BILLINGS COUNTY

NORTH DAKOTA

ZONING ORDINANCE

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ARTICLE I

INTRODUCTION

1.1 Title

This ordinance shall be known as "Zoning Ordinance, Billings County, North Dakota."

1.2 Authority

This ordinance is adopted under the authority granted by Chapter 11-33 and 11-33.2 of the North Dakota Century Code.

1.3 Purpose and Intent

The purpose of these regulations is to promote public health, safety, and the general welfare of the citizens of Billings County; to promote the orderly development of the county and to prevent conflict among land uses and structures; to regulate the use and division of land within the county and unincorporated territorial jurisdiction; to facilitate adequate provisions for water, sewer, transportation and other customary services to its county unincorporated communities; to protect existing properties against nuisances that interfere with the use and enjoyment of property, endanger personal health and safety, or is offensive to the senses; and to conserve and develop resources.

1.4 Interpretation

These regulations shall be held to be the minimum requirements. Whenever these requirements are at variance with other requirements, rules, regulations, deed restrictions, or covenants, the most restrictive shall govern, unless otherwise specifically stated.

1.5 Severability

If any part of these regulations is found to be invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected.

1.6 Repeal

The existing zoning ordinance together with any amendments thereto is hereby repealed.

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1.7 Effective Date

This ordinance shall be effective thirty (30) days following its adoption by the County Commission of Billings County.

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ARTICLE II

RULES AND DEFINITIONS

2.1 Compliance

No structure, land and building shall hereafter be used and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered without a building permit, and the same shall be in compliance with this ordinance.

2.2 Word Use

In the construction of this ordinance, the following words, rules, and definitions shall be observed and applied except when the context clearly indicates otherwise.

2.2.1 Words used in the present tense shall include the future.

2.2.2 Words used in a singular number shall include the plural; words used in the plural shall include the singular the singular.

2.2.3 Shall is a mandatory word and not discretionary.

2.2.4 May is a permissive word.

2.2.5 The word “lot” shall also mean “parcel”, “piece”, and “plat”.

2.2.6 The word “building” includes all structures and “structure” includes buildings.

2.3 Definitions

1) **Access** – The place or way by which pedestrians and vehicles have safe and suitable entrance and exit to a property.

2) **Accessory Building and Uses –** A subordinate building or portion of the main building the use of which is clearly incidental to and serves exclusively to the principal building or principal use and shall be located on the same zoning lot.

3) **Adult Bookstore –** An enclosed building having as a substantial or significant portion of its stock in trade books, magazines, or other periodicals that are distinguished or characterized by their emphasis on

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matter depicting or describing sexual activities or anatomic areas, such as genitals, breasts or buttocks.

4) **Adult Cinema –** An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of sexual activities or specified anatomical areas, such as genitals, breasts, or buttocks for observation by patrons in return for the payment of consideration, irrespective of the number of persons who may be able to view the presentation at one time.

5) **Adult Entertainment Facility** – An enclosed building wherein an admission is charged for entrance, or food or non alcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas, such as genitals, breasts, or buttocks.

6) **Adult Entertainment Cente**r – An adult bookstore, adult cinema, adult entertainment facility, or any combination thereof.

7) **Affected Area –** An area having a radius of one mile from a proposed change.

8) **Agriculture** – The process of producing food and fiber customary to the family farming operation with a minimum of 40 acres in area, excluding commercial feed lots and the processing and manufacturing of farm-based products.

9) **Alley** – A public way which affords only secondary access to abutting property.

10) **Allowed Uses** – Those uses, buildings or structures which comply with the requirements of specific zoning districts because of the similarities in nature and relationship to each other. Allowed uses are distinct from conditional uses in that they are authorized only if certain requirements of this ordinance are met after a public hearing and approval by the County Commission.

11) **Alteration** – As applied to a building or structure, a change, re-arrangement, relocation, or enlargement in the structural parts or in the existing facilities, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

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12) **Amendmen**t – Any change, revision or modification of the text of these regulations and the zoning district map.

13) **Animal Hospital or Kennel** – A building or premises set up for treatment and boarding of domestic animals including veterinary facilities.

14) **Animal Unit Equivalent** – A unitless number developed from the nutrient and volume characteristics of manure from a specific livestock type. The term animal unit is used to normalize the number of animals (e.g. head) for each specific livestock type which produce comparable bulk quantities of manure.

15) **Area of Special Flood Hazard** – The land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

16) **Basement** – That level of a building, partly underground with more than one-half of its height below grade.

17) **Base Flood** – The flood having a one percent chance of being equaled or exceeded in any given year.

18) **Bed and Breakfast Inn –** An establishment which provides overnight lodging to the public for compensation; caters to the traveling public; is located in the proprietor's residence; and serves only a limited breakfast to registered guests.

19) **Block** – A part of the platted area bounded by rights-of-way, intersecting streets and/or railroad.

20) **Building** – any structure designed or intended for shelter or protection of persons, animals or property.

21) **Building Area** – That portion of the zoning lot that may be occupied by the principal use, excluding the front, rear and the side yards.

22) **Building Height** – The vertical distance from the grade to the highest point of the roof.

23) **Building Line** – A line establishing the minimum distance from which structures must be placed from the lot lines or street right-of-way. For the purposes of this ordinance the building line is the same as the setback line.

24) **Certificate of Compliance** – A certificate stating compliance with this ordinance.

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25) **Club** – A facility at which any private branch, lodge, or chapter of a nonprofit association of persons gathers for the purpose of its members.

26) **Commercial Building** – Any structure which is not used for residential, medical, religious, industrial, or instructional purposes and which is constructed in compliance with the adopted building code.

27) **Commercial Feed Lot** – Any building, structure, enclosure, or premises used, designed or intended for the commercial feeding of 300 animals which is operated as a separate pursuit and not as incidental to farming on a given piece of land regardless of its size.

28) **Comprehensive Plan** – The Billings County Comprehensive Plan.

29) **Conditional Use** – A use of a special nature not automatically permitted in a zoning district and which requires a public hearing and review and approval by the County Zoning Inspector, the Planning and Zoning Board, or County Commission. It is a use which would not be appropriate in a particular zoning district, but which if controlled as to the number, location, or relation to the surrounding uses and the area, would be consistent with the purpose and the intent of these zoning regulations. A conditional use is permitted in a district specifically permitting it, subject to the approval of the County Commission and only when the commission finds that such use meets all applicable, including but not limited to those contained in this ordinance.

30) **County** – The Board of County Commissioners.

31) **Conforming Building or Structure** – A building or structure which complies with all requirements of this ordinance and other regulations adopted by the county.

32) **Development** – Any man-made change to improved or unimproved real estate, including but not limited to the construction of buildings, structures, or accessory structures, the construction of additions or alterations to buildings or structures, ditching, dredging, paving, excavation or drilling operations.

33) **Development Plan** – A document including maps and data for physical development of an area as provided by this ordinance.

34) **District Zoning** – A section or sections of Billings County for which regulations governing the use of building and premises, the building

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heights, the size of yards, lot area, lot width, and the use thereof are uniform.

35) **Dwelling** – Any building or portion thereof, used exclusively for human and other temporary occupancy habitation including single family units of no less than 900 square feet and multiple family units but not including hotels or motels, or vehicles designed for camping, such as vacation vehicles.

36) **Dwelling, Multiple Family** – A single building or portion thereof containing two (2) or more dwelling units.

37) **Dwelling, Single Family** – A building containing one (1) dwelling unit only.

38) **Dwelling Unit** – One or more rooms in a building designed for occupancy by one family for living purposes and having its own permanently installed cooking and sanitary facilities.

39) **Easement** – A right to the use of land for specific purposes, such right being held by someone other than the owner who holds title to the land.

40) **Encroachment** – Any fill, building, structure or use including accessory uses projecting into the required yard areas or public and private properties.

41) **Establishment** – A place of business for processing, production, assembly, sales, service of goods and materials.

42) **Extraterritorial Jurisdiction** – The extension of a city's zoning regulations to any quarter quarter section of unincorporated area within one-half mile of the corporate limits of the cities of Billings County subject to the provisions of NDCC 40-47-01.1.

43) **Family** – A group of one or more persons occupying premises and living as a single housekeeping unit as distinguished from a group occupying a boarding house, lodging house, or hotel as herein defined.

44) **Farm** – A zoned area of Billings County containing at least forty (40) acres, which is used for the production of agricultural crops or livestock, or raising, feeding or producing livestock, poultry, milk, or fruit. The term does not include the production of timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services. Feed lots which are operated as a separate pursuit shall be deemed commercial feed lots and shall not be construed as farming or incidental to a farming operation.

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45) **Farmer-** In order to be considered a farmer for the purposes of this code, the owner or tenant of the farm shall earn fifty-one (51) percent or more of his or her annual income from the operation of the farm.

46) **Flood or Flooding** – A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of rivers or streams and/or the unusual and rapid accumulation or runoff or waters from any source.

47) **Garage –** A building used as an accessory to a main building permitted in a residential district and providing for the storage of motor vehicles and in which no business, occupation or service for profit is conducted.

48) **Grade** – The land elevation at the horizontal intersection of the ground and the building.

49) **Gravel Pit** – Any mining and extraction of earth minerals for commercial or private sale.

50) **Highway** – Any public right-of-way designated as a state highway or a county road or highway.

51) **Home Occupation** – Any occupation which: (a) is carried on in a dwelling unit by members of the family; (b) is clearly secondary to the use of the residential dwelling units; and (c) does not create a nuisance, excessive noise, traffic, or conflict with adjoining uses.

52) **Hotel or Motel** – A building with lodging accommodations, either with or without meals which are provided for compensation.

53) **Improvements** – Street grading, surfacing, installation of sidewalks, curb, gutter, water, sanitary and storm sewer systems, culverts, bridges, and trees as may be required by the county.

54) **Industrial Districts** – The areas designated by the Billings County Commission to the District Zoning Map which provides for the grouping of manufacturing, assembly and heavy commercial activities.

55) **Industrial Waste** – All waste resulting from an industrial, manufacturing service or commercial activity that is managed as a separate waste stream and as defined by N.D.C.C. 23-29-03.

56) **Inert Waste** – Non-putrescent solid waste which will not generally contaminate water or form a contaminated lechate. Inert waste does not serve as food for vectors. Inert waste includes, but is not limited to

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construction and demolition material, such as metal, wood, brick, masonry, and concrete, asphalt concrete, tires and tree branches.

57) **Junk or Salvage Yard** –A business establishment or a place which is maintained, operated, or used for placing, storing, keeping, buying, or selling junk, including old or scrap paper, copper, brass, rope, rags, batteries, paper trash, rubber, debris, or waste or junked, dismantled, or wrecked automobiles or parts thereof or iron, steel, and other old or scrap ferrous or nonferrous material, or for the maintenance, use, or operation of an automotive graveyard.

58) **Kennel** – Any premises where dogs, cats, and other household pets are boarded, bred, and maintained for compensation.

59) **Landfill** – Specially selected, designed, and operated sites for disposal of solid waste in accordance with N.D.C.C. 23-29-03 and the provisions of this ordinance.

60) **Livestock** – Domestic animals customarily raised or kept on farms for profit or other purposes including fur bearing animals.

61) **Lot** – A parcel of land occupied or intended for occupancy by one main building together with its accessory buildings, and having its principal frontage upon a street or road, together with such open spaces and yards as required by this ordinance

62) **Lot Area –** The total horizontal area within the lot lines exclusive of streets, roads, and highways.

63) **Lot, Corner** – A lot abutting on two or more streets other than an alley at their intersection.

64) **Lot, Depth** – The mean horizontal distance between the front and rear lot lines.

65) **Lot, Double Frontage** – A lot having frontage on two non-intersecting streets as distinguished from a corner lot.

66) **Lot, Line** – The property line bounding a lot.

67) **Lot of Record** – A lot which is part of a subdivision, the map of which has been recorded in the office of the County Recorder of Billings County, or a parcel of land, the deed to which was recorded in the office of the County Recorder prior to the adoption of these regulations.

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68) **Lot Width** – Any average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot line.

69) **Modular Home (formerly manufactured home)** – A factory built dwelling unit, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site and which does not have permanently attached to its body or frame any wheel or axel and bears a label certifying that it was built in compliance with the latest standards adopted by the U.S. Department of Housing and Urban Development.

70) **Master Plan** – The comprehensive plan, or any portion thereof made and adopted by the planning commission in accordance with the laws of the state of North Dakota and regulations of the County of Billings indicating the general or specific locations recommended for streets, parks, public buildings, zoning districts and all other public improvements to include local policies and standards.

71) **MET Tower** – Temporary and permanent meteorological towers used for the measurement of wind speed.

72) **Mobile Home** – A structure which is: 1) eight body feet or more in width and thirty-two body feet or more in length; 2) transportable in one or more sections; 3) built on a permanent metal chassis; and, 4) designed to be used as a dwelling, with or without a permanent foundation and additions, when connected to the required utilities, including plumbing, heating, air conditioning and electrical systems. This term includes any manufactured home or factory built structure, transportable in one or more sections, which has at least 720 or more square feet and is designed as a year-round dwelling unit to be placed on a secure or a permanent foundation or basement. All mobile homes and manufactured homes must comply with the latest Manufactured Home Safety Construction and Safety Standards adopted by the U.S. Department of Housing and Urban Development. A recreational vehicle is not a mobile home.

73) **Mobile Home District** – The area designated by the Billings County Commission on the District Zoning Map for development of mobile home residential dwelling units.

74) **Mobile Home Park** – A tract of land designed and developed to accommodate mobile homes, each occupying a portion of the site which is purchased, leased or rented and each provided with the necessary utilities and other amenities so that the total development serves as a suitable environment for permanent residential occupancy.

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75) **NDCC –** North Dakota Century Code.

76) **Nonconforming Building** – Any building or structure which does not conform to any or all of this ordinance but existed at the time of the adoption of this code.

77) **Nonconforming Uses** – A use, building or structure existing at the time of the passage of these regulations or amendments thereto, which does not conform to these provisions.

78) **Outlot** – A plot of land devoted to and recorded as a single principal use which has proper road and utility access.

79) **Parking Space** – An off-street area designated for parking of automobiles accessible from a public street or alley and which shall be no less than nine (9) feet by twenty (20) feet.

80) **Permanent Foundation** – A wood or masonry foundation which extends below ground level and is set on footings. The footings may be concrete or gravel depending on soil conditions.

81) **Permitted Use** – Any use which complies with the requirements of a particular zoning district and does not require a conditional use permit.

82) **Permittee** – An individual, group of individuals, corporations, partnerships, joint venture, owners, or any other business entity, or combination thereof, that leases or owns the wind rights, wind turbines and the associated improvements, and all subsequent assignees and/or transferees of these rights, and that submits a Wind Energy Facility Siting Permit application, develops the Wind Energy Facility, and subsequently operates such facility.

83) **Person** – Any natural person, firm, partnership, association, social or fraternal organization, corporation, trust, estate, or government.

84) **Planning and Zoning Board** – the Billings County Planning and Zoning Board.

85) **Prohibited Use** – Any use or structure which is not allowed in a particular district. Any use not identified explicitly in this code shall be considered prohibited and shall not be allowed until incorporated through the amendment procedure.

86) **Public Way** – Any dedicated and recorded right-of-way including alleys, bikeways, sidewalks, streets, roads or highways.

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87) **Recreational Vehicle** – A vacation trailer or other vehicular or portable unit which is either self-propelled or towed and which is intended for human occupancy and is designed for vacation or recreational purposes but not permanent residential use.

88) **Recreational Vehicle Park** – A lot which is operated on a fee or other basis as a place for the parking of occupied recreational vehicles.

89) **Regional Flood** – A flood determined by the state and Federal Emergency Management Agency which is representative of large floods known to have occurred in Billings County, North Dakota.

90) **Residential District** – The areas dedicated by the county commission on the District Zoning Map for development of residential dwelling units.

91) **Right-of Way** – A strip of land designated or dedicated for public way, including streets, sidewalks, railroads, electric transmission lines, telephone and telecommunications lines, oil or gas pipelines, sanitary sewer, storm sewer, or water.

92) **Rotor Diameter** – The diameter of the circle formed by the swept area of the Wind Turbine's blades.

93) **Service Station** – Any building or premises where automotive fuels, automotive related services, lubricants, parts, and supplies are made available to the motorist.

94) **Setback** – The line within a property defining the required minimum distance between the front lot line and the building line.

95) **Sign** – Any emblem, name, identification, description or illustration which is used for outdoor advertising having a permanent location on the ground or attached to or painted on a building including bulletin boards, poster boards and billboards, but excluding real estate for sale signs, political campaign signs, and public information and traffic signs.

96) **Site Plan** – A detailed plan for making improvements to parcel(s) of land for the purpose of building and development as provided in this ordinance.

97) **Solid Waste** – Any garbage, refuse, sludge from a waste treatment plant, water treatment plant, or air pollution control facility and other discarded waste material, including solid, liquid, semi solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities. The term does not include

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1) agricultural waste, including manures and crop residues returned to the soil as fertilizers; or 2) solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to Permit Section 402 of the Federal Water Pollution Control Act, as amended, or source, special nuclear or the by-product material as defined by the Atomic Energy Act of 1954, as amended.

98) **Stable, Private –** A building used for the housing of animals for private recreational use.

99) **Stable, Public –** A building used for the housing of animals for sale to or use by the public for recreational purposes.

100) **Street** – A public right-of-way for vehicular and pedestrian traffic.

101) **Structure** – Anything constructed or erected, which requires permanent location on the ground excluding fences.

102) **Structural Alterations** – Any change in the supporting elements of a building or structure including bearing elements, partitions, columns, beams, girders, roofs, exterior walls and embankment.

103) **Subdivision –** The division of a lot, parcel of land, or tract , creating two or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale, rent, or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights-of-way, whether public or private, for access to or from any such lot, tract or parcel, and the creation of new or enlarged parks, playgrounds, plaza, or open spaces.

104) **Substantial Improvements** – Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 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 definition, “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.

105) **Temporarily Permitted Use** – A conditionally permitted use which has a definite time period as one of its conditions.

106) **Temporary** – Means one year or less.

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107) **Total Height** – When referring to a Wind Turbine, the distance measured from the ground level to the blade extended at its highest point.

108) **Variance** - A relaxation of the terms of these regulations 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, the literal enforcement of these regulations would result In unnecessary and undue hardship.

109) **Yard** – The Required open space on the zoning lot which is unoccupied or unobstructed by any portion of a structure from the ground upward.

110) **Yard, Rear** – A yard that extends across the full width of the lot, as the least distance between the rear lot line and the rear building line.

111) **Yard, Side** - A yard between the front and rear yards, as the least distance between the side of the principal building and the side lot line.

112) **Utility** - The basic facilities for public use such as water, sanitary and storm sewers, electricity, gas and telephone lines.

113) **Wind Energy Conversion System** – Any device that is designed to convert wind power to another form of energy such as electricity, mechanical or heat (also referred to by such common names as wind charger, wind turbine, and wind mill).

114) **Wind Energy Facility** – A facility directly generating electricity or indirectly generating electricity or energy through production of hydrogen, compressed air or other energy carrier from conversion of wind to energy and consisting of one or more wind turbines under common ownership or operating control, and includes substations, temporary and permanent MET Towers, cables/wires and other buildings accessory to such facility, whose main purpose is to supply electricity directly, or through wind energy conversion to another form of energy, to off-site customer(s).

115) **Wind Energy Facility Perimeter** – The boundary of the Wind Energy Facility as defined by the external property lines of landowners who have a contractual relationship with the Permittee and who will receive Wind Energy compensation payments or other forms of revenue derived from wind turbine sited within such Wind Energy Facility.

116) **Wind Energy Facility Siting Permit** – A construction and operating permit granted in accordance with the provisions of this Ordinance.

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117) **Wind Turbine** – A wind energy conversion system which converts wind energy into electricity, hydrogen, compressed air, or some other energy carrier and includes the turbine, blade, tower, base and pad transformer, if any; provided that such a system shall only be a wind turbine for the purposes of 6.12, if it has a nameplate capacity of 100 kilowatts or greater. wind turbines of less than 100 kilowatts will be regulated as a utility.

118) **Zoning District** – Those areas of the county to which regulations governing the use of lands, buildings, and structures, including the height of buildings, the size of yards, lot area, lot width, uniformly apply.

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ARTICLE III

GENERAL PROVISIONS

3.1 Jurisdiction

These regulations shall apply to all unincorporated areas of Billings County except those areas where the incorporated cities have elected to exercise extraterritorial zoning as authorized by Section 40-48-18, NDCC.

3.2 Compliance with Ordinances, Statutes, Regulations and Plans

No building, structure or land shall hereafter be occupied unless in conformity to this ordinance and:

1) The provisions of the North Dakota Century Code.
2) The North Dakota Administrative Code; and
3) The Comprehensive Plan of Billings County.

This ordinance shall not prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming.

3.3 Exceptions

These regulations shall not apply to the land and buildings for agricultural uses, as herein defined, except for setbacks from roads and flood plain regulations.

3.4 Non Conforming Uses

The lawful use of a building or premises on or before the date of the adoption of this ordinance may be continued. Where a non-conforming use is discontinued for a period of more than eighteen (18) consecutive calendar months any subsequent use or occupancy of such premises shall conform to this ordinance. Whenever a building is destroyed or damaged by fire or other casualty to the extent of more than fifty (50) percent of its market value it shall not be restored unless such building shall conform to the provisions of the district in which it is located. Non-conforming uses shall not be expanded to occupy a larger area of land than existed at the date of the adoption of this ordinance unless there is an undue hardship and such expansion is approved by the Commission.

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3.5 Land Suitability

No land shall be used for seasonal or permanent non-farm uses because of inadequate drainage, soil limitation, flooding or incompatible land use, or any other condition likely to be harmful to the health and safety of the area residents and the public.

3.6 Conditional Uses

Where a use is classified as a conditional use under this ordinance and exists at the date of the adoption of this ordinance, it shall be considered an allowed use. Where a use is not allowed as a conditional use or permitted use, under this ordinance, and exists at the date of the adoption of this ordinance, it shall be considered non-conforming and shall be subject to the provisions of Section 3.4.

3.7 Highway Access

1) The points of access to any highway shall be limited to four (4) per mile per side of the highway.

2) Additional access points may be provided via frontage roads where the land owner shall dedicate a suitable right-of-way by deed or easement.

3.8 Highway Setbacks

1) The minimum set back for buildings from the centerline of all section lines and the center line of county road shall be one hundred three (103) feet.

2) The minimum setback for buildings from the centerline of all state highways shall be two hundred fifty (250) feet.

3) The minimum set back for tree plantings from all section lines and the center line of county roads shall be one hundred three (103) feet.

3.9 Residential Development

No lot shall contain more than one principal single family residential building, and no dwelling unit shall be built on a lot which does not abut a dedicated public right-of-way. Accessory buildings shall be smaller than the principal building and shall be limited to fifteen (15) feet in height and be located at least ten (10) feet from all lot lines.

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3.10 Dedication of Land for Streets

Whenever a parcel of land to be subdivided as a subdivision contains a street or public right-of-way, such street or public right-of-way shall be dedicated to the public at the location and details shown on the final plat. All non-section line rights-of-way shall be the responsibility of the subdivision.

3.11 On Site Sewer System

To protect the public health, to control water pollution, and to reduce nuisance and odor, all new subdivision development within the county shall be connected to an approved on site sewage system.

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ARTICLE IV

ZONING DISTRICTS

4.1 Zoning Districts

The following zoning districts are hereby established to carry out the purposes of this ordinance:

5.1 Agricultural District
5.2 Residential District
5.3 Recreation District
5.4 Commercial District
5.5 Industrial District
5.6 Hillside and Ridgeline Overlay District

4.2 Zoning Map

The location and boundaries of the zoning districts are hereby established as shown on the map entitled “Zoning District Map" on file in the office of the County Auditor. The County Zoning Administrator shall regularly update the map to show any changes in the zoning district boundary line resulting from amendments.

4.3 Location of District Boundaries

The following rules shall apply to the boundaries of the zoning districts as shown on the Zoning District Map.

1) Where zoning district boundary lines follow streets, highways, roads, railroad right-of-way, alleys, and extensions thereof, such boundary lines shall be the center lines, streets, highways, roads, railroad rights-of-way or alleys unless clearly shown to the contrary.

2) Where a zoning district boundary line coincides approximately, but not exactly, with a lot line, the zoning district boundary shall be construed to be the lot line at that location. All section lines, quarter section lines, and quarter quarter section lines may be construed as the property lines.

3) Where any uncertainty exists as to the exact location of zoning district boundary lines, the Commission shall determine the location of such boundary lines.

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ARTICLE V

ZONING DISTRICT REGULATIONS

5.1 Agriculture District - Purpose

The Agricultural District is established to encourage preservation and protection of agricultural lands and to discourage uses incompatible with agricultural operations or detrimental to agricultural lands.

5.1.1 Permitted uses

a) All types of farming and ranching operations including dairying, livestock, poultry raising, apiaries, fur farming, and truck gardening.

b) Truck gardening, nurseries, greenhouse and roadside stands offering for sale only those farm products which have been grown on the premises.

c) Accessory buildings and structures necessary to the operation of farms or ranches.

d) Animal hospitals and clinics, provided they are not located nearer than five hundred (500) feet from any residence except the residence of the owner operator.

e) Cemeteries.

f) Churches and related facilities.

g) Grain elevators and accessory structures.

h) Home occupations.

i) Public parks and recreational facilities, wildlife and game management areas and refuges.

j) Public and parochial schools.

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k) Oil and Gas Exploration

No person, partnership, association, corporation shall engage in the exploration for oil or gas within the County without first providing to the Zoning Administrator evidence of compliance with the provisions of NDCC Chapters 38-08 and 38-08.1

l) Oil and Gas Drilling and Production

Oil and gas drilling and production is a permitted use in the Agricultural District provided the person engaged in such oil and gas drilling and production has met the following requirements:

1) Provide the County Zoning Administrator with evidence of approval by the North Dakota Industrial Commission of all permits required by NDCC chapters 38-08 and 38-08.1, including but not limited to, drilling permits of any kind, underground injection permits, tank cleaning permits, waste storage permits, and treating plant permits.

2) Provide the County Zoning Administrator with evidence of approval by the North Dakota Industrial Commission of a surety bond or cash bond, or alternative form of security, where such security is required by the North Dakota Industrial Commission.

3) Obtain a County Road Approach Permit from the County Zoning Administrator.

   a. The County Zoning Administrator shall charge each applicant for a County Road Approach Permit a fee, the amount of which is to be determined by the Commission, to cover processing and administrative expenses, plus any mileage and expenses of the County Zoning Administrator at the rate allowed county officials by state law, should it be deemed necessary to conduct on-cite inspections. Said fee or expenses, if any, must be paid prior to the approval and issuance of the County Road Permit.

   b. The County Zoning Administrator, in reviewing any application for a County Road Approach Permit, shall consider all relevant criteria, including the proposed use and the condition of the county roads and bridges at the time of the application, public safety concerns, maintenance costs to the county, weather conditions, etc.

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5.1.2 Conditionally Permitted Uses

a) Commercial feedlots subject to the provisions of Section 6.3.

b) Commercially operated air landing strip and landing field.

c) Manufacturing and processing of agricultural resources and products indigenous to the County but not including rendering plants, fertilizer plants and the like.

d) Solid waste disposal facilities subject to the provisions of Section 6.4.

e) High voltage transmission lines and accessory buildings used for the primary purpose of transmission of electrical energy from one area to another. These provisions shall not apply to those transmission lines which directly serve the county.

f) Transmitting towers and relaying stations and pipelines.

g) Coal Exploration.

An applicant for a coal exploration conditional use permit shall meet the following requirements:

1) Provide the County Zoning Administrator with evidence of approval by the North Dakota State Industrial Commission and the State Geologist of a permit for coal exploration.

2) Provide the County Zoning Administrator with evidence of approval by the North Dakota Industrial Commission and the State Geologist of a surety bond or cash bind, or alternative form of security, where such security is required by the North Dakota Industrial Commission.

3) Upon completion, the operator shall file with the County Recorder, the actual location of the testing.

4) The duration of the conditional use permit for coal exploration shall not exceed 90 days.

h) Coal Mining

The provisions of this section shall not apply to excavation or mining of coal by the County.

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An applicant for a coal mining conditional use permit shall meet the following requirements:

1) Provide to the County Zoning Administrator a copy of all non-confidential information that was submitted to the North Dakota Public Service Commission concerning site operations, locations, ownership patterns and cite reclamation.

2) Provide the County Zoning Administrator with evidence of approval, where approval is required by state law, by the North Dakota Public Service Commission of the proposed mining operations.

3) Conform to all state and federal laws relating to the preservation, removal or relocation of historical or archaeological artifacts and to reclamation of strip mined lands.

4) Post performance bond for reclamation of the site, with the County Auditor, if not already posted with the state.

i) Other Subsurface Mineral Exploration

An applicant for a subsurface mineral exploration conditional use permit shall meet the following requirements:

1) Provide to the County Zoning Administrator evidence of approval by the North Dakota State Industrial Commission and the State Geologist of the proposed subsurface mineral exploration.

2) Provide to the County Zoning Administrator with evidence of approval by the North Dakota State Industrial Commission and State Geologist of any surety bond or cash bond, or alternate form of security, where such security is required by the North Dakota Industrial Commission.

3) The duration of a subsurface mineral exploration conditional use permit shall be no more than 90 days.

4) Upon completion of the operations, the operator shall file with the County Recorder the actual location of testing.

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j) Other Subsurface Mineral Mining

An applicant for a subsurface mineral mining conditional use permit shall meet the following requirements:

1) Provide the County Zoning Administrator with a copy of all non-confidential information that was submitted to the North Dakota Industrial Commission and the State Geologist concerning site operations, site reclamation, location, and ownership patterns.

2) Provide the County Zoning Administrator with written evidence of approval by the North Dakota Industrial Commission and the State Geologist for the proposed mining or excavation operation, if such approval is required by state law.

3) Conform to all state and federal laws relating to the preservation, removal, or relocation of historical or archaeological artifacts and to reclamation of strip-mined lands.

4) Post a performance bond for reclamation of the site, with the County Auditor If not already posted with the State.

k) Excavation and Mining of Sand, Gravel, Rock, Stone, Scoria, and Clay

All mining and excavation sites shall be located so as to protect and preserve agricultural land and to minimize the traffic, noise, dust, fumes, and vibration impact on adjoining uses. The provisions of this section shall not apply to any excavations for agricultural purposes or for uses requiring less than 5,000 cubic yards of aggregate.

An applicant for a conditional use permit to excavate or mine sand, gravel, rock, stone, scoria, or clay shall meet the following requirements:

1) Provide the County Zoning Administrator with a site plan for operation and reclamation of the mined land, including maps showing the location of the land to be mined; the location of roads and points of access to the site; maps showing the

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existing and proposed contours after the land is mined; and a time table for operation of the site.

2) Provide the County Zoning Administrator with evidence of written agreement between the applicant and property owner that excavation or processing shall not take place within three hundred (300) feet of an adjacent property line or within five hundred (500) feet of an existing residence.

3) Conform to all requirements regarding preservation, removal or relocation of historical or archaeological artifacts.

4) Demonstrate compatibility with the existing landform including the vegetation, surface, and ground water resources.

5) All mining and excavation sites must have at least a 1 to 3 slope.

6) Provide the County Zoning Administrator with written evidence of a reclamation agreement between the applicant and the surface owner.

7) Reclamation of the site shall be completed within one year of the resource being exhausted, abandoned, or closure of the operation of the site. All top soil shall be replaced and planted to natural protected vegetation.

8) Post bond as follows:

0 - 19 acres	no bond
20 – 39 acres	$ 50,000
40 + acres	$100,000

I) Mobile Homes (Manufactured Homes)

1) Mobile homes on permanent type of foundations on five acres or more.

2) Temporary mobile homes belonging to less than full time or non-farm employees provided the mobile home is located within the proximity of an occupied farmstead and is attached to the farmsteads existing sewer and water systems.

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m) Single Family Non-Farm Residence on 5 (five) acres or more.

n) Wind Energy Facilities.

o) Hotels, Motels, and Hunting Lodges.

p) Bed and Breakfast Inns.

q) Restaurants.

5.2 Residential District - Purpose

The residential district is established to promote a suitable residential environment uninterrupted by conflicting uses and incompatible activities in unincorporated communities.

5.2.1 Permitted Uses:

a) Single family dwelling units..

b) Churches, schools and related facilities.

c) Public parks and playgrounds.

d) Public libraries, museums, and community centers.

e) Fire and police stations.

f) Home occupations.

g) Childcare facilities.

5.2.2 Conditionally Permitted Uses:

a) Multi-family dwelling units provided that public water and sewer systems are available or the dwelling units are within the existing platted areas where public water and sewer systems are likely to be installed.

b) Mobile home parks, provided the following requirements are satisfied:

1) The applicant has submitted a site plan showing the location of streets, utilities, off-street parking, driveways, walkways,

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blocks, lots, playground and park area, accessory buildings to be used for all mobile home park residents.

2) The mobile home park contains a minimum of 5 acres of land.

3) The maximum number of mobile homes in a mobile home park shall be no more than 5 units per gross acre.

4) The Commission approves access to and from the mobile home park via county roads.

5) Each mobile home is placed on a lot at least 60 feet wide and has a minimum area of 6,000 square feet.

6) A minimum of 12 percent of the mobile home park area shall be allocated for open space and recreational facilities.

7) Each unit is firmly anchored to avoid accidental movement and overturning.

8) All lots in the mobile home park are accessible to emergency vehicles.

9) Each unit lot shall have a minimum setback of 10 feet within the park and 50 feet from public roads outside of the park.

10) Each unit lot shall have a minimum side yard of 10 feet.

11) Where the mobile home park is served by private streets those streets shall conform to the design standards recommended by the Commission.

12) Evidence of compliance with the rules and regulations of North Dakota Department of Health.

13) All units in the mobile home park are served by underground utilities unless waived by the Commission.

14) There shall be two off-street parking spaces per unit.

c) Mobile homes on permanent type foundations on platted lots, provided they are placed on a permanent foundation or properly anchored basement made of concrete and wheels and hitches

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must be removed. Loose blocks shall not constitute a permanent foundation.

d) Public facilities including public water and sewage treatment lagoons.

e) Bed and Breakfast Inns.

f) Recreational vehicles or mobile homes to be temporarily used as a residence during the construction of a residence upon a site, provided no recreational vehicle or mobile home is used as a temporary residence for longer than one year from the date of the issuance of the building permit.

g) Long term care and group home facilities.

5.2.3 Lot Area

a) The minimum lot area for single family dwelling units, in areas where public water and sewer are not available, shall be 20,000 square feet provided that the site meets the minimum standards for on site sewage disposal by North Dakota State Health Department. The minimum lot width shall be one hundred (100) feet and lot depth two hundred (200) feet.

b) The minimum lot area for single family dwelling units in areas where public water and/or sewer are available shall be 12,750 square feet provided the lot has a minimum lot width of eighty-five (85) feet.

c) The minimum lot area for multi-family units shall be the same as those for single family units, provided however, that an area of not less than 2,500 additional square feet shall be required for each dwelling unit over one in number in multi-family structures.

5.2.4 Yards

a) Each front yard must have a minimum depth of 75 feet.

b) Each side yard must have a minimum width of 10 feet.

5.2.5 Off-street Parking:

a) For residential uses two parking spaces for each dwelling unit.

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5.3 Recreational District - Purpose

The Recreational District is established to preserve areas for developed recreational activity and residency around rivers, lakes, and other water courses and mountain areas where development is controlled in order to maintain the quality of the environment.

5.3.1 Permitted Uses:

a) Public parks and outdoor recreation facilities.

b) Churches, schools and related facilities.

c) Hunting, fishing and trapping.

d) Game animals, waterfowl, and fish farms.

e) Harvesting of any natural crops.

f) Ski slides and resorts.

g) Public utility and other transmission lines.

h) Accessory buildings or structures to any permitted uses.

i) Golf course, golf driving range, miniature golf course, go-cart track, or race track provided:

   i) The same not be constructed within 500 feet of a residential district; and

   ii) Any floodlights used to illuminate the premises are so directed and shielded as not to be an annoyance to any developed residential property, highways and streets.

5.3.2 Conditionally Permitted Uses:

a) Recreational vehicle parks, and campgrounds.

   The applicant shall meet the following requirements to obtain a permit:

   1) The minimum area for a campground shall be five (5) acres and maximum number of recreational vehicles per gross acre shall be fifteen (15) units.

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2) Submit a site plan showing the boundary of property, topographic information with contour intervals of no more than 5 feet; arrangement of streets, drives and access roads; location of service buildings; location and dimension of camp sites; location of sanitary facilities; location of water supply.

3) Submit proof of compliance with any applicable requirements of North Dakota Department of Health.

4) Obtain approval from the Commission for ingress and egress to the property.

b) Single family dwelling units, cabins and summer residences on a minimum of 5 acres of land.

c) Amusement parks.

d) Refreshment stands.

e) Commercial campgrounds and recreational vehicle parks.

f) Restaurants.

g) Agriculture

5.4 Commercial District - Purpose

The Commercial District is established to accommodate the concentration of commercial and related uses. Commercial uses must be compatible with adjoining uses and shall not negatively affect the adjoining properties.

5.4.1 Permitted Uses:

a) Dry Cleaning, pressing, tailor shops and laundromats.

b) Electrical and plumbing shops.

c) Lumber yards.

d) Professional offices including banks, insurance offices, real estate offices, medical clinics, newspapers and law offices.

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e) Retail and service establishments, including but not limited to, grocery, pharmacies, hardware stores, clothing stores, furniture stores, bakeries, restaurants, taverns, automobile service station, used and new car lots, print shops, barber and beauty shops, and sales and service of appliances.

f) Sales and service of farm implements.

g) Amusement places including bowling alleys, athletic clubs, pool halls and similar indoor facilities.

h) Automobile dealerships.

k) Hotels and motels.

5.4.2 Lot Depth

The minimum lot depth in any commercial district shall be at least fifty (50) feet.

5.4.3 Off-street parking

Each commercial establishment shall provide off-street parking as follows:

a) A ratio of one to one for rolling equipment.

b) A ratio of one per employee for visitors and customers.

5.4.4 Conditionally Permitted Uses

a) Residential uses only in areas not fronted by a state highway.

b) Contractor's yard and operations.

c) Processing and packaging of materials and agricultural products.

d) Warehouses and wholesale dealerships.

e) Commercial grain bins or related activity.

f) Private membership clubs and lodges.

g) Small animal veterinary hospitals and kennels.

h) Dairy, locker plant.

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i) Recycling facilities.

5.5 Industrial District - Purpose

The Industrial District is established to provide convenient access for the manufacturing and processing of the natural resources of the County and also to accommodate those uses which because of land requirements or unique features are most suitable in unincorporated areas.

5.5.1 Permitted Uses:

a) Lumber yards.

b) Manufacturing of clay and concrete products.

c) Repair and storage of heavy equipment and machinery.

d) Sewage treatment facilities.

e) Truck or freight terminal.

f) All uses permitted in commercial district except residential.

g) Public utility buildings including water and waste water facilities and accessories.

h) Petroleum storage facilities.

i) Warehouses.

j) Cement and ready mix facilities.

k) Any industrial or manufacturing operation providing that: (a) dust, fumes, odors, smoke, vapor, noise, lights, and vibrations shall be confined within the industrial district, and (b) outdoor storage, equipment and refuse areas shall be concealed from view of abutting rights-of way.

l) Recycling facilities.

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5.5.2 Conditionally Permitted Uses

a) Coal gasification and liquefaction plants.

b) Electric power generating plants, transmission lines and accessory structures.

c) Exploration, drilling, excavation and mining for, coal, sand, gravel, clay and other subsurface minerals as provided by Sections 5.1.2, subsections g, h, l, and k respectively of this ordinance.

d) Fuel and bulk storage plants.

e) Oil refineries and petrochemical plants.

f) Radio, television and microwave towers.

g) Salvage and junk yards.

h) Adult entertainment centers.

i) Noxious waste disposal sites.

j) Wind energy facilities.

5.5.3 Off-Street Parking

Adequate off-street parking shall be provided for employees and customers of establishments in the Industrial District.

5.5.4 Performance Standard

a) A buffer strip acceptable to the Commission, consisting of fences, trees, and/or bushes, shall be provided between districts and establishments in the district.

b) The open storage of material, including waste products or salvage shall not be permitted closer than one hundred (100) feet from any residence. All combustible material shall be stored in such a way to permit free access to firefighting equipment.

5.5.5 Lot Area, Width, and Yard Requirements

a) The minimum lot area for the industrial district shall be two (2) acres.

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b) The minimum lot width shall be 1,250 ft.

c) There shall be at least 200 ft. setback from the centerline of the front public road or access.

d) The minimum rear building line, measured from the rear lot line, shall be 200 ft.

e) The minimum side building line, measured from the side lot line, shall be 200 ft.

f) No building or structure shall be located within 1,250 ft from the boundary of any residential district.

5.6 Hillside and Ridgeline Overlay District – Purpose

The Hillside and Ridgeline Overlay District is established to preserve the natural character, visual quality and aesthetic value of ridgelines and hillsides and to protect the residents and visitors to the County from the potential hazards of unregulated development on hillsides. The requirements of this Section are in addition to those established for the underlying zoning district in which a parcel is located, including permitted and conditional use restrictions.

5.6.1 Applicability of Hillside and Ridgeline Guidelines.

The provisions of this section shall apply to any application for a land use permit or subdivision on land that meets either of the following two conditions:

(1) Any portion of the building envelope that includes slopes in excess of fifteen (15) percent;

(2) Land that is located on or within fifty (50) vertical feet of the elevation of any prominent ridgeline. Lands that meet either of these two provisions are herein referred to as hillside land or ridgeline land, respectively.

5.6.2 Prominent Ridgeline Defined

A prominent ridgeline shall be defined as any ridgeline, as viewed from any point along a designated major roadway corridor which create a

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silhouette with the sky.The currently designated major roadway corridors are Interstate 94, including all business loops and US Highway 85, and all county roadways. Other potential major roadway corridors from which to identify prominent ridgelines, whether existing or proposed at the time a subdivision or land use permit application is submitted, may be designated by the Planning and Zoning Board during the development review process. These new major roadway corridors shall then establish view points from which to identify prominent ridgelines.

5.6.3 Determination of Prominent Ridgeline

The determination of prominent ridgelines and any major roadway corridor in addition to currently designated major roadways shall be made by the Planning and Zoning Board. The presence of a prominent ridgeline or the designation of additional major roadways may influence the planning and design of a development proposal. For this reason, applicants are strongly encouraged to request such determinations prior to submitting subdivision pre-application plans and land use permit applications.

a) A request for a staff determination of prominent ridgelines or additional major roadway corridors shall be made by the applicant and shall be accompanied by a survey, U.S.G.S. Topographic Map or other graphic information as necessary to indicate the general location of the proposed development. The Planning and Zoning Board shall make its determination based on material submitted by the applicant and a site visit to the proposed development site. In the event that prominent ridgelines or additional major roadway corridors are identified by the staff, such ridgelines or roadway corridors shall be indicated on the graphic material submitted by the applicant. Appeals of any staff decisions may be made in accordance with procedures outlined in this Ordinance.

5.6.4 Slope Defined

Slope shall mean the inclination of land determined by dividing the horizontal run of the slope into the vertical rise of the same slope and converting the resulting figure into a percentage. The presence of slopes in excess of fifteen (15) percent shall be determined based on a slope analysis of the subject parcel completed by the applicant. The presence of slopes in excess of fifteen (15) percent may influence the planning and design of a development proposal. For this reason, applicants are strongly encouraged to complete a slope analysis of the subject parcel prior to submitting subdivision sketch plan applications or land use permit applications.

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5.6.5 Setbacks on Hillside Property

The required setbacks for existing parcels as of the date of the adoption of this code within any given district may be waived if it is determined by the County Zoning Administrator that no suitable building site is available due to the presence of slopes in excess of fifteen (15) percent. Any request for waive of a required setback must be accompanied by proof of slopes in excess of fifteen (15) percent and justification provided by the applicant that all reasonable efforts have been made to design a structure which complies with setback requirements.

5.6.6 Application for Land Use Permits on Hillside and Ridgeline Land

The following review process, design standards, review criteria and variance provisions shall apply for all land use permit applications for hillside or ridgeline land.

a) Review Process for Land Use Permits on Hillside and Ridgeline Land. The review of land use permit applications will be administered by the Planning and Zoning Board in accordance with this Ordinance. Upon submittal of a land use permit application on hillside or ridgeline land, the Planning and Zoning Board shall review the application for compliance with design standards and review criteria outlined in this section, Appeals of staff decisions shall be considered in accordance with the procedures outlined in the Administration section of this Ordinance.

b) The following material shall be submitted in conjunction with a land use permit application on a hillside or ridgeline land:

1) Topographic survey of the building envelope prepared by a land surveyor. The building envelope shall be defined to include that portion of each lot within which all improvements must be located. Improvements shall include all buildings and garages. Decks, patios, terraces, retaining walls, fences, recreational facilities and site access may be located outside of the building envelope. The topographic survey shall be drawn at a scale of 1”:20’ or greater and the contours shall be indicated at two-foot intervals. The survey shall also indicate easements, existing drainages, mature stands of trees with eight inch or greater caliper and approved building envelope (if applicable).

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2) Slope analysis indicating the percent slope of the portion of the lot on which all development and site improvements are located.

3) Site plan at a scale of 1”:20’ or greater indicating the location of all proposed structures, site access, retaining walls and other site improvements.

4) Building elevations indicating exterior wall materials roof material, heights of roof ridges, and existing grades, and proposed finished grades around all structures.

5) Construction/site disturbance plan indicating proposed limits of construction, methods for protecting existing vegetation and locations for storage of construction material and equipment, trailers, dumpsters and sanitary facilities.

6) Grading and drainage plan drawn at the same scale as the site plan indicating all proposed re-grading, cross-sections of all proposed cuts and fills, heights of all proposed retaining walls, and proposed site drainage.

7) Erosion control plan indicating all proposed measures to control surface water run-off, retain eroded soil material during construction and permanently stabilize disturbed slopes and drainage features upon completion of construction.

8) Photo overlays or other visual tools to demonstrate the visual impact of the proposed development.

c) The extent of the areas indicated on the topographic survey, slope analysis, landscape plan, grading and drainage plan, erosion control plan and construction plan may be limited to only those portions of the building envelope where development and site improvements are proposed. At a minimum, such plans shall include portions of the site within one hundred (100) feet of all proposed development and site improvements and any other portion of the site as may be necessary to evaluate the land use permit.

d) If warranted by the nature of the proposed development, the presence of unique site characteristics or other considerations, the Planning and Zoning Board may modify or waive any of the submittal requirements listed above.

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5.6.7 Design Standards for Land Use on Hillside Land

All development and site modifications proposed on the land use permit application on hillside land shall comply with each of the following design standards:

a) No buildings shall be located on portions of a lot in excess of 25 percent slope.

b) Building height shall not exceed 33 feet on buildings with a sloping roof and 30 feet for buildings with a flat roof, as measured vertically from the average elevation of the proposed finished grade at the front of a building to the highest point of a flat roof, the deck line of a mansard roof and the mean height between the eaves and ridge for gable, hip and gambrel roofs.

c) All buildings shall be located within an approved building envelope (if applicable).

5.6.8 Review Criteria for Land Use Permits on Hillside Land and Ridgeline Land

The following design criteria shall be used by the Planning and Zoning Board to evaluate land use permit applications on hillside land. It shall be the burden of the applicant to demonstrate that proposed development complies with the following criteria, that one or more of the criteria are not applicable, or that a practical solution consistent with the purpose of this section has been achieved. The Planning and Zoning Board shall act on applications by either approving, approving with conditions or denying the application based on compliance with the following criteria:

a) Buildings, site improvements and driveways shall be sited and designed to minimize the loss of vegetation and the need for site grading, cuts and fills, and retaining walls.

b) Buildings shall be designed to bench into hillsides and building level changes shall be accomplished by stepping the building with the natural contours of the site.

c) Existing vegetation and natural topography of a site shall be incorporated into the design and siting of buildings, site improvements and driveways in order to minimize their visibility from roadways within the district and to integrate improvements with the natural characteristics of the site.

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d) Site grading shall be designed to blend with the natural contours of the site by feathering all cuts and fills into existing natural grades. Overlot grading of a site to create a flat building site is not permitted.

e) If warranted by site conditions, the use of retaining walls is encouraged in order to minimize grading, preserve existing plant materials and reduce overall site disturbance. Retaining walls visible from roadways or adjacent properties shall not exceed six feet in height. Retaining cuts in excess of six feet shall be accomplished by two or more retaining walls. In such cases, retaining walls shall be separated by a minimum of two feet in order to allow for the introduction of landscape materials.

f) Driveways shall be constructed in such a fashion to allow access (ingress and egress) to all emergency vehicles. Driveways shall be designed follow existing contours to the extent possible and be designed to minimize the loss of vegetation and the need for grading and cuts and fills. Appropriate driveway standards may vary depending on site specific considerations. Generally, driveways should not exceed 10 percent slope and 14 feet in width. In order to facilitate re-vegetation, cut and fill slopes should be re-graded to no more than a 3:1 slope. Re-graded slopes in excess of 3:1 slope may be approved if steeper slopes will minimize site disturbance and preserve existing vegetation.

g) It is recommended that the color of exterior walls, roofs and retaining walls shall be limited to muted earth tones. Such colors should be selected to blend buildings and improvements with the terrain and vegetation of the surrounding landscape. All roofs shall be constructed of non-reflective materials.

h) Exterior lighting shall include horizontal cutoffs and be designed and located in a manner that minimizes the impact of direct light sources on adjacent properties, rights-of-way and roadways. Lighting shall be limited to low-level down lighting necessary to illuminate driveways, walks and entryways for safety and security purposes. Up-lighting of trees or structures is not permitted.

i) The re-vegetation and erosion control plans shall provide appropriate measures for short-term soil stabilization and control of site drainage and the long-term restoration of disturbed areas of the site.

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j) Structures and site improvements shall be designed in accordance with soils and slope suitability analyses (if applicable).

k) The construction/site disturbance plan shall limit site disturbance to an area of the site no larger than necessary to develop the site in accordance with approved plans and shall include on-site measures necessary to limit disturbance of the site and protect existing vegetation.

5.6.9 Design Standards for Land Use Permits on Ridgeline Land

All development and site modifications proposed by the land use permit application on ridgeline land shall comply with each of the following design standards:

a) No part of any structure or site improvement shall break the silhouette created by the prominent ridgeline and the sky. For the purposes of these guidelines, a canopy of existing trees located on the top of a ridgeline shall be considered a part of the prominent ridgeline.

b) Building height shall not exceed 33 feet on buildings with a sloping roof and 30 feet for buildings with a flat roof as measured vertically from average elevation of the existing grade or finished grade (whichever is the more restrictive), at the front of a building to the highest point of a flat roof, the deck line of a mansard roof and the mean height between eaves and ridge for gable, hip, and gambrel roofs.

c) All buildings shall be located within an approved building envelope (if applicable).

5.6.10 Variances for Land Use Permits on Hillside Land

Variances to Section 5.7.9 Design Standards for Land Use Permits on Hillside Land shall be considered by the Planning and Zoning Board in accordance with the procedures outlined in this ordinance. Prior to approving a variance request, the Planning and Zoning Board and the Commission shall make one or more of the following findings:

a) Compliance with one or more of the design standards would deprive an owner of the reasonable use of its property;

b) There are no practical alternatives to locating buildings on portions of the site that exceed 25-percent slope. Prior to approving a

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variance to build on portions of a site in excess of 25 percent, the applicant shall demonstrate that soil and or geologic conditions of the site are such that the proposed development does not pose a danger to the public health and safety, or that any potential hazard can be reduced to a reasonable level with corrective engineering or other mitigating measures. All building foundations, retaining walls, roads and utilities shall be designed by a licensed engineer in accordance with the recommendations of soil and/or geotechnical studies.

c) The proposed variance will result in greater compliance with the overall intent by preserving the natural character, visual quality and aesthetic value of hillsides in a manner that would not otherwise be possible by the strict adherence to Section 5.7.7 Design Standards for Land Use Permits on Hillside Land.

d) Additions or remodels of existing structures on hillside land shall be exempt from the provisions of Section 5.7 provided the square footage of such addition does not exceed 50 percent of the square footage of the existing structure.

5.6.11 Proposed Subdivision of Hillside and Ridgeline Land.

The design standards, review criteria and variance and exemption provisions of this section shall apply to all minor and major subdivision applications on hillside or ridgeline land.

a) Applicability of Zoning Requirements to Subdivision Process. Design standards and review criteria outlined in this section shall be used by the Commission in conjunction with applicable subdivision review criteria to evaluate the proposed subdivision of hillside or ridgeline land. In the event of any conflicts between these design standards and subdivision review criteria, the most restrictive provision shall apply.

Submittal material shall include all material required by the subdivision regulations for minor or major subdivisions and photo overlays, visual simulations, field staking or other visual techniques to demonstrate the location and visual impact of proposed development sites.

If warranted by the nature of the proposed development, the presence of unique site characteristics or other considerations, the Planning and Zoning Board may modify or waive any of the submittal requirements listed above.

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5.6.12 Design Standards for the Subdivision of Hillside Land

Not withstanding any language to the contrary in the Billings County Subdivision Regulations, subdivision applications on hillside land shall comply with each of the following design standards:

a) Building envelope defines the portion of each lot within which all improvements must be located. Improvements shall include all buildings and garages. Decks, patios, terraces, retaining walls, fences, recreational facilities and site access may be located outside of the building envelope.

b) No portion of a building envelope shall exceed 25-percent slope.

c) Any portion of a site in excess of 40-percent slope shall not be considered in the calculation of allowable density on land zoned or proposed to be zoned for densities greater than one unit per 20 acres.

d) Building envelopes on ridgelines shall be sited such that the future development of the building envelope can be accomplished without breaking the natural silhouette created by the prominent ridgeline and the sky. For the purposes of these guidelines, a canopy of existing trees located on the top of a ridgeline shall be considered a part of the prominent ridgeline.

5.6.13 Review Criteria for the Subdivision of Hillside and Ridgeline Land

The following design criteria shall be used by the Planning and Zoning Board and the Commission to evaluate subdivision applications on hillside land and ridgeline land. It shall be the burden of the applicant to demonstrate that the proposed subdivision complies with each of the following criteria, that one or more of the criteria are not applicable, or that a practical solution consistent with the purpose of this section has been achieved.

a) Building envelopes shall be sited to utilize existing vegetation and natural topography of the site in order to integrate the building with the site and to minimize the visibility of the building from the roadway corridor.

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b) Building envelopes shall be sited such that future access to the envelope can be integrated with the natural characteristics of the site in a manner that will require a minimal amount of site grading, cuts and fills, retaining walls and loss of vegetation.

5.6.14 Variances to 25 Percent Slope Limitation for New Building Envelopes on Hillside Land

It is the intention of these regulations that no portions of new building envelopes exceed 25 percent slope. However, if properly sited, designed and engineered, construction on slopes between 25 to 40 percent can be accomplished while mitigating potentially adverse visual and safety impacts commonly associated with development on steep slopes. The purpose of this section is to establish criteria for reviewing proposed subdivisions that include building envelopes with slopes between 25 to 40 percent.

Review procedures and submittal requirements for variance requests to the 25 percent slope limitation for proposed building envelopes shall be as outlined in this section. The burden of proof shall be on the applicant to demonstrate that the proposed building envelopes are in compliance with all applicable guidelines and development standards. The following submittal material shall also be provided by the applicant:

a) Specific design guidelines and standards proposed by the applicant that demonstrate how the proposed development of said building envelopes will comply with all applicable review criteria.

b) Design Standards. In addition to design standards and review criteria outlined in the subdivision regulations, subdivision applications for variances to the 25-percent slope limitation for proposed building envelopes on hillside land shall comply with each of the following design standards:

1) Building envelopes shall be required for all proposed lots. The building envelope defines the portion of each lot within which all improvements must be located. Improvements shall include all buildings and garages. Decks, patios, terraces, retaining walls, fences, recreational facilities and site access may be located outside of the building envelope.

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2) No portion of the proposed building envelope shall be located on slopes in excess of 40 percent and no access or site improvements shall be permitted on portions of a site that exceed 40 percent slope.

3) All building foundations, retaining walls, roads and utilities shall be designed by a licensed engineer in accordance with applicable soil and/or geotechnical studies.

c) Review Criteria. The following review criteria shall be used by the Planning and Zoning Board for evaluating proposed variances to the 25-percent slope limitation for new building envelopes:

1) Submittal material and design guidelines and standards prepared by the applicant shall clearly demonstrate that locating building envelopes on land with slopes in excess of 25 percent will lessen the visual impacts and improve the overall environmental and aesthetic quality of the proposed subdivision in a manner that would not otherwise be possible by the strict adherence to Section 5.7.14.

2) Soils analysis and geotechnical studies shall clearly demonstrate that the development of the proposed subdivision and lots does not pose a danger to the public health and safety or that any potential hazard can be reduced to a reasonable level with corrective engineering or other mitigating measures, and that any necessary mitigating measures shall be incorporated into the development of the subdivision and the subsequent development of proposed building envelopes.

3) Building envelopes are sited to utilize existing vegetation and natural topography of the site in order to integrate the building with the site and to minimize the visibility of the building from the designated roadway corridor.

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4) Building envelopes are sited such that future access to the envelope can be integrated with the natural characteristics of the site in a manner that will require minimal amount of site grading, cuts and fills, retaining walls and loss of vegetation.

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ARTICLE VI

SPECIAL PROVISIONS

6.1 Off-Street Parking

6.1.1 General Requirements

a) An off-street automobile parking space shall be at least nine (9) feet wide and twenty (20) feet long, exclusive of access drives.

b) All open off-street parking areas with four (4) or more spaces and all loading berths shall be: (a) gravel, concrete, or asphalt surfaces; (b) graded to dispose of all surface water run-off but not be diverted to adjoining properties.

6.1.2 Special Requirements

No building shall be erected or enlarged without meeting the following parking requirements:

a) Businesses, professional or public office buildings, studios, banks , medical or dental Clinics: three (3) parking spaces plus one additional space for each four hundred (400) square feet of floor space over one thousand (1000) square feet.

b) Private clubs or lodges: two parking spaces for each two hundred (200) square feet of service area.

c) Restaurants and other eating and drinking establishments: one parking space for each one hundred (100) square feet of floor area.

d) Industrial uses: one off-street parking space for every one and one-half (1 1/2) employees.

6.2 Junk or Salvage Yards

6.2.1 Site Approval Requirements

All sites for salvage and junkyards require approval by the Commission.

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6.2.2 Location Standards

a) No salvage or junk yard shall be located within one thousand (1000) feet of a residential district or within two hundred (200) feet of commercial buildings and structures.

b) No salvage or junk yard shall be located in areas, which due to high water table, flooding, and soil conditions may affect the quality of surface or ground water.

c) No salvage or junk yard shall be located nearer than five hundred (500) feet off all road and highway rights-of-way.

d) All salvage yard or junk yard operations shall be screened from public view. Such screening shall be by natural vegetation, fences of at least ten (10) feet in height, building and or land form.

e) Storage items shall not be higher than fences or screens.

6.3 Commercial Feed Lots

6.3.1 Purpose

These regulations are designed to allow feedlots for feeding of livestock, furbearers, and poultry at the same time to protect the adjoining uses from odor, run off, and other incompatible or undesirable characteristics associated with feed lots.

6.3.2 General Requirements

a) All feed lots as defined by this code are permitted as conditional uses subject to the provisions of this ordinance, the requirements of the North Dakota Health Department, and approval by the Commission.

b) All commercial feed lots shall be designed and constructed with all reasonable preventative measures to avoid surface run-off including construction of sealed collection and retention ponds.

c) Where appropriate, there shall be sufficient drainage to avoid pollution of the ground and surface water from the standing effluents.

d) Commercial feed lots shall not be placed in the floodplains.

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e) An applicant, as part of the site approval application, shall submit a plan for removal and disposal of the liquid solid waste generated by the commercial feed lot.

f) An “animal unit equivalent” is a unitless number developed from the nutrition and volume characteristics of manure for a specific livestock types. The term “animal units” is used to normalize the number of animals (e.g., head) for each specific livestock type which produce comparable bulk quantities of manure. The animal equivalent units for types of livestock and the number of livestock for facility size thresholds of 300 animal units (AUE), and so forth, are listed in the following table.

g) No feed lot shall be located nearer than .50 miles from a residence other than the owner/operator’s, residential development in an unincorporated area or city limits in the county, park, cemetery, church, or school.

6.3.3 Water Resource Setbacks

An applicant of a new commercial feedlot operation that has more than 300 animal units shall not locate or establish that operation:

a) Within a delineated source water protection area for a public water system.

b) Within 1200 feet of a private ground water well which is not owned by the operator or within 1500 feet of a public ground water well which does not have a delineated source water protection area.

c) Within 1000 feet of surface water which is not included in a source water protection area.

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Equivalent Numbers of Livestock (hd)

For Four Sizes (a.u.) of Animal Feeding Operations

Livestock Type Equivalent	Animal Unit	300 a.u.	1,000 a.u.	2,000 a.u.	5,000 a.u.
1 horse	2	200 hd	666 hd	1,333 hd	3,333 hd
1 dairy cow	1.33	225	750	1,500	3,750
1 mature beef	1.0	300	1,000	2,000	5,000
1 beef feeder-finishing	1.0	300	1,000	2,000	5,000
1 beef feeder-backgrounding	.75	400	1,333	2,667	6,667
1 mature bison	1.0	300	1,000	2,000	5,000
1 bison feeder	1.0	300	1,000	2,000	5,000
1 swine>55 lbs	0.4	750	2,500	5,000	12,500
1 goose or duck	0.2	1,500	5,000	10,000	25,000
1 sheep	0.1	3,000	10,000	20,000	50,000
1 turkey	0.0182	16,500	55,000	110,000	275,000
1 chicken	0.01	30,000	100,000	200,000	300,000

Setback Distances for Animal Feeding Operations

Number of Animal Units	Hog Operations	Other Operations
100-299	1 mile	0.50 mile
300-999	2 miles	1 mile
1,000 or more	3 miles	2 miles

6.3.4 Application Procedure and Requirements

The application for a conditional use permit to operate a facility for a commercial feeding operation shall include a scaled site plan. If the facility will handle more than 300 animal units, the scaled site plan shall be prepared by a registered land surveyor, a civil engineer, or other person having comparable experience or qualifications. The application shall also list or provide:

a) The proposed number of animal units.

b) Total acreage of the site of the facility.

c) Existing and proposed roads and access ways within and adjacent to the site of the facility.

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d) Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.

e) A copy of the permit application submitted by the applicant to the North Dakota State Department of Health.

6.4 Sanitary Landfills and Solid Waste Sites

6.4.1 Solid Waste Disposal Facility

Solid waste disposal facilities as regulated by this section shall include all facilities for the incineration of disposal of solid waste or solid waste residue which are required to be permitted under statute or rule by the North Dakota Department of Health and Consolidated Laboratories. A solid waste disposal facility may be allowed in any Agricultural District as a conditionally permitted use provided:

a) It is located at least one-half (1/2) mile from any residence or residential zone area unless written approval is obtained from the owner of any residence within this area.

b) It is continuously licensed and approved by the North Dakota Department of Health as to location and operation.

c) There is no substantive evidence that the facility will endanger the public health or the environment.

d) The conditional use permit will be valid for a period of time set by the Commissioners.

e) For the permit to be approved sixty percent (60%) of all property owners within one-half (1/2) mile of the proposed location must approve of the proposed facility.

6.4.2 County Code and Procedures

The county hereby adopts solid waste provisions of NDCC 11-33-20, to assure meeting the purposes of this ordinance and the Comprehensive Plan.

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6.4.3 Site Approval Requirements

All solid waste sites require onsite reviews prior to approval by the Commission.

6.4.4 Collection of Solid Waste

No person may collect or transport waste materials for a fee without obtaining a permit from the County. Storage of solid waste materials shall be confined to buildings and structures designed specifically for such purpose and shall be secured by appropriate fences and gates. The openings to the buildings and structures, including but not limited to conveyors, doors, ramps, and other points of access for use by transport or moving vehicles when not in use shall be closed air tight to minimize the impact from odor and concentration of insects and rodents.

6.5 Recycling Facilities

A recycling facility by definition is a place where any material including yard waste, oil, glass, metal, plastic, paper, or cardboard is processed for an end use. Because of the nature of the recycling facilities as permanent structures, zoning approval and a conditional use permit is required. The following are required to obtain a conditional use permit:

1) The facility shall not abut residential and public uses.

2) The facility will be screened from the public right-of-way.

3) The facility shall not be placed in the flood plain.

4) The site shall be free of litter and other undesirable materials. Containers shall be clearly marked to identify the type of material that may be deposited.

5) There shall be pest control plan for review and approval.

6.6 Public Nuisances

The maintenance of public nuisances including, but not limited to noxious weeds, smoke, gases, radio interference, blighted structures or buildings, accumulation of junk, trash, rubbish, automobiles, dead or diseased trees shall be prohibited.

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6.7 Noise

Sustained noise of over 80 decibels (dB) during the day and 70 decibels (dB) at night is prohibited.

6.8 Fences

1) No site-obscuring fence over 48 inches (48) in height shall be erected within the front yard of any lot used for residential purposes.

2) No permanent fence shall be constructed on a road right-of-way or within the confines of the ditch backstop.

3) Electrical fences shall conform in all respects to the State of North Dakota regulations for electrical wiring, and shall be energized only with underwriters laboratories approved equipment.

6.9 Home Occupations

6.9.1 A home occupation in an unincorporated community:

The following requirements must be satisfied in order for a home occupation located in an unincorporated city within the County to constitute a conforming use in any zoning district where such uses are authorized:

a) The occupation shall be limited to the dwelling and the area of the occupation shall not exceed twenty-five (25) percent of the main floor area, excluding any basement or garage floor space.

b) Structural changes shall not be made in the dwelling, unless a certificate/ application is first obtained.

c) Employees are limited to two full-time or four part-time besides owners.

d) No sign may be permitted larger than four (4) square feet.

e) Evidence of the home occupation shall not be visible from the road.

f) The home occupation shall not adversely affect the character of the uses permitted in the zoning district in which it is located.

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6.9.2 Rural Home Occupations:

Rural home occupations shall conform to the requirements for suburban homes except:

a) Rural home occupations may be located in a separate non-residential or farm building provided any building principally used for the home occupation shall not exceed one thousand two hundred eighty (1280) square feet. The minimum lot size for a separate non-residential building shall be one (1) acre.

b) Employees are limited to two full-time or four part-time personnel.

c) Structural additions may be made to a dwelling provided the applicant obtains approval from the Commission and the alterations shall not exceed twenty-five (25) percent of the main floor area of the dwelling, but not including basement or garage floor area.

6.10 Adult Entertainment Centers

1) An adult entertainment center shall not be located within 1250 feet of any religious institution, cemetery, school, park, or recreation area.

2) An adult entertainment center may be located only in an industrial zoning district

3) An adult entertainment center shall not be located within 1250 feet of any establishment that dispenses alcohol on-premises.

4) An adult entertainment center shall not be located within 1250 of any other adult entertainment center.

5) An adult entertainment center must prohibit entrance by persons less than 18 years of age.

6) An adult entertainment center may not display any signs visible from the exterior of the adult entertainment center, except for signs identifying it as an adult entertainment center, as an adult book store, adult entertainment facility, adult cinema, or combination thereof.

7) No material depicting specified sexual activities or specifies anatomical areas shall be visible from the exterior of an adult entertainment center.

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8) The business premises of an adult entertainment center that are generally open to its patrons are open equally at the same time to members of any law enforcement agency who may wish to enter thereon provided the entry is in the course of the discharge of the law enforcement officer's duties.

6.11 Wind Energy Facility

The purpose of these regulations is to provide a regulatory framework for the siting, construction and operation of Wind Energy Facilities in the County, subject to reasonable restrictions, that will preserve the safety and well-being of the residents of the County, while allowing equitable and orderly development of Wind Energy Facilities.

6.11.1 Regulatory Framework

(a) Zoning

Wind Energy Facilities may be constructed within the County, subject to the restrictions and conditions of this ordinance.

(b) Principal or Accessory Use

A different existing use or an existing structure on the same parcel shall not preclude the installation of a Wind Energy Facility or a part of such facility on such parcel. Wind Energy Facilities that are constructed and installed in accordance with the provisions of this ordinance shall not be deemed to constitute expansion of a nonconforming use or structure.

(c) Applicability

The requirements of this ordinance shall apply to all Wind Energy Facilities with one or more Wind Turbines rated at one hundred (100) kilowatts nameplate capacity or larger constructed after the effective date of this ordinance. No operation of an existing Wind Energy Facility shall be allowed without full compliance with this ordinance and its Wind Energy Facility Siting Permit, and no modification or alteration of an existing Wind Energy Facility shall be allowed without issuance of a new Wind Energy Facility Siting Permit pursuant to 6.11.3.

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6.11.2 Wind Energy Facility Siting Permit

a) Application for Permit

No work, except for wind monitoring, soil testing and other survey work, may commence on a Wind Energy Facility until a Wind Energy Facility Siting Permit ("Permit") has been issued by the Commission. An applicant for a Wind Energy Facility Siting Permit must submit an application Planning and Zoning Board. The application shall be signed by an authorized representative of the applicant, include a fee to be determined by the Commission for each proposed Wind Turbine, and includes the following information:

1) The complete name, legal address and phone number of the applicant and responsible contact person.

2) A USGS topographical map of the Wind Energy Facility and 500 feet of all Adjoining Properties adjoining the Wind Energy Facility Perimeter. The map must show all existing features, including property boundaries, structures, improvements, roads, utility lines, public facilities and natural features. The map must also show the location of all proposed improvements for the Wind Energy Facility, including Wind Turbines, Met Towers, electrical lines and roads. Each proposed Wind Turbine shall be numbered and fully described in technical details, including Rotor Diameter, model, and manufacturer, and distances, measured in feet, from property lines and from existing improvements for each proposed Wind Turbine.

3) Details as to how the applicant will comply with each item in 6.11.5.

4) A schedule for the proposed start and completion of construction of the Wind Energy Facility.

5) Copies or signed summaries of all leases and easements for Wind Turbines and associated equipment and infrastructure to be sited within the County and copies of any written agreements between the applicant and affected parties holding associated wind rights on adjoining properties.

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6.11.3 Public Hearings

Upon receipt of the application, the Planning and Zoning Board along with any experts it may retain, shall review the permit application and, in its discretion, may hold a public hearing on the application within no more than forty-five (45) days from receipt of the application, providing at least fifteen (15) days notice prior to the hearing in the official newspaper of the County and mailing written notice to property owners within five hundred (500) feet of the proposed Wind Energy Facility Perimiter.

If the Planning and Zoning Board finds that the applicant for the Wind Energy Facility Siting Permit has satisfied all applicable requirements, it shall recommend approval by the Commission. The Commission must approve, approve with conditions, or deny the application within sixty (60) days of the date of the submission of the application, or, where held, the date of the public hearing.

6.11.4 Demonstration of Compliance

A Wind Energy Facility Siting Permit issued pursuant to 6.11.3 shall be contingent upon the applicant's final demonstration of compliance with the requirements of the Permit following completion of construction of the Wind Energy Facility. Within 90 (ninety) days of Wind Energy Facility construction, the Permittee shall submit to the Planning and Zoning Board an updated and final USGS topographical map, or survey if available, providing all information pursuant to 6.11.2.1(2) and demonstrating actual compliance with the requirements and conditions of the Permit.

6.11.5 General Requirements for Wind Energy Facilities

a) Appearance, Lighting, Facility Footprint, Agricultural Operations, Roads and Power Lines

1) Wind Turbines shall be painted a non-reflective, non-obtrusive color.

2) Wind Turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the Wind Energy Facility.

3) Each Wind Turbine shall be marked with a visible identification number to assist with provision of emergency services, and a Permittee shall file with local fire departments, law enforcement and the county emergency

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management coordinator a Wind Energy Facility map identifying Wind Turbine locations and numbers.

4) Wind Turbines shall not be artificially lighted, except to the extent required by the FAA or other applicable authority.

5) At Wind Energy Facility sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, and location that will blend the Wind Energy Facility to the natural setting and existing environment.

6) At Wind Energy Facility sites, the location and construction of access roads and other infrastructure shall, to the extent reasonably possible, minimize disruption to farmland, the landscape and agricultural operations within the county.

7) A Permittee shall promptly replace or repair all fences or gates removed or damaged during all phases of the Wind Energy Facility's life, unless otherwise negotiated with the affected landowner. When the Permittee installs a gate where electric fences are present, the Permittee shall provide for continuity in the electric fence circuit.

8) A Permittee shall ensure that, following completion of construction of a Wind Energy Facility, County roads will be repaired or restored to a condition at least equal to the condition prior to construction of such Facility.

9) A Permittee shall place electrical lines, known as collectors, and communication cables underground when located on private property. Collectors and cables shall also be placed within or adjacent to the land necessary for Wind Turbine access roads, unless otherwise negotiated with the affected landowner. [This paragraph does not apply to feeder lines.]

10) A Permittee shall place overhead feeder lines on public rights-of-way, if a public right-of-way exists, or a Permittee may place feeder lines on private property. A change of routes may be made as long as the feeders remain on public rights of way and approval has been obtained from the governmental unit responsible for the affected right-of-way. When placing feeders on private property, the Permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.

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(b) Setbacks

The following setbacks and separation requirements shall apply to all Wind Turbines in a Wind Energy Facility.

1) Occupied Structures and Facilities: Each Wind Turbine shall be set back from the nearest occupied dwelling, commercial building or publicly-used structure or facility at a distance not less than 2,640 feet (one-half mile).

2) Public Roads and Above Ground Communication and Electrical Lines: Each Wind Turbine shall be set back from the nearest public road or above ground communication and electrical lines at a distance not less than two hundred (200) feet, determined from the center of the existing right-of-way.

3) Wind Energy Facility Perimeter: Each Wind Turbine shall be set back from the Wind Energy Facility Perimeter at a distance not less than two and one half (2.5) times the Rotor Diameter of the Wind Turbine. A variance may be granted if an authorized representative or agent of the Permittee and those affected parties on adjoining properties with associated wind rights sign a formal and legally-binding agreement expressing all parties' support for a Variance that waives or reduces the setback requirement.

6.11.6 Minimum Ground Clearance

The blade tip of any Wind Turbine shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet.

6.11.7 Restoration of Property

Within one hundred and eighty (180) days of termination or abandonment of leases or easements for a Wind Energy Facility in the County, the Permittee shall cause, at its own expense, removal of all structures to a depth of four feet below pre-construction grade.

6.11.8 Transfer of Wind Energy Facility Siting Permit

In the event of a change in ownership or controlling interest in a Wind Energy Facility and the transfer of a Wind Energy Facility Siting Permit, any successors and assigns of the original Permittee shall comply with

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the requirements and conditions of such Permit for the duration of operation of a Wind Energy Facility permitted in the County. Within thirty (30) days of such change in ownership or controlling interest of any entity owning a Wind Energy Facility, the parties to the transaction shall notify the Commission by letter and provide information pursuant to 6.1.3. The letter shall be signed by the authorized representatives or agents of both the original Permittee and the entity to which the Permit is being transferred.

6.12 Signs

The purpose of regulating signs in the County is to provide for a visually pleasant environment and minimize potentially unsafe conditions, while also offering opportunities for public and private information and advertising.

6.12.1 General Requirements

1) Signs providing directions for permitted uses shall not be larger than twenty (20) square feet in area.

2) Signs providing directions for conditional uses shall not be larger than forty (40) square feet.

3) Advertising signs shall not be larger than ninety-six (96) square feet.

6.12.2 Special Requirements

1) Signs in a Residential District shall be limited to: (a) one sign per dwelling structure not exceeding twelve (12) square feet in an area which may be wall, pedestal, ground or projecting type; (b) One temporary sign such as “For Sale”, or “For Rent”, not exceeding twenty (20) square feet in area.

2) Signs in the Commercial and Industrial Districts shall be limited to: (a) one general identification sign per business not exceeding fifty (50) square feet in area which may be wall, pedestal, ground, or projecting type; (b) temporary signs including “For Sale”, political campaign signs, greeting signs, and rally signs not exceeding fifty (50) square feet in area; (c) Directory and advertising signs in the Agricultural, Commercial, and Industrial districts shall not be larger than ninety-six (96) square feet in area and placed nearer than six hundred (600) feet apart.

3) The placement of all signs shall be subject to the setback requirements of the district in which they are located and in no event upon a county roadway or right of way.

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4) No flashing or bare bulb signs are allowed.

5) Signs if allowed in Residential Districts are limited to ten (10) feet in height.

6) Signs in Agricultural, Commercial, and Industrial Districts shall be limited to twenty-five (25) feet in height.

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ARTICLE VII

ADMINISTRATION AND ENFORCEMENT

The administration and enforcement of this Ordinance is hereby vested in the Commissioners and the County Zoning Administrator.

7.1 County Commission

7.1.1 Duties

a) The Commission shall review and take action on all proposed to this Ordinance.

b) The Commission or its designee shall review and decide all applications for zoning modifications.

c) The Commission or its designee shall hear and decide all requests for variances or other relief from the provisions of this Ordinance.

d) The Commission or its designee shall review all applications for conditional use permits.

e) The Commission shall hear and decide all appeals of decisions of the Planning and Zoning Board.

f) The Commission or its designee shall investigate all violations of the provisions of this Ordinance and shall determine and take appropriate remedial action.

7.2 Planning and Zoning Board

1) Membership - The Planning and Zoning Board shall consist of no more than seven members appointed by the Commission in accordance with Chapter 11-33 of the NDCC.

2) Duties

a) The Planning and Zoning Board shall hold public hearings on applications for all proposed amendments to this Ordinance and make written recommendations to the Commission for the approval or denial of such applications.

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b) The Planning and Zoning Board shall hold public hearings on applications for conditional use permits and make written recommendations to the Commission for the approval, denial, modification, and/or the imposition of conditions upon such applications.

c) The Planning and Zoning Board shall hold public hearings on applications for variances from the provisions of this Ordinance and make written recommendations to the Commission for the approval, denial, modification, and/or the imposition of conditions upon such applications.

d) The Planning and Zoning Board shall report all zoning violations to the Commission for appropriate action.

7.3 Conditional Use Permits

The development and administration of this Ordinance is based on the division of the County into districts within which the uses of land and buildings are mutually compatible. However, there are certain uses which, because of their unique characteristics cannot be classified as unrestricted permitted uses in any particular district or districts without consideration in each particular case of the impact of those uses upon adjoining lands or public facilities. Such uses, nevertheless, may be necessary or desirable in a particular district provided that due consideration is given to location, development and operation of such uses.

1) In order to promote and protect public health, safety and the general welfare, the Planning and Zoning Board may stipulate conditions and restrictions upon the establishment, location, construction and operation of the proposed use. In all cases in which conditional uses are granted, the Planning and Zoning Board shall prior to issuance of a certificate of compliance, require evidence of compliance with these provisions and with the conditions set forth.

2) No conditional use permit shall be recommended by the Planning and Zoning Board or approved by the Commission unless the applicant shall have met all the following criteria:

a) The establishment, maintenance, or operation of the conditional use shall not be detrimental to or endanger the public health, safety, comfort or general welfare.

b) The proposed conditional use shall not substantially impair or diminish the value and enjoyment of other property in the area.

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c) The proposed conditional use shall not impede the normal orderly development of the surrounding property.

d) Adequate utilities, access roads, drainage or other necessary site improvements have been or are being provided to accommodate the proposed conditional use.

e) Adequate measures will be taken to provide ingress and egress to the property without adverse effects on the adjoining properties and traffic congestion in the public street.

f) The proposed conditional use shall conform to all applicable regulations of the district within which it is located.

3) The Planning and Zoning Board shall hold a public hearing on any request for a conditional uses permit, a notice of which shall be published at least two weeks prior to the hearing in the official newspaper of the County. The notice of hearing shall include: 1) the time and place of hearing; 2) description of the property to be affected; 3) the proposed use; and 4) time and place for public inspection of documents prior to the hearing.

4) The Planning and Zoning Board, following a public hearing, shall make recommendation to the Commission for the approval or denial, modification, and/or imposition of conditions of each application for a conditional use permit. Upon approval by the Commission, the Planning and Zoning Board shall issue such conditional use permit.

5) If the Planning and Zoning Board finds that the conditions or restrictions set forth in a conditional use are not being compiled with, it may revoke the conditional use permit after a public hearing.

6) In any case where a conditional use has not been instituted within one year of the date of approval of the conditional use, the permit shall be null and void without further action of the Planning and Zoning Board or the Commission

7) Upon the cessation or abandonment for a period of one year of any use, for which a conditional-use permit has been issued, such conditional use permit is deemed to have been terminated and any future use of the land, building(s), or premises shall be in conformity with this Ordinance.

7.4 Variance

1) Where a literal enforcement of the provisions of this ordinance would result in great difficulties, unnecessary hardship, or injustice, the

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Commission may adjust the application and enforcement of these regulations provided that such action shall not be contrary to the public interest or general purposes thereof. The authority for issuing variances may be delegated to the Planning and Zoning Board. No variance shall be approved unless the applicant shall have met the following conditions:

a) The particular physical surroundings, shape or topographic condition of the specific property should result in unnecessary hardship.

b) The purpose of the variance is not based on a desire for economic gain.

c) The variance shall not be detrimental to the public welfare or injurious to other properties in the area; and

d) The unique character of the property upon which the request for variance is made is not the result of actions of the applicant.

2) Public Hearing Notice

a) The Planning and Zoning Board shall hold a public hearing, a notice of which shall be published at least two weeks prior to the hearing in the official newspaper of the County. The notice of hearing shall include: 1) the time and place of hearing; 2) description of the property to be affected; 3) the proposed use and requested variance; and 4) time and place for public inspection of the relevant documents before the hearing.

b) Data Submission Requirements Applications for variances must include following data:

i) Legal description of the property;

ii) A map showing the existing land uses and zoning district classification of the area;

iii) The reason for the variance request;

iv) The type of variance requested and an explanation of whether the hardship is unique to the applicant's property;

v) Any other information that the Planning and Zoning Board deems necessary; and

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vi) A fee, the amount of which shall be determined by the Commission, plus any additional costs to be paid in accordance with the schedule established by the Commission.

7.5 County Zoning Administrator

7.5.1 Appointment

a) The Commission shall appoint the County Zoning Administrator.

7.5.2 Duties

a) Receive and file all applications for amendments to this Ordinance, the "Zoning District Map," and development permits.

b) Make inspections upon Commission request and maintain records.

c) Provide written report all zoning violations to the Planning and Zoning Board and the Commission for appropriate action.

d) Prepare and publish required notices.

e) Prepare written notices to property owners of any violation of this Ordinance, citing the nature of the violation and demanding compliance.

f) Receive, file, and forward to the Planning and Zoning Board all applications for preliminary and final plats and the supporting documents.

7.6 Amendments

The Commission may from time to time on its own motion, by petition, or on recommendation of the Planning and Zoning Board, amend, supplement or repeal the provisions of this Ordinance following a public hearing.

Any person, firm or corporation which owns land is entitled to submit an application for amendment to the Zoning District Map.

7.6.1 Procedure for Amendments:

a) Applications for amendment shall be filed with the County Zoning Administrator.

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b) Notice of a time, place, and purpose of the public hearing must be published once a week for two consecutive weeks in the official newspaper of the County.

c) Upon receipt of the recommendations of the Planning and Zoning Board, the Commission shall approve, deny, approve with modification the proposed amendment or remand to the Planning and Zoning Board for further hearing.

7.7 Permits and Fees

7.7.1 Building Permit

a) It shall be unlawful for any person to commence construction, alteration, or conversion of any building or structure without first obtaining a building permit from the County Zoning Administrator.

b) This section does not apply to those buildings or structures directly used in connection with farming operations and constructed by farmers as defined herein.

c) A building permit issued pursuant to these provisions shall expire one year from date of issuance.

7.7.2 Fees

The County Zoning Administrator shall charge and collect a fee as follows;

The County Zoning Administrator shall charge and collect a fee according to the resolution of fees and schedules established by the Commission. The applicant for a conditional use permit, variance, or building permit, shall be liable for and pay to the County Zoning Administrator sufficient sums of money to pay for and cover costs incurred by the County for the processing of such application, including, but not limited to: publication costs, attorney's fees, mileage, copying expense, etc. No permit shall be issued until such costs have been paid by the applicant, unless the County Zoning Administrator has otherwise provided for good cause shown.

7.8 Violations and Penalties

If any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or if any building, structure, or land is used in violation of this Ordinance, the proper county authorities or any affected citizen or

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property owner, in addition to other remedies, may institute any appropriate action or proceeding:

1) To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

2) To restrain, correct, or abate such violations;

3) To prevent the occupancy of the building, structure, or land; or

4) To prevent any illegal act to conduct business or use in or about such premises.

A violation of any provision of this Ordinance or the regulations and restrictions made herein shall constitute the maintenance of a public nuisance and shall be a Class B Misdemeanor.

7.10 Building Code

7.10.1 All buildings or structures or parts of structures used for residential or commercial purposes, and accessory structures thereto shall be designed and constructed, altered, equipped, and maintained in accordance with the North Dakota State Building Code, N.D. Admin. Code Sec. 108-01-01 et seq. and the same is hereby made a part of this resolution and incorporated therein as if set out at herein, and from the date this resolution takes effect the provisions thereof shall be controlling in the construction of all residential buildings and accessory buildings thereto.

Adopted this____ day of_____, 2010

By:_____
Chairman, Billings County Board of County Commissioner

BY:_____
Billings County Auditor

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