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1997 REVISED ZONING ORDINANCE
OF BROOKINGS COUNTY, SOUTH DAKOTA

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ARTICLE I
SHORT TITLE AND APPLICATION

Section 101. This regulation may be known and may be cited and referred to as the "Brookings County Zoning Regulation" to the same effect as if the full title were stated.

Section 102. Jurisdiction. Pursuant to SDCL Chapter 11-2, 1967 as amended, the provision of this regulation shall apply within the un-incorporated areas of Brookings County, South Dakota, and including any joint jurisdictional areas, as established on the map entitled "The Official Zoning Map of Brookings County, South Dakota."

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

ARTICLE II

DEFINITIONS

Section 201. For the purpose of this regulation, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural and the plural the singular; the word "building" shall include the word "structure", and the word "shall" is mandatory and not discretionary.

Section 202. A 25-year, 24-hour Storm Event is the amount of rainfall in a 24-hour period expected to occur only once every 25 years. Typically, the 25-year, 24-hour storm event is about 5 inches in Brookings County. The map in Appendix A shows the actual amount of rainfall that constitutes the 25-year, 24-hour storm event for South Dakota.

Section 203. Accessory Buildings and Uses. is a subordinate use which is incidental to that of the main building or to the main use of the premises. Buildings of 120 square feet or less are not required to have a building permit.

Section 204. Anaerobic Lagoon means an impoundment used in conjunction with an animal feeding operation, if the primary function of the impoundment is to store and stabilize organic manure, the impoundment is designed to receive manure on a regular basis, and the impoundment's design manure loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include any of the following:

a. A confinement feeding operation structure.

b. A runoff control basin which collects and stores only precipitation induced runoff from an open feedlot.

c. An anaerobic treatment system which includes collection and treatment facilities for all gases.

Section 205. Animal Feeding Operation Structure means an anaerobic lagoon, formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building.

Section 206. Animal Manure is poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding or other materials.

Section 207. Animal Unit. See page 76.

Section 208. Applicant is an individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of one or more concentrated animal feeding operations.

Section 209. Aquifer is a geologic formation, group of formations or part of a formation capable of storing and yielding ground water to wells or springs.

Section 210. Basement. A basement has more than one-half (1/2) of its height below grade. A basement is counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes, other than by a janitor.

Section 211. Bed and Breakfast Home. A building in which not to exceed five (5) rooms are rented to transients.

Section 212. Best Management Practices (BMP) means schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMP's also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, manure disposal, manure application, waste or manure stockpiles, or drainage from raw material storage.

Section 213. Building is any structure in excess of 120 square feet designed for the support, shelter and protection of persons, animals, or property.

Section 214. Buildings, Height of. The vertical distance from the grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the mean height level between the eaves and ridge for gable, hip and gambrel roofs.

Section 215. Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

Section 216. Change in Operation means a cumulative increase of more than 500 animal units, after May 13, 1997, which are confined at an un-permitted concentrated feeding operation.

Section 217. A Chronic or Catastrophic Event is a single precipitation event, or a series of rainfall events in a short period of time, that totals or exceeds the volume of a 25-year, 24-hour storm event. The event includes tornadoes, or other catastrophic conditions. The event would directly result in, or cause, an overflow from the containment structure or lagoon that receives and contains runoff from an open lot.

Section 218. Common Ownership is defined as single, corporate, cooperative or other joint operation or venture.

Section 219. Concentrated Animal Feeding Operation see page76.

Section 220. Conditional Use A conditional use is a use that would not be appropriate generally or without restriction throughout the zoning division or district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning division or district as conditional uses, as specific provisions for such uses are made in these zoning regulations. The Board of Adjustment may, after notice and hearing, revoke the conditional use in the event of a violation of any of such conditions. In addition, the conditional use permit may not be transferred during any violation.

Section 221. Confinement Feeding Operation means a totally roofed animal feeding operation in which wastes are stored or removed as a liquid or semi-liquid.

Section 222. Confinement Feeding Operation Structure means a formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building. A confinement feeding operation structure does not include an anaerobic lagoon.

Section 223. Corner Lot is a lot with two front yards.

Section 224. District. A section or sections of the County for which regulations governing the use of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform.

Section 225. Domestic Animal is any animal that through long association with man, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind. For the purpose of this ordinance the definition shall include, but is not limited to, animals commonly raised on farms and ranches, such as cattle, horses, hogs, sheep and mules.

Section 226. Dwelling. Any building, including seasonal housing structures, or a portion thereof, which is designed and used exclusively for residential purposes.

Section 227. Dwelling, Single-Family. A building occupied exclusively by one (1) family.

Section 228. Dwelling, Multiple. A building occupied by two (2) or more families.

Section 229. Dwelling Unit. One (1) or more rooms in a dwelling occupied as separate living quarters by a single family.

Section 230. Earthen Manure Storage Basin means an earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from a confinement feeding operation if accumulated wastes from the basin are removed at least once each year.

Section 231. Established Building Site means an established building site shall have been used in the past as a farmstead for a normal farming operation. Any residence established for more than ten (10) years shall become an established building site.

Section 232. Established Residence is any residence established by a personal presence, in a fixed and permanent dwelling and an intention to remain there.

Section 233. Family. One (1) or more persons related by blood, marriage, or adoption occupying a dwelling unit as an individual housekeeping organization. A family may include two (2), but not more than two (2), persons not related by blood, marriage, or adoption.

Section 234. Farm. An area with or without family dwelling which is used for the growing of the usual farm products, such as vegetables, fruit, trees and grain, and their storage on the area, as well as for the raising, feeding, or breeding thereon of the usual farm poultry and farm animals, such as horses, cattle, sheep and swine. The term "farming" includes the operating of such an area for one or more of the above uses, including dairy farms with the necessary accessory uses for treating or storing the produce; provided, however, that the operation of such accessory uses shall be secondary to that of the normal farming activities.

Section 235. Farm Dwelling means any residence farmer owned or occupied by the farm owners, operators, tenants, or seasonal or year-around hired workers.

Section 236. Farm Employee. A person hired by the farm owner/ manager and works at least an average of 20 hours a week on the farm doing customary farm work. Proof of an Employer/Employee relationship must be provided in writing.

Section 237. Feedlot Operator means an individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of one or more concentrated animal feeding operations.

Section 238. Formed Manure Storage Structure means a structure, either covered or uncovered, used to store manure from a confinement feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.

Section 239. Frontage. All the property on one (1) side of a street or road.

Section 240. Garage, Private. An accessory building used for the storage of not more than four (4) vehicles owned and used by the occupant of the building to which it is accessory.

Section 241. Home Occupation and Home Extended Occupations. (See General Requirements section, Article XII.)

Section 242. Housed Lot means totally roofed buildings that may be open or completely enclosed on the sides. Animals are housed over solid concrete or dirt floors, slotted floors over pits or manure collection areas in pens, stalls or cages. Housed lot is synonymous with other industry terms such as slotted floor buildings.

Section 243. Institution farm Agricultural land wholly owned by a government agency, Federal, State, County or Municipality, and used to grow an agricultural commodity.

Section 244. Junk/Salvage/Recycling Yards. The use of more than one thousand (1,000) square feet of any land, building, or structure for commercial purposes, where waste, discarded materials such *as* scrap metals, used building materials, used lumber, used glass, discarded vehicles, paper, rags, rubber, cordage, barrels etc., are stored.

Section 245. Letter of Assurances is a list of conditions signed by the applicant for a permit acknowledging agreement to follow the conditions of the permit.

Section 246. Lodging House. A building or place where lodging is provided (or which is equipped to provide lodging regularly) by pre-arrangement for definite periods, for compensation, for three (3) or more persons in contradistinction to hotels open to transients.

Section 247. Lot, Buildable. (1) A parcel of land occupied or intended for occupancy by a use permitted in this regulation, including one (1) main building together with its accessory buildings, the open spaces and parking spaces required by this regulation. (2) A lot which is a part of a subdivision, the plat of which has been recorded in the office of the County Register of Deeds at the time of the adoption of this regulation, provided that said lot has a frontage of not less than seventy five (75) feet; or an irregular tract lot described by a deed recorded in the office of the County Register of Deeds at the time of the passage of this regulation; provided that if a lot has less width or area as required by this regulation, the lot is not a buildable lot.

Section 248. Lot, Corner. A lot abutting upon two (2) or more streets at their intersection.

Section 249. Lot, Depth of. The average horizontal distance between the front and rear lot lines.

Section 250. Lot, Double Frontage. A lot having a frontage of two (2) streets as distinguished from a corner lot.

Section 251. Man-made means a pipeline, ditch, drain, tile, terrace, irrigation system, machine, or other object that carries manure, wastewater, or runoff into waters of the state.

Section 252. Manufactured Home is a building, used exclusively for human habitation, which is constructed in a manufacturing facility after June 15, 1976, in compliance with the National Manufactured Home Construction and Safety Standards Act and transportable in one or more sections to a building site.

Section 253. Manure Management System means any piping, containment structures, and disposal appurtenances associated with the collection, storage, treatment, and disposal of manure or wastewater at an concentrated animal feeding operation.

Section 254. Mobile Home is a building, used exclusively for human habitation, constructed in a manufacturing facility prior to June 15, 1976, the effective date of the National Manufactured Home Construction and Safety Standards Act, which is transported on a permanent chassis to a

building site. A mobile home shall be construed to remain a mobile home subject to all regulations applying thereto, whether or not wheels, axles, hitch or other appurtenances of mobility are removed and regardless of the nature of the foundation provided. A mobile home shall not be construed to be a travel trailer or other form of recreational vehicle.

Section 255. Mobile Home Park. Any premises used or set apart for supplying to the public parking space for one (1) or more mobile homes for living and sleeping purposes, and which include any buildings, structures, vehicles or enclosures used or intended for use by park residents.

Section 256. Modular Home is a building, used exclusively for human habitation, constructed off site and in compliance with the applicable local or state building code and which is transported on a temporary chassis to a permanent building site.

Section 257. Motel. A series of attached, semi-attached, or detached sleeping or living units, for the accommodation of transient guests and not customarily including individual cooking or kitchen facilities, said units having convenient access to off-street parking spaces for the exclusive use of guests or occupants.

Section 258. Non-conforming Use. Any building or land lawfully occupied by a use at the time of passage of this regulation or amendment thereto, which does not conform after the passage of this regulation or amendment.

Section 259. Non-farm Dwelling means any occupied dwelling, which is not a farm dwelling.

Section 260. No-till Cropland means land which is subject to a conservation farming practice: where the soil is left undisturbed from harvest to planting; where planting or drilling is done in a narrow seedbed or slot created by coulters, row cleaners, disk openers, or in-row chisel; and where this conservation practice has been ongoing for at least four consecutive years to establish the soil characteristics necessary to reduce or eliminate erosion from runoff.

Section 261. Open Concentrated Animal Feeding Operation is an un-roofed or partially roofed animal feeding operation in which no crop, vegetation, forage growth or post-harvest residues are maintained during the period that animals are confined in the operation.

Section 262. Open Lot means pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside

environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Open lot is synonymous with other industry terms such as pasture lot, dirt lot or dry lot.

Section 263. Parking Space. An area, enclosed or un-enclosed, sufficient in size to store one (1) automobile, together with a driveway connecting the parking space with a street or alley.

Section 264. Permit is required by these regulations unless stated otherwise.

Section 265. Potential Pollution Hazard A Concentrated Animal feeding Operation of 100 to 500 Animal Units may be classified as a Class D Operation by the County Zoning Officer when a Potential Pollution Hazard exists. Factors to be considered by the Zoning Officer in determining a Potential Pollution Hazard include the following:

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

b. A Potential Water Pollution Hazard exists due to sitting over a shallow aquifer or drainage which contributes to the waters of the State.

Section 266. Process Generated Wastewater means water directly or indirectly used in the operation of an animal feeding operation. The term includes spillage or overflow from watering systems; water and manure collected while washing, cleaning or flushing pens, barns, manure pits or other areas; water and manure collected during direct contact swimming, washing or spray cooling of animals; and water used in dust control.

Section 267. Process Wastewater means any process generated wastewater and any precipitation (rain or snow) that comes into contact with the animals, manure, litter or bedding, feed, or other portions of the animal feeding operation. The term includes runoff from an open lot.

Section 268. Producer means the owner or operator of the concentrated livestock feeding operation.

Section 269. Religious farming community An agricultural community with common land and property ownership.

Section 270. Sale or Auction Yard or Barn. A place or building where the normal activity is to sell or exchange livestock. Livestock normally in yard or farm for one (1) day during sale or auction.

Section 271. Seasonal Camp Trailers or Recreational Vehicles. A vehicle designed for temporary seasonal living quarters.

Section 272. Sediment Basin is a basin constructed to trap and store water-born sediment and debris.

Section 273. Service Station. Any building or premises where automotive fuels are stored and made available for sale and dispensing through fixed equipment into fuel supply tanks or motor vehicles and where automotive supplies and accessories may or may not be available.

Section 274. Severe Property Damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Section 275. Shall means that the condition is an enforceable requirement of this permit.

Section 276. Shallow Aquifer is an aquifer vulnerable to contamination because the permeable material making up the aquifer (a) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (b) extends to near the land surface and lacks a sufficiently thick layer of impermeable material on the land or near the land surface to limit percolation water from transporting contaminants from the land surface to the aquifer.

Section 277. Shallow Well is a well which is located in a shallow aquifer.

Section 278. Shelterbelt. A strip or belt of trees or shrubs established to reduce soil erosion and to protect yards, lots, buildings, livestock and residences, recreation and wildlife from wind.

Section 279. Should means that the condition is a recommendation. If violations of the permit occur, the Board of Adjustment will evaluate whether the producer implemented the recommendations contained in this permit that may have helped the producer to avoid the violation.

Section 280. Significant Contributor of Pollution means to determine if a feedlot meets this definition, the following factors are considered:

a. Size of feeding operation and amount of manure reaching waters of the state;

b. Location of the feeding operation in relation to waters of the state;

c. Means of conveyance of manure and process wastewater into waters of the state; and

d. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal manure and process wastewater into waters of the state.

Section 281. Solid Waste (reference SDCL 34A-6-1.3, 17.) any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations and from community activities, but does not include mining waste in connection with a mine permitted under Title 45, hazardous waste as defined under chapter 34A-11, solid or dissolved materials in domestic sewage or dissolved materials in irrigation return flows or industrial discharges with are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended to January 1, 1989, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, 1989.

Section 282. Solid Waste Facility or solid waste disposal facility, (reference SDCL 34A-6-1.3, 18.) all facilities and appurtenances connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained or operated to facilitate the disposal or storage of solid waste.

Section 283. Solid Waste Management System (reference SDCL 34A-6-1.3, 19.) is the entire process of storage, collection, transportation, processing and disposal of slid wastes by any person.

Section 284. Street, Highway or Road. All property acquired or dedicated to the public and accepted by the appropriate governmental agency for street, highway or road purposes.

Section 285. Street, Highway or Road, Right-of-Way (ROW) Line. A dividing line between a lot or parcel of land and a contiguous street, highway or road.

Section 286. Structure. Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground.

Section 287. Structural Alterations. Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, or girders, or any complete rebuilding of the roof or the exterior walls.

Section 288. Twin Homes. A two family unit, with a common wall, under separate ownership, on more than one lot, zero setback with one side yard and having separate septic systems for each family.

Section 289. Unauthorized Releases mean the discharge of water from the lower end of the treatment or containment system through a release structure or over or through retention dikes. An unauthorized release is distinguished from a bypass in that a bypass discharges wastewater prior to any treatment or containment.

Section 290. Waters of the State means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

Section 291. Yard. An open space on the same lot with a building, unoccupied and unobstructed. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and bearing wall of the main building shall be used.

Section 292. Yard, Front. A yard extending across the front of a lot between the side yard lines, and being the minimum horizontal distance between the road right-of-way line and the main bearing wall of the main building or any projections thereof other than the projections of the usual steps, un-enclosed balconies or open porch.

Section 293. Yard, Rear. Any yard extending across the rear of a lot measured between the side lot lines, and being the minimum horizontal distance between the rear lot line and the rear of the main building or bearing

wall or any projections other than steps, un-enclosed porches, or un-enclosed balconies. On corner lots the rear yard may be to the rear of either street, provided that the minimum rear yard depth requirement shall be calculated on the longest average lot dimension. On interior lots the rear yard shall in all cases be at the opposite end of the lot from the front yard.

Section 294. Yard, Side. A yard between the main building and the side line of the lot being the minimum horizontal distance between the bearing wall of the building and the side yard line, and extending from the front lot line to the rear yard line.

Section 295. Zoning Complaints. All zoning complaints must be in writing and signed.

ARTICLE III

ESTABLISHMENT OF DISTRICTS

Section 301. Districts. For the purpose of this regulation, the un-incorporated areas of the County may be divided into any of the following zoning districts: A--Agricultural; CI--Commercial/ Industrial; LP--Lake Park; NR--Natural Resources; Flood Plain Overlay District; Aquifer Protection Overlay District.

Section 302. Provision for official zoning map.

1. The un-incorporated area of the County is hereby divided into zones, or districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this regulation. The Official Zoning Map shall be identified by the signature of the Chairman of the Board of County Commissioners, attested by the County Auditor, and bearing the seal of the County under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 302 of the regulation adopted May 24,1988 by Brookings County, South Dakota."

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

   No changes of any nature shall be made on the official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this regulation. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this regulation and punishable as provided under Article VIII.

2. In the event the official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the Board of County Commissioners may, by resolution, adopt a new official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map shall be identified by the signature of the Chairman of the Board of County Commissioners, attested by the County Auditor, and bearing the seal of the County under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the official Zoning Map adopted (date of adoption of map being replaced) for Brookings County, South Dakota." Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved, together with all available records pertaining to its adoption or amendment.

Section 303. Interpretation of District Boundaries.

1. A district name or letter symbol shown on the district map indicates that the regulations pertaining to the district designated by that name or symbol extend throughout the whole area in the un-incorporated portions of the County bounded by the district boundary lines.

2. In cases where the boundary line is given a position within a street, road, or non-navigable stream, it shall be deemed to be in the center of the street, road, or stream, and if the actual location of such street, road, or stream varies slightly from the location as shown on the district map, then the actual location shall control.

3. In cases where a boundary line is shown as being located a specific distance from a street line or other physical feature, this distance shall control.

4. In cases where a boundary line is shown adjoining or coincident with a railroad, it shall be deemed to be in the center of the railroad right-of-way and distances measured from the railroad shall be measured from the center of the designated mainline track.

5. Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be the lot lines and where the districts designated on the Official Zoning Map accompanying and made a part of this regulation are bounded approximately by lot lines, said lot lines shall be construed to be the boundary of such districts unless said boundaries are otherwise indicated on the map or by resolution.

6. In un-subdivided property, unless otherwise indicated, the district boundary line on the official Zoning Map accompanying and made a part of this regulation shall be determined by the use of the scale contained on such map.

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

Section 305. Application of District Regulations.

Except as hereafter provided:

1. No building shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used except for a purpose permitted in the district in which the building or land is located.

2. No building shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height limit established for the district in which the building is located.

3. No building shall be erected, converted, enlarged, reconstructed, or structurally altered except in conformity with the area and parking regulations of the district in which the building is located.

4. The minimum yards and other open spaces, including lot area per family, required by this regulation for each and every building at the time of passage of this regulation or for any building hereafter erected shall not be encroached upon or considered as yard or open space requirements for any other buildings, nor shall any lot area be reduced beyond the district requirements of this regulation.

5. Every building hereafter erected or structurally altered shall be located on a buildable lot as herein defined and in no case shall there be more than one (1) main building on one (1) buildable lot.

6. All sign sizes, light, and location shall, at a minimum, meet all State and Federal laws and regulations.

ARTICLE IV

NONCONFORMING USES OR LOTS OF RECORD

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

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

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

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

Section 404. When a building, the use of which does not conform to the provisions of this regulation, is damaged by fire, explosion, or the public enemy, to the extent of more

than sixty percent (60%) of its fair market value, it shall not be restored except in conformity with the regulations of the district in which the building is situated.

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

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

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

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

Section 408. Non-conforming lots of record which were zoned for small lot development prior to the adoption of amendments in 1988 may be developed if other minimum requirements of this ordinance are met.

ARTICLE V

COUNTY ZONING COMMISSION, APPEALS, VARIANCE AND SPECIAL EXCEPTIONS

Section 501. Within Brookings County, outside of incorporated municipalities and joint jurisdictional areas, the power and jurisdiction related to this article shall be executed by the County Planning Commission, known as the County Zoning Commission.

1. The members of the Commission shall select one (1) of their members as Chairman and another as Vice-chairman, who shall act as Chairman in the Chairman's absence. Both shall serve one (1) year and until their successors have been selected. Meetings of the Commission shall be held at the call of the Chairman and at such times as the Commission shall determine.

2. The Chairman, or in his or her absence the Acting Chairman, may administer oaths and compel the attendance of witnesses in order to execute the purposes of this article.

3. All meetings of the County Zoning Commission shall be open to the public. The Commission shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Commission and shall be public record. The Commission shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

Section 502 that pursuant to SDCL 11-2-49 the County Zoning Commission shall act as the Board of Adjustment.

Section 503. Powers and Jurisdiction Relating to Administrative Review. The County Zoning Commission acting as the Board of Adjustment, pursuant to SDCL 11-2-53, shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location of structures or to interpret any map.

Section 504. Appeals, Record and Appeal, Hearing and Stays. Appeals to the County Zoning Commission acting as the Board of Adjustment, pursuant to SDCL 11-2-53, may be taken by any person aggrieved or by an officer, department, board or bureau of the County or city/town affected by any decision of the administrative officer. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board of Adjustment by filing with the officer from whom the appeal is taken and with the

Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

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

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

The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of two-thirds (2/3) of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination upon which it is required to pass under this regulation.

Section 505. Powers and Jurisdiction Relating to Conditional Use Permits. The County Zoning Commission shall have the power to hear and decide in accordance with the provisions of this regulation, requests for Conditional Use Permits or for decisions upon other special questions upon which the Zoning Commission is authorized by this regulation to pass; to decide such questions as are involved in determining whether special conditions and safeguards as are appropriate under this regulation, or to deny Conditional Use Permits when not in harmony with the purpose and intent of this regulation. A Conditional Use Permit shall not be granted by the Zoning Commission unless and until:

a. A written application for a Conditional Use Permit is submitted, indicating the section of this regulation under which the Conditional Use Permit is sought and stating the grounds on which it is requested. Applications are due the second Tuesday of the month for the following month's meeting.

b. Notice of hearing shall be published twice in a paper of general circulation in the area affected.

c. Adjoining landowners shall be notified by First Class mail at their last known address of the public hearing time and date at least seven (7) days prior to the hearing.

d. The public hearing shall be held. Any party may appear in person, or by agent or attorney.

e. The County Zoning Commission shall make a finding that it is empowered under the section of this regulation described in the application to grant the Conditional Use Permit and that the granting of the Conditional Use Permit will not adversely affect the public interest. An affirmative vote of two thirds (2/3) of the full membership of the County Zoning Commission is required for approval of a Conditional Use Permit.

f. Before granting any Conditional Use Permits the County Zoning Commission shall make written findings certifying compliance with the specific rules and criteria governing individual Conditional Uses and that satisfactory provision and arrangements have been made concerning the following, where applicable:

    1. Entrance and exit to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

    2. The roads providing access to the property are adequate to meet the transportation demands of the proposed conditional use. The County Zoning Commission may require the applicant to enter into a written contract with any affected township or other governmental unit regarding the upgrading and continued maintenance of any roads used for the conditional use requested prior to the issuance of a conditional use permit.

    3. Off-street parking and loading areas where required, with particular attention to the items in (a) above and economic, noise, glare or other effects of the Conditional Use on adjoining properties and properties generally in the district.

    4. Utilities, refuse and service areas, with reference to locations, availability, and compatibility.

    5. Screening and buffering with reference to type, dimensions and character.

6. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district.

7. Required yards and other open space.

8. General compatibility with adjacent properties and other property in the district.

g. Any Conditional Use Permit that is granted and not used within 3 years will be considered invalid.

h. The County Zoning Commission may, after notice and hearing, revoke a Conditional Use Permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the Conditional Use Permit may not be transferred during any violation.

Section 506. Powers and Jurisdiction Relating to Variances. The County Zoning Commission acting as the Board of Adjustment pursuant to SDCL 11-2-53 shall have the power, where, by reason of exception, narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantially impairing the intent, spirit and purpose of this regulation. An affirmative vote of two thirds (2/3) of the full membership is required to grant a variance.

1. No such variance shall be authorized by the Board of Adjustment unless it finds that the strict application of the Regulation would produce undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, and caprice.

2. No variances shall be authorized unless the Board of Adjustment finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this regulation.

3. A variance from the terms of this regulation shall not be granted by the Board of Adjustment unless and until a written application for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or buildings in the same district; that literal interpretation of the provisions of this regulation would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this regulation; that the special conditions and circumstances do not result from the actions of the applicant, and that granting the variance requested will not result from the actions of the applicant, and that granting the variance requested will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

4. No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

5. Notice of public hearing shall be given as in Section 505; the public hearing shall be held. Any party may appear in person, or by agent or by attorney; the Board of Adjustment shall make findings that the requirements of this section have been met by the applicant for a variance; the Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; the Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general spirit, purpose and intent of this regulation, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

6. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation.

7. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this regulation in the district involved, or any use expressly or by implication prohibited by the terms of this regulation in said district.

8. Any variance that is granted and not used with three (3) years will be considered invalid.

Section 507. Appeals to a Court of Record. Any person or persons, jointly or severally aggrieved by a decision of the County Zoning Commission or Board of Adjustment or any taxpayer, landowner, or any officer, department, board, or bureau of the County may appeal as provided by SDCL Chapter 11-2.

ARTICLE VI

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

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

It is further the intent of this regulation that the duties of the Board of County Commissioners in connection with this regulation shall not include hearing and deciding questions of interpretation and enforcement that may arise.

ARTICLE VII

SCHEDULE OF FEES, CHARGES, AND EXPENSES

Section 701. The Board of County Commissioners shall establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, and other matters pertaining this regulation. The schedule of fees shall be posted in the office of the County Zoning Officer and may be altered or amended only by the Board of County Commissioners. Changes in the zoning regulations or map which are initiated by incorporated communities or the County shall not require a fee.

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

ARTICLE VIII

ENFORCEMENT

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

Section 802. Building Permit.

1. Building Permit Required. It shall be unlawful to commence the excavation for or the construction of any building, structure, or any accessory building, or to commence the moving or alteration of any buildings, including accessory buildings, until the County Zoning Officer has issued a building permit for such work. Furthermore, it shall be unlawful to commence work until the building permit is displayed in a conspicuous place visible from public right-of-way.

2. Issuance of a Building Permit. In applying to the County Zoning officer for a building permit, the applicant shall submit a dimensioned sketch or a scale plan indicating the shape, size, and height and location of all buildings, to be erected, altered, or moved and of any building already on the lot. He shall also state the existing and intended use of all such buildings, the location of existing or proposed water and sewer facilities, and supply such other information as may be required by the County Zoning Officer for determining whether the provisions of this regulation are being observed. If the proposed excavation or construction as set forth in the application are in conformity with the provisions of this regulation, and other regulations of the County then in force, the County Zoning Officer shall issue a building permit for such excavation or construction. If a building permit is refused, the County Zoning officer shall state such refusal in writing, with the cause, and shall thereupon mail notice of such refusal to the applicant at the address indicated upon the application. The County Zoning Officer shall grant or deny the permit within a reasonable time from the date the application is submitted.

3. The issuance of a building permit shall, in no case, be construed as waiving any provisions of this regulation. A building permit shall become void six (6) months from the date of issuance unless substantial progress has been made by that date on the project described therein.

Section 803. Violation and Penalty.

It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the Board of County Commissioners pursuant thereto. Violation thereof shall be a misdemeanor and may be punishable by a fine up to one hundred dollars ($100) for each and every day that any violator fails to comply with the provisions of these regulations. All fines for violation shall be paid to the County Auditor and shall be credited to the General Fund of the County.

In the event of a violation or a threatened violation of these regulations or restrictions, the Board of County Commissioners or any member thereof, in addition to other remedies, may institute an appropriate action or proceeding to seek an injunction in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation, and it is the duty of the State's Attorney to institute such action.

Any taxpayer of the County may institute mandamus proceedings in Circuit Court to compel specific performance by the proper official or officials of any duty required by these regulations.

ARTICLE IX

AMENDMENTS

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

Section 902. Hearing by Planning Commission on Proposed Change -- Publication of Notice. Upon such filing or upon separate request by the Board, the Planning Commission shall hold a public bearing not less than fifteen (15) days after notice published in a newspaper of general circulation in the area affected. At such public hearing, any person may appear and request or protest the requested change.

Section 903. Hearing by County Commissioners. Following receipt of any petition as provided in Section 901, the Board shall hold a public hearing after notice in a newspaper of general circulation. The County Auditor shall publish a notice once a week for two (2) successive weeks of the time and place when and where such hearing shall be held and a notice that all interested persons may appear and be heard.

Section 904. Adoption or Rejection County Commissioners -- Publication of Change. The Board of County Commissioners shall thereafter by resolution or ordinance, as appropriate, either adopt or reject such amendment, supplement, change, modification or repeal, and if it is adopted by the Board of County Commissioners, a summary of the same shall be prepared by the County Planning Commission, reviewed by the State's Attorney, and published once in the official newspaper in such County and take effect on the twentieth (20th) day after its publication.

ARTICLE X

LEGAL STATUS PROVISIONS

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

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

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

ARTICLE XI

ZONING DISTRICTS

Section 1101. "A" Agricultural District

Purpose

This district is established to maintain and promote farming and related activities within an environment which is generally free of other land use activities. Residential development will be discouraged to minimize conflicts with farming activities and reduce the demand for expanded public services and facilities.

Permitted Uses

1. Agricultural activities and farm related buildings, including Class E but excluding Classes A, B, C and D Concentrated Animal Feeding Operations.

2. Established residence.

3. Residential dwelling not within 1,320 feet of a Concentrated Animal Feeding Operation unless waiver registered on deed.

4. Single family residences including manufactured, mobile and modular homes on less than 35 acre lots provided that such residences are on an established farm building site, abandoned school site, or are lots of record and further provided that the proposed site has established road access, the lot has clearly delineated boundaries and the site can meet minimum water and sewer standards.

5. Fisheries services and game propagation areas;

6. Orchards, tree farms, truck gardening, nurseries and greenhouses;

7. Public parks and recreation areas;

8. 8. Home occupations.

9. Accessory buildings of 120 square feet or less are not required to have a building permit.

Conditional Uses

1. Airports and airstrips;

2. Church or cemetery;

3. Golf course, golf driving range;

4. Sand, gravel or quarry operation, mineral exploration and extraction;

5. Rock crushers, concrete and asphalt mixing plants;

6. Contractors shops and yards;

7. Sanitary landfills provided:

   a. The site meets the requirements of the State Department of Water and Natural Resources.

   b. A site plan is provided indicating the following information:

      (1) Present topography, soil types, depth to groundwater.

      (2) Location of existing water drainage, existing buildings, existing shelterbelts.

      (3) Identification of roads leading to the site.

      (4) Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.

      (5) Proposed monitoring wells, etc.

   c. A minimum of 1,320 feet from the landfill property line to the nearest residence; excluding the residence of the landfill operator.

   d. Conditional use permitting of a Religious farming community will include the authorization to construct or utilize an existing building as a church and to construct multiple single family dwelling units. A detailed site plan will be required, and all federal, state, and local laws will be strictly enforced. If a confined animal feeding operation (CAFO) or any other conditional use permitted uses are planned a separate application will be required. In the event that a Religious farming community ceases to exist all single family dwelling units will be required to be removed.

8. Institution farms, including religious farming communities;

9. Sewage treatment plants;

10. Fur farms;

11. Class A, B, C, and D Concentrated Animal Feeding Operations. See Section 1211.

12. Stables, dog/cat kennels;
13. Veterinary clinics;

14. Junk/salvage/recycling yards, provided that they meet the following minimum requirements and other restrictions that the County Planning Commission may deem appropriate:

    a. Storage for junk/salvage/recycling yards shall be set back a minimum of two hundred (200) feet from any adjoining road right-of-way.

    b. Junk/salvage/recycling yards shall be screened on all sides by a solid wall at least two (2) feet above the highest stock pile or by a shelterbelt of shrubs and trees as approved by the Planning Commission; screening must be maintained in good repair.

    c. No junk/salvage/recycling yards will be allowed within one thousand three hundred twenty (1,320) feet of any residence other than that of the owner of the land.

    d. All junk/salvage/recycling yards must have a minimum lot of ten (10) acres.

15. Water pumping stations, elevated tanks and similar essential public utilities and service structures.

16. One mobile home as a secondary residence, on an established farmstead to be used for the occupancy of a farm employee, or by parents, grandparents, children or brothers and sisters of the occupant of the land, provided that said mobile home is removed within ninety (90) days of the vacation therefrom by the qualified occupant or occupants;

17. Commercial radio and TV towers;

18. Commercial public entertainment enterprises not normally accommodated in commercial areas, including but not limited to, the following: music concerts, rodeos, tractor pulls, and animal and vehicle races;
19. Seasonal retail stands, excluding garden produce but including fireworks stands;

20. Home extended business;

21. Caretaker residences associated with public or private enterprise;

22. Lodging house.

23. Agricultural processing plants.

24. Spreading of manure with irrigation system.

25. Wind Energy Systems (WES)

26. The County Zoning Commission may permit other uses which, in its opinion, are not detrimental to other uses and are in the general character of the Agricultural District.

Area Regulations

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

1. Lot Size: All lots for purposes of residential use unless otherwise provided for in this ordinance, shall be a minimum of thirty five (35) acres, except as provided in Item 7 below.

2. Front Yard: The minimum depth of the front yard shall be one hundred (100) feet. A corner lot will have two front yards.

3. Side Yard: The minimum width of a side yard shall be twenty-five (25) feet.

4. Rear Yard: The minimum depth of a rear yard shall be fifty (50) feet.

5. Maximum Lot Coverage: Dwellings and buildings accessory thereto shall cover not more than twenty-five (25) percent of the lot area.

6. Shelterbelts. (See Section 1208.)

7. The County Zoning Commission may allow a smaller minimum lot size for the "A" Agricultural District under the following condition:

   a. Where a second single family home is requested on an established farmstead, so long as it is immediately connected to the existing farming operation.

b. Single family residences legally built under these ordinances shall be considered an established farm building site after it has existed ten (10) years.

c. The County Zoning Commission may deny any request for a smaller minimum lot size if it is determined to be an attempt to circumvent the intent or requirements of this ordinance.

8. Non-conforming lots of record that are allowed to develop must meet the following setbacks:

	Per Unit Density Sq. Ft	Min. Lot Area Sq. Ft. Well	Min. Lot Area Sq. Ft. Rural Water	Min. Lot Width	Min. Front Yard	Min. Side Yard	Min. Rear Yard
Single Family Dwelling	20,000′	43,560′	20,000′	60′	50′	8′	50′
Other Allowable Uses	20,000′	20,000′	20,000′	60′	50′	8'	50′

Height Regulations

No main buildings shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height. Exceptions include the following:

1. Agricultural buildings;

2. Chimneys, smokestacks, cooling towers;

3. Radio and TV towers;

4. Water tanks;

5. Elevators;

6. Others, providing that they are not used for human occupancy.

7. Wind Energy Systems (WES)

Section 1102. "CI" Commercial/Industrial District

Purpose

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

Permitted Use

1. Permitted uses in the "A" Agricultural District except residential dwellings.

2. Manufacturing and processing plants for agricultural products and by-products and storage and related facilities for such operations.

Conditional Uses

1. Implement sales and service;

2. Truck terminals and freight warehouses;

3. Seed sales and grain storage, fertilizer and chemical storage and sales;

4. Highway and street maintenance shops;

5. Welding and machine shops;

6. Gas, oil and liquid propane stations including bulk stations;

7. Public and private utilities;

8. Livestock sales;

9. Contractors' shops and yards;

10. Wholesale distributing companies;

11. Restaurants;

12. Motels;

13. Conditional Uses in the "A" Agricultural District except residential dwellings.

14. The County Zoning Commission may permit other uses which, in its opinion, are not
detrimental to other uses and are in the general character of the CI District. These may include all manufacturing and processing uses, but do not include extractive or mining operations.

Highway Access

All property in the "CI" District must have access to a County, State, or Federal road.

Area Regulations

1. Lot Area. Lot area shall be determined by need, setback, side yards, rear yards, parking requirements, freight handling requirements, building site and future expansion; however, in no case shall a lot have less than two (2) acres. An applicant for a Conditional Use shall provide a proposed site plan which can be reviewed by the County Zoning Commission. For commercial and industrial uses, buildings shall occupy no more than twenty-five (25) percent of the lot.

2. Front Yard. There shall be a front yard on each street which a lot abuts, and which yard shall be not less than one hundred (100) feet in depth. A corner lot will have two front yards.

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

4. Rear Yards. No building shall be constructed within fifty (50) feet of the rear lot line. The rear yard shall be one hundred (100) feet if the lot abuts an interstate or major highway.

Section 1103. "LP" Lake-Park District

Purpose

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

Area Contained in "LP" District

All land, unless otherwise zoned, within one thousand (1,000) feet of the normal high water line of a designated lake shall be contained in Lake-Park Districts and usage shall conform to the regulations for this District.

Permitted Uses

1. Single-family residential usage;

2. Public parks;

3. Agriculture and horticulture uses;

4. Manufactured or modular homes. (See General Requirements, Sections 1205 and 1207).

5. 5. Home occupations.

6. Accessory buildings, must be of new construction, maximum of 8' side-walls and 1000 square feet or less and meet the required setbacks. Accessory buildings of 120 square feet or less are not required to have a building permit.

Conditional Uses

1. Twin homes;

2. Private parks and camp grounds;

3. Resorts;

4. Restaurants;

5. Boat houses adjacent to lake shore;
6. Accessory building with a side-wall greater than ten (10) feet or more than 1000 square feet.

7. The County Zoning Commission may permit other uses which in its opinion are not detrimental to other uses and are in the general character of other uses in the LP District.

Density, Area and Yard Regulations (Lake Front)

The Lake Park (lake front) district regulations shall be as follows:

	Per Unit Density Sq. Ft.	Min.Lot Area Sq. Ft.	Min. Shoreline Frontage	Min. Road Frontage	Min. Front Yard	Min. Side Yard	Lake Side Yard
Single Family Dwelling	20,000′	20,000′	75′	50′	25′	8′	75′
Other Allowable Uses	20,000′	20,000′	75′	50′	25′	8′	75′

1. A corner lot will have two front yards.

2. For lakes or ponds: No structure except piers and docks shall be placed at an elevation such that the lowest floor, including basement, is less than three (3) feet above the highest known water level. In those instances where sufficient data on known high water levels are not available, the elevation line of permanent terrestrial vegetation shall be used as the estimated high water elevation. when fill is required to meet this elevation, the fill shall be required to stabilize before construction is begun.

3. Sealed holding tanks for individual cabins and homes are required for all lots containing less than twenty thousand (20,000) square feet.

Density, Area and Yard Regulations (Non-Lake Front)

The Lake Park (non-lakefront) district regulations shall be as follows:

	Per Unit Density Sq. Ft	Min. Lot Area Sq. Ft.	Min. Lot Width	Min. Front Yard	Min. Side Yard	Min. Rear Yard
Single Family Dwelling	20,000′	20,000′	60′	50′	8′	50′
Other Allowable Uses	20,000′	20,000′	60′	50′	8'	50′

1. 1. A corner lot will have two front yards.

Shoreline Alterations

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

1. Removal of Shore Cover

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

   a. Cutting shall leave sufficient cover to screen cars, dwellings, and accessory structures, except boathouses, as seen from the water, to preserve natural beauty and to control erosion.

   b. Natural shrubbery shall be preserved as far as practicable, and where removed it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.

   c. The removal of natural shrubbery and its replacement shall require the granting of a permit by the Zoning officer. Petition for such permit shall be accompanied by a plan showing the work to be accomplished. The granting of such Conditional Use shall be conditional upon a contract requiring the petitioner to give to the Zoning officer, within one (1) year after the date of

grant, satisfactory evidence of compliance with such plan or pay for the cost of such compliance by the County.

Filling, Grading, Lagooning and Dredging

1. Filling, grading, lagooning or dredging which would result in substantial detriment to natural waters by reason of erosion, sedimentation or impairment of fish and aquatic life is prohibited.

2. A permit shall be required for any filling or grading. This requirement does not apply to soil conservation practices such as terraces, runoff diversions and grassed waterways, which are used for sediment retardation.

3. Building permits shall be required for all retaining walls or structures.

Section 1104. "NR" Natural Resource District

Purpose

The purpose of the Natural Resource District is to provide for the retaining of natural vegetation of a particular area, to preserve the natural environment and resources from destructive land uses and to protect wildlife habitat. Such an area may include but is not limited to flood plains of rivers, streams, and lakes, abandoned quarries, certain wetlands, natural prairies, and historical sites.

Area Contained in "NR" District

All lands, unless otherwise zoned, within three hundred (300) feet of wetlands that are totally or partially owned by the State or Federal governments as wildlife production or public shooting areas. Also lands on meandered lakes may be included.

Permitted Uses

1. Wildlife production areas;
2. Game refuges;
3. Historic sites and/or monuments;
4. Designated natural prairies;
5. Public hunting and fishing access areas.
6. Horticulture uses and livestock grazing.

Uses Permitted by Conditional Use if Deemed Not Detrimental to District

1. Transportation and utility easements and rights-of-way.
2. Utility substations;
3. Public parks and/or playgrounds;

Section 1105. Flood Damage Prevention Regulations

Section 1. Statutory Authorization Findings of Fact Purpose and Objectives

1.1 Statutory Authorization

The Legislature of the State of South Dakota has in SDCL Chapter 11-2 delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the County Commissioners of Brookings County, South Dakota, ordain as follows:

1.2 Findings of Fact

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

(2) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood-proofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

1.3 Statement of Purpose

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

(1) To protect human life and health;

(2) To minimize expenditure of public money for costly flood control projects;

(3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) To minimize prolonged business interruptions;

(5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;

(6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

(7) To ensure that potential buyers are notified that property is in an area of special flood hazard; and,

(8) To ensure that those who occupy the areas of special flood hazards assume responsibility for their actions.

1.4 Methods of Reducing Flood Losses

In order to accomplish its purposes, these regulations include methods and provisions for:

(1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

(2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

(4) Controlling filling, grading, dredging, and other development which may increase flood damage; and,

(5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

Section 2. Definitions

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them the meaning they have in common usage and to give these regulations the most reasonable application.

(1) Area of Special Flood Hazard means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

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

(3). Corner Lot is a lot with two front yards.

(4) Development means any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

(5) Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters and/or

(b) The unusual and rapid accumulation of runoff of surface waters from any source.

(6) Flood Insurance Rate Map (FIRM) means an official map of a community on which the Federal Emergency Management Agency has delineated areas of special flood hazard designated as Zone A.

(7) Manufactured Home is a building, used exclusively for human habitation, which is constructed in a manufacturing facility after June 15, 1976, in compliance with the National Manufactured Home Construction and Safety Standards Act and transportable in one or more sections to a building site.

(8) Mobile Home is a building, used exclusively for human habitation, constructed in a manufacturing facility prior to June 15, 1976, the effective date of the National Manufactured Home Construction and Safety Standards Act, which is transported on a permanent chassis to a building site. A mobile home shall be construed to remain a mobile home subject to all regulations applying thereto, whether or not wheels, axles, hitch or other appurtenances of mobility are removed and regardless of the nature of the foundation provided. A mobile home shall not be construed to be a travel trailer or other form of recreational vehicle.

(9) Modular Home is a building, used exclusively for human habitation, constructed off site and in compliance with the applicable local or state building code and which is transported on a temporary chassis to a permanent building site.

(10) Structure means a walled and roofed building or manufactured home that is principally above ground.

(11) Substantial Improvement means 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:

(a) Before the improvement or repair is started, or

(b) If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this designation, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

(a) Any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

(b) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(12) Zoning Complaints. All zoning complaints must be in writing and signed.

Section 3. General Provisions

3.1 Lands to Which This Ordinance Applies.

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of Brookings County.

3.2 Basis for Establishing the Areas of Special Flood Hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in its Flood Insurance Rate Map (FIRM), dated January 1, 1987, is adopted by reference and declared to be part of these regulations. The FIRM is on file at the County Auditor's Office, Brookings County Courthouse, Brookings, SD.

3.3 Compliance

No structure or land shall hereafter be constructed, located, extended, or altered without full compliance with the terms of these regulations and other applicable regulations.

3.4 Abrogation and Greater Restrictions

These regulations are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where these regulations and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

3.5 Interpretation.

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

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the governing body; and

(3) Deemed neither to limit nor repeal any other powers granted under State statutes.

3.6 Warning and Disclaimer of Liability

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

Section 4. Administration

4.1 Establishment of Development Permit

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 3.2. Application for a development permit shall be made on forms furnished by the Zoning officer and may include, but not be limited to: Plans in duplicate drawn to

scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the forgoing. Specifically, the following information is required:

(1) Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;

(2) Elevation in relation to mean sea level to which any structure has been flood proofed;

(3) Certification by a registered professional engineer or architect that the flood proofing methods for any nonresidential structure meet the flood proofing criteria in Section 5.2-2; and

(4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

4.2 Designation of the Zoning Officer

The Zoning officer is hereby appointed to administer and implement these regulations by granting or denying development permit applications in accordance with their provisions.

4.3 Duties and Responsibilities of the Zoning Officer

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

4.3-1. Permit Review

(1) Review of all development permits to determine that the permit requirements of these regulations have been satisfied.

(2) Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.

(3) Review all development permits to determine if the proposed development adversely affects the flood carrying capacity of the area of special flood hazard. For the purposes of these regulations, "adversely affects" means damage to adjacent properties because of rises in flood stages attributed to physical changes of the channel and the adjacent overbank areas.

(i) If it is determined that there is no adverse effect and the development is not a building, then the permit shall be granted without further consideration.

(ii) If it is determined that there is an adverse effect, then technical justification (i.e., a registered professional engineer's certification) for the proposed development shall be required.

(iii) If the proposed development is a building, then the provisions of these regulations shall apply.

4.3-2. Uses of Other Base Flood Data

When base flood elevation data has not been provided in accordance with Section 3.2, Basis for Establishing the Areas of Special Flood Hazard, the Zoning officer shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring that new construction, substantial improvements, or other development in Zone A are administered in accordance with Section 5.2, Specific Standards.

4.3-3. Information to be Obtained and Maintained.

(1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

(2) For all new or substantially improved flood proofed structures:

(i) Verify and record the Actual elevation (in relation to mean sea level) to which the structure has been flood proofed.

(ii) Maintain the flood proofing certification required in Section 4.1 (3).

(3) Maintain for public inspection all records pertaining to the provisions of these regulations.

4.3-4. Alteration of Watercourses

(1) Notify adjacent communities and Emergency and Disaster Services, Pierre, prior to any alteration or relocation of a watercourse, and submit

evidence of such notification to the Federal Emergency Management Agency.

(2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

4.3-5. Interpretation of FIRM Boundaries

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

Section 5. Provisions for Flood Hazard Reduction

5.1 General Standards

In all areas of special flood hazards, the following standards are required:

5.1-1. Anchoring

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure and capable of resisting the hydrostatic and hydrodynamic loads.

(2) All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement and capable of resisting the hydrostatic and hydrodynamic loads. Methods of anchoring may include, but are not limited to use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces. Specific requirements may be:

(i) Over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations, with manufactured homes less than 50 feet long requiring one additional tie per side.

(ii) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring four additional ties per side;

(iii) All components of the anchoring system be capable of carrying a force of 4,800 pounds; and

(iv) Any additions to the manufactured home be similarly anchored.

5.1-2. Construction Materials and Methods

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(3) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

5.1-3. Utilities

(1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and

(3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

5.1-4. Subdivision Proposals

(1) All subdivision proposals shall be consistent with the need to minimize flood damage;

(2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

(3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

(4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or five acres (whichever is less).

5.1-5. Encroachments

Encroachments, including fill, new construction, substantial improvements, and other development shall be prohibited in any floodway unless a technical evaluation demonstrates that the encroachments will not result in any increase in flood levels during the occurrence of the base flood discharge.

5.2 Specific Standards

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 4.3-2, Use of Other Base Flood Data, the following standards are require.

5.2-1. Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to one foot above the base flood elevation.

5.2-1a Below-Grade Residential Crawlspace Construction

New construction and substantial improvement of any below-grade crawlspace shall:

(1) Have the interior grade elevation that is below base flood elevation no lower than two feet below the lowest adjacent grade;

(2) Have the height of the below-grade crawlspace measured from the interior grade of the crawlspace to the top of the foundation wall, not exceed four feet at any point;

(3) Have an adequate drainage system that allows floodwaters to drain from the interior area of the crawlspace following a flood;

(4) Be anchored to prevent flotation, collapse, or lateral movement of the structure and be capable of resisting the hydrostatic and hydrodynamic loads;

(5) Be constructed with materials and utility equipment resistant to flood damage;

(6) Be constructed using methods and practices that minimize flood damage;

(7) Be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(8) Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

(a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

(b) The bottom of all openings shall be no higher than one foot above grade;

(c) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

5.2-2. Nonresidential Construction

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to one foot above the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

(1) Be flood proofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

(2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(3) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this paragraph. Such certifications shall be provided to the official as set forth in Section 4.3-3(2).

Section 1106. Aquifer Protection Overlay District.

Purpose

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

The purpose of the Aquifer Protection Overlay District is to protect public health and safety by minimizing contamination of the shallow/surficial aquifers of Brookings County. It is the intent to accomplish this, as much as possible, by public education and securing public cooperation.

Appropriate land use regulations will be imposed, however, which are in addition to those imposed in the underlying zoning districts or in other county regulations. It is not the intent to grandfather in existing land uses which pose a serious threat to public health through potential contamination of public water supply well head areas.

Definitions

1. Aquifer. A geologic formation, group of formations or part of a formation capable of storing and yielding ground water to wells or springs.

2. Best Management Practices. (BMP) means schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMP's also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, manure disposal, manure application, waste or manure stockpiles, or drainage from raw material storage.

3. Buffer Zone. An area outside and adjacent to Zone A that has been delineated to account for possible changes in the boundaries of Zone A due to effects of irrigation pumping.

4. Chemigation. The process of applying agricultural chemicals (fertilizer or pesticides) using an irrigation system by injecting the chemicals into the water.

5. Class V Injection Well. A conduit through which potentially contaminated but generally non-hazardous fluids can move from the land surface to the subsurface; the types of primary concern are (1) commercial/industrial facility septic tanks when

they are used to dispose of more than domestic wastewater and (2) dry wells for repair/service bay drains at facilities servicing motorized vehicles/ equipment.

6. Concentrated Animal Feeding Operation See Section 1211.

7. Contamination. The process of making impure, unclean, inferior, or unfit for use by introduction of undesirable elements.

8. Contingency Plans. Detailed plans for control, re-containment, recovery and clean up of hazardous materials released during fires, equipment failures, leaks and spills.

9. Corner Lot is a lot with two front yards.

10. Development. The carrying out of any construction, reconstruction, alteration of surface or structure or change of land use or intensity of use.

11. Facility. Something that is built, installed or established for a particular purpose.

12. Grey Water. All domestic wastewater except toilet discharge water.

13. Hazardous Materials. A material which is defined in one or more of the following categories.

    a. Ignitable: A gas, liquid or solid which may cause fires through friction, absorption of moisture or which has low flash points. Examples: white phosphorous and gasoline.

    b. Carcinogenic: A gas, liquid or solid which is normally considered to be cancer causing or mutagenic. Examples: PCBs in some waste oils.

    c. Explosive: A reactive gas, liquid or solid which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.

    d. Highly Toxic: A gas, liquid or solid so dangerous to man as to afford an unusual hazard to life. Examples: parathion and chlorine gas.

    e. Moderately Toxic: A gas, liquid or solid, which through repeated exposure or in a single large dose can be hazardous to man. Example: atrazine.

    f. Corrosive: Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.

14. Manure Storage Area. An area for the containment of animal manure in excess of 8,000 pounds or 1,000 gallons.

15. Leaks and Spills. Any unplanned or improper discharge of a potential contaminant including any discharge of a hazardous material.

16. Pasture. A field that provides continuous forage to animals without depletion of forage matter.

17. Primary Containment Facility. A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.

18. Secondary Containment Facility. A second tank, catchment pit, pipe or vessel that limits and contains liquid or chemical leaking or leaching from a primary containment area. Monitoring and recovery are required.

19. Shallow/Surficial Aquifer.. An aquifer in which the permeable media (sand and gravel) starts at the land surface or immediately below the soil profile. The main shallow/ surficial aquifer in Brookings County is the Big Sioux Aquifer.

20. Ten Year Time of Travel Distance. The distance that ground water will travel in ten years. This distance is a function of the permeability and slope of the aquifer.

21. Zone of Contribution. The entire area around a well or well field that is recharging or contributing water to the well or well field.

22. Zoning Complaints. All zoning complaints must be in writing and signed.

Establishment and Delineation of Aquifer Protection Overlay Zones.

Boundaries for the aquifer protection zones for the Aquifer Protection Overlay District are shown on published maps entitled "Well head Protection Area Maps, Brookings County Shallow Aquifer Map" dated May, 1988, with pages 5 and 9 amended in January of 1999, as drawn by Banner Associates. Said maps are hereby adopted by reference as part of this ordinance as if the maps were fully described herein.

The shallow/surficial aquifer boundary was mapped using data from the South Dakota Geological Survey and United States Geological Survey. This map only serves as a general guide to the location of these aquifers. County studies and other information shall be used, where available, to better determine more precise aquifer locations. Aquifer boundaries are drawn at the discretion of geologists and hydrologists based on best available information. Therefore, actual site specific aquifer boundaries may differ

from the attached map and other information. Hydrogeologic information is necessary to verify the location of a concentrated animal feeding operation in relation to an underlying shallow aquifer.

Zone A -- Aquifer Critical Impact Zone.

Zone A, the well head protection area, is the zone of contribution mapped around all public water supply wells or well fields and includes land upgradient to the ten year time of travel boundary plus contributing drainage areas, as delineated on the official copy of published maps representing sloping, adjacent lands not underlain by the aquifer from which surface water can flow directly onto Zone A.

Permitted uses in Zone A, Provided They Meet Appropriate Performance Standards Outlined For Aquifer Protection Overlay Zones:

1. 1. Agriculture;

    a. Application of manure is permitted with an approved nutrient management plan.

2. Horticulture;

3. Park, greenways or publicly owned recreational areas;

4. Necessary public utilities/facilities designed so as to prevent contamination of ground water.

Conditional Uses in Zone A:

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

1. Expansion of existing conforming and non-conforming uses to the extent allowed by the underlying district. The County Zoning Commission shall not grant approval unless it finds such expansion does not pose greater potential contamination to ground water than the existing use.

2. Sediment basins will be allowed on a case-by-case basis and must be constructed to current NRCS standards and specifications.

Prohibited Uses in Zone A:

The following uses are expressly prohibited in Zone A:

1. New Concentrated Animal Feeding Operations after adoption of this ordinance.
2. Existing Concentrated Animal Feeding Operations will not be able to expand beyond a total of 500 animal units (Class D).
3. Earthen storage basins and lagoons.
4. Disposal of or stockpiling of solid waste.
5. Post harvest application of nitrogen fertilizer prior to October 15th except for the spreading of manure.
6. Storage of road salt or disposal of snow containing deicing chemicals.
7. Processing and storage of PCB containing oils;
8. Car washes;
9. Auto service, repair or painting facilities and junk or salvage yards;
10. Disposal of radioactive waste;
11. Graveyards or animal burial sites;
12. Open burning and detonation sites;
13. All other facilities involving the collection, handling, manufacture, use storage, transfer or disposal of any solid or liquid material or waste having a potentially harmful impact on ground water quality;
14. Land spreading or dumping of petroleum-contaminated soil, waste oil or industrial wastes.
15. Class V injection wells.
16. All uses not permitted or not permitted as Conditional Uses in Zone A.

Zone B -- Aquifer Secondary Impact Zones

Zone B is established as the remainder of the mapped shallow/ surficial aquifer not included in Zone A.

This portion of the aquifer is being protected because (1) it is a valuable natural resource for future development, (2) it provides drinking water supply for individual households, (3) contamination is not justified, even though this area is not a public water supply wellhead and (4) contaminants could eventually reach Zone A.

Permitted Uses in Zone B:

1. All uses permitted in the underlying zoning districts provided that they can meet the Performance standards as outlined for the Aquifer Protection Overlay Zones.

Conditional Uses in Zone B:

1. New Class D and expansion of existing Class D up to 999 animal units (Class C).

2. Sediment basins will be allowed on a case-by-case basis and must be constructed to current NRCS standards and specifications.

3. All Conditional Uses allowed in underlying districts may be approved by the County Zoning Commission provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones.

Prohibited Use in Zone B:

The following use is expressly prohibited in Zone B:

1. New and expansion of Class A, B and C Concentrated Animal Feeding Operations.

2. Earthen storage basins and lagoons.

3. Post harvest application of nitrogen fertilizer prior to October 15th except for the spreading of manure.

4. Land spreading or dumping of petroleum-contaminated soil, waste oil or industrial wastes.

5. Class V injection wells.

Performance Standards:

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

1. New or replacement septic tanks and associated drain fields for containment of human or animal wastes must conform with regulations established by the State Department of Water and Natural Resources.
2. Any facility involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or wastes, except for spreading of manure, in excess of 1000 pounds and/or 100 gallons which has the potential to contaminate ground water must have a secondary containment system which are easily inspected and whose purpose is to intercept any leak or discharge from the primary containment vessel or structure. Underground tanks or buried pipes carrying such materials must have double walls and inspectable sumps. Pipes installed to carry diluted chemicals for chemigation are exempted and storage of liquid fertilizer for chemigation is allowed as long as a secondary containment system is used. Secondary containment for tanks used for chemigation must be in place by April 1, 1991.

3. Open liquid waste ponds containing materials referred to in (2) above will not be permitted without a secondary containment system except for community wastewater lagoons. Agricultural waste storage ponds are permitted but must be constructed in conformance with Natural Resource Conservation Service South Dakota Engineering Standard, Waste Storage Ponds 425. (See Appendix 1).

4. Storage of petroleum products in quantities exceeding fifty-five (55) gallons at one locality in one tank or series of tanks must be in elevated tanks; such tanks must have a secondary containment system noted in (2) above where it is deemed necessary by the County Zoning office.

5. Discharge of industrial process water on site is prohibited without County Zoning office approval.

6. Auto service, repair or painting facilities and junk or salvage yards in Zone B shall meet all State and Federal standards for storage, handling and disposal of petroleum products and shall properly dispose of all other potentially hazardous waste materials.

7. An acceptable contingency plan for all permitted facilities must be prepared and on file in the County Zoning Office for preventing hazardous materials from contaminating the shallow/surficial aquifer should floods, fire and other natural catastrophes or equipment failure occur:

a. For flood control, all underground facilities shall include but not be limited to a monitoring system and secondary standpipe above the 100-year flood control level, for monitoring and recovery. For above ground facilities, an impervious dike, above the 100 year flood level and capable of containing 100 percent of the largest volume of storage, will be provided with an overflow recovery catchment area (sump).

b. For fire control, plans shall include but not be limited to a safe fire fighting procedure, a fire retardant system and provide for dealing safely with both health and technical hazards that may be encountered by disaster control personnel in combating fire. Hazards to be considered are overhead and buried electrical lines, pipes, other buried objects and other hazardous liquids, chemicals or open flames in the immediate vicinity.

c. For equipment failures, plans shall include but not be limited to:

   Below ground level, removal and replacement of leaking parts, a leak detection system with monitoring and an overfill protection system. Above ground level, liquid and leaching monitoring of primary containment systems, their replacement or repair and cleanup and/or repair of the impervious surface.

d. For any other natural or man-caused disasters occurring, the owner and/or operator shall report all incidents involving liquid or chemical material in an endangerment of the health and /or safety of either disaster personnel and/or the public in general.

   Agricultural operations are exempted from this section unless they store chemicals that are on the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III) extremely hazardous substance list over the threshold planning quantity at any one time. (See Appendix 3)

   The County Zoning Office, DENR and public water supply officials shall be informed within 24 hours of all leaks and spills of materials that might potentially contaminate ground water.

8. Since it is known that improperly abandoned wells can become a direct conduit for contamination of ground water by surface water, all abandoned

wells should be plugged in conformance with South Dakota Well Construction Standards, Chapter 74:02:04:67-70.

Grant of Permit, Alteration of Use:

A permit will be granted when the County Zoning officer has examined the application and determined that the proposed use, activity or development meets the performance standards.

In securing a use permit, the owner/developer must make future improvements which may become necessary to prevent contamination of shallow/surficial aquifers and the owner/developer must allow County personnel to inspect any improvements to verify they meet the performance standards.
Whenever any person has obtained a permit and thereafter desires alteration of the authorized use, such persons shall apply for a new permit. The owner may appeal a County Zoning officer's decision to modify or deny a requested permit to the County Planning Commission/County Zoning Commission.

Exceptions:

1. Any lawful use in existence on the effective date of this ordinance shall be permitted to continue provided it can be shown such use does not threaten public health and safety by potential contamination of water in the shallow/surficial aquifers. Any proposed additions, changes or improvements will require a permit.

2. Storage of liquids and chemicals used in agricultural operations during spring/fall planting and crop cultivation are exempt from the requirements of this ordinance April 1 to October 1. Tanks used for chemigation are not exempt. Best Management Practices are encouraged, particularly in Zone A.

3. Storage of liquid or dry fertilizer in amounts equal to or less than 1,000 pounds or 100 gallons, stored indoors by each farm operator is exempt from the requirements of this ordinance.

Limitation of County Liability

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

Underlying Zones:

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

Saving Clause:

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

ARTICLE XII

GENERAL REQUIREMENTS

Pursuant to the purpose of this regulation are certain general requirements that are not provided for under Article XI Zoning Districts. These requirements are set forth under this Article.

Section 1201. Screening.

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

Section 1202. Vision Clearance on Corner Lots. On a corner lot in any residential district, no fence, building or other structure shall be erected to a height of more than three (3) feet above the elevation of the established grade at the intersection of the streets on that part of any yard which is bounded by the street lines of the intersecting streets, either at the intersection of said street lines or within such area.

Section 1203. Refuse.

In all zoning districts, refuse (rubbish, garbage, trash, wastes, or debris) shall be kept within a complete enclosed building or specially designed closed container made for such purpose. Owners of vacant lot shall be responsible for keeping their property free of trash.

Section 1204. Unlicensed Vehicles.

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

Section 1205. Moved in Buildings.

1. Any building moved into any use district must secure a building permit from the County Zoning Officer.

2. Residences

   a. A new residence to be used for a first occupancy, constructed off the property and moved to the location, shall not require adjoining landowners approval for the issuance of a building permit.

   b. The County Zoning Officer may issue a building permit for a previously occupied residence to be moved into an appropriate district when the application is accompanied by the written consent of one hundred percent (100%) of the adjoining landowners and one hundred percent (100%) of the landowners within two hundred (200) feet.

   c. In the absence of the consent of all neighbors above provided, the Brookings County Planning and Zoning Commission by a 2/3 majority may authorize the issuance of a building permit for the moving in of a previously occupied residence after a public hearing. Notice of the hearing shall be provided in writing at least fourteen (14) days prior to the hearing to all adjoining landowners and all landowners within two hundred (200) feet of the property. In determining whether or not to authorize the permit, the Board shall consider the following:

      1. Whether or not the proposed residence is consistent in character with the other residences in the area.

Section 1206. Minimum Water and Sewer Requirements.

A water and sewer system cannot be approved until it meets the following standards:

1. All public utilities and facilities shall be located, elevated, and constructed to minimize or eliminate flood damage; and

2. All new or replacement water supply systems and sanitary sewage systems, in addition to meeting the requirements of the South Dakota Department of Water and Natural Resources, must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

Section 1207. Minimum Mobile Home/Manufactured Home Requirements

1. Any manufactured, mobile or modular home must secure a building permit from the County Zoning Officer.

2. Residences

   a. A new residence to be used for a first occupancy, constructed off the property and moved to the location shall not require adjoining landowners approval for the issuance of a building permit.

   b. The County Zoning Officer may issue a building permit for a previously occupied residence to be moved into an appropriate district when the application is accompanied by the written consent of one hundred percent (100%) of the adjoining landowners and one hundred (100%) of the landowners within two hundred (200) feet.

   c. In the absence of the consent of all neighbors above provided, the Brookings County Planning and Zoning Commission by a 2/3 majority may authorize the issuance of a building permit for the moving in of a previously occupied residence after a public hearing. Notice of the hearing shall be provided in writing at least fourteen (14) days prior to the hearing to all adjoining landowners and all landowners within two hundred (200) feet of the property. In determining whether or not to authorize the permit, the Board shall consider the following:

      1. Whether or not the proposed residence is consistent in character with the other residences in the area.

3. All mobile homes, regardless of location, shall be tied down as prescribed by the Protecting Manufactured homes from High Winds, TR75, issued July 1986, by the Federal Emergency Management Agency.

4. Must have been constructed after June 15, 1976 (applies to Lake Park District only).

Section 1208. Shelterbelt Setback Requirements.

A shelterbelt, consisting of one (1) or more rows shall not be established within one hundred (100) of the road right-of-way of any road. Shelterbelts at right angles to roads shall have a minimum setback of fifty (50) feet from the right-of-way. Shelterbelts parallel or at right angle to an adjoining property line shall maintain the same setbacks as required on the right-of-way. Shelterbelts may be planted closer to the adjoining

property line than required above with the written permission of the adjoining landowner. Trees used for landscaping the area immediately adjacent to farmsteads and residences are exempt from this regulation. (Updated April 1, 2003, Ordinance #2003-01, Brookings County Commission)

Section 1209. Home Occupations.

Home occupations shall be subject to the following requirements:

1. Such use shall be conducted entirely within a dwelling and carried on by not more than two (2) individuals, one of whom is the principal occupant.

2. Such use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes and shall not change the residential character thereof.

3. The total area used for such purposes shall not exceed the equivalent of one-fourth (1/4) the floor area, in square feet, of the first floor of the user's dwelling unit, if any, otherwise of the main floor of such dwelling unit; but in any instance a maximum of three hundred (300) square feet shall be allowed.

4. There shall be no advertising, display or other indications of a home occupation on the premises except as follows: (1) there is used no sign other than a non-lighted and non-reflecting name plate not more than sixteen (16) square feet in area, which name plate may designate the home occupation carried on within, and which name plate must be clearly visible at the entrance to the premises where said home occupation is carried on and must be attached to the building wherein the home occupation is conducted.

5. There shall not be conducted on the premises the business of selling stocks of merchandise, supplies, or products, provided that incidental retail sales may be made in connection with other permitted home occupations.

6. There shall be no exterior storage on the premises of material used in the home occupation or of any highly explosive or combustible material.

7. There shall be no offensive noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line.

8. A home occupation, including studios or rooms for instruction, shall provide an additional off-street parking area adequate to accommodate needs created by the home occupation of not less than two (2) parking spaces plus the parking spaces required for the dwelling unit. Such parking shall be provided on the same lot as the home occupation.

9. For the purposes of this section, provided all requirements contained herein are met, the following shall be considered home occupations:

   a. Professional and service offices;

   b. Art and photo studio;
   c. Dressmaking or millinery;

   d. Teaching, with musical instruction limited to two (2) pupils at a time;

   e. The keeping of not more than two (2) roomers or boarders;

   f. Tea room;

   g. Barber shop;

   h. Beauty shop;

   i. Antique shop;

   j. Other uses in the opinion of the County Zoning Commission, which would not be detrimental.

Section 1210. Extended Home Occupation.

There are significant differences between home occupations on small tracts and agricultural home occupations. The nature of resources available for use, the benefits and disadvantages created by home occupations, and the problems generated necessitate a distinction between urban home occupations and farm home occupations. Each concept is based on supplementing income, but the districts in which each is practiced has unique characteristics. For the aforesaid reasons, different home occupations may be permitted in agricultural zoning districts than are permitted in the urban residential districts.

1. For the purpose of this section, provided all requirements are met, the following shall be considered farm home occupations:

   a. Welding repair conducted in a safe manner;

   b. Veterinarian's office;

   c. Blacksmith;

d. Service office;

e. Others which, in the opinion of the County Zoning Commission would be in the same general character as those noted above.

2. Any home occupation shall be clearly supplementary to the principal use of the land and structures.
3. A home occupation may not be changed to another home occupation except by the issuance of a separate special use permit.

4. If any "A" District or part thereof is rezoned, the rezoned area shall meet the new district regulations and any home occupations shall be considered a non-conforming use until such requirements are met.

5. No sign shall be permitted larger than that allowed for a home occupation (see Section 1209 (4)).

Section 1211. Concentrated Animal Feeding Operation Regulations.

Intent

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

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

Definitions

1. A 25-year, 24-hour Storm Event is the amount of rainfall in a 24-hour period expected to occur only once every 25 years. Typically, the 25-year, 24-hour storm event is about 5 inches in Brookings County. The map in Appendix A shows the actual amount of rainfall that constitutes the 25-year, 24-hour storm event for South Dakota.

2. Accessory Buildings and Uses is a subordinate use, which is incidental to that of the main building or to the main use of the premises. Buildings of 120 square feet or less are not required to have a building permit.

3. Anaerobic Lagoon means an impoundment used in conjunction with an animal feeding operation, if the primary function of the impoundment is to store and stabilize organic manure, the impoundment is designed to receive manure on a regular basis, and the impoundment's design manure loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include any of the following:

a. A confinement feeding operation structure.

b. A runoff control basin, which collects and stores only precipitation induced runoff from an open feedlot.

c. An anaerobic treatment system, which includes collection and treatment facilities for all gases.

4. Animal Feeding Operation Structure means an anaerobic lagoon, formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building.

5. Animal Manure is poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding or other materials.

6. Animal Unit See page 76

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

8. Aquifer is a geologic formation, group of formations or part of a formation capable of storing and yielding ground water to wells or springs.

9. Best Management Practices (BMP) means schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMP's also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, manure disposal, manure application, waste or manure stockpiles, or drainage from raw material storage.

10. Building is any structure in excess of 120 square feet designed for the support, shelter and protection of persons, animals, or property.

11. Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

12. Change in Operation means a cumulative increase of more than 500 animal units, after May 13, 1997, which are confined at an un-permitted concentrated feeding operation.

13. A Chronic or Catastrophic Event is a single precipitation event, or a series of rainfall events in a short period of time that totals or exceeds the volume of a 25-year, 24-hour storm event. The event includes tornadoes, or other catastrophic conditions.

The event would directly result in, or cause, an overflow from the containment structure or lagoon that receives and contains runoff from an open lot.

14. Common Ownership is defined as single, corporate, cooperative or other joint operation or venture.

15. Concentrated Animal Feeding Operation see page 76.
16. Confinement Feeding Operation means a totally roofed animal feeding operation in which wastes are stored or removed as a liquid or semi-liquid.

17. Confinement Feeding Operation Structure means a formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building. A confinement feeding operation structure does not include an anaerobic lagoon.

18. Corner lot is a lot with two front yards.

19. Domestic Animal is any animal that through long association with man, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind. For the purpose of this ordinance the definition shall include, but is not limited to, animals commonly raised on farms and ranches, such as cattle, horses, hogs, sheep and mules.

20. Earthen Manure Storage Basin means an earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from a confinement feeding operation if accumulated wastes from the basin are removed at least once each year.

21. Established Building Site means an established building site shall have been used in the past as a farmstead for a normal farming operation. Any residence established for more than ten (10) years shall become an established building site.

22. Established Residence is any residence established by a personal presence, in a fixed and permanent dwelling and an intention to remain there.

23. Farm Dwelling means any residence farmer owned or occupied by the farm owners, operators, tenants, or seasonal or year-around hired workers.

24. Feedlot Operator means an individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of one or more concentrated animal feeding operations.

25. Formed manure Storage Structure means a structure, either covered or uncovered, used to store manure from a confinement feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.

26. Housed Lot means totally roofed buildings that may be open or completely enclosed on the sides. Animals are housed over solid concrete or dirt floors, slotted floors over pits or manure collection areas in pens, stalls or cages. Housed lot is synonymous with other industry terms such as slotted floor buildings.

27. Letter of Assurances is a list of conditions signed by the applicant for a permit acknowledging agreement to follow the conditions of the permit.

28. Man-made means a pipeline, ditch, drain, tile, terrace, irrigation system, machine, or other object that carries manure, wastewater, or runoff into waters of the state.

29. Manure Management System means any piping, containment structures, and disposal appurtenances associated with the collection, storage, treatment, and disposal of manure or wastewater at an concentrated animal feeding operation.

30. Non-farm Dwelling means any occupied dwelling, which is not a farm dwelling.

31. No-till Cropland means land which is subject to a conservation farming practice: where the soil is left undisturbed from harvest to planting; where planting or drilling is done in a narrow seedbed or slot created by coulters, row cleaners, disk openers, or in-row chisel; and where this conservation practice has been ongoing for at least four consecutive years to establish the soil characteristics necessary to reduce or eliminate erosion from runoff.

32. Open Concentrated Animal Feeding Operation is an un-roofed or partially roofed animal feeding operation in which no crop, vegetation, forage growth or post-harvest residues are maintained during the period that animals are confined in the operation.

33. Open Lot means pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Open lot is synonymous with other industry terms such as pasture lot, dirt lot or dry lot.

34. Permit is required by these regulations unless stated otherwise.

35. Potential Pollution Hazard A Concentrated Animal feeding Operation of 100 to 500 Animal Units may be classified as a Class D Operation by the County Zoning Officer

when a Potential Pollution Hazard exists. Factors to be considered by the Zoning Officer in determining a Potential Pollution Hazard include the following:

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

b. A Potential Water Pollution Hazard exists due to sitting over a shallow aquifer or drainage that contributes to the waters of the State.

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

37. Process wastewater means any process generated wastewater and any precipitation (rain or snow) that comes into contact with the animals, manure, litter or bedding, feed, or other portions of the animal feeding operation. The term includes runoff from an open lot.

38. Producer means the owner or operator of the concentrated livestock feeding operation.

39. Sediment Basin is a basin constructed to trap and store water-born sediment and debris.

40. Severe Property Damage means substantial physical damage to property, damage to the treatment facilities, which causes them to become inoperable, or substantial and permanent loss of natural resources, which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

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

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

43. Shallow Well is a well that is located in a shallow aquifer.

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

45. Significant Contributor of Pollution means to determine if a feedlot meets this definition, the following factors are considered:

    a. Size of feeding operation and amount of manure reaching waters of the state;

    b. Location of the feeding operation in relation to waters of the state;

    c. Means of conveyance of manure and process wastewater into waters of the state; and

    d. d. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal manure and process wastewater into waters of the state.

46. Solid Waste (reference SDCL 34A-6-1.3, 17.) any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations and from community activities, but does not include mining waste in connection with a mine permitted under Title 45, hazardous waste as defined under chapter 34A-11, solid or dissolved materials in domestic sewage or dissolved materials in irrigation return flows or industrial discharges with are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended to January 1, 1989, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, 1989.

47. Solid Waste Facility or solid waste disposal facility, (reference SDCL 34A-6-1.3, 18.) all facilities and appurtenances connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained or operated to facilitate the disposal or storage of solid waste.

48. Solid Waste Management System (reference SDCL 34A-6-1.3, 19.) is the entire process of storage, collection, transportation, processing and disposal of slid wastes by any person.

49. Conditional Use. A Conditional Use is a use that would not be appropriate generally or without restriction throughout the zoning division or district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such

zoning division or district as Conditional Uses, as specific provisions for such exceptions is made in these zoning regulations. The County Zoning Commission may, after notice and hearing, revoke a Conditional Use in the event of a violation of any of such conditions. In addition, the Conditional Use permit may not be transferred during any violation.

50. Unauthorized Releases mean the discharge of water from the lower end of the treatment or containment system through a release structure or over or through retention dikes. An unauthorized release is distinguished from a bypass in that a bypass discharges wastewater prior to any treatment or containment.

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

52. Zoning Complaints. All zoning complaints must be in writing and signed.

Animal Units

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

EQUIVALENT NUMBER OF A SPECIES TO EQUAL:

ANIMAL SPECIES	500 AU	1,000 AU	2,000 AU	ANIMAL UNIT EQUIVALENT SPECIES/AU
Feeder or Slaughter Cattle	500 hd	1,000 hd	2,000 hd	1.0
Mature Dairy Cattle	357 hd	714 hd	1,428 hd	1.4
Finisher Swine (over 55 lbs)	1250 hd	2,500 hd	5,000 hd	0.4
Nursery Swine (less than 55 lbs)	5,000 hd	10,000 hd	20,000 hd	0.1
Farrow to Finish*	135 hd	270 hd	540 hd	3.7
Sow and Litter	465 hd	1,076 hd	2,150 hd	0.93
Horses	250 hd	500 hd	1,000 hd	2.0
Sheep	5,000 hd	10,000 hd	20,000 hd	0.1
Turkeys	27,750 hd	55,550 hd	111,150 hd	0.018
Laying Hens and Broilers (continuous overflow watering in facility)	50,000 hd	100,000 hd	200,000 hd	0.01
Laying Hens and Broilers (liquid handling system in confinement facility)	15,150 hd	30,300 hd	60,600 hd	0.033
Ducks	2,500 hd	5,000 hd	10,000 hd	0.2

*Figures in the farrow to finish column include sows, pigs born and fed to market weight at one site, at one time.

Classes of Concentrated Animal Feeding Operations

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

ownership, the area not on Zone B may be allowed to expand without including the number of animal units on Zone B in determining what class permit is required.

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

	UNITS	
Class A	2,000 or more	
Class B	1,000 to 1,999	
Class C	500 to 999	
Class D	100 to 499	(Potential water pollution hazard)
Class E	0 to 499	(No pollution hazard)

Concentrated Feeding Operation Permit Requirements

Owners of Class A, Class B, Class C, and Class D Concentrated Feeding Operations are required to complete a permit application whenever any of the following occur:

1. A new Concentrated Feeding Operation is proposed where one does not exist.

2. An expansion is proposed beyond what a current permit allows.

3. Accumulative expansion by 500 animal units, after May 13, 1997 if an existing concentrated animal feeding operation that does not have a permit or if expansion takes the animal units into another class.

4. Any complaint against a Concentrated Animal Feeding Operation must be in writing and signed. Names of complainants will be kept confidential. A signed complaint has been received by the Zoning Officer or South Dakota Department of Environment and Natural Resources and after inspection reveals that the Concentrated Feeding Operation is in violation of County or State regulations.

5. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) or more years.

Concentrated Animal Feeding Operation Control Requirements

1. No Significant Contribution of Pollution.

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

2. State General Permit

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

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

   a. If an earthen storage basin or lagoon is used for manure storage.

   b. The County Zoning Commission decides conditions require a state permit.

3. Nutrient Management Plan.

   The applicant shall develop, maintain, and follow a nutrient management plan to ensure safe disposal of manure and protection of surface and ground water. The nutrient management plan must be either approved by the Brookings County Zoning Officer or by the South Dakota Department of Environment & Natural Resources if a State General Permit is required prior to land application of any manure. Due to crop rotation, site changes, and other operational changes, the applicant should update the plan annually to reflect the current operation and crops grown on the application sites. The applicant should collect, store, and dispose of manure according to recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site are secondary to the proper and safe disposal of the manure. If a violation of the nutrient management plan occurs the violator will be required to update the nutrient management plan annually and the collection, storage and disposal of liquid and solid manure will be done according to recognized practices of good agricultural management.

   A generic nutrient management plan that the applicant may use in developing a nutrient management plan is available from the South Dakota Department of Environment & Natural Resources and NRCS. The generic nutrient management plan is based on application of nitrogen. The applicant may use other plans, provided the alternate plan contains all the information necessary to determine

compliance with conditions of this general permit or Brookings County requirements. Nitrogen, in addition to that allowed in the nutrient management plan, may be applied up to the amounts as indicated by soil or crop nitrogen test results that are necessary to obtain the realistic crop yield. The South Dakota Department of Environment & Natural Resources and Brookings County encourage producers to develop a nutrient management plan for phosphorous. Over application of phosphorous may lead to water quality problems in area lakes and streams.

The applicant must have the manure analyzed, soil tests taken on land where manure is to be applied and take the results to the Cooperative Extension Service and/or an agronomist for recommendations for the correct amount to apply per acre. This must be done the first year and every year thereafter. Phosphorus should be sampled every 3-5 years.

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

Land spreading agreements shall be provided if applicant does not have minimum acreage to apply animal waste.

4. Manure Management and Operation Plan

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

A. Plan must include:

1. The location and specifics of proposed animal manure facilities.

2. The operation procedures and maintenance of manure facilities.

3. Plans and specifications must be prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer. Waste containment facilities will require inspection by an engineer or NRCS technician and as-built plans be submitted to the Brookings County Zoning Officer.

4. Animal manure shall not be stored longer than two years.

5. Manure containment structures shall provide for a minimum design volume of 270 days of storage. In addition open outdoor storage shall include storage for direct precipitation and/or runoff from a 25 year, 24 hour storm.

6. Applicants shall keep records of manure applications on individual fields, which document acceptable manure, and nutrient management practices have been followed. These records shall include soils test results for surface two feet of soil, actual and projected crop yields, nutrient analysis of manure, and information about date, rate and method of manure applications for individual fields. The producer shall retain records of all monitoring information, maintenance and inspection records, copies of reports required by this permit. The producer shall keep the records for at least three years from the date of the sample, measurement, report, or application. Data collected and a copy of this permit must be kept at the confined animal feeding operation or the usual place of business where employees of the operation have access to them. Copies of the above records shall be submitted to the Brookings County Zoning Office annually.

B. The applicant must participate in environmental training programs and become a certified livestock manager if available.

C. The applicant is responsible for the misapplication of the manure whether applied on the applicants own land or on land where there is a land spreading agreement or in transport. The complaint procedure will be the same as for any other zoning complaint.

D. The County Zoning Commission may require manure to be injected or incorporated in order to minimize air and water quality impacts.

E. Requests for application of liquid manure by means of irrigation systems will be reviewed by the County Zoning Commission on a site-specific basis. Impact on air and water quality will be taken into consideration.

F. All irrigation systems blending manure with ground water must have check valves installed to prevent back flow into the water supply.

G. The County Zoning Commission may, after notice and hearing, revoke a Conditional Use in the event of a violation of any of such conditions. In addition, the Conditional Use permit may not be transferred during any violation.

5. Management Plan for Fly and Odor Control

Classes A, B, C, D and E Concentrated Animal Feeding Operations shall dispose of dead animals, waste and wastewater in such a manner as to control odors and flies. A management plan is required for submission of a permit. Brookings County Zoning Commission will review the need for control measures on a site specific basis, taking into consideration prevailing wind direction and

topography. The following procedures to control flies and odors shall be considered in a management control plan.

A. Operational plans for manure collection, storage treatment and use must be kept updated and implemented.

B. Methods to be utilized to dispose of dead animals shall be included in the management plan.

The following procedures to control flies and odors should be considered in a management control plan.

A. Plant trees and shrubs to reduce wind movement of odors away from buildings, manure storage ponds and/or lagoons.

B. Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized.

C. Store solid manure in containment areas having good drainage to minimize odor production.

D. Consider use of BMP's on open storage systems for liquid manure systems to control odor production.

6. Required Setbacks and Separation Distance for New Concentrated Feeding Operations and those Expanding by 500 or More Animal Units after May 13, 1997.

MINIMUMS

	CLASS A	CLASS B	CLASS C	CLASS D & E
Established residences	2,640 feet	1,760 feet	1,320 feet	1,320 feet
Churches, Businesses and Commercially Zoned Areas	2,640 feet	2,640 feet	1,320 feet	1,320 feet
Buildings within Municipal Areas and Incorporated Municipality	5,280 feet	5,280 feet	2,640 feet	1,320 feet
Private Wells other than the operator	2,640 feet	1,760 feet	1,320 feet	1,320 feet
Lakes and Streams classified as Fisheries as identified by the state	500 feet	500 feet	200 feet	200 feet
Federal, State & County Road ROW Confinement	300 feet	300 feet	200 feet	200 feet
Federal, State & County Road ROW Open lot	50 feet	50 feet	50 feet	50 feet
Township Road ROW Confinement	150 feet	150 feet	150 feet	150 feet
Township Road ROW Open lot	50 feet	50 feet	50 feet	50 feet

Proposals for new concentrated animal feeding operations, on a site-by-site basis, shall be set back from adjoining property lines as well as the boundaries around Zone A as delineated by the Wellhead Protection Map, determined by the County County Zoning Commission.

Permitted uses in Zone A, Provided They Meet Appropriate Performance Standards Outlined For Aquifer Protection Overlay Zones:

1. Agriculture;

   a. Application of manure is permitted with an approved nutrient management plan.

2. Horticulture;

3. Park, greenways or publicly owned recreational areas;

4. Necessary public utilities/facilities designed so as to prevent contamination of ground water.

Conditional Uses in Zone A:

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

1. Expansion of existing conforming and non-conforming uses to the extent allowed by the underlying district. The County Zoning Commission shall not grant approval unless it finds such expansion does not pose greater potential contamination to ground water than the existing use.

2. Sediment basins will be allowed on a case by case basis and must be constructed to current NRCS standards and specifications.

Prohibited Uses in Zone A:

The following uses are expressly prohibited in Zone A:

1. New Concentrated Animal Feeding Operations after adoption of this ordinance.

2. Existing Concentrated Animal Feeding Operations will not be able to expand beyond a total of 500 animal units (Class D).

3. Earthen storage basins and lagoons.

4. Disposal of or stockpiling of solid waste.

5. Post harvest application of nitrogen fertilizer prior to October 15th except for the spreading of manure.
6. Storage of road salt or disposal of snow containing deicing chemicals.
7. Processing and storage of PCB containing oils;
8. Car washes;
9. Auto service, repair or painting facilities and junk or salvage yards;
10. Disposal of radioactive waste;
11. Graveyards or animal burial sites;
12. Open burning and detonation sites;
13. All other facilities involving the collection, handling, manufacture, use storage, transfer or disposal of any solid or liquid material or waste having a potentially harmful impact on ground water quality;
14. Land spreading or dumping of petroleum contaminated soil, waste oil or industrial wastes.
15. Class V injection wells.
16. All uses not permitted or not permitted as Conditional Uses in Zone A.

Zone B -- Aquifer Secondary Impact Zones

Zone B is established as the remainder of the mapped shallow/surficial aquifer not included in Zone A.

This portion of the aquifer is being protected because (1) it is a valuable natural resource for future development, (2) it provides drinking water supply for individual households, (3) contamination is not justified, even though this area is not a public water supply wellhead and (4) contaminants could eventually reach Zone A.

Permitted Uses in Zone B:

1. All uses permitted in the underlying zoning districts provided that they can meet the Performance standards as outlined for the Aquifer Protection Overlay Zones.

Conditional Uses in Zone B:

1. 1. New Class D and expansion of existing Class D up to 999 animal units (Class C).
2. Sediment basins will be allowed on a case by case basis and must be constructed to current NRCS standards and specifications.

3. All Conditional Uses allowed in underlying districts may be approved by the County Zoning Commission provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones.

Prohibited Use in Zone B:

The following use is expressly prohibited in Zone B:

1. New and expansion of Class A, B and C Concentrated Animal Feeding Operations.

2. Earthen storage basins and lagoons.

3. Post harvest application of nitrogen fertilizer prior to October 15th except for the spreading of manure.

4. Land spreading or dumping of petroleum contaminated soil, waste oil or industrial wastes.

5. Class V injection wells.

Each application for a new or expanded concentrated animal feeding operation (CAFO) will be reviewed by the County Zoning Commission on a site specific basis. The County Zoning Commission reserves the right to increase the minimum required setbacks and separation distance on a site specific review, based on one or more of the following considerations.

A. A concentration of CAFO's in the area exists or would occur which may pose an air or water quality concern.

B. Due to topography and prevailing wind direction, additional setback and separation distance is appropriate to safeguard air or water quality.

C. A concentrated animal feeding operation is in excess of 5,000 animal units.

7. Standards for Conditional Uses

A. The County County Zoning Commission may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.

B. The County County Zoning Commission may impose, in addition to the standards and requirements set forth in these regulations, additional conditions which the County Zoning Commission considers necessary to protect the public health, safety and welfare.

C. Conditional Uses shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are being adhered to.

D. When considering an application, the County County Zoning Commission will take into consideration current and past violations relating to Concentrated Animal Feeding Operations that the applicant has an interest in.

E. The permit holder shall provide insurance, a fidelity bond or some other proof of adequate funds set aside to clean up any environmental damages that might occur and to cover cleaning of buildings, waste system and emptying and filling of holding pond in the event of closure of the animal confinement operation. The carrier is required to provide Brookings County with notice of insurance and is also required to provide the County with a notice of cancellation or change in coverage.

F. Permit applicants will be required to file a letter of assurances as required by the County Zoning Commission. The letter of assurances will be prepared by the zoning officer and signed by both the applicant and the zoning officer.

8. Information Required for Class A and B Concentrated Feeding Operation Permit.

A. Owner's name, address and telephone number.

B. Legal descriptions of site and site plan.

C. Number and type of animals.

D. Nutrient management plan.

E. Manure management and operation plan.

F. Management Plan for Fly and Odor Control.

G. Information on ability to met designated setback requirements including site plan to scale.

H. General permit from South Dakota Department of Environment & Natural Resources if available for animal species.

I. Review of Plans and Specifications and Nutrient Management Plan by the South Dakota Department of Environment & Natural Resources.

J. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year flood plain designation.

K. Notification of whomever maintains the access road (township, county and state). Notification of public water supply officials

L. Any other information as contained in the application and requested by the County Zoning Officer.

9. Information Required for Class C and D Concentrated Feeding Operation Permit.

A. Owner's name, address and telephone number.

B. Legal descriptions of site and site plan.

C. Number and type of animals.

D. Nutrient management plan.

E. Manure management and operation plan.

F. Management Plan for Fly and Odor Control.

G. Information on ability to met designated setback requirements including site plan to scale.

H. Review of Plans and Specifications and Nutrient Management Plan by the South Dakota Department of Environment & Natural Resources if using lagoon or earthen storage basin.

I. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.

J. Notification of whomever maintains the access road (township, county and state). Notification of public water supply officials

K. Any other information as contained in the application and requested by the County Zoning Officer.

SECTION 1212. WIND ENERGY SYSTEM (WES) REQUIREMENTS

A. A. APPLICABILITY

The requirements of these regulations shall apply to all WES facilities except private facilities with a single tower height of less than seventy-five (75) feet and used primarily for on-site consumption of power.

B. B. FEDERAL AND STATE REQUIREMENTS

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

C. DEFINITIONS

Construction. "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.

High voltage transmission line. "High voltage transmission line" means a conductor of electric energy and associated facilities.

Large electric power facilities. "Large electric power facilities" means high voltage transmission lines.

Person. "Person" shall mean an individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Route. "Route" means the location of a high voltage transmission line between two end points. The route may have a variable width of up to 1.25 miles.

Utility. "Utility" shall mean any entity engaged in this state in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, cooperatively owned utility, and a public or municipally utility.

D. GENERAL PROVISIONS

1. 1. Mitigation Measures

a. Site Clearance. The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the WES.

b. Topsoil Protection. The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.

c. Compaction. The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.

d. Livestock Protection. The permittees shall take precautions to protect livestock during all phases of the project's life.

e. Fences. The permittees shall promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the affected landowner.

f. Roads

(1) Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used for the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the WES. Where practical, all-weather roads shall be used to deliver concrete, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.

The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees shall notify the County Zoning Office of such arrangements.

(2) Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainageways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.

(3) Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.

(4) Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust.

g. Soil Erosion and Sediment Control Plan. The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County Zoning Office. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

2. Setbacks

Wind turbines shall meet the following minimum spacing requirements.

a. Distance from existing off-site residences, business and public buildings shall be one thousand (1,000) feet. Distance from on-site or lessor's residence shall be five hundred (500) feet.

b. Distance from centerline of public roads shall be two (2) times the height of the wind turbines, measured from the ground surface to the tip of the blade when in a fully vertical position.

c. Distance from any property line shall be two (2) times the height of the wind turbine, measured from the ground surface to the tip of the blade when in a fully vertical position unless wind easement has been obtained from adjoining property owner.

3. Electromagnetic Interference. The permittees shall not operate the WES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the WES or its operation, the permittees shall take the measures necessary to correct the problem.

4. Lighting. Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment.

5. Turbine Spacing. The turbines shall be spaced no closer than three (3) rotor diameters (RD) measurement of blades tip to tip. If required during final micro siting of the turbines to account for topographic conditions, up to 10 percent of the towers may be sited closer than the above spacing but the permittees shall minimize the need to site the turbines closer.

6. Footprint Minimization. The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.

7. Electrical Cables. The permittees 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 immediately adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.

8. Feeder Lines. The permittees shall place overhead electric lines, known as feeders, on public rights-of-way if a public right-of-way exists. Changes in routes may be made as long as feeders remain on pubic rights-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction.

9. Decommissioning/Restoration/Abandonment

   a. Decommissioning Plan. Within 120 days of completion of construction, the permittees shall submit to the County Zoning Office a

decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County Zoning Office may at any time request the permittees to file a report with the County Zoning Office describing how the permittees are fulfilling this obligation.

b. Site Restoration. Upon expiration of this permit, or upon earlier termination of operation of the WES, the permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four feet. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County Zoning Office and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County Zoning Office prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen months after expiration.

c. Abandoned Turbines. The permittees shall advise the County Zoning Office of any turbines that are abandoned prior to termination of operation of the WES. The County Zoning Office may require the permittees to decommission any abandoned turbine.

10. Height from Ground Surface. The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.

11. Towers.

a. Color and Finish. The finish of the exterior surface shall be non-reflective and non-glass.

b. All towers shall be singular tubular design.

12. Noise. Noise level shall not exceed 50 dBA, including constructive interference effects at the property line of existing off-site residences, businesses, and public buildings.

13. Permit Expiration. The permit shall become void if no substantial construction has been completed within three (3) years of issuance.

14. Required Information for Permit.

    a. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other map as appropriate.

    b. Map of easements for WES.

    c. Map of occupied residential structures, businesses and public buildings.

    d. Map of sites for WES, access roads and utility lines.

    e. Location of other WES in general area.

    f. Project schedule.

    g. Mitigation measures.