

ORDINANCE B2004-01, AN ORDINANCE ESTABLISHING ZONING REGULATIONS FOR DEUEL COUNTY, SOUTH DAKOTA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTERS 11-2, 1967 SDCL, AND AMENDMENTS THEREOF, AND FOR THE REPEAL OF ALL RESOLUTIONS AND ORDINANCES IN CONFLICT THEREWITH.

WHEREAS, the Deuel County, South Dakota, Board of County Commissioners, hereinafter referred to as the Board of County Commissioners, deems it necessary, for the purpose of promoting the health, safety, and the general welfare of the County, to enact a zoning regulation and to provide for its administration, and

WHEREAS, the Board of County Commissioners have appointed a County Planning Commission, hereinafter referred to as the Planning Commission, to recommend the district boundaries and to recommend appropriate regulations to be enforced therein, and

WHEREAS, the Planning Commission has divided Deuel County into districts, and has established by reference to maps the boundaries of said districts for administration and interpretation; has provided for definitions and for amendments to this regulation; has provided for the enforcement; prescribed penalties for violation of provisions; has provided for building permits within the districts; has provided for invalidity of a part and for repeal of regulation in conflict herewith; and has prepared regulations pertaining to such districts in accordance with the county comprehensive plan and with the purpose to protect the tax base, to guide the physical development of the county, to encourage the distribution of population or mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements, to conserve and develop natural resources, and

WHEREAS, the Planning Commission has given reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses, and

WHEREAS, the Planning Commission has given due public notice to a hearing and has held such public hearing and has made a preliminary report and submitted it to the Board of County Commissioners, and

WHEREAS, the Board of County Commissioners has given due public notice to a hearing relating to zoning districts, regulations, and restrictions, and has held such public hearings, and

WHEREAS, all requirements of SDCL 11-2, 1967, with regard to the preparation of this ordinance and subsequent action of the Board of County Commissioners, has been met, and

WHEREAS, copies of said zoning ordinance and zoning map have been filed with the Deuel County Auditor for public inspection and review during regular business hours, and

WHEREAS, all ordinances or parts of ordinances in conflict herewith are hereby expressly repealed;

THEREFORE BE IT RESOLVED that the Deuel County Zoning Ordinance is hereby adopted by the Board of County Commissioners, Deuel County, South Dakota.

Adopted this 6th day of July, 2004.

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Chairman  
Deuel County Board of County Commissioners

ATTEST:

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Deuel County Auditor

## ARTICLE I

### SHORT TITLE AND APPLICATION

Section 101 Title. This regulation may be known and may be cited and referred to as the "Deuel County Zoning Ordinance" 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 Ordinance shall apply within the unincorporated areas of Deuel County, South Dakota, as established on the map entitled "The Official Zoning Map of Deuel County, South Dakota."

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

#### Section 104. Purpose

These regulations have been based upon the Deuel County Comprehensive Land Use Plan adopted by the Board of County Commissioners, and are in conformance with Chapter 11-2 of the South Dakota Compiled Laws. These regulations are designed to carry out the goals and objectives of the plan, but especially to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration or scattering of population; and to encourage a distribution of population or mode of land utilization that will facilitate the economical and adequate provision of transportation, water, drainage, sewerage, schools, parks, or other public requirements.

These regulations have been made with reasonable consideration to the character and intensity of the various land uses and the need for public facilities and services that would develop from those uses. These regulations are necessary for the best physical development of the county. The regulations are intended to preserve and protect existing property uses and values against adverse or unharmonious adjacent uses by zoning all unincorporated land except those areas where joint zoning jurisdiction has been granted to a municipality.

**ARTICLE II**  
**DEFINITIONS**

Section 201. For the purpose of this Ordinance, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural and the plural the singular; the word "building" shall include the word "structure", the word "shall" is mandatory and not discretionary; the word may is permissive; the word person includes a firm, association, organization, partnership, trust, company or corporation, as well as, an individual; the word lot includes the word plat or parcel; and the words used or occupied include the words intended, designed, or arranged to be used or occupied. Any word not herein defined shall be as defined in any recognized Standard English dictionary.

Section 202. Accessory Buildings and Uses. A subordinate use which is incidental to that of the main building or to the main use of the premises.

Section 203. Adult Amusement or Entertainment Establishment. Any use which has as part of its operations amusement or entertainment which is distinguished or characterized by an emphasis on material depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as herein defined, or which features topless dancers, exotic dancers, strippers, male or female impersonators, or similar entertainment.

Section 204. Adult Bookstores. An establishment having as a substantial or significant portion of its stock and trade, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as herein defined, or an establishment with a segment or section devoted to the sale or display of such materials.

Section 205. Adult Mini-motion Picture Theater. An enclosed building with a capacity for less than fifty (50) persons used for presenting material for observation by patrons and which excludes minors by virtue of age.

Section 206. Adult Motion Picture Theater. An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as herein defined, for observation by patrons therein.

Section 207. Adult Photo Studio. An establishment which, on payment of a fee, provides photographic equipment and/or models for the purpose of photographing "specified anatomical areas", as herein defined.

Section 208. Adult use. The term “adult use” shall include adult amusement or entertainment establishment, adult bookstores, adult mini motion picture theaters, adult motion picture theaters, and adult photo studios.

Section 209. Agriculture. The use of land for agricultural purposes including farming, dairying, raising, breeding, or management of livestock, poultry, or honey bees, truck gardening, forestry, horticulture, floriculture, viticulture, and the necessary accessory uses for packaging, treating or storing the produce providing that the operation of any such accessory use shall be secondary to the normal agricultural activities. This definition shall not include intensive agricultural activities such as concentrated animal feeding operations and agribusiness activities.

Section 2.10. Airport. A place where aircraft can land and takeoff, usually equipped with hangers, facilities for refueling and repair, and various accommodations for passengers, including heliports.

Section 211. Animal Husbandry. The dairying, raising of livestock, breeding or keeping of animals, fowl or birds as a business for gainful occupation.

Section 212. Animal Manure. Poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding or other materials.

Section 213. Animal Unit. See Article XIII.

Section 214. Animal Waste, Incorporated. Animal waste applied to the land surface and mechanically mixed into the soil within 24 hours.

Section 215 Animal Waste, Injected. Animal waste injected or tilled into the soil at the time of application.

Section 216 Animal Waste, Surface Applied. Animal waste applied to the land surface without benefit of incorporation or injection. This shall not include the use of animal waste in irrigation waters.

Section 217. Applicant. An individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of one or more concentrated animal feeding operations.

Section 218. Basement. A basement has more than one-half (1/2) of its height below grade.

Section 219. Bed and Breakfast (B & B's). A private single-family residence, which is used to provide, limited meals and temporary accommodations for a charge to the public. Such establishments should be located where there will be minimal impact on surrounding properties and should comply with the following conditions:

1. They shall be in compliance with applicable state laws including registration with the South Dakota Department of Health, maintaining a guest list, and providing a smoke detector in each sleeping room.
2. Accessory use signs shall be based on similar requirements for a home occupation permit and shall not be more than two (2) square foot in area.
3. Such uses shall be an incidental use with an owner occupied principal dwelling structure provided that not more than four bedrooms in such dwelling structure shall be used for such purpose.
4. The length of stay shall not exceed fourteen (14) days during any one hundred twenty-- (120) day consecutive period.
5. Meals shall be limited to breakfast, which is prepared in a common facility (household kitchen). Meals may be served only to overnight registered guests and cooking is not permitted in the sleeping rooms.
6. The building shall meet all building codes and zoning requirements. A site plan showing the location of guest parking spaces and floor plan showing a location of the sleeping rooms, lavatories, and bathing facilities, and kitchen shall be submitted with application.

Section 220. Board of County Commissioners. The governing body of Deuel County.

Section 221. Building. Any structure designed for the support, shelter and protection of persons, animals, or property.

Section 222. 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 223. Campground - Shall mean a plot of ground for public use upon which two or more campsites are located, established, maintained, advertised, or held out to the public, to be a place where camping units can be located and occupied as temporary living quarters. Campgrounds for tent trailers and recreational vehicles should be sited with consideration for access to the property. The campground should be designed to minimize the impact from adjacent major thoroughfares.

Section 224. Change in Operation. Change in operation means a cumulative increase of more than 99 animal units, after June 3, 1997, which are confined at an unpermitted concentrated animal feeding operation.

Section 225. Concentrated Animal Feeding Operation. A Concentrated Animal Feeding Operation is defined as a lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of 45 days or more during any 12-month period, and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility. Two or more animal feeding operations under common ownership are single animal operation if they adjoin each other, or if they use a common area, or if they use a common area or system for disposal of manure.

Section 226. Comprehensive Plan. The adopted long-range plan intended to guide the growth and development of Deuel County.

Section 227. Contractor Shops and Yards. Those facilities to include structures and land areas where the outdoor storage of equipment and supplies used for various types of construction are stored. Examples of equipment and supplies include but are not limited to the following – road construction, building construction, gravel operations, and general contracting services.

Section 228. District, Zoning. 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 229. Domestic Sanitary Sewage Treatment Facility. Shall mean the structures equipment and processes required to collect, carry away, and treat and dispose of domestic wastewater, industrial wastes, and or sludge.

Section 230. Dwelling. Any building, including seasonal housing structures, or a portion thereof, which is designed and used exclusively for residential purposes. This definition does not include a mobile home or manufactured home.

Section 231. Dwelling, Farm. Any dwelling farmer owned or occupied by the farm owners, operators, tenants, or seasonal or year-around hired workers.

Section 232. Dwelling, Single-Family. A building occupied exclusively by one (1) family.

Section 233. Dwelling, Multiple. A building occupied by two (2) or more families.

Section 234. Dwelling Unit. One (1) or more rooms, containing sleeping quarters, in a dwelling occupied as separate living quarters by a single family.

Section 235. Existing Farmstead. An existing farmstead shall include a livable house occupied by the owner or tenant within the last three (3) years and shall have been existing on the site for at least five (5) years and the site shall have been used in the past as a farmstead for normal farming operation. The Planning Commission may consider defining an identifiable parcel as an existing farmstead if the proposed site meets the following criterion:

1. Evidence that the proposed site was once used for human habitation. This may be determined by existence of buildings/foundations and/or an established shelterbelt.
2. Information regarding the location of flood plain, access to roads and utilities, and other appropriate site information may be considered by the Planning Commission in determining the suitability of the parcel for development.

Section 236. Extended Home Occupation. See Section 1210.

Section 237. Family. One (1) or more persons related by blood, marriage, or adoption occupying a dwelling unit as a single household unit. A family shall not include more than three (3) adults who are unrelated by blood or law. This definition shall not include foster families as regulated by the State of South Dakota.

Section 238. 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 239. Fence. A structure used as a boundary, screen, separation, means of privacy, protection or confinement, and is constructed of wood, plastic, metal, wire mesh, masonry or other similar material and is used as a barrier of some sort.

Section 240. Frontage. All the property on one (1) side of a street or road.

Section 241. Game Lodge. A building or group of two (2) or more detached, or semi-detached, or attached buildings occupied or used as a temporary abiding place of sportsmen, hunters and fishermen, who are lodged with or without meals, and in which there are sleeping quarters.

Section 242. Garage, Private. An accessory building used for the storage of not more than four (4) vehicles owned and used by the occupant of the building to which it is necessary. Vehicles include cars, pickups, and boats.

Section 243. Group Home. A supervised living or counseling arrangement in a family home context providing for the 24 hour care of children or adults.

Section 244. Home Occupation. See Section 1209.

Section 245. Horticultural services. Commercial services which are oriented to support the science or practical application of the cultivation of fruits, vegetables, flowers, and plants.

Section 246. Junkyards/Salvage Yards. The use of more than one thousand (1,000) square feet of any land, building, or structure, for commercial purposes, where waste, discarded materials such as scrap metals, used building materials, used lumber, used glass, discarded vehicles, paper, rags, rubber, cordage, barrels, etc., are stored.

Section 247. Kennel. Any premise or portion thereon where more than five (5) dogs, cats, or other household pets are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

Section 248. Lot, Buildable.

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

Section 249. Lot, Corner. A lot abutting upon two (2) or more streets at their intersection.

Section 250. Lot, Depth of. The average horizontal distance between the front and rear lot lines.

Section 251. Lot, Double Frontage. A lot having a frontage of two (2) streets as distinguished from a corner lot.

## Section 252. Manufactured Home.

1. An industrialized building unit constructed on a chassis for towing to the point of use and designed to be used for continuous year-round occupancy as a single dwelling. For the purpose of this ordinance manufactured homes and will be regulated by types. Three types of homes are defined under these regulations.
  - a. Type A Manufactured Home shall:
    - i. Have more than one thousand one hundred (1,100) square feet of occupied space in a double-section or larger multi-section unit.
    - ii. The age of the manufactured house may not exceed five (5) years from the date of manufacture.
    - iii. Utilize a perimeter enclosure of metal, vinyl, wood, or Styrofoam in accordance with manufacturer's specifications.
    - iv. Be anchored to the ground, in accordance with manufacturer's specifications, or as prescribed by the ANSI/NFPA 501 A Standards.
    - v. Have a gabled roof with a pitch of at least 2/12 feet.
    - vi. Have siding material of a type customarily used on site-constructed residence.
    - vii. Have roofing material of a type customarily used on site-constructed residences.
  - b. Type B Manufactured Home shall:
    - i. Have more than 700 square feet of occupied space in a single, double, expando or multi-section unit.
    - ii. Utilize a perimeter enclosure of metal, vinyl, wood, or Styrofoam in accordance with manufacturer's specifications.
    - iii. Be anchored to the ground, in accordance with manufacturer's specifications or as prescribed by the ANSI/NFPA 501A Standards.
    - iv. Have siding material of a type customarily used on site-constructed residence.
    - v. Have roofing material of a type customarily used on site-constructed residences.
    - vi. Be placed on a support system, in accordance with approved installation standards.
    - vii. Must have been constructed after June 15, 1976.

c. Type C Manufactured Home shall:

- i. Have more than 700 square feet of occupied space in a single, double, expando or multi-section unit.
- ii. Utilize a perimeter enclosure of metal, vinyl, wood, or Styrofoam in accordance with manufacturer's specifications.
- iii. Be anchored to the ground, in accordance with manufacturer's specifications or as prescribed by the ANSI/NFPA 501A Standards.
- iv. Be placed on a support system, in accordance with approved installation standards.
- v. Must have been constructed after June 15, 1976.

2. Installation standards

a. Support System

- i. All HUD-Code manufactured homes of the Type A Classification shall be installed with load bearing foundations in conformance with the manufacturer's installation specifications.
- ii. Type B and C manufactured homes not placed on a permanent foundation shall be installed on a support system in conformance with the manufacturer's installation specifications or with the support systems regulations in the ANSI/NFPA 501 A 1977 installation standards.

b. Siding/Skirting

- i. Those manufactured homes utilizing a permanent foundation and permanent perimeter enclosure must have footings and crawl space or basement walls. The foundation shall be (a) an approved wood basement constructed of 2 x 6 framework and treated with water resistant materials; or (b) a foundation shall be constructed with eight inches poured concrete or concrete block.

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

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

### 3. Nonconforming Homes.

A manufactured ~~or mobile~~ home placed and maintained on a tract of land and deemed to be a legal nonconforming use prior to the adoption of this Ordinance shall continue to be a legal nonconforming use. If the nonconforming use is discontinued for a period of one year, the land thereafter must be used in conformity with all provisions of this Ordinance.

### 4. Replacement of Nonconforming Homes.

Thereafter, upon application to the Zoning Officer and subsequent approval thereof, a manufactured home deemed a legal nonconforming use, may be replaced by a manufactured home, and provided the replacement is of an equal or higher type. Equal or higher type means that a type C manufactured home could be replaced with a Type A, B, or C manufactured home; A type B manufactured home could be replaced with a Type A or B manufactured home; A type A manufactured home could be replaced with a Type A manufactured home.

### 5. Structural Alteration.

Due to its integral design, any structural alteration or modification of a manufactured home after it is placed on the site must be approved by the Zoning Officer.

### 6. Variance from Maximum Age Requirement

Type A manufactured homes may receive a variance from the maximum age requirement (Section 252 1.a.ii). The Board of Adjustment may grant a variance if the manufactured home meets the following requirements:

- a. The applicant shall provide a photograph of the manufactured home's exterior and interior.
- b. That it shall have been shown to the satisfaction of the Zoning Officer that the said manufactured home complies with the gas, plumbing, electrical, and construction requirements of Deuel County.
- c. That the applicant shall obtain the written consent of all property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site and the consent of sixty-six (66) percent of the property owners within 150 feet (excluding streets and alleys) of said proposed location has been received.

Section 253. Modular Home.

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

Section 254. 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 255. Nonconforming 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 256. Non-Farm Dwelling. Any occupied dwelling which is not a farm dwelling.

Section 257. Parking Space. An area, enclosed or unenclosed, sufficient in size to store one (1) automobile, together with a driveway connecting the parking space with a street or alley.

Section 258. Parks and Recreation Areas. Public, non-commercial recreation facilities open to the general public and requiring minimal structural development, including, but not limited to playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, public campgrounds swimming pools, and wildlife and nature preserves, along with any necessary accessory facilities, rest rooms, bath houses, and the maintenance of such land and facilities, but not including private, commercial campgrounds, commercial recreation and/or amusement centers.

Section 259. Permit. A permit required by these regulations unless stated otherwise.

Section 260. Permitted Use. Any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

Section 261. Potential Pollution Hazard. A Class D Concentrated Animal Feeding Operation of 50 to 499 Animal Units may be required to obtain a special exception permit when a potential pollution hazard exists. Factors to be considered by the Zoning Officer in determining a Potential Pollution Hazard include the following:

1. The Concentrated Animal Feeding Operation does not meet the minimum setback and separation distances of these regulations.
2. A Potential Water Pollution Hazard exists due to siting over a shallow aquifer or drainage which contributes to the waters of the State.

Section 262. Private Shooting Preserves. An acreage of at least one hundred and sixty (160) acres and not exceeding one thousand two hundred and eighty (1,280) acres either privately owned or leased on which hatchery raised game is released for the purpose of hunting, for a fee, over an extended season.

Section 263. Process Generated Wastewater. Water directly or indirectly used in the operation of an animal feeding operation. The term includes spillage or overflow from watering systems; water and manure collected while washing, cleaning or flushing pens, barns, manure pits or other areas; water and manure collected during direct contact swimming, washing or spray cooling of animals; and water used in dust control.

Section 264. Process Wastewater. Process wastewater means any process generated wastewater and any precipitation (rain or snow) that comes into contact with the animals, manure, litter or bedding, feed, or other portions of the animal feeding operation. The term includes runoff from an open lot.

Section 265. Religious Farming Community. A corporation formed primarily for religious purposes whose principle income is derived from agriculture and/or a farm which may or may not be held in collective ownership, in which multiple families reside on-site and use or conduct activities upon the property which are participated in, shared, or used in common by the members of the group residing thereon.

Section 266. Rubble Site. A site for the disposition of refuse as defined by the South Dakota Department of Environment and Natural Resources.

Section 267. Sale or Auction Yard or Barn. A place or building where the normal activity is to sell or exchange livestock. Livestock normally in yard or barn for one (1) day during sale or auction.

Section 268. Sanitary Landfill. A site for the disposal of garbage and other refuse material.

Section 269. Seasonal Camp Trailers or Recreational Vehicles. A vehicle designed for temporary seasonal living quarters.

Section 270. 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 271. Shall (when used in regard to concentrated animal feeding operations). means that the condition is an enforceable requirement of this permit.

Section 272. Shallow Aquifer. An aquifer vulnerable to contamination because the permeable material making up the aquifer (a) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (b) extends to near the land surface and lacks a sufficiently thick layer of impermeable material on the land or near the land surface to limit percolation water from transporting contaminants from the land surface to the aquifer.

Section 273. Shallow Well. A well which is located in a shallow aquifer.

Section 274. 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. For the purposes of this ordinance a shelterbelt shall include ten (10) or more trees planted in a line, separated by a distance of forty (40) feet or less.

Section 275. Shooting Range. shall be defined as an area for the discharge of weapons for sport under controlled conditions where the object of the shooting is an inanimate object such as, but not limited to, paper, metal or wooden targets.

Section 276. Should (when used in regard to concentrated animal feeding operations). means that the condition is a recommendation. If violations of the permit occur, the County will evaluate whether the producer implemented the recommendations contained in this permit that may have helped the producer to avoid the violation.

Section 277. Significant Contributor of Pollution. To determine if a concentrated animal feeding operation meets this definition, the following factors are considered:

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

Section 278. Special Exception. A special exception 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 a such zoning division or district as special exceptions, as specific provisions for such exceptions are made in these zoning regulations. Special exceptions are subject to evaluation and approval by the Board of Adjustment and are administrative in nature.

Section 279. 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 280. 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 281. 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 282. 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 283. Structure, Temporary. Anything constructed or erected, or placed, the use of which requires temporary location on the ground or attached to something having a temporary location on the ground.

Section 284. Temporary Fireworks Sales Stand. A structure utilized for the licensed resale of fireworks during the time period allowed by South Dakota State Law.

Section 285. Variance. A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conforming in the zoning district or uses in an adjoining zoning district.

Section 286. 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 287. 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 288. 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, unenclosed balconies or open porch.

Section 289. Yard, Rear. Any yard extending across the rear of a lot measured between the side lot lines, and being the minimum horizontal distance between the rear lot line and the rear of the main building or bearing wall or any projections other than steps, unenclosed porches, or unenclosed balconies. On corner lots the rear yard may be to the rear of either street, provided that the minimum rear yard depth requirement shall be calculated on the longest average lot dimension. On interior lots the rear yard shall in all cases be at the opposite end of the lot from the front yard.

Section 290. 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 291. Zoning Officer. The individual appointed by the Board of County Commissioners and designated to administer and enforce the zoning ordinance.

**ARTICLE III  
ESTABLISHMENT OF DISTRICTS**

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

Section 302. Provision for Official Zoning Map.

1. The unincorporated area of the County is hereby divided into zones, or districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the Chairperson 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 Ordinance B2004-01 adopted July 6, 2004 by Deuel County, South Dakota."

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

No changes of any nature shall be made on the Official Zoning Map or matter shown thereon except in conformity with the procedure set forth in this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance 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, Ordinance, 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 Deuel 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 unincorporated portions of the County bounded by the district boundary lines.
2. In cases where the boundary line is given a position within a street, road, or non-navigable stream, it shall be deemed to be in the center of the street, road, or stream, and if the actual location of such street, road, or stream varies slightly from the location as shown on the district map, then the actual location shall control.
3. In cases where a boundary line is shown as being located a specific distance from a street line or other physical feature, this distance shall control.
4. In cases where a boundary line is shown adjoining or coincident with a railroad, it shall be deemed to be in the center of the railroad right-of-way and distances measured from the railroad shall be measured from the center of the designated mainline track.
5. Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be the lot lines and where the districts designated on the Official Zoning Map accompanying and made a part of this Ordinance are bounded approximately by lot lines, said lot lines shall be construed to be the boundary of such districts unless said boundaries are otherwise indicated on the map or by resolution.
6. In unsubdivided property, unless otherwise indicated, the district boundary line on the Official Zoning Map accompanying and made a part of this Ordinance shall be determined by the use of the scale contained on such map.

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

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

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

2. No building shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height limit established for the district in which the building is located.
3. No building shall be erected, converted, enlarged, reconstructed, or structurally altered except in conformity with the area and parking regulations of the district in which the building is located.
4. The minimum yards and other open spaces, including lot area per family, required by this Ordinance for each and every building at the time of passage of this Ordinance or for any building hereafter erected shall not be encroached upon or considered as yard or open space requirements for any other buildings, nor shall any lot area be reduced beyond the district requirements of this Ordinance.
5. All sign sizes, light, and location shall, at a minimum, meet all State and Federal laws and regulations.

Section 306. Prohibited uses.

All uses and structures not specifically listed as a permitted or permitted by special exception shall be prohibited.

## ARTICLE IV

### NONCONFORMING USES OR LOTS OF RECORD

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

Section 401. When a nonconforming use has been changed to a conforming use, it shall not be changed subsequently to any nonconforming use.

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

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

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

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

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

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

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

Section 408. Nonconforming lots of record which were zoned for small lot development prior to the adoption of amendments in 999 may be developed if other minimum requirements of this ordinance are met.

## ARTICLE V

### BOARD OF ADJUSTMENT, APPEALS, VARIANCE, AND SPECIAL EXCEPTIONS

Section 501. Within Deuel County, outside of incorporated municipalities, the power and jurisdiction related to this article shall be executed by the County Planning Commission, known as the Board of Adjustment.

1. The Board of Deuel County Commissioners shall appoint the Deuel County Planning Commission and four (4) alternates to act as the County Board of Adjustment. The Alternates to the Board of Adjustment shall be the members of the Board of Deuel County Commissioners. If a Planning Commissioner acting as a Board of Adjustment member is unable to attend a meeting, the Deuel County Commissioner representing the district in which the applicant requesting a Board of Adjustment action, shall be the first alternate, subsequent alternates shall be chosen by the Board of Adjustment.
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 Board of Adjustment shall be open to the public. Board of Adjustment shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board of Adjustment and shall be public record. The Board of Adjustment shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

Section 502. Appeals, Record of Appeal, Hearing and Stays. Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the County or city/town affected by any decision of the administrative officer. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board of Adjustment by filing with the officer from whom the appeal is taken and with 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 County-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.

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

Section 504. Powers and Jurisdiction Relating to Special Exceptions. The Board of Adjustment shall have the power to hear and decide, in accordance with the provisions of this regulation, requests for special exceptions or for decisions upon other special questions upon which the Board of Adjustment 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 special exceptions when not in harmony with the purpose and intent of this regulation. A special exception permit shall not be granted by the Board of Adjustment unless and until:

1. A written application for a special exception is submitted, indicating the section of this regulation under which the special exception is sought and stating the grounds on which it is requested.
2. Notice of hearing shall be published once ten (10) days prior to the hearing in a paper of general circulation in the area affected.
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
4. The Board of Adjustment shall make a finding that it is empowered under the section of this ordinance described in the application to grant the special exception, Grant with conditions, or deny the special exception, and that the granting of the special exception will not adversely affect the public interest. An affirmative vote of two-thirds (2/3) of the full membership of the Board of Adjustment is required to approve a special exception.
5. Before granting any special exception, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual special exceptions and that satisfactory provision and arrangement has been made concerning the following, where applicable:
  - a. Entrance to and exit from property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

- b. Off-street parking and loading areas where required, with particular attention to the items in (a) above and the economic, noise, glare, odor or other effects of the special exception on adjoining properties and properties generally in the district.
  - c. Utilities, with reference to locations, availability, and compatibility.
  - d. Screening and buffering with reference to type, dimensions, and character.
  - e. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district.
  - f. Required yards and other open spaces.
  - g. General compatibility with adjacent properties and other property.
  - h. Refuse and service areas, with particular reference to the items in (a) and (b) above.
6. A special exception that is granted but not used within two (2) years shall be considered invalid unless an extension has been requested and approved by the Board of Adjustment.
6. In granting the Special exception Permit, 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 special exception permit is granted, shall be deemed a violation of this ordinance and punishable under Section 808 of this ordinance.
8. Reapplication. No applicant requesting a special exception permit whose application includes the same or substantially the same requirements for the same or substantially the same property which has been denied by the Board of Adjustment shall be again considered by the Board of Adjustment before the expiration date of six (6) months from the date of the final action on the petition.

Section 505. Powers and Jurisdiction Relating to Variances. The Board of Adjustment shall have the power, where, by reason of exception, narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this 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 and purpose of this Ordinance. An affirmative vote of two-thirds (2/3) of the full membership of the Board of Adjustment is required to approve a variance.

1. No such variance shall be authorized by the Board of Adjustment unless it finds that the strict application of the Board of Adjustment 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 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 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 nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming 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 504; 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 purpose and intent of this regulation, and 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. A variance that is granted but not used within one (1) year shall be considered invalid unless an extension has been requested and approved by the Board of Adjustment.
9. Limitations. Any order of the Board of Adjustment granting a variance may be declared invalid by the Board of Adjustment unless substantially completed within two years from the date of such order. The Zoning Officer shall notify the property owner of record upon invalidation of a variance.

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

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

## **ARTICLE VI**

### **DUTIES OF COUNTY ZONING OFFICER, BOARD OF COUNTY COMMISSIONERS, BOARD OF ADJUSTMENT, 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 Board of Adjustment only on appeal from the decision of the Zoning Officer, and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by law.

It is further the intent of this regulation Ordinance that the duties of the Board of County Commissioners in connection with this Ordinance 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 by resolution establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, and other matters pertaining this Ordinance. The schedule of fees shall be posted in the office of the County Zoning Officer and may be altered or amended only by the Board of County Commissioners. 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. Right of Entry.

Whenever necessary to make an inspection to enforce any of the provisions of this regulation, or whenever the Zoning Officer or an authorized representative has reasonable cause to believe that there exists in any building or upon any premises a regulation violation, the Zoning Officer or an authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Zoning Officer by this ordinance, provided that if such building or premises be occupied, they shall first present proper credentials and request entry; and if such building or premises be unoccupied, they shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the Zoning Officer or an authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Zoning Officer or an authorized representative shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Zoning Officer or an authorized representative for the purpose of inspection and examination pursuant to this regulation.

Section 803. Stop Order

Whenever any work is being done contrary to the provisions of this ordinance, the Zoning Officer may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Zoning Officer to proceed with the work.

Section 8.04 Occupancy Violation.

Whenever any building or structure regulated by this ordinance is being used contrary to the provisions of this ordinance, the Zoning Officer may order such use discontinued and the structure, or portion thereof, vacated by notice served on any person causing such use to be continued. Such persons shall discontinue the use within the time prescribed after receipt of such notice to make the structure, or portion thereof, comply with the requirements of this ordinance.

### Section 805. Building Permit.

1. **Building Permit Required.** It shall be unlawful to commence the excavation for or the construction of any building or any accessory building, or to commence the moving or alteration of any buildings, including accessory buildings, until the County Zoning Officer has issued a building permit for such work. 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 immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application. The County Zoning Officer shall grant or deny the permit 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. If the work described in any building permit has not begun within one hundred and eighty (180) days or has not been substantially completed within two (2) years of the date of issuance thereof, said permit shall expire; it shall be canceled by the Zoning Officer and written notice thereof shall be given to the persons affected. The notice shall state that further work as described in the canceled permit shall not proceed unless, and until, a new building permit has been obtained.

### Section 806. Construction and Use to be as Provided in Application, Plans, Permits, and Application for Zoning Compliance.

Building permits issued on the basis of plans and applications approved by the Zoning Officer authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement, or construction at variance with that authorized shall be deemed a violation of this ordinance, and punishable as provided by Section 808 of this regulation.

### Section 807. Complaints Regarding Violations.

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Officer. The Zoning Officer shall record properly such complaint with the Board of Adjustment and investigate and take action thereon as provided by this Ordinance.

If the Zoning Officer shall find that any of the provisions of this Ordinance are being violated, he/she shall notify, in writing by certified mail with return receipt, the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The party responsible for the violation shall respond within seven (7) working days from receipt of the letter; otherwise, they will be considered in violation and punishable under Section 808.

### Section 808 Violation and Penalty.

1. Violations of the ordinance shall be treated in the manner specified below.
  - a. Any person who starts work for which a permit is required by this Zoning Ordinance, without first securing such permit and paying the prescribed fee, shall be charged according to the provisions of this section. All fees assessed there under shall be rounded to the nearest whole dollar.
    - i. Upon finding such violation, staff shall send written notification of the requirement that a permit be obtained to the owner of the property involved by certified mail with return receipt requested. If application for said permit is filed within seven (7) working days from the date of receipt of the letter, an administrative fee shall be assessed in the amount of one hundred percent (100%) of the fee for the permit plus the cost of the postage for mailing the aforementioned notice. In no case shall this administrative fee be less than five dollars (\$5.00), including the postage costs.
    - ii. If application for said permit is filed after the deadline of seven working days following receipt of the notification of the requirement therefore, there shall be imposed an administrative fee in the amount of two (2) times the permit fee. The payment of the administrative fee shall not relieve such person from the provisions of (b) below.
    - iii. Any administrative fee or penalty imposed under the provisions of this Zoning Ordinance shall be in addition to any other fees or charges required under this Zoning Ordinance.

- a. It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the Board of County Commissioners pursuant thereto. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any provision of this Zoning Ordinance may be subject to a civil or criminal penalty. The penalty for violation of this Zoning Ordinance shall be two hundred dollars (\$200.00) or imprisonment for not more than thirty (30) days, or both, and in addition the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification may constitute a separate offense. All fines for violation shall be paid to the County Auditor and shall be credited to the General Fund of the County.
- b. In the event, any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of Deuel County in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation, and it is the duty of the State's Attorney to institute such action.
- c. 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 or by County for Zoning Change -- Notice to Abutting Landowners. An individual landowner may petition the Board to change the zoning of all or any part of his property. The Board of County Commissioners may from time to time on its own motion, after public notice and hearing, and after a recommendation by the Planning Commission amend, supplement, or change the boundaries or regulations herein or subsequently established. Such petitioning landowner or County Commission, if rezoning is initiated by the County, shall also notify all other abutting landowners by registered or certified mail of the petitioned zoning change at least one (1) week days 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 hearing not less than ten (10) 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. The Planning Commission shall consider all applications for zoning district classification changes and make a recommendation to the Board of County Commissioners.

Section 903. Hearing by County Commissioners. Following receipt of the recommendation of the Planning Commission, the Board shall hold a public hearing after notice in a newspaper of general circulation. The County Auditor shall give notice of the time and place of hearing once at least ten (10) days in advance by publication in a legal newspaper of the county. At such public hearing, any person may appear and request or protest the requested change.

Section 904. Adoption or Rejection by County Commissioners -- Publication of Change. The Board of County Commissioners shall thereafter by ordinance, either adopt or reject such amendment, supplement, change, modification or repeal, and if it is adopted by the Board of County Commissioners, the Board shall publish a notice of the fact of adoption once in the official newspaper in such County and take effect on the twentieth (20th) day after its publication.

Section 9.05 Reapplication. No application requesting a zoning district classification change on any property whose application includes any such property either entirely or substantially the same as that which has been denied by the Board, shall again be considered by the Planning Commission before the expiration of six (6) months from the date of the final action of the Board.

## 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

Section 1101.01. 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.

Section 1101.02 Permitted Uses

1. Agricultural activities and farm related buildings, including Type E Concentrated Animal Feeding Operations;
2. Farm dwelling;
3. Site-built single-family residences;
4. Type A and Type B manufactured homes;
5. Modular homes;
6. Fisheries services and game propagation areas;
7. Horticultural services;
8. Orchards, tree farms, truck gardening, nurseries and greenhouses;
9. Public parks and recreation areas;
10. Home occupations;
11. Accessory uses and buildings.

Section 1101.03 Special exceptions

1. Airports and airstrips;
2. Church or cemetery;
3. Golf course, golf driving range;

4. Sand, gravel or quarry operation, mineral exploration and extraction, Rock crushers, concrete and asphalt mixing plants provided;
  - a. The site meets the requirements of the State Department of Environment and Natural Resources.
  - b. A site plan is provided indicating the following information:
    - i. Present topography, soil types, depth to groundwater.
    - ii. Location of existing water drainage, existing buildings, existing shelterbelts.
    - iii. Identification of roads leading to the site.
    - iv. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
    - v. Proposed monitoring wells, etc.
    - vi. A requirement for receiving a permit for extractive/mining operations shall include a haul-road agreement between the applicant and appropriate governmental entity (Federal, State, County, Township, or Municipality).
    - vii. The applicant may be required to provide information regarding how potential air, noise, and water pollution would be minimized.
    - viii. A minimum of one thousand (1,000) feet from the mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants property line to the nearest residence; excluding: the residence of the above said uses operator.

5. Sanitary landfills, Rubble Sites 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:
  - i. Present topography, soil types, depth to groundwater.
  - ii. Location of existing water drainage, existing buildings, existing shelterbelts.
  - iii. Identification of roads leading to the site.

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

- v. Proposed monitoring wells, etc.
  - c. A minimum of one thousand (1,000) feet from the landfill property line to the nearest residence; excluding: the residence of the landfill operator.
6. Institution farms, including religious farming communities;
  7. Domestic Sanitary Sewer Treatment Facility 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 one thousand (1,000) feet from the domestic sanitary sewer treatment facility property line to the nearest residence.
  8. Class A, Class B, Class C, and Class D Concentrated Animal Feeding Operations. (See Concentrated Animal Feeding Operations, Article XIII.)
  9. Stables, dog/cat kennels;
  10. Veterinary clinics;
  11. Junkyards/salvage yards, provided that they meet the following minimum requirements and other restrictions that the Board of Adjustment may deem appropriate:
    - a. Storage for junkyards shall be set back a minimum of two hundred (200) feet from any adjoining road right-of-way.
    - b. Junkyards shall be screened on all sides by a solid wall, with construction materials and design to be approved by the Board of Adjustment, at least two (2) feet above the highest stock pile or by a shelterbelt of shrubs and trees as approved by the Board of Adjustment; screening must be maintained in good repair.

- c. No junkyards will be allowed within one thousand (1,000) feet from the junkyard property line to the nearest residence; excluding: the residence of the junkyard operator.
  - d. All junkyards must have a minimum lot of ten (10) acres.
12. Essential services – Overhead or underground electrical, gas, steam or water transmission or distribution systems and structures, or collection, communication, supply or disposal systems and structures used by public for protection of the public health, safety or general welfare, including towers, poles, wires, mains drains, sewers, pipes, conduits, cables satellite dishes, and accessories in connection therewith.
  13. Wireless Telecommunication Towers and Facilities;
  14. 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;
  15. Seasonal retail stands, including fireworks stands;
  16. Extended Home Occupation--see Section 1210;
  17. Caretaker residences associated with public or private enterprise.
  18. Bed and breakfast
  19. Game Lodge;
  20. Private Shooting Preserve;
  21. Group Home;
  22. Wind Energy System;
  23. On and Off-Site Sign;

#### Section 1101.04 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 residential lots shall be a minimum of three (3) acres, except as provided in item 7 below. All other permitted uses and special exceptions shall have a minimum area and setback regulations as determined by the Board of Adjustment.

2. Front Yard

The minimum depth of the front yard shall be not less than one hundred fifty (150) feet and in no case shall an accessory building be located or extend into the front yard. In the case of a corner lot, front yards shall be provided on both streets.

3. Side Yard

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

4. Rear Yard

The minimum depth of a side 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 Board of Adjustment may allow a minimum residential lot size for the "A" Agricultural District under the following condition:

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

8. Building additions that are no closer to the right-of-way or other property lines

Section 1101.05 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.

### Section 1101.06 Access

1. The drive-way serving the parcel shall be separated from adjacent driveways on the same side of the road by the following distances depending upon road types:
  - a. Local road: 100 feet;
  - b. Collector road: 300 feet;
  - c. Arterial: 500 feet;
  - d. Minimum distance from intersection of two or more of the above: 100 feet
2. For all proposed uses and structures adjacent to a State highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the filing of a plat or the issuance of a building/use permit

### Section 1101.07 Easements/Waivers

1. An Agricultural easement must be filed with Register of Deeds on all property to be used as a site for a newly constructed residence (farm and non-farm) or church prior to issuance of a building permit.
2. Applicants for residential development (farm and non-farm) are required to obtain a written waiver from the owner/operator of any existing concentrated animal feeding operation which is closer than one-half (1/2) mile from the proposed residential building site. This waiver shall be filed with the Register of Deeds.

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

### Section 1102.01 Purpose

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

### Section 1102.02 Permitted Use

1. On-Site Signs

### Section 1102.03 Special exceptions

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, taverns;
12. Motels;
13. Single family residences;
14. Adult Uses
15. Off-site signs;
16. Auto Sales;
17. Agricultural-based industries such as ethanol plants and corn/soybean processing.

### Section 1102.04 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 three (3) acres. An applicant for a special exception shall provide a proposed site plan which can be reviewed by the Board of Adjustment. 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 fifty (150) feet in depth.
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 1102.05 Access

1. All property in the "CI" District must have access to a County, State, or Federal Road.
2. The drive-way serving the parcel shall be separated from adjacent driveways on the same side of the road by the following distances depending upon road types:
  - a. Local road: 100 feet;
  - b. Collector road: 300 feet;
  - c. Arterial: 500 feet;
  - d. Minimum distance from intersection of two or more of the above: 100 feet
3. For all proposed uses and structures adjacent to a State highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the filing of a plat or the issuance of a building/use permit

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

### Section 1103.1 Purpose

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

### Section 1103.2 Area Contained in "LP" District

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

### Section 1103.3 Permitted Uses

1. Site-built Single-family residential usage;
2. Public parks and recreation areas;
3. Agriculture and horticulture uses;
4. Type A Manufactured Homes;
5. Modular Homes;

### Section 1103.4 Special exceptions

1. Private parks and campgrounds;
2. Resorts;
3. Restaurants;
4. Home occupations;
5. Shoreline alterations, filling, grading, lagooning, dredging, and retaining walls, in a strip paralleling the shoreline and extending thirty-five (35) feet inland from all points along the high water mark of the shoreline.
6. Multiple family dwellings;
7. Type B and C manufactured homes that are older than ten (10) years, if the owner intends to upgrade or modify.

8. Accessory structures located on a lot adjacent to a lot with principle structure which is separated by a public or private road.
9. Storage
10. Commercial campground

Section 1103.5 Area Regulations:

1. Each lot shall have a lot depth of not less than one hundred and fifty (150) feet.
2. Each lot shall have a shoreline frontage of not less than seventy-five (75) feet in width.
3. Each lot shall have a road frontage of not less than fifty (50) feet in width.
4. Each building shall be set back not less than fifty (50) feet from the established normal high water mark and or have a rear yard of fifty (50) feet.
5. Each building shall be set back not less than fifty (50) feet from State or Federal highways and must be set back a minimum of thirty (30) feet for all other roads and ten (10) feet from the side yard property line. Exception: On those lots platted prior to June 8, 1976, which have a lot width of less than seventy-five (75) feet, each building shall have a side yard of not less than a distance equal to ten (10) percent of the lot width. Under no circumstances shall a building have a side yard of less than five (5) feet. Roof overhangs may infringe upon the side yard requirements no more than one and one-half (1.5) feet.
6. For lakes and 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 established normal high water mark. 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 or be tamped down before construction is begun.
7. Sealed holding tanks for individual cabins and homes are required for all lots containing less than twenty thousand (20,000) square feet and not within the Lake Cochrane Sanitary District.
8. There shall be no more than one primary residential building on any parcel of land.
9. Where two parcels of land are purchased and joined together by one common boundary, the setbacks established above shall pertain to the perimeter of the combined lots.

## Section 1103.6 Shoreline Alterations

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

### 1. Removal of Shore Cover

Tree and shrub cutting in a strip paralleling the shoreline and extending thirty-five (35) feet inland from all points along the established 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 permit 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.

### 2. Shoreline Stabilization

Shoreline stabilization, including but not limited to riprapping and retaining walls, shall require the granting of a permit by the Board of Adjustment.

## Section 1103.7 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.
4. Small filling and grading projects and small shoreline repair or stabilization projects limited to one hundred (100) square feet shall require a Permit. The Zoning Officer can give the above permit without the approval of the Board of Adjustment, all other permits must be approved by the Board of Adjustment.

### Section 1103.8 Fence Requirements

All fences, walls, and hedges shall be set back not less than fifty (50) feet from the high water mark and not less than thirty (30) feet from the road right-of-way and shall have a maximum height of eight (8) feet. All fences shall require the granting of a permit by the Zoning Officer.

## Section 1104. "NR" Natural Resource District

### Section 1104.01 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.

### Section 1104.02 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 and meandered lakes.

### Section 1104.03 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.

### Section 1104.04 Uses Permitted by Special exception 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. Aquifer Protection Overlay District**

### **Section 1105.01 Purpose and Intent:**

The Deuel County Zoning Commission recognizes (1) that residents of Deuel County rely exclusively on ground water for a safe drinking water supply and (2) that certain land uses in Deuel 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 Deuel 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 wellhead areas.

### **Section 1105.02 Definitions for Aquifer Protection Overlay District:**

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

8. Development: The carrying out of any surface or structure construction, reconstruction or alteration of land use or intensity of use.
9. Facility: Something built, installed or established for a particular purpose.
10. Grey Water: All domestic wastewater except toilet discharge water.
11. 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.
12. Manure Storage Area: An area for the containment of animal manure in excess of 8,000 pounds or 1,000 gallons.
13. Leaks and Spills: Any unplanned or improper discharge of a potential contaminant including any discharge of a hazardous material.
14. Pasture: A field that provides continuous forage to animals and where the concentration of animals is such that a vegetative cover is maintained during the growing season.
15. Primary Containment Facility: A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.

16. Secondary Containment Facility: A second tank, catchment pit, pipe or vessel that limits and contains a liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery systems are required.
17. Shallow Aquifer: An aquifer vulnerable to contamination because the permeable material making up the aquifer (1) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (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.
18. Ten Year Time of Travel Distance: The distance that ground water will travel in ten years. This distance is a function of aquifer permeability and water table slope.
19. Zone of Contribution: The entire area around a well or wellfield that contributes water to the well or wellfield.

#### Section 1105.03 Delineation and Regulation of Aquifer Protection Overlay Zones

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

The Aquifer Protection Overlay District is divided into two zones. The zone of contribution for Zone A, was mapped by the (EDWDD) with South Dakota Geological Survey (SDGS) technical assistance using techniques outlined in the U.S. Environmental Protection Agency publication "Guidelines for Delineation of Wellhead Protection Areas", June, 1987. The shallow/surficial aquifer boundary for Zone B was mapped by the SDGS as Task 3 of EDWDD's comprehensive ground water project.

#### Section 1105.04 Zone A -- Aquifer Critical Impact Zones

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

#### Section 1105.05 Permitted Uses in Zone A:

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

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

Section 1105.06 Special exceptions in Zone A:

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

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

Section 1105.07 Prohibited Uses in Zone A:

The following uses are expressly prohibited in Zone A:

1. New Concentrated Animal Feeding Operations, including Class A, Class B, Class C, Class D, and Class E.
2. Manure storage areas;
3. Disposal of solid waste except spreading of manure;
4. Outside unenclosed storage of road salt;
5. Disposal of snow containing de-icing chemicals;
6. Processing and storage of PCB contaminated oil;
7. Car washes;
8. Auto service, repair or painting facilities and junk or salvage yards;

9. Disposal of radioactive waste;
10. Graveyards or animal burial sites;
11. Detonation sites;
12. Open burning except ditches, fields and non-hazardous yard and household wastes such as paper, wood and leaves.
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. Fall application of nitrogen fertilizer except spreading of manure;
15. Land spreading of petroleum contaminated soil;
16. Land spreading or dumping of waste oil;
17. Class V injection wells;
18. Existing Concentrated Animal Feeding Operations will not be able to expand beyond a total of three hundred (300) animal units.
19. Earthen storage basins and lagoons;
20. Stockpiling of solid waste;
21. Chemigation with liquid fertilizer, pesticides and/or herbicides
22. Storage of liquid fertilizer, pesticides and/or herbicides without an approved permanent secondary storage system.

#### Section 1105.08 Zone B -- Aquifer Secondary Impact Zones

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

#### Section 1105.09 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.

Section 1105.10 Special exceptions in Zone B:

1. All special exceptions allowed in underlying districts, with the exception of those expressly prohibited in Zone B, may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zone.
2. All new and expansion of existing concentrated animal feeding operations may be required to conduct shall require soil borings to determine impermeable material between land surface and the aquifer.
3. Earthen storage basins and lagoons may be approved by the Board of Adjustment after site-specific review. Earthen storage basins and lagoons shall require soil borings to determine impermeable material between land surface and the aquifer. The Board reserves the right to require an impermeable liner to prevent ground water contamination.

Section 1105.11 Prohibited Uses in Zone B:

The following uses are expressly prohibited in Zone B:

- a. Fall application of nitrogen fertilizer except spreading of manure
- b. Land spreading of petroleum contaminated soil;
- c. Land spreading or dumping of waste oil;
- d. Class V injection wells;

Section 1105.12 Performance Standards For Aquifer Protection Overlay Zones:

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

1. New or replacement septic tanks and associated drain fields for containment of human wastes must conform with regulations established by the State Department of Environment and Natural Resources.
2. (Reserved)
3. Storage of petroleum products in quantities exceeding (100) gallons at one locality in one tank or series of tanks must be in elevated tanks; such tanks larger than one thousand (1,000) gallons must have secondary containment system where it is deemed necessary by the County Zoning Office.

4. Any commercial or industrial facility, not addressed by (2) or (3) above, involving collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or waste, except for spreading of manure, in excess of one thousand (1,000) pounds and/or one hundred (100) gallons which has the potential to contaminate ground water must have a secondary containment system which is 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.
5. When pastured animals are concentrated for winter feeding and the number of animal units exceeds two hundred (200), measures shall be employed to prevent runoff of manure
6. Owners/operators of active or abandoned feedlots shall handle and dispose of manure in accordance with Soil Conservation Service South Dakota engineering Standard, Nutrient Management System (680)
7. Discharge of industrial process water is prohibited without County Zoning Office approval.
8. Auto service, repair or painting facilities and junk or salvage yards shall meet all State and Federal standards for storage, handling and disposal of petroleum products and shall properly dispose of all other potentially hazardous waste materials.
9. Any facility involving collection, handling, manufacture, use, storage, transfer or disposal of hazardous materials must prepare and have on file in the County Zoning Office an acceptable contingency plan for preventing hazardous chemicals from contaminating the shallow/surficial aquifer should floods, fire, other natural catastrophes or equipment failure occur:
  - a. For flood control, all underground facilities shall include a monitoring system and a secondary standpipe above the 100 year frequency flood level. All above ground facilities, an impervious dike, above the 100 year flood level and capable of containing 120 percent of the largest storage volume, with an overflow recovery catchment area (sump).
  - b. For fire control, all facilities shall include a fire retardant system and provision 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 limited to:
    - i. Below ground level, provision for removal and replacement of leaking parts, a leak detection system with monitoring, and overfill protection system.

- ii. Above ground level, provision for monitoring, replacement, repair, and cleanup of primary containment systems.
  - d. For other natural or man-caused disasters occurring, the owner and/or operator shall report all incidents involving liquid or chemical material which may endanger health and/or of disaster personnel and/or the general public.
  - e. Agricultural operations are exempted from performance standard (9) unless chemicals are stored which are on the Superfund and Reauthorization Act of 1986 (SARA Title III) extremely hazardous substance list in quantities exceeding the threshold planning quantity at any one time.
  - f. The County Zoning Office, Public Water Supplies, and Department of Environment and Natural Resources shall be informed within 24 hours of any leak, spill or release of materials that might potentially contaminate groundwater.
10. Since it is known that improperly abandoned wells can become a direct conduit for contamination of groundwater by surface water, all abandoned wells should be plugged in conformance with South Dakota Well Construction Standards, Chapter 74:02:04:67-70.

Section 1105.13 Grant of Permit, Alteration of Use:

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

When securing a use permit, the owner/developer agrees to make future improvements which 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 an existing use, activity or development and thereafter desires alteration or expansion of the authorized use, such persons shall apply for a permit. The owner/developer may appeal a County Zoning Officer's decision to modify or deny a requested permit to the ~~County Planning~~/Board of Adjustment

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.

Exceptions:

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

Section 1105.14 Limitation of County Liability:

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

Section 1105.15 Underlying Zones:

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

Section 1106. "TD" Town District

Section 1106.01 Purpose

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

Section 1106.02 Permitted Uses

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

Section 1106.03 Special Exceptions

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

Section 1106.04 Area Regulations

Residential

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

Minimum Lot Size:

Public Water Supply/Septic Tank-----20,000 Sq. Ft.

Well/Septic Tank-----43,560 Sq. Ft.

Public Water Supply/Public Sewer-----9,600 Sq. Ft.

Commercial

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

Industrial

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

## 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 by planting, except where planting may be in conflict with vision clearance.

Section 1202. Intersection Visibility. At intersections of any roads, no planting, structure, sign, fence, wall, or obstruction to vision between the range of three (3) feet and eight (8) feet in height measured from the center line of the road shall be placed or maintained within the triangular area formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line each of which is fifty (50) feet distance from the point of intersection.

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, except those in the "A" Agricultural District, moved into any use district must secure a building permit from the County Zoning Officer.
2. Any residence moved into any use district must have signature by petition of sixty-six (66) percent of the adjoining landowners and of seventy-five (75) percent of the landowners within two hundred (200) feet. EXCEPTION: A new residence to be used for first occupancy, constructed off the property and moved to location shall not require adjoining landowners' approval.

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

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

2. All new or replacement water supply systems and sanitary sewage systems, in addition to meeting the requirements of the South Dakota Department of 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. (Reserved)

Section 1208. Shelterbelt Setback Requirements. Permits are required for all shelterbelt plantings. A shelterbelt, consisting of one (1) or more rows shall not be established within one hundred fifty (150) feet of a public road right-of-way line on the north and west sides of roads and not within one hundred (100) feet of a public road right-of-way line on the south and east sides of roads. Shelterbelts shall not be established within one hundred fifty (150) feet of adjoining property lines without written permission of adjoining property owners.

Trees or shrubs used for landscaping and windbreak are allowed in a controlled area. The controlled area is defined as the area within one hundred (100) feet of homes or farm buildings, but not closer to the right-of-way than fifty (50) feet. Except for the following, plantings within the controlled area are exempt from this regulation. Four or more trees in a row are not allowed within the controlled area. Deciduous trees which are spotted or staggered within the controlled area can be no closer than twenty (20) feet. Conifer trees which are spotted or staggered within the controlled area can be no closer than twenty-five (25) feet. The distance between trees shall be determined by measuring distance between tree trunks.

The setback requirements also apply to volunteer trees that the landowner allows to grow.

Section 1209. Home Occupation. 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 purpose 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 four (4) 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 nor 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. Tea room;
  - f. Barber shop;
  - g. Beauty shop;
  - h. Antique shop;
  - i. Other uses in the opinion of the Board of Adjustment 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 benefit and disadvantages created by home occupations, and the problems generated necessitate a distinction between small tract 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 extended home occupations may be permitted on farms than are permitted on small tracts on five (5) acres or less.

1. For the purpose of this section, provided all requirements are met, the following shall be considered extended 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 Board of Adjustment would not conflict with adjoining land uses.

Section 1211. Animal Units on Small Acreages.

On parcels of ten (10) acres or less in the Lake Park District, a maximum of one (1) animal unit per acre will be allowed. Concentrated animal feeding operations with permit are excluded from this requirement.

Section 1212. Buildings Being Moved off County Zoned Property.

Any person desiring to move any building or structure in the County shall apply for a permit. The applicant shall also deposit with the County Zoning Officer an amount to be determined by the Board of County Commissioners. This deposit will be held until such time that the property is reclaimed to a clean and safe condition, and that any damage to utilities, roads, or other public or private property is compensated for. The applicant must furnish proof that all real estate taxes legally assessed and due against the property have been paid before any permit is granted.

Section 1213. Fireworks Retailer or Wholesalers.

The selling of fireworks shall require a permit from the County Zoning Officer. A long-term permit shall be required for the selling of fireworks for the period of May 1<sup>st</sup> to July 5<sup>th</sup> of any given year. A short-term permit shall be required to sell fireworks from June 27<sup>th</sup> to July 5<sup>th</sup> of any give year. All buildings shall be in compliance with all appropriate state regulations and are subject to inspection by any County officer.

Section 1214. On – and Off –Site Signs

1. No private sign shall be erected or maintained which:
  - a. Creates a hazard due to collapse, fire, collision, decay, or abandonment; or
  - b. Creates traffic hazards, by either:

- i. Confusing or distracting motorists; or
  - ii. Impairing the driver's ability to see pedestrians, obstacles or other vehicles, or
  - iii. Impairing the driver's ability to see and interpret any official traffic sign, signal or device; or
  - iv. Creates a nuisance to persons using a public right-of-way; or
  - v. Constitutes a nuisance to occupancy of adjacent and contiguous property by its brightness, size, height, or movement
2. Signs shall be permitted in all zoning districts, subject to the following provisions:
  - a. Wall signs may be located anywhere on the wall of a building.
  - b. Freestanding signs shall not project over public property.
  - c. Freestanding signs shall not be erected adjacent to a corner of two intersecting streets, unless such signs are constructed to not obstruct the view of said intersection.
  - d. Each sign – size, lighting, and location - in the County shall at least meet the standards established by the South Dakota Department of Transportation.
  - e. Other than utility fixtures or holiday decorations, no signs, awnings, or display shall be suspended, hanged, or placed so that the same shall hang over any part of a street or sidewalk, used for vehicular or pedestrian travel unless a written application for a permit is made to the County Zoning Officer and the said Official grants a permit therefore.
3. The Zoning Officer shall take into consideration factors that would make the proposed structure likely to endanger the property or personal safety of passerby traveling the streets or sidewalks in question, and whether or not such structure complies with National Building Code relating to outdoor advertising.
4. On-Site Signs: Each sign erected as an on-site sign in those districts where permitted shall have a maximum surface area of eighty (80) square feet and shall observe all yard and height requirements of the district in which it is located.
5. Off-Site Signs: Off-site signs erected in those districts where permitted shall conform to the following requirements:
  - a. Each sign shall have a maximum surface area of one thousand two hundred (1,200) square feet, and maximum dimensions of thirty (30) feet in height, and forty (40) feet in length.

- b. Each sign shall not be closer than three hundred (300) feet from any street intersection and five hundred (500) feet from another permitted off-site sign on the same side of the street or road.
- c. Signs shall not be located within the street right-of-way.

## Section 1215. Wind Energy System (Wes) Requirements

### Section 1215.01 Applicability

The requirements of these regulations shall apply to all WES facilities except private non-commercial facilities with a single tower height of less than one-hundred forty (140) feet and used primarily for on-site consumption of power.

### Section 1215.02 Federal and State Requirements

All WESs 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 WESs.

### Section 1215.03 General Provisions

#### 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

- i. 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 cement, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.
- ii. 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 of such arrangements upon request of the County.
- iii. 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.
- iv. 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.
- v. Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust.
- vi. 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. 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 not less than one thousand (1,000) feet. Distance from on-site or lessor's residence shall be not less than five hundred (500) feet or one hundred and ten percent (110%) of the wind turbine height, whichever is greater. For purposes of this section only, the term "business" does not include agricultural uses.
  - b. Distance from public right-of-way shall be one hundred and ten percent (110%) 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 one hundred and ten percent (110%) 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. Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.
  5. Turbine Spacing. The turbines shall be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.
  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 except when total distance of collectors from the substation require an overhead installation due to line loss of current from an underground installation. 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 public 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 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 may at any time request the permittees to file a report with the County 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 forty two (42) inches. 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 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 prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen months after expiration.
10. Abandoned Turbines. The permittees shall advise the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require the

permittees to decommission any abandoned turbine.

11. 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.

12. 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. With the exception of those towers identified in Section 12.15.01.

13. Noise. Noise level shall not exceed 50 dBA, average A-Weighted Sound pressure at the perimeter of existing residences.

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

15. 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. Copy of easement agreements with landowners.
- d. Map of occupied residential structures, businesses and public buildings.
- e. Map of sites for WES, access roads and utility lines.
- f. Proof of utility right-of-way easement for access to transmission lines.
- g. Location of other WES in general area.
- h. Project schedule.

## Section 1216. Wireless Telecommunications Towers And Facilities

### Section 1216.01 Purpose

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

Specifically, the purposes of this Ordinance are:

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

#### Section 1216.02 Definitions

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

1. *Antenna Support Structure* means any building or structure other than a Tower which can be used for location of Telecommunications Facilities.
2. *Applicant* means any Person that applies for a Tower development permit.
3. *Application* means the process by which the Owner of a parcel of land within the County submits a request to develop, construct, build, modify, or erect a Tower upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an Applicant to the County concerning such a request.
4. *Engineer* means any engineer licensed by the State of South Dakota.
5. *Owner* means any Person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within the County who desires to develop, or construct, build, modify, or erect a Tower upon such parcel of land.

6. *Person* is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.
7. *Stealth* means any Tower or Telecommunications Facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and Towers designed to look other than like a Tower such as light poles, power poles, and trees. The term *Stealth* does not necessarily exclude the use of uncamouflaged lattice, guyed, or monopole Tower designs.
8. *Telecommunications Facilities* means any cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications which a Person seeks to locate or has installed upon or near a Tower or Antenna Support Structure. However, Telecommunications Facilities shall not include:
  - a. Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial; or
  - b. Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category.
9. *Tower* means a self-supporting lattice, guyed, or monopole structure constructed from grade which supports Telecommunications Facilities. The term Tower shall not include amateur radio operators' equipment, as licensed by the FCC.

#### Section 1216.03 Development of Towers

1. Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of one hundred and fifty (150) feet. Towers may be permitted in excess of one hundred and fifty (150) feet in accordance with "Criteria for Site Plan Development Modifications."
2. No new Tower shall be built, constructed, or erected in the County unless the Tower is capable of supporting three other Persons' operating Tele-communications Facilities comparable in weight, size, and surface area to the Telecommunications Facilities installed by the Applicant on the Tower within six (6) months of the completion of the Tower construction. No tower shall charge co-location fees in excess of commercially reasonable industry amounts. Each tower constructed shall upon the request of Deuel County mount law-enforcement or public safety communications apparatus.
3. An Application to develop a Tower shall include:
  - a. The name, address, and telephone number of the Owner and lessee of the parcel of land upon which the Tower is situated. If the Applicant is not the Owner of the parcel

of land upon which the Tower is situated, the written consent of the Owner shall be evidenced in the Application.

- b. The legal description, folio number, and address of the parcel of land upon which the Tower is situated.
- c. The names, addresses, and telephone numbers of all owners of other Towers or usable Antenna Support Structures within a one-half ( $\frac{1}{2}$ ) mile radius of the proposed new Tower site, including County-owned property.
- d. A description of the design plan proposed by the Applicant. Applicant must identify its utilization of the most recent technological design, including microcell design, as part of the design plan. The Applicant must demonstrate the need for Towers and why design alternatives, such as the use of microcell, cannot be utilized to accomplish the provision of the Applicant's telecommunications services.
- e. An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to install or co-locate the Applicant's Telecommunications Facilities on Towers or usable Antenna Support Structures owned by other Persons located within a one-half ( $\frac{1}{2}$ ) mile radius of the proposed Tower site. In the event that one reason for the unsuccessful efforts to install or co-locate is that fees to be charged are not commercially reasonable, an explanation shall be provided why said charges are commercially unreasonable.
- f. Written technical evidence from an Engineer(s) that the proposed Tower or Telecommunications Facilities cannot be installed or co-located on another person's Tower or usable Antenna Support Structures owned by other Persons located within one-half ( $\frac{1}{2}$ ) mile radius of the proposed Tower site.
- g. A written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.
- h. Written, technical evidence from an Engineer(s) that the proposed structure meets the standards set forth in, "Structural Requirements," of this Ordinance.
- i. Written, technical evidence from a qualified Engineer(s) acceptable to the Fire Marshall and the building official that the proposed site of the Tower or Telecommunications Facilities does not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.
- j. The FCC has sole jurisdiction of the field of regulation of RF emissions and does not allow the County to condition or deny on the basis of RF impacts the approval of any

Telecommunications Facilities (whether mounted on Towers or Antenna Support Structures) which meet FCC standards. In order to provide information to its citizens, the County shall make available upon request copies of ongoing FCC information and RF emission standards for Telecommunications Facilities transmitting from Towers or Antenna Support Structures. Applicants shall be required to submit information on the proposed power density of their proposed Telecommunications Facilities and demonstrate how this meets FCC standards.

- k. No application shall be accepted from landowners or on property on which there are current or past unresolved violations outstanding.
4. The Board of Adjustment may require an Applicant to supplement any information that the Board considers inadequate or that the Applicant has failed to supply. The Board of Adjustment may deny an Application on the basis that the Applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the Board in a prompt manner and all decisions shall be supported in writing setting forth the reasons for approval or denial.

#### Section 1216.04 Setbacks

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

#### Section 1216.05 Structural Requirements

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

### Section 1216.06 Separation or Buffer Requirements

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

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

1. Monopole Tower structures shall be separated from all other Towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet.
2. Self-supporting lattice or guyed Tower structures shall be separated from all other self-supporting or guyed Towers by a minimum of fifteen hundred (1,500) feet.
3. Self-supporting lattice or guyed Tower structures shall be separated from all monopole Towers by a minimum of seven hundred and fifty (750) feet.

### Section 1216.07 Method Of Determining Tower Height

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

### Section 1216.08 Illumination

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

### Section 1612.09 Exterior Finish

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

### Section 1216.10 Modification Of Towers

1. A Tower existing prior to the effective date of this Ordinance, which was in compliance with the County's zoning regulations immediately prior to the effective date of this Ordinance, may continue in existence as a nonconforming structure. Such non-

conforming structures may be modified or demolished and rebuilt without complying with any of the additional requirements of this Section, except for Sections "Separation or Buffer Requirements", "Certification and Inspections", and "Maintenance," provided:

- a. The Tower is being modified or demolished and rebuilt for the sole purpose of accommodating, within six (6) months of the completion of the modification or rebuild, additional Telecommunications Facilities comparable in weight, size, and surface area to the discrete operating Telecommunications Facilities of any Person currently installed on the Tower.
- b. An Application for a development permit is made to the Board of Adjustment which shall have the authority to issue a development permit without further approval. The granting of a development permit pursuant to this Section allowing the modification or demolition and rebuild of an existing nonconforming Tower shall not be considered a determination that the modified or demolished and rebuilt Tower is conforming.
- c. The height of the modified or rebuilt Tower and Telecommunications Facilities attached thereto do not exceed the maximum height allowed under this Ordinance.

#### Section 1216.11 Certifications And Inspections

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

### Section 1216.12 Maintenance

1. Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
2. Tower owners shall install and maintain Towers, Telecommunications Facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
3. All Towers, Telecommunications Facilities, and Antenna Support Structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any Person.
4. The property in which Towers, Telecommunications Facilities, and Antenna Support Structures are situated shall be maintained in a manner to control noxious weeds.
5. All maintenance or construction of Towers, Telecommunications Facilities, or Antenna Support Structures shall be performed by licensed maintenance and construction personnel.
6. All Towers shall maintain compliance with current RF emission standards of the FCC.
7. In the event that the use of a Tower is discontinued by the Tower owner, the Tower owner shall provide written notice to the County of its intent to discontinue use and the date when the use shall be discontinued.

### Section 1216.13 Criteria For Site Plan Development Modifications

1. Notwithstanding the Tower requirements provided in this Ordinance, a modification to the requirements may be approved by the Board of Adjustment as a special exception in accordance with the following:
  - a. In addition to the requirement for a Tower Application, the Application for modification shall include the following:
    - i. A description of how the plan addresses any adverse impact that might occur as a result of approving the modification.
    - ii. A description of off-site or on-site factors which mitigate any adverse impacts which might occur as a result of the modification.
    - iii. A technical study that documents and supports the criteria submitted by the Applicant upon which the request for modification is based. The technical study

shall be certified by an Engineer and shall document the existence of the facts related to the proposed modifications and its relationship to surrounding rights-of-way and properties.

- iv. For a modification of the setback requirement, the Application shall identify all parcels of land where the proposed Tower could be located, attempts by the Applicant to contract and negotiate an agreement for co-location, and the result of such attempts.
  - v. The Board of Adjustment may require the Application to be reviewed by an independent Engineer under contract to the County to determine whether the antenna study supports the basis for the modification requested. The cost of review by the County's Engineer shall be reimbursed to the County by the Applicant.
2. The Board of Adjustment shall consider the Application for modification based on the following criteria:
- a. That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.
  - b. Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.
  - c. In addition, the board may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower and mitigate any adverse impacts which arise in connection with the approval of the modification.
3. In addition to the requirements of subparagraph (2) of this Section, in the following cases, the Applicant must also demonstrate, with written evidence, the following:
- a. In the case of a requested modification to the setback requirement, that the setback requirement cannot be met on the parcel of land upon which the Tower is proposed to be located and the alternative for the Person is to locate the Tower at another site which is closer in proximity to a residentially zoned land.
  - b. In the case of a request for modification of the separation and buffer requirements from residential use of land of, if the Person provides written technical evidence from an Engineer(s) that the proposed Tower and Telecommunications Facilities must be located at the proposed site in order to meet the coverage requirements of the Applicant's wireless communications system and if the Person is willing to create approved landscaping and other buffers to screen the Tower from being visible to residentially used property.

- c. In the case of a request for modification of the height limit for Towers and Telecommunications Facilities or to the minimum height requirements for Antenna Support Structures, that the modification is necessary to:
  - i. Facilitate co-location of Telecommunications Facilities in order to avoid construction of a new Tower; or
  - ii. To meet the coverage requirements of the Applicant's wireless communications system, which requirements must be documented with written, technical evidence from an Engineer(s) that demonstrates that the height of the proposed Tower is the minimum height required to function satisfactorily, and no Tower that is taller than such minimum height shall be approved.

#### Section 1216.14 Abandonment

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

## ARTICLE XIII

### CONCENTRATED ANIMAL FEEDING OPERATION REGULATIONS

#### Section 1300. Intent

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

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

## Section 1301. Animal Units

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

<u>ANIMAL SPECIES</u>	<b>EQUIVALENT NUMBER OF A SPECIES TO EQUAL:</b>			<u>ANIMAL UNIT EQUIVALENT SPECIES/AU</u>
	<u>500 AU</u>	<u>1,000 AU</u>	<u>2,000 AU</u>	
Feeder or Slaughter Cattle	500 hd	1,000 hd	2,000 hd	1.0
Mature Dairy Cattle	357 hd	700 hd	1,400 hd	1.43
Finisher Swine (over 55 lbs)	1,250 hd	2,500 hd	5,000 hd	0.4
Nursery Swine (less than 55 lbs)	5,000 hd	10,000 hd	20,000 hd	0.1
Farrow-to-Finish (sows)	135 hd	270 hd	540 hd	3.7
Swine Production Unit (Sows Breeding, Gestating & Farrowing)	1,064 hd	2,130 hd	4,260 hd	0.47
Horses	250 hd	500 hd	1,000 hd	2.0
Sheep	5,000 hd	10,000 hd	20,000 hd	0.1
Turkeys	27,800 hd	55,000 hd	110,000 hd	0.018
Laying Hens and Broilers (continuous overflow watering in facility)	50,000 hd	100,000 hd	200,000 hd	0.01
Laying Hens and Broilers (liquid handling system in confinement facility)	15,150 hd	30,000 hd	60,000 hd	0.033
Ducks	2,500 hd	5,000 hd	10,000 hd	0.2

## Section 1302. Classes of Concentrated Animal Feeding Operations

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

### ANIMAL UNITS

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

## Section 1303. Concentrated Animal Feeding Operation Permit Requirements

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

1. A new concentrated animal feeding operation is proposed where one does not exist.
2. An expansion is proposed beyond what a current permit allows.
3. An expansion of an existing, non-permitted concentrated animal feeding operation after June 3, 1997, which would result in the creation of either a Class A, B, C, or D concentrated animal feeding operation
4. A change in ownership of a Class A or Class B concentrated animal feeding operation. This requirement does not apply if the transfer of ownership is between family members with one degree of consanguinity.
6. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) years.
7. A signed complaint has been received by the County Zoning Officer or South Dakota Department of Environment and Natural Resources and after inspection reveals that the Concentrated Animal Feeding Operation is in violation of County or State regulations.

## Section 1304. Concentrated Animal Feeding Operation Control Requirements

### **1. No Significant Contribution of Pollution**

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

## **2. State General Permit**

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

Classes C 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, excluding existing operations that are improving waste handling facilities according to Natural Resource Conservation Service standards.
- b. The Board of Adjustment decides conditions require a State permit.

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

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

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

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

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

The plan must comply with County Manure Application Setbacks.

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

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

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

A. Plan must include:

1. The location and specifics of proposed animal manure facilities.
2. The operation procedures and maintenance of manure facilities.
3. Plans and specifications must be prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer. Waste treatment facilities will require inspection by an engineer and as-built plans to be submitted to the County Zoning Officer.
4. Animal manure shall not be stored longer than two years.
5. Manure containment structures shall provide for a minimum design volume of three hundred sixty-five (365) days of storage.
6. Producers shall keep records on manure applications on individual fields which document acceptable manure and nutrient management practices have been followed. These records shall include soils test results for surface two feet of soil, actual and projected crop yields, nutrient analysis of manure, and information about date, rate and method of manure applications for individual fields.

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

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

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

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

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

**6. Required Setbacks and Separation Distance for New Concentrated Animal Feeding Operations and those Existing, Non-permitted Concentrated Animal Feeding operations expanding into a Class A, B, C, or D Concentrated animal Feeding Operations Expanding-after June 3, 1997.**

**MINIMUMS**

	<u>CLASS A</u>	<u>CLASS B</u>	<u>CLASS C</u>	<u>CLASS D &amp; E</u>
Established Residences	2,640 feet	1,760 feet	1,320 feet	1,320 feet
Churches, Businesses and Commercially Zoned Areas	2,640 feet	2,640 feet	1,320 feet	1,320 feet
Incorporated Municipality Limits	5,280 feet Plus 440 ft. For each Addnl 1,000 A.U. over 2,000 A.U.	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	150 feet	150 feet	150 feet	150 feet
Township Road ROW Confinement	150 feet	150 feet	150 feet	150 feet
Township Road ROW Open Lot	150 feet	150 feet	150 feet	150 feet

**7. Exemptions to Separation Distance Requirements**

- A. A Concentrated Animal Feeding Operation constructed prior to June 3, 1997, which does not comply with the distance setback requirements, which continues to operate, but is not expanded by more than three hundred (300) animal units.
- B. A Concentrated Animal Feeding Operation structure which is expanded or constructed, if the title holder of the land benefiting from the distance separation

requirement executes a written waiver with the title holder of the land where the structure is located, under such terms and conditions which the parties may negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the Register of Deeds in the county. The benefited land is the residence, commercial enterprise, bonafide religious institution, educational institution from which separation is required.

- C. A Concentrated Animal Feeding Operation structure which is located within any distance from an educational institution, commercial enterprise, bonafide religious institution, incorporated community, if the educational institution, commercial enterprise or bonafide institution was constructed or expanded or the boundaries of the incorporated community were expanded, after the date that the animal feeding operation was established. The date that the Concentrated Animal feeding Operation was established is the date on which the Concentrated Animal Feeding Operation commenced operating. A change in ownership or expansion shall not change the date of operation.

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

**Considerations To Increase Setbacks And/or Separation Distances**

- A. A concentration of CAFOs in the area exists or would occur which may pose an air or water quality concern.
- B. Due to topography and 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.

**Considerations To Decrease Setbacks And Separation Distances**

- A. An existing Concentrated Animal Feeding Operation proposes to expand but does not meet suggested setback or separation distances, the Board of Adjustment may reduce suggested setbacks and separation distances after:
  - i. Review of past management practices and proposed improvements to waste handling facilities.
  - ii. Due to the type of waste handling and management of the CAFO little or no impact on adjacent property is expected.

- iii. Due to topography and/or prevailing wind direction little or no impact on adjacent property is expected.
- iv. Due to the limited number of animal units no adverse impacts are expected.

**9. Manure Application Setbacks**

A. The following manure application setbacks apply to all classes of Concentrated Animal Feeding Operations.

**COUNTY MANURE APPLICATION SETBACKS**

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

B. The County Board of Adjustment may require liquid manure to be incorporated or injected in order to minimize air and water quality impacts.

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

**10. Standards for Special Exceptions**

A. The County Board of Adjustment may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.

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

- C. Special exceptions 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 Board of Adjustment will take into consideration current and past violations relating to Concentrated Animal Feeding Operations that the applicant has an interest in.
- E. Permit applicants will be required to file a letter of assurances as required by the Board of Adjustment. The letter of assurances will be prepared by the zoning officer and signed by both the applicant and the zoning officer.

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

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

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

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