirements of the Lake County Zoning Ordinance.

B. Further, the grantors hereby waive all common law rights to appeal any decision of Lake County Board of Adjustment relating to the issuance of a variance regarding separation setbacks from the existing concentrated animal feeding operation located at above legal description.

IN WITNESS WHEREOF, \_\_\_\_\_, 20\_\_

Grantors (Print) \_\_\_\_\_

Grantors (Signature) \_\_\_\_\_

STATE OF SOUTH DAKOTA

SS:

COUNTY OF LAKE

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_  
(Grantors).

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## **Section 1217. Adult Use Regulations**

ADULT USES. In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this section. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.

### **Section 1217.01. Setbacks**

1. None of the following uses may be established, operated or maintained within five hundred (500) feet of a residence, a church, a school meeting all the requirements of the Compulsory Education Laws of the State of South Dakota, or a public park.
  - a. Adult bookstore.
  - b. Adult motion picture theater.
  - c. Adult photo studio.
  - d. Adult Entertainment Cabaret
  - e. Any use which has as a part of its operation adult entertainment or amusement including but not limited to, a restaurant or eating place, a bar, lounge or tavern.
  - f. Any use intended to provide adult amusement or entertainment.
2. Not more than two of the following uses may be established, operated or maintained within one thousand (1,000) feet of each other:
  - a. Adult bookstore.
  - b. Adult motion picture theater.
  - c. Adult photo studio.
  - d. Adult entertainment cabaret
  - e. Any use which has as a part of its operation adult entertainment or amusement including but not limited to, a restaurant or eating place, a bar, lounge or tavern.
  - f. Any use intended to provide adult amusement or entertainment.
  - g. A bar.
  - h. A liquor store.



3. The one thousand (1,000)-foot restriction provided for in 1217.01.2 above may be waived and a conditional use permit issued upon proper application if the County finds:
  - a. That the proposed use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of these regulations will be observed.
  - b. That the proposed use will not enlarge or encourage the development of a 'skid row' area.
  - c. That all applicable regulations will be observed.

**Section 1217.02. Required License.**

It shall be unlawful for any person to engage in the business of operating an adult use in Lake County without first having obtained a license from the Lake County Commissioners.

**Section 1217.02.01. Application; Standards for Issuance.**

1. Application for an adult use license shall be made in writing and shall state the following:
  - a. The name, address, telephone number and age of the applicant and the registered agent of the applicant if the applicant is a corporation.
  - b. The location of the adult use business.
  - c. The exact nature of the adult use to be conducted and of the proposed place of business and the facilities related thereto.
  - d. A statement by the applicant that he is familiar with the provisions of this article and is in compliance with them.
  - e. A statement of whether the business will be conducted by a manager and, if so, the name, address, telephone number, and age of each such manager.
  - f. A statement that no manager or principal operating the business has been convicted of any offense of prostitution, soliciting for prostitution, or obscenity or public indecency as defined in the South Dakota Compiled Statutes within the last two (2) years, and that the applicant has not had any license for an adult use in any other community revoked within the last two (2) years.
2. Within fifteen (15) days after receipt of an application for an adult use license, the Lake County Commissioners shall investigate the information contained in the application and shall determine the following:
  - a. That the premises designated by the applicant as the location of the business are in full compliance with all applicable ordinances of Lake County, including zoning ordinances.
  - b. That the premises and each manager and employee comply with the provisions of Section 1217.02.1 as such provisions apply to them.

- c. That the applicant, each manager and each employee are over twenty-one (21) years of age.
  - d. That no manager or principal operator of the business has been convicted of any offense of prostitution, solicitation for prostitution, or obscenity or public indecency, as defined in the South Dakota Compiled Statutes within the last two (2) years, and that the applicant has not had any license for an adult use revoked within the last two (2) years.
3. If the investigation shows the compliance of the applicant for an adult use license, the premises upon which the business is to be conducted and each manager and employee, if applicable, with each of the requirements established in subsections (1) and (2) of this section, and with the conditions and regulations set forth in Section 1217.03 within fifteen (15) days after completion of such investigation, the Lake County Commissioners shall issue a license, and upon payment by the applicant of the license fee required under this article, the license shall be issued.
  4. If the investigation shows that the applicant for an adult use license, the premises on which the business is to be conducted, or the managers and employees, if applicable, do not comply with each of the requirements established in subsection (1) of this section, and with the conditions and regulations set forth in Section 1217.03 within fifteen (15) days after completion of such investigation, the Lake County Commissioners shall notify the applicant in writing that the license has been denied. Such denial shall be the final administrative action of the County with respect to the license application, and shall be subject to the immediate appeal by the applicant to the circuit court.

**Section 1217.03. Conditions & Regulations Governing Operation; Violation; Penalty.**

1. The following regulations shall govern and control the business of operating an adult use in Lake County:
  - a. No person under twenty-one (21) years of age shall be allowed on the licensed premises.
  - b. At all times during the hours of operation there shall be present a manager or other employee of the licensee who shall be not less than twenty-one (21) years of age.
  - c. Upon a change of any manager conducting business for the licensee, the licensee shall, within ten regular business days, give the County Commissioners written notice of such change by actual delivery or by registered or certified mail. The licensee shall, thereafter, as promptly as practicable, but in any event within five (5) regular business days, provide the information concerning the new manager which is required in Section 1217.02.
  - d. No adult use shall be located on-premises for which a license to sell alcoholic liquor has been issued, and no alcoholic liquor shall be permitted on such premises.
  - e. No adult use shall be permitted unless the premises on which such business is located complies with the requirements of the zoning ordinance.
  - f. No licensee or manager under the provisions of this article shall knowingly permit any person to remain in or upon licensed premises who commits any act of public indecency or obscenity as defined in the South Dakota Compiled Statutes.

- g. No licensee or manager under the provisions of this article shall permit any act of prostitution, solicitation for prostitution or patronization of a prostitute on the licensed premises.
  - h. No sign shall be posted on the licensed premises which depicts, displays or refers to specified anatomical areas or specified sexual activities, as defined in this article.
2. In addition to the requirements established in Section 1217.03.1, the following regulations shall govern and control the operation of an adult bookstore which offers any films or videotapes for viewing on-premises by use of motion picture devices or other such operations means:
- a. All viewing areas, which shall be defined as the area where a patron or customer would ordinarily be positioned while watching a film or viewing device, shall be visible from a continuous main aisle or public room and shall not be obscured by any curtain, door, wall or other enclosure.
  - b. There shall be no aperture whatsoever in any wall or partition between viewing areas.
  - c. Each viewing area shall be lighted at a minimum level of ten (10) foot candles in all parts thereof.
3. In addition to the requirements established in Section (1) of this section, the following regulations shall govern and control the operation of an adult entertainment cabaret:
- a. All performers shall be at least twenty-one (21) years of age.
  - b. All performances, exhibitions or displays shall take place on a platform raised at least two feet from the level of the floor, and located at least ten (10) feet from any patron.
  - c. No performer shall fondle or caress any patron or other performer and no patron shall fondle or caress any performer.
  - d. No patron shall be permitted to pay or give any gratuity to any performer, and no performer shall solicit any pay or gratuity from any patron.
4. It shall be unlawful for any person licensed to engage in the business of operating an adult use within the County to fail to comply with the conditions and regulations set forth in subsections 1217.01, 1217.02, and/or 1217.03 of this section as they are applicable to the licensed business, or to suffer or permit noncompliance with such conditions and regulations on or within the licensed premises. In this regard, any act or omission of an employee shall be deemed the act or omission of the owner if such act or omission occurred either with the authorization, knowledge or approval of the owner or as a result of the owner's negligent failure to supervise the employee's conduct. All conduct occurring while on the premises shall be presumed to be the responsibility of the owner.
5. Any person convicted of a violation of this section shall be subject to a fine pursuant to Section 803 of this Ordinance.

#### **Section 1217.04 Suspension or Revocation.**

Nothing in the terms of this article shall preclude the right of the Lake County Commissioners to suspend or revoke the license of the licensee, as follows:

1. The Lake County Commissioners may temporarily suspend any license issued under the terms of this article when he has reason to believe that the continued operation of a particular licensed premises will immediately threaten the welfare of the community or create an imminent danger of violation of applicable law. In such case, he may, upon the issuance of a written order stating the reason for such determination, and without notice or hearing, order the licensed premises closed for not more than seven (7) days; provided, that the licensee shall be given an opportunity to be heard in a public hearing during the seven (7)-day period, and further provided that if such licensee shall also be engaged in the conduct of other business on the licensed premises, such order shall not be applicable to such other businesses.
2. The Lake County Commissioners may suspend or revoke any license issued under the terms of this article upon ten (10) days notice to the licensee of the time and place of a public hearing, and a public hearing at which the licensee may appear and present evidence, if the Lake County Commissioners determines upon such hearing that the licensee has failed or refused to comply with the terms of this article, has failed or refused to comply with other law applicable to the business of operating an adult use, has knowingly permitted the failure of any manager or employee on the premises to comply with the terms of this article or with other law applicable to the business of operating an adult use, has knowingly furnished false or misleading information on any application required for any license under this section or has suffered or caused another to furnish or withhold such information on his behalf, or has been convicted by a court of competent jurisdiction of a violation of any provision of this section.

#### **Section 1218. Private Wind Energy Conversion System (PWECS) Requirements**

The regulations regarding Private Wind Energy Conversion Systems (hereafter referred to as PWECS) are as follows:

1. Limited Use. No PWECS installed in accordance with the requirements of these regulations will generate power as an electric utility as defined by SDCL 49-34A-1.
2. Applicants. Applicant means any person that applies for a PWECS permit. Person is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.
3. Contiguous property owners and planned developments may construct a PWECS for their use in common. If property held by more than one (1) single owner is used to meet the setback requirements, a site plan establishing easements or reserved areas must be submitted to the Board of Adjustment for their approval.
4. Setback requirements. Wind turbines must meet the following minimum spacing requirements.
  - i. Distance from existing off-site residences, businesses, churches, and buildings owned and/or maintained by a governmental entity must be at least two hundred percent (200%) the height of the wind turbine. Distance from on-site or lessor's residence must

be at least one hundred fifty percent (150%) the height of the wind turbine. Distance is measured from the wall line of the neighboring principal building to the base of the WES tower.

- ii. Distance from centerline of public roads must be at least one hundred fifty percent (150%) the height of the wind turbine measured from the ground surface to the tip of the blade when in a fully vertical position.
  - iii. Distance from any property line must be at least one hundred fifty percent (150%) the height of the wind turbine, measured from the ground surface to the tip of the blade when in a fully vertical position unless wind easement has been obtained from adjoining property owner.
  - iv. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distances identified above, if the adjoining landowners agree to a lesser setback/separation distance. If approved, such agreement is to be recorded and filed with the Lake County Zoning Official.
5. Tower Access. Climbing access to the PWECS tower must be limited either by means of a fence six (6) feet high around the tower base with a locking portal, or by limiting tower climbing apparatus so there is access to it no lower than twelve (12) feet from the ground.
  6. Electromagnetic Interference. If a PWECS is installed in any location along or within the major access of an existing microwave communications link, the applicant will be required to provide a letter from the business whose link they are within or adjacent to stating that the business whose link is affected would have no objection to the installation of the PWECS.
  7. Air Space. A PWECS must be located or installed in compliance with the guidelines of the Federal Aviation Administration Regulations with regard to Airport Approach Zones and clearance around VOR stations.
  8. Interconnect. The PWECS, if interconnected to an electric utility distribution system, must meet the interconnect requirements of the electric utility company.
  9. Appearance, Color, Finish. The PWECS will remain painted or finished the color or finish that was originally applied by the manufacturer, unless approved in the building permit.
  10. Noise. Noise level must not exceed fifty (50) dBA, average A-weighted sound pressure including constructive interference effects at the perimeter of the principal and accessory structures of existing off-site residences, businesses, and buildings owned and/or maintained by a governmental entity.
  11. Utility Notification. No PWECS will be installed until evidence has been provided that the utility company has been informed of the applicant's intent to install an interconnected applicant-owned generator. Off-grid systems are exempt from this requirement.
  12. Permit Requirements
    - a. Building permit. A building permit will be required for the installation of a PWECS.

- b. The conditional use permit application must be accompanied by a plan which includes the following:
  - i. Pre-construction plans and specifications from the manufacturer or stamped by a registered engineer;
  - ii. Property lines and physical dimensions of the property;
  - iii. Location, dimensions, and types of existing major structures on the property;
  - iv. Location of the proposed PWECS;
  - v. The right-of-way of any public road that is contiguous with the property;
  - vi. Any overhead utility lines;
  - vii. Wind system specifications, including manufacturer and model, rotor diameter, tower height, and tower type (monopole, lattice, guyed);
  - viii. Tower foundation blueprints or drawings;
  - ix. Tower blueprint or drawing;
  - x. Proof of notification to the utility in the service territory in which the PWECS is to be erected, consistent with the provisions of Paragraph 10 herein;
  - xi. The status of all necessary interconnection agreements or studies;
  - xii. Map of any easements and affidavit attesting that necessary easement agreements with landowners have been obtained, if applicable, consistent with the provisions of Paragraph 3 herein; and
  - xiii. Project schedule.

13. Permit Expiration. The conditional use permit will become void if no substantial construction has been completed within two (2) years of issuance.

14. Construction Standards. Any PWECS must be constructed in accordance with all applicable life, safety, electrical, building and fire codes including but not limited to the following:

- a. An application for a building permit for a PWECS must include pre-construction plans and specifications stamped by a registered engineer and may also be required by the Zoning Official to submit a post-construction inspection stamped by a registered engineer. Post-construction inspections stamped by a registered engineer must be provided consistent with the guidelines provided for in South Dakota Codified Law 36-18A-46.
- b. Lightning Protection. Any PWECS must have appropriate lightning protection to sufficiently protect all connected and adjacent equipment and structures from damage. The lightning protection system must effectively discharge lightning energy from the structure to the ground through the application of shielding, lightning arresters and deep earth grounding.

15. Abandonment/removal.

- a. The County may declare a PWECS abandoned . The County will issue a Notice of Abandonment to the permittee that the PWECS is deemed to have been abandoned. The permittee has the right to respond to the Notice of Abandonment within thirty (30) days from Notice receipt date. The County will determine that a PWECS has been abandoned if any of the following criteria apply:

- i. The PWECS has not been operational for a period of eighteen (18) consecutive months or more. To be considered operational, the permittee must show that the PWECS has produced a minimum of twenty-five (25) percent of the expected typical energy output as stated in the system specifications over the past eighteen (18) consecutive months. For the purposes of this paragraph, the expected typical energy output is defined as the number of kilo-Watt-hours (kWh) of energy that the system is reasonably expected to produce in a given time period based on the typical wind attributes present at the installation location and assuming that the system is capable of being fully operational during the given time period.

The permittee may set forth reasons for the operational difficulty in its response and provide a reasonable timetable for corrective action. If the County deems the timetable for corrective action to be unreasonable, the PWECS may be declared abandoned.

- ii. The PWECS has fallen into obvious disrepair as determined by the Board of Adjustment or has been condemned by the County; or
  - iii. The conditional use permit is revoked; or
  - iv. The PWECS has become violative of some other local, state or federal law and the permittee has not taken appropriate actions to remedy the problem.
- b. If the PWECS is determined to be abandoned or the permittee has not responded to the notice of abandonment as prescribed above, the PWECS must be removed at the permittee's sole expense within three (3) months of receipt of Notice of Abandonment. If the permittee fails to remove the system, the County may pursue legal action to have the PWECS removed at the permittee's expense.

### **Section 1219. Automotive Tow Business/Impound Lot Requirements**

Impound lots, incident to the operation of an automotive tow business, may be established within districts pursuant to the zoning laws of the County for the storage of vehicles under the following conditions and requirements:

1. All automotive tow businesses/impound lots must have a minimum lot of five (5) acres.
2. The area used for an impound lot must be free of debris and regularly maintained.
3. The area used for an impound lot must be completely enclosed by a fence or natural vegetation having a minimum height of six (6) feet; if the impound lot abuts or is adjacent to a residential use, that section abutting or adjacent to the residential use shall be completely enclosed with a fence or natural vegetation having a minimum height of six (6) feet and constructed with a material or have vegetation so dense that ensures that the interior of the impound lot cannot be viewed from the residential use.
4. An impound lot may be used for the temporary storage of vehicles from which major parts have not been removed, and which are capable of being made fully operable.

5. An impound lot may be used for the storage of not more than thirty (30) vehicles at any one time.
6. Vehicle parts shall not be stored within an impound lot.
7. Vehicle parts shall not be taken or sold from vehicles stored within an impound lot.
8. Vehicles stored in an impound lot must be parked neatly in rows and meet or exceed all County, State and Federal laws governing the same.
9. No automotive tow business/impound lots will be allowed within one thousand (1,000) feet from the property line to the nearest residence; excluding: the residence of the operator or any residence other than that of the owner of the land.

### **Section 1220. Target Range Requirements.**

#### **1220.01. Conditional Use Permits.**

1. No Range shall be established within the Lake County without first obtaining a Conditional Use Permit.

#### **1220.02. General Regulations for All Ranges.**

1. No Conditional Use Permit shall be approved for any Range unless all of the following conditions are met (unless specifically waived by the Board of Adjustment):
  - a. A safety plan shall be submitted along with the application. The plan, once approved, shall be posted in a prominent place at the site. Any changes to the safety plan shall be submitted to the County Board of Adjustment for approval. At a minimum the safety plan must state:
    - i. A method of identifying the Range Officer when the Range Officer is present at the site. Additionally, a permanent log identifying the Range Officer who is present when required at the facility must be maintained and available for inspection by the County or local law enforcement officers.
    - ii. The authority of Range Officers to carry out the rules and regulations on the site and to enforce penalties.
    - iii. The policy for the site for the use of alcohol.
    - iv. Controlled substances are prohibited on the site.
    - v. Rules for the safe handling of weapons.
    - vi. A building and grounds maintenance plan.
    - vii. Administrative Rules to include regulations that normally govern range schedules, parking, guest policies, member/user responsibilities, hours of operation, security, program development, range supervision and other items such as sign-in procedures.



- viii. Regulations on the type of weapon, shooting activity, caliber, shot size or type of target to ensure safety for range users and others.
- ix. The penalties that are in force for violations of the safety plan.
- x. The method used to control trespass or unauthorized access to the range or preserve.
- b. Applicants must meet all state and federal requirements and follow the recommendations of the NRA Range Sourcebook
- c. On an annual basis, applicants must provide proof of insurance.
- d. Applicants shall continuously keep the County informed as to the current names and telephone numbers of the officers of any organization having an interest in the Range. Any changes to the names or telephone numbers of the officers shall be reported to the County within thirty (30) days of the change.
- e. All Ranges must control entrance to their sites.
- f. No alcohol licenses shall be granted to any site which has a Range.
- g. Parking space for all members, owners or guests must be on-site and is not allowed on public streets or roads.

**1220.03. Special Regulations for Ranges.**

1. Applications for all ranges, in addition to any other requirements of this Ordinance, must also show:
  - a. A survey delineating the layout of all individual Ranges.
  - b. Setbacks to all property lines.
  - c. Method of containing projectiles within each individual range (such as earthen berms or other method).
  - d. Methods to be employed to reduce noise, including impulse noise.
    - i. The maximum noise that may escape the range into areas not controlled by the owner is 125 dB.
  - e. All Ranges shall be designed using the NRA Range Source Book as a guideline.

**1220.04. Application Requirements.**

1. Each application for a Range shall, at a minimum, include the following:
  - a. A description of specific activities to be conducted on-site.
  - b. The hours and days of operation.

- c. The maximum number of people using the facility at any one time.
- d. A plan, if applicable, for collecting and recycling used shot.
- e. A delineation of any special events, if any.
- f. A sewage, water and solid waste management plan.

**1220.05. Area Regulations.**

- 1. Minimum Lot Size: Ten (10) acres.
- 2. Minimum Front Yard: One hundred fifty (150) feet.
- 3. Minimum Side Yard: Three hundred (300) feet.
- 4. Back of the Range Setback: A minimum of one thousand (1000) feet from any buildings and/or roads.
- 5. Setback from Residences: One-quarter (1/4) mile to be measured from the firing line to the nearest residential dwelling.
- 6. Setback from Commercial Uses: One-quarter (1/4) mile to be measured from the firing line to the nearest commercial structure.
- 7. Setback from Churches and Schools: One-quarter (1/4) mile to be measured from the firing line to the nearest church or school.
- 8. Setback from Municipalities: Three (3) miles to be measured from the firing line to the corporate limits of the municipality.
- 9. Berms shall be established behind shooting target areas to prevent stray shots from traveling onto adjoining property.

**1220.06. Miscellaneous Regulations.**

- 1. In the event that any provision of this Chapter or the Conditional Use Permit is violated, or the County otherwise reasonably believes that the health, safety or general welfare of the public is endangered by the use, or if the County reasonably believes that a public nuisance has been created, then, upon ten (10) days written notice, the County may originate action to either modify or cancel any Conditional Use Permit.

**Section 1221. Domestic Sanitary Sewer Treatment Plant/Facility Requirements.**

- 1. The site meets the requirements of the State Department of Environment and Natural Resources.
- 2. A site plan is provided indicating the following information:

- a. Present topography, soil types, and depth to groundwater.
- b. Location of existing water drainage, existing buildings, existing shelterbelts.
- c. Identification of roads leading to the site.
- d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
- e. Proposed monitoring wells, etc.
- f. No sewage treatment plant/facility will be allowed within one thousand three hundred twenty (1,320) feet from the property line of the sewage treatment plant/facility to the nearest residence; excluding: the residence of the sewage treatment plant/facility operator.

### **Section 1222. Bed and Breakfast Regulations**

1. B & B's shall be limited to residential structures with an overall minimum of one thousand eight hundred (1,800) square feet of floor. Preference will be given to structures with historic or other unique qualities.
2. They shall be in compliance with applicable state laws including registration with the South Dakota Department of Health, maintaining a guest list, and providing a smoke detector in each sleeping room.
3. Accessory use signs shall be based on similar requirements for a home occupation permit and shall not be more than sixteen (16) square foot in area.
4. Such uses shall be an incidental use with an owner occupied principal dwelling structure provided that not more than four bedrooms in such dwelling structure shall be used for such purpose.
5. Off-street parking requirements shall be one space per guestroom and shall be in addition to parking requirements for the principal use. Off-street parking shall not be located in a required front or side yard and screening shall be required when adjacent to residentially used property.
6. The length of stay shall not exceed fourteen (14) days during any one hundred twenty-- (120) day consecutive period.
7. Meals shall be limited to breakfast, which is prepared in a common facility (household kitchen). Meals may be served only to overnight registered guests and cooking is not permitted in the sleeping rooms.
8. The building shall meet all building codes and zoning requirements. A site plan showing the location of guest parking spaces and floor plan showing a location of the sleeping rooms, lavatories, and bathing facilities, and kitchen shall be submitted with application.

### **Section 1223. Home Occupation Regulations**

1. No person other than members of the family residing on the premises shall be engaged in such occupation.
2. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use of residential purposes by its occupants, and not more than 25 percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation.
3. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not to exceed sixteen (16) square feet in area, non-illuminated.
4. No home occupation shall be conducted in any accessory building.
5. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need of parking generated by the conduct of such home occupation shall be provided off the street and other than in a required front yard.
6. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference offensive to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.
7. There is no commodity sold upon the premises, except that which is prepared on the premises in connection with such occupation or activity.

### **Section 1224. Sand, gravel or quarry operation; rock crushers; and concrete and asphalt mixing plants requirements.**

1. The site meets the requirements of the State Department of Environment and Natural Resources.
2. A site plan is provided indicating the following information:
  - a. Present topography, soil types, depth to groundwater.
  - b. Location of existing water drainage, existing buildings, existing shelterbelts.
  - c. Identification of roads leading to the site.
  - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
  - e. Proposed monitoring wells, etc.
  - f. A requirement for receiving a permit for extractive/mining operations shall include a haul-road agreement between the applicant and appropriate governmental entity (Federal, State, County, Township, or Municipality).

- g. The applicant may be required to provide information regarding how potential air, noise, and water pollution would be minimized.
- h. A minimum of one thousand (1,000) feet from the mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants property line to the nearest residence; excluding: the residence of the above said uses operator.

**Section 1225. Sanitary Landfills, Rubble Sites, Composting Sites, Waste Tire Sites, and Restricted Use Sites Requirements**

- 1. The site meets the requirements of the State Department of Environment and Natural Resources.
- 2. A site plan is provided indicating the following information:
  - a. Present topography, soil types, depth to groundwater.
  - b. Location of existing water drainage, existing buildings, existing shelterbelts.
  - c. Identification of roads leading to the site.
  - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
  - e. Proposed monitoring wells, etc.
  - f. A minimum of one thousand (1,000) feet from the landfill property line to the nearest residence; excluding: the residence of the landfill operator.

**Section 1226. Junkyards/Salvage Yard Requirements**

- a. Storage for junkyards shall be set back a minimum of two hundred (200) feet from any adjoining road right-of-way.
- b. Junkyards shall be screened on all sides by a solid wall or suitable fencing, with construction materials and design to be approved by the Board of Adjustment, at least two (2) feet above the highest stock pile or by a shelterbelt of shrubs and trees as approved by the Board of Adjustment; screening must be maintained in good repair.
- c. No junkyards will be allowed within one thousand (1,000) feet from the junkyard property line to the nearest residence; excluding: the residence of the junkyard operator. of any residence other than that of the owner of the land.
- d. All junkyards must have a minimum lot of ten (10) acres.

## **Section 1227. Signs**

### **1227.01 On-premise and Off-premise signs**

1. Prohibited Signs:
  - a. No sign shall be erected or maintained which creates a hazard due to collapse, fire, collision, decay, or abandonment; or creates traffic hazards, by either:
    - i. Confusing or distracting motorists
    - ii. Impairing the driver's ability to see pedestrians, obstacles or other vehicles; or
    - iii. Impairing the driver's ability to see and interpret any official traffic sign, signal or device; or
    - iv. Creates a nuisance to persons using a public right-of-way; or
    - v. Constitutes a nuisance to occupancy of adjacent and contiguous property by its brightness, size, height, or movement
  - b. Any vehicle or trailer parking on a public right-of-way, public property or private property so as to be visible from the public right-of-way and which displays an advertising message, unless said vehicle is used in the regular course of business.
2. Signs shall be permitted in zoning districts per Article III, subject to the following provisions:
  - a. Wall signs may be located anywhere on the wall of a building.
  - b. Signs shall not project over public property.
  - c. Signs shall not be erected adjacent to a corner of two (2) intersecting streets, unless such signs are constructed to not obstruct the view of said intersection. See Chapter 5.01.
  - d. Each sign – size, lighting, and location - in the County shall at least meet the standards established by the South Dakota Department of Transportation.
  - e. Other than utility fixtures or holiday decorations, no signs, awnings, or display shall be suspended, hanged, or placed so that the same shall hang over any part of a street or sidewalk, used for vehicular or pedestrian travel unless a written application for a permit is made to the Zoning Official and the said Official grants a permit therefore.
  - f. The Zoning Official shall take into consideration factors that would make the proposed structure likely to endanger the property or personal safety of passerby traveling the streets or sidewalks in question, and whether or not such structure complies with codes relating to outdoor advertising.

3. On-premise Signs: Each sign erected as an on-premise sign in those zoning districts where permitted shall, unless specified elsewhere in this ordinance, conform to the following requirements:
  - a. Each sign erected as an on-site sign in those districts where permitted shall have a maximum surface area of eighty (80) square feet and shall observe all yard and height requirements of the district in which it is located. The maximum cumulative amount of all on-site signage allowed shall not exceed eighty (80) square feet.
4. Off-premise Signs: Off-premise signs erected in those zoning districts where permitted shall, unless specified elsewhere in this ordinance, conform to the following requirements:
  - a. Each sign shall have a maximum surface area of three hundred (300) square feet.
  - b. The sign structure or sign shall have a maximum height of thirty (30) feet. Height of sign is the vertical distance from the top of the sign or sign structure, whichever is greater, to the ground in a straight line directly below, measured from a point equidistant from the sides or edges of the sign.
  - c. Stacked signs (two or more signs stacked vertically on a single sign structure) are prohibited.
  - d. Each sign shall not be closer than three hundred (300) feet from any street intersection and five hundred (500) feet from another permitted Off-premise sign on the same side of the street or road.
  - e. Each sign shall not be closer than ten (10) feet from any street right-of-way.
  - f. Each sign shall not be closer than two hundred fifty (250) feet from adjoining property lines.

#### **Section 1228. Repair Shops, Motor Vehicle and Equipment**

1. All repair shops must have a minimum lot of five (5) acres.
2. No abandoned vehicles may be kept on the property.
3. No more than five (5) vehicles shall be kept outdoors at any one-time pending repair, and they must be fully screened from the road and adjacent properties.
4. All motor vehicle repair work shall be conducted within an enclosed structure.
5. Motor vehicle repair work shall not include:
  - a. The dismantling or wrecking of any motor or other vehicles; or
  - b. The storage of inoperable, damaged or wrecked vehicles, other than those awaiting immediate repair.
6. All fluids (oil, gasoline, transmission fluid, windshield washer fluids, etc.) and batteries from vehicles shall be stored, disposed, or recycled according to state and federal regulations.

7. All repair shops may have a maximum of three employees.
8. No repair shops will be allowed within one thousand (1,000) feet from the property line to the nearest residence; excluding: the residence of the operator or any residence other than that of the owner of the land.
9. No traffic shall be generated by such repair shop in greater volumes than would normally be expected in a residential neighborhood. Prior to the issuance of a conditional use permit for a repair shop, County Highway Superintendent and/or Township approval shall be required.
10. Any need of off-street parking generated by the conduct of such repair shop shall be provided off the street and other than in a required front yard.
11. No equipment or process shall be used in such repair shop which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

#### **Section 1229. Farm Implement Repair, Sales, and Service**

1. All farm implement repair, sales, and service businesses must have a minimum lot of five (5) acres.
2. The outdoor display of goods or materials for sale, lease, or rental may be conducted, provided the display areas are maintained in an orderly manner and are not located in any required yards.
3. No farm implement repair, sales, and service businesses will be allowed within one thousand (1,000) feet from the property line to the nearest residence; excluding: the residence of the operator or any residence other than that of the owner of the land.
4. All farm implement repair, sales, and service businesses may have a maximum of three employees.
5. No traffic shall be generated by such farm implement repair, sales, and service business in greater volumes than would normally be expected in a residential neighborhood. Prior to the issuance of a conditional use permit for a repair shop, County Highway Superintendent and/or Township approval shall be required.
6. Any need of off-street parking generated by the conduct of such farm implement repair, sales, and service business shall be provided off the street and other than in a required front yard.
7. No equipment or process shall be used in such farm implement repair, sales, and service business which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.



## **Section 1230. Cannabis Dispensaries**

### 1. Maximum Number of Cannabis Dispensaries

- a. In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a potential deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.
- b. The County shall allow up to two (2) cannabis dispensaries provided the time, place, and manner of said dispensaries comply with this ordinance.

### 2. Required Separation Distances

- a. A cannabis dispensary shall be located not less than one thousand (1,000) feet from a public or private school existing before the date of the cannabis dispensary application.
- b. A cannabis dispensary shall be located not less than one thousand (1,000) feet from a church, residence, public park, library, daycare facility, or other cannabis dispensaries existing before the date of the cannabis dispensary application.
- c. Exemption from separation requirements. Any separation distance requirement, other than the State requirement from schools (1,000 feet), may be waived, provided:
  - i. The applicant provides documentation waiving the setback requirement from the title holder of the land benefiting from the separation.
- d. Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the dispensary is proposed to the lot line of the existing use.

### 3. Other Locational Requirements

- a. Permanent or temporary dispensaries are prohibited in all other zoning districts and not eligible for a home occupation use.
- b. It shall be unlawful to operate a dispensary in a building which contains a residence or a mixed-use building with commercial and residential uses.

### 4. Controlled Access

- a. No No cannabis establishment shall share premises with or permit access directly from another medical cannabis establishment, business that sells alcohol or tobacco, or, any other cannabis establishment.

### 5. Hours of Operation

- a. Cannabis Cannabis dispensaries are allowed to be open between the hours of 8:00 a.m. and 8:00 p.m., Monday through Friday, and between the hours of 8:00 a.m. and 5:00 p.m. on Saturday. Cannabis dispensaries are to remain closed on Sundays and federal holidays.

#### 6. Documentation of State Licensure

- a. No cannabis dispensary shall acquire, possess, store, deliver transfer, transport, supply or dispense cannabis, cannabis products, paraphernalia without providing documentation of licensure from the State of South Dakota.

#### 7. Site Plan

- a. An applicant for a conditional use must provide a site plan containing the following:
  - i. Any information required for applicable building permit
  - ii. Ingress and egress plan
  - iii. Parking plan
  - iv. Lighting plan (including security lighting)
  - v. Screening/security fencing plan
  - vi. Refuse plan
  - vii. Hours of operation
  - viii. Documentation of ability to meet setback/separation requirements
  - ix. Documentation of state licensure
  - x. Any other information as lawfully may be required by the Zoning Officer to determine compliance with this ordinance

#### 8. Building Code

- a. All Cannabis Establishments are required to be constructed in conformance with the 2021 Edition of the International Building Code and International Fire Code.

## ARTICLE XIII CONCENTRATED ANIMAL FEEDING OPERATION REGULATIONS

### Intent

An adequate supply of healthy livestock, poultry and other animals is essential to the well being of county citizens and the State of South Dakota. However, livestock, poultry, and other animals produce manure which may, where improperly stored, transported, or disposed, negatively affect the County's environment. Animal manure must be controlled where it may add to air, surface water, ground water, or land pollution. The following regulations have been adopted to provide protection against pollution caused by manure from domesticated animals. All new and proposed expansions of Concentrated Animal Feeding Operations shall comply with the regulations as outlined herein.

It is the intention of the Board of Adjustment in the enforcement of this ordinance that when an operator of an existing Concentrated Animal Feeding Operation applies for a permit to expand to another class level, the standards that apply to the expansion will not be applied to existing structures that were built in compliance with zoning regulations in existence at the time of the construction of such facilities.

### Definitions

**Animal Manure:** Poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding or other materials.

**Animal Unit:** (See definition later in this section.)

**Applicant:** An individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of one or more concentrated animal feeding operations.

**Change in Operation:** "Change in operation," means a cumulative increase of more than 300 animal units, after January 20, 1998, which are confined at an unpermitted, concentrated animal feeding operation.

**Farm Dwelling:** Any dwelling farmer owned or occupied by the farm owners, operators, tenants, or seasonal or year-around hired workers.

**Non-Farm Dwelling:** Any occupied dwelling which is not a farm dwelling.

**Permit:** A permit required by these regulations unless stated otherwise.

**Potential Pollution Hazard:** A Concentrated Animal Feeding Operation of 50 to 499 Animal Units may be classified as a Class D Operation by the County Zoning Officer when a Potential Pollution Hazard exists. Factors to be considered by the Zoning Officer in determining a Potential Pollution Hazard include the following:

1. The Concentrated Animal Feeding Operation does not meet the minimum setback and separation distances of these regulations.

2. A Potential Water Pollution Hazard exists due to siting over a shallow aquifer or drainage which contributes directly to creeks, streams or lakes.

**Process Generated Wastewater:** Water directly or indirectly used in the operation of an animal feeding operation. The term includes spillage or overflow from watering systems; water and manure collected while washing, cleaning or flushing pens, barns, manure pits or other areas; water and manure collected during direct contact swimming, washing or spray cooling of animals; and water used in dust control.

**Process Wastewater:** "Process wastewater" means any process generated wastewater and any precipitation (rain or snow) that comes into contact with the animals, manure, litter or bedding, or other portions of the animal feeding operation, but not including feed storage areas.

**Shall** means that the condition is an enforceable requirement of this permit.

**Shallow Aquifer:** An aquifer vulnerable to contamination because the permeable material making up the aquifer (a) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (b) extends to near the land surface and lacks a sufficiently thick layer of impermeable material on the land or near the land surface to limit percolation water from transporting contaminants from the land surface to the aquifer.

**Shallow Well:** A well which is located in a shallow aquifer.

**Should** means that the condition is a recommendation. If violations of the permit occur, the County will evaluate whether the producer implemented the recommendations contained in this permit that may have helped the producer to avoid the violation.

**Significant Contributor of Pollution:** To determine if a concentrated animal feeding operation meets this definition, the following factors are considered:

1. Size of feeding operation and amount of manure reaching waters of the state;
2. Location of the feeding operation in relation to waters of the state;
3. Means of conveyance of manure and process wastewater into waters of the state; and
4. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewater into waters of the state.

**Waters of the State** means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

## **Animal Units**

Animal species and number of a species required to equal 500, 1,000 and 2,000 animal units. Note that these figures relate to inventory rather than annual production. Other animal species equivalents which are not listed will be based on species' waste production.

### **EQUIVALENT NUMBER OF A SPECIES TO EQUAL:**

<u>ANIMAL SPECIES</u>	<u>500 AU</u>	<u>1,000 AU</u>	<u>2,000 AU</u>	<u>ANIMAL UNIT EQUIVALENT SPECIES/AU</u>
Feeder or Slaughter Cattle	500 hd	1,000 hd	2,000 hd	1.0
Mature Dairy Cattle	357 hd	700 hd	1,400 hd	1.4
Finisher Swine (over 55 lbs)	1,250 hd	2,500 hd	5,000 hd	0.4
Nursery Swine (less than 55 lbs)	5,000 hd	10,000 hd	20,000 hd	0.1
Farrow-to-Finish (sows)	135 hd	270 hd	540 hd	3.7
Swine Production Unit (Sows Breeding, Gestating & Farrowing)	1,064 hd	2,130 hd	4,260 hd	0.47
Horses	250 hd	500 hd	1,000 hd	2.0
Sheep	5,000 hd	10,000 hd	20,000 hd	0.1
Turkeys	27,800 hd	55,000 hd	110,000 hd	0.018
Laying Hens and Broilers (continuous overflow watering in facility)	50,000 hd	100,000 hd	200,000 hd	0.01
Laying Hens and Broilers (liquid handling system in confinement facility)	15,150 hd	30,000 hd	60,000 hd	0.033
Ducks	2,500 hd	5,000 hd	10,000 hd	0.2

### **Classes of Concentrated Animal Feeding Operations**

A Concentrated Animal Feeding Operation is defined as a lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of 45 days or more during any 12-month period, and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility. Two or more animal feeding operations under common ownership are single animal operation if they adjoin each other, or if they use a common area, or if they use a common area or system for disposal of manure.

For the purpose of these regulations, Concentrated Animal Feeding Operations are divided into the following classes:

ANIMAL UNITS

Class A	2,000 or more	
Class B	1,000 to 1,999	
Class C	500 to 999	
Class D	50 to 499	(Potential water pollution hazard)
Class E	50 to 499	(No pollution hazard)

**Concentrated Animal Feeding Operation Permit Requirements**

Owners of Class A, Class B, Class C, Class D and Class E Concentrated Animal Feeding Operations are required to complete a permit application as follows:

1. A new concentrated animal feeding operation is proposed where one does not exist.
2. An expansion is proposed beyond what a current permit allows.
3. A cumulative expansion by 300 animal units, after January 20, 1998, of existing concentrated animal feeding operation that does not have a permit.
4. A change in ownership of a Class A or Class B concentrated animal feeding operation.
5. A change in ownership of a Class C or Class D or Class E if documented pollution problem exists.
6. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) or more years.
7. A signed complaint has been received by the County Zoning Officer or South Dakota Department of Environment and Natural Resources and after inspection reveals that the Concentrated Animal Feeding Operation is in violation of County or State regulations.

**Concentrated Animal Feeding Operation Control Requirements**

1. No Significant Contribution of Pollution

In general, no Concentrated Animal Feeding Operation shall be constructed, located, or operated so as to create a significant contribution of pollution.

2. State General Permit

Classes A and B Concentrated Animal Feeding Operations shall obtain a State General Permit pertaining to the animal species of the Concentrated Animal Feeding Operation. A County permit may be approved conditioned on receiving a State permit.

Classes C, D, and E Concentrated Animal Feeding Operations will be required to obtain a State General Permit if the following occur:

- a. If an earthen storage basin or lagoon is used for manure storage which is not prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer.
- b. The Board of Adjustment decides potential environmental impacts dictate a State permit.

### **3. Nutrient Management Plan**

Classes A, B, C, and D Concentrated Animal Feeding Operations are required to have a nutrient management plan. The applicant shall develop, maintain, and follow a nutrient management plan to ensure safe disposal of manure and protection of surface and ground water. The South Dakota Department of Environment & Natural Resources must approve the plan prior to land application of any wastes. Due to crop rotation, site changes, and other operational changes, the producer should update the plan annually to reflect the current operation and crops grown on the application sites. The applicant shall collect, store, and dispose of liquid and solid manure according to recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site are secondary to the proper and safe disposal of the manure.

A generic nutrient management plan that the applicant may use in developing a nutrient management plan is available from the South Dakota Department of Environment & Natural Resource. The generic nutrient management plan is based on application of nitrogen. The applicant may use other plans, provided the alternate plan contains all the information necessary to determine compliance with conditions of this general permit. Nitrogen, in addition to that allowed in the nutrient management plan, may be applied up to the amounts as indicated by soil or crop nitrogen test results that are necessary to obtain the realistic crop yield.

The South Dakota Department of Environment & Natural Resources recommends and encourages producers to develop nutrient management plans for other nutrients such as phosphorous and potassium. Over application of these nutrients may lead to water quality problems in area lakes and streams and result in potential damage to the producer's land and crop.

The applicant must maintain records to show compliance with the plan.

The plan must comply with County Manure Application Setbacks.

Land spreading agreements (for 5-year plan) shall be provided if applicant does not have minimum acreage to apply animal manure.

### **4. Manure Management and Operation Plan**

Classes A, B, C, and D Concentrated Animal Feeding Operations must submit a Manure Management and Operation Plan.

A. Plan must include:

1. The location and specifics of proposed animal manure facilities.
2. The operation procedures and maintenance of manure facilities.
3. Plans and specifications must be prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer. Waste treatment facilities will require inspection by an engineer and as-built plans to be submitted to the County Zoning Officer.
4. Animal manure shall not be stored longer than two years.
5. Manure containment structures shall provide for a minimum design volume of 270 days of storage.
6. Producers shall keep records on manure applications on individual fields which document acceptable manure and nutrient management practices have been followed. These records shall include soils test results for surface two feet of soil, actual and projected crop yields, nutrient analysis of manure, and information about date, rate and method of manure applications for individual fields.

B. As a condition of the permit, the Board of Adjustment may require the producer to participate in environmental training programs and become a certified livestock manager.

**5. Management Plan for Fly and Odor Control**

Classes A, B, C, and D Concentrated Animal Feeding Operations shall dispose of dead animals, manure and wastewater in such a manner as to control odors or flies. A management plan is required for submission of a permit. The Board of Adjustment will review the need for control measures on a site-specific basis, taking into consideration prevailing wind direction and topography. The following procedures to control flies and odors should be considered in a management control plan.

- A. Operational plans for manure collection, storage treatment and use must be kept updated and implemented.
- B. Methods to be utilized to dispose of dead animals should be included in the management plan.
- C. Plant trees and shrubs to reduce wind movement of odors away from buildings, manure storage ponds and/or lagoons.
- D. Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized.
- E. Store solid manure in containment areas having good drainage to minimize odor production.
- F. Remove manure from open pens as frequently as possible to minimize odor production.
- G. Consider use of covers on open storage systems for liquid manure systems to reduce odor production.
- H. Avoid spreading manure on weekends, holidays and evenings during warm season when neighbors may be involved in outdoor recreation activities.



- I. Avoid spreading during calm and humid days, since these conditions restrict the dispersion and dilution of odors.

**6. Required Setbacks and Separation Distance for New Concentrated Animal Feeding Operations and those Expanding by 300 or More Animal Units after January 20, 1998.**

	MINIMUMS			
	<u>CLASS A</u>	<u>CLASS B</u>	<u>CLASS C</u>	<u>CLASS D &amp; E</u>
Established Residences	2,640 feet	1,760 feet	1,320 feet	1,320 feet
Churches, Businesses and Commercially Zoned Areas, Planned Residential Districts	2,640 feet	2,640 feet	1,320 feet	1,320 feet
Madison City Limits	15,840 feet	15,840 feet	2,640 feet	1,320 feet
Ramona, Nunda and Wentworth Incorporated Municipality Limits, Town Districts, Sanitary District Boundaries	5,280 feet +440 feet for each 1000 AU over 2000 AU	5,280 feet	2,640 feet	1,320 feet
3 Private Wells other than the operator	2,640 feet	1,760 feet	1,320 feet	1,320 feet
Lakes and Streams classified as Waters of the State	500 feet	500 feet	200 feet	200 feet
Federal, State & County Road ROW Confinement	300 feet	300 feet	200 feet	200 feet
Federal, State & County Road ROW Open Lot	50 feet	50 feet	50 feet	50 feet
Township Road ROW Confinement	150 feet	150 feet	150 feet	150 feet
Township Road ROW Open Lot	50 feet	50 feet	50 feet	50 feet

Proposals for new Concentrated Animal Feeding Operations, on a site-by-site basis, shall be set back from adjoining property lines as determined by the Board of Adjustment.

## **7. Exemptions to Separation Distance Requirements**

- A. A Concentrated Animal Feeding Operation constructed prior to January 20, 1998, which does not comply with the distance requirements, which continues to operate, but is not expanded.
- B. A Concentrated Animal Feeding Operation structure which is expanded or constructed, if the title holder of the land benefiting from the distance separation requirement executes a written waiver with the title holder of the land where the structure is located, under such terms and conditions which the parties may negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the Register of Deeds in the county. The benefited land is the residence, commercial enterprise, bonafide religious institution, educational institution from which separation is required.
- C. A Concentrated Animal Feeding Operation constructed or expanded closer than the required separation distance within the corporate limits of a city, if the incorporated community approves a waiver which shall be stated in writing. The written waiver becomes effective only after recording with the Register of Deeds.
- D. A Concentrated Animal Feeding Operation structure which is located within any distance from an educational institution, commercial enterprise, bonafide religious institution, incorporated community, if the educational institution, commercial enterprise or bonafide institution was constructed or expanded or the boundaries of the incorporated community were expanded, after the date that the animal feeding operation was established. The date that the Concentrated Animal feeding Operation was established is the date on which the Concentrated Animal Feeding Operation commenced operating. A change in ownership or expansion shall not change the date of operation.

Each application for a new or expanded Concentrated Animal Feeding Operation (CAFO) will be reviewed by the Board of Adjustment on a site-specific basis. The Board of Adjustment reserves the right to increase the minimum required setbacks and separation distance on a site specific review, based on one or more of the following considerations.

- A. A concentration of CAFOs in the area exists or would occur which may pose an air or water quality concern.
- B. Due to topography and/or prevailing wind direction, additional setback and separation distance is appropriate to safeguard air or water quality.
- C. A Concentrated Animal Feeding Operation is in excess of 5,000 animal units.

## **8. Manure Application Setbacks**

- A. The following manure application setbacks apply to all classes of Concentrated Animal Feeding Operations.
- B. The Board of Adjustment may require liquid manure to be incorporated or injected in order to minimize air and water quality impacts.

- C. Requests for application of liquid manure by means of irrigation will be reviewed by the Board of Adjustment on a site-specific basis. Impact on air and water quality will be taken into consideration.

**COUNTY MANURE APPLICATION SETBACKS**

<u>CATEGORY</u>	<u>SURFACE OR IRRIGATION APPLIED</u>	<u>INCORPORATED OR INJECTED</u>
Lake, Rivers and Streams Classified as Waters of The State	300 feet	100 feet (lake) 50 feet (river & stream)
Streams and Lakes Classified as Drinking Water Supplies	1000 feet	300 feet
Public Roads	25 feet (surface) from right-of-way 300 feet (irrigation)	10 feet from right-of-way
Area of 10 or more Residences	300 feet (surface) 1,000 feet (irrigation)	300 feet
Public Wells	1000 feet	1000 feet
Private Shallow Wells	250 feet	250 feet
A Residence other than the Operator	300 feet (surface) 1,000 feet (irrigation)	300 feet
Natural or Manmade Drainage	200 feet	50 feet

**9. Standards for Conditional Use**

- A. The Board of Adjustment may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.
- B. The Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations additional conditions which the Board of Adjustment considers necessary to protect the public health, safety and welfare.
- C. Conditional uses shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are being adhered to.

- D. When considering an application, the Board of Adjustment will take into consideration current and past violations relating to Concentrated Animal Feeding Operations that the applicant has an interest in.
- E. Permit applicants will be required to file a letter of assurances as required by the Board of Adjustment. The letter of assurances will be prepared by the Zoning Officer and signed by both the applicant and the Zoning Officer. The permit for the Concentrated Animal Feeding Operation is based upon compliance with the regulations herein, and letter of assurances. Any violation of the regulations or non-compliance with the letter of assurances shall be cause for revoking a permit. Permit applicants will be notified by registered mail and a hearing before the Board of Adjustment shall either revoke the permit or set a time line for compliance. If compliance is not met, the permit shall be revoked and the permit holder ordered to cease operations. Permits and letters of assurances will be reviewed on an annual basis for compliance.

**10. Information Required for Class A and B Concentrated Animal Feeding Operation Permit.**

- A. Owner's name, address and telephone number.
- B. Legal descriptions of site and site plan.
- C. Number and type of animals.
- D. Nutrient management plan.
- E. Manure management and operation plan.
- F. Management plan for fly and odor control.
- G. Information on ability to meet designated setback requirements including site plan to scale.
- H. General permit from South Dakota Department of Environment & Natural Resources if available for animal species.
- I. Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources.
- J. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- K. Notification of whomever maintains the access road (township, county and state). Notification of public water supply officials.
- L. Any other information as contained in the application and requested by the County Zoning Officer.

**11. Information Required for Class C and D Concentrated Animal Feeding Operation Permit.**

- A. Owner's name, address and telephone number.
- B. Legal descriptions of site and site plan.

- C. Number and type of animals.
- D. Nutrient management plan.
- E. Manure management and operation plan.
- F. Management plan for fly and odor control.
- G. Information on ability to meet designated setback requirements, including site plan to scale.
- H. Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources if using lagoon or earthen storage basin.
- I. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- J. Notification of whomever maintains the access road (township, county and state). Notification of public water supply officials.
- K. Any other information as contained in the application and requested by the County Zoning Officer.

**12. Information Required for Class E, Concentrated Animal Feeding Operation Permit.**

- C. Owner's name, address and telephone number.
- D. Legal descriptions of site and site plan.
- E. Number and type of animals.
- F. Information on ability to meet designated setback requirements, including site plan to scale.
- G. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- H. Notification of whomever maintains the access road (township, county and state). Notification of public water supply officials.
- I. Any other information as contained in the application and requested by the County Zoning Officer.