

## **SECTION 300 - SUPPLEMENTARY REGULATIONS**

In order to accomplish the general purpose of these Zoning Ordinances, it is necessary to give special consideration to certain uses because they are unique in nature, require large land areas, are potentially incompatible with existing development, or because the effects of such uses cannot definitely be foreseen.

### **SECTION 301 – AIRPORT HEIGHT AND HAZARD ZONING**

**A. Intent:**

To regulate and restrict the height of structures and objects of natural growth and otherwise regulate the use of property, in the vicinity of the Rapid City Regional Airport, by creating the appropriate zones and establishing the boundaries thereof.

**B Definitions:**

See Section 103 – Definitions.

**C. General:**

It is hereby found that an obstruction has the potential for endangering the lives and property of users of Rapid City Regional Airport and property or occupants of land in its vicinity; that an obstruction may affect existing and future instrument approach minimums of Rapid City Regional Airport; that an obstruction may reduce the size of areas available for the landing, takeoff, and maneuvering of aircraft, thus, tending to destroy or impair the utility of Rapid City Regional Airport and the public investment therein. Accordingly, it is declared:

1. That the creation or establishment of an obstruction has the potential of being a public nuisance and may injure the region served by Rapid City Airport;

2. That it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of obstructions that are a hazard to air navigation be prevented; and
3. That the prevention of these obstructions should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.

It is further declared that the prevention of the creation or establishment of hazards to air navigation, the elimination, removal, alteration or mitigation of hazards to air navigation, or marking and lighting of obstructions are public purposes for which a political subdivision may raise and expend public funds and acquire land or interests in land.

D. Airport Zones:

In order to carry out the provisions of this Ordinance, there are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to Rapid City Regional Airport. Such zones are shown on Rapid City Regional Airport Zoning Map consisting of two sheets, dated October 15, 2003, which is attached as an adjunct hereof. An area located in more than one of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

1. Utility Runway Visual Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 250 feet wide. The approach zone expands outward uniformly to a width of 1,250 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

2. Utility Runway Nonprecision Instrument Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 2,000 feet at a horizontal distance 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

3. Runway Larger Than Utility Visual Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 1,500 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

4. Runway Larger Than Utility With A Visibility Minimum Greater Than 3/4 Mile Nonprecision Instrument Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

5. Runway Larger Than Utility With A Visibility Minimum As Low As 3/4 Mile Nonprecision Instrument Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 4,000 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

6. Precision Instrument Runway Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

7. Transitional Zones

The transitional zones are the areas beneath the transitional surfaces.

8. Horizontal Zone

The horizontal zone is established by swinging arcs of 5,000 feet radii for all runways designated utility or visual and 10,000 feet for all others from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zones.

9. Conical Zone

The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward there from a horizontal distance of 4,000 feet.

E. Airport Zone Height Limitations:

---

~~Except as otherwise provided in this Ordinance, no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this Ordinance to a height in excess of the applicable height herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:~~

1. Utility Runway Visual Approach Zone

Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

2. Utility Runway Nonprecision Instrument Approach Zone  
Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
3. Runway Larger Than Utility Visual Approach Zone  
Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
4. Runway Larger Than Utility With A Visibility Minimum Greater Than 3/4 Mile Nonprecision Instrument Approach Zone  
Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.
5. Runway Larger Than Utility With A Visibility Minimum As Low As 3/4 Mile Nonprecision Instrument Approach Zone  
Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.
6. Precision Instrument Runway Approach Zone  
Slopes fifty (50) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline; thence slopes upward forty (40) feet horizontally for each foot vertically to an additional horizontal distance of 40,000 feet along the extended runway centerline.
7. Transitional Zones  
Slope seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is 100 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface, and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface, and extending a horizontal distance of 5,000 feet measured at 90-degree angles to the extended runway centerline.

8. Horizontal Zone

Established at 150 feet above the airport elevation or at a height of 250 feet above mean sea level.

9. Conical Zone

Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.

10. Excepted Height Limitations

Nothing in this Ordinance shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree to a height up to fifty (50) feet above the surface of the land.

F. Use Restriction:

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Ordinance in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

G. Nonconforming Uses:

1. Regulations Not Retroactive

The regulations prescribed in this Ordinance shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as the effective date of this Ordinance, or otherwise interfere with the continuance of a nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted.

2. Marking and Lighting

---

Notwithstanding the preceding provision of this Section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Airport Manager to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of the City of Rapid City.

H. Permits:

1. Future Uses

Except as specifically provided in a, b, and c hereunder, no structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a permit therefore shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting structure or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this Ordinance shall be granted unless a Variance has been approved in accordance with Section 301.G.4.

- a. In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than fifty (50) feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.
- b. In areas lying within the limits of the approach zones, but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than fifty (50) feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.
- c. In the areas lying within the limits of the transition zones, beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than fifty (50) feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limits established by this Ordinance except as set forth in Section 301.D.10.

## 2. Existing Uses

No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation, than it was on the effective date of this Ordinance or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

## 3. Nonconforming Uses Abandoned or Destroyed

Whenever the Pennington County Planning Director determines that a nonconforming tree or structure has been abandoned or more than 80 percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from these zoning regulations.

4. Variances

Any person desiring to erect or increase the height of any structure or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this Ordinance, may apply to the Board of Adjustment for a variance from such regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is dully found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this Ordinance. Additionally, no application for variance, to the requirements of this Ordinance, may be considered by the Board of Adjustment unless a copy of the application has been furnished to the Airport Manager for advice as to the aeronautical effects of the variance. If the Airport Manager does not provide a written response to the application within fifteen (15) days after receipt, the Board of Adjustment may act on its own to grant or deny said application.

5. Obstruction Marking and Lighting

Any permit or variance granted, if such action is deemed advisable to effectuate the purpose of this Ordinance and be reasonable in the circumstances, may be so conditioned as to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the Board of Adjustment, this condition may be modified to require the owner to permit the City of Rapid City, at its own expense, to install, operate, and maintain the necessary markings and lights.

I. Enforcement:

It shall be the duty of the Pennington County Planning Director to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the Pennington County Planning Director upon a form published for that purpose. Applications required by this Ordinance to be submitted to the Pennington County Planning Director shall either be granted or denied. Application for action by the Board of Adjustment shall be forthwith transmitted by the Pennington County Planning Director.

J. Appeals:

1. Any person aggrieved or any taxpayer affected by any decision of the Pennington County Planning Director, made in the administration of the Ordinance, may appeal to the Board of Adjustment.
2. All appeals hereunder must be taken within a reasonable time as provided by the rules of the Board of Adjustment, by filing with the Pennington County Planning Director a notice of appeal specifying the grounds thereof. The Pennington County Planning Director shall forthwith

transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

3. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Pennington County Planning Director certifies to the Board of Adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would in the opinion of the Pennington County Planning Director cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the Board of Adjustment or notice to the Pennington County Planning Director and on due cause shown.
4. The Board of Adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person, by agent, or by attorney.
5. The Board of Adjustment may, in conformity with the provisions of this Ordinance, reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination appealed from and may make such order; requirement; decision; or determination as may be appropriate under the circumstances.

**K. Judicial Review:**

Any person aggrieved, or any taxpayer affected, by any decision of the Board of Adjustment, may appeal to the Circuit Court as provided in SDCL 11-2-61.

**L. Conflicting Regulations:**

Where there exists a conflict between any of the regulations or limitations prescribed in this Ordinance and any other regulations applicable to the same area, whether the conflict is with respect to the height of structures or trees, and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

**M. Severability:**

If any of the provisions of this Ordinance or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

---

**SECTION 302 - NEIGHBORHOOD COMMERCIAL**

**A. Intent:**

To establish areas for those commercial facilities which are especially useful in close proximity to residential areas, while minimizing any undesirable impact of such uses on the neighborhoods which they service.

**B. Property and buildings may include, but are not limited to the following purposes:**



All uses in Neighborhood Commercial are to be individually considered as to compatibility with the zoning district in which they are located. Primarily, this classification shall be utilized for neighborhood services in the agricultural and residential districts providing direct services to residential occupants and shall not materially increase traffic in that district.

C. Special Regulations:

All requests for a Neighborhood Commercial classification shall be handled as a Conditional Use for the district in which it is to be located.

**SECTION 303 - MULTIPLE-FAMILY DWELLINGS**

A. General:

Multiple-family dwellings may be allowed in a Limited Agriculture, Low Density Residential, and Suburban Residential District upon the issuance of a Conditional Use Permit.

B. Minimum lot Requirements:

For each structure of two (2) dwelling units, there shall be a lot area of not less than 7,500 square feet. There shall be 1,500 square feet for each additional dwelling unit.

C. Minimum Setback Requirements:

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

1. Front Yard

All approved structures shall be set back twenty-five (25) feet from the front lot line or fifty-eight (58) feet from the center of the Section Line of the public right-of-way, whichever is greater, and in no case shall an accessory building be located to extend into the front yard.

2. Side Yard

a. For a single-story dwelling located on interior lots, side yards shall be not less than eight (8) feet in width. For dwellings of more than one (1) story, there shall be a side yard requirement of not less than twelve (12) feet.

b. For unattached buildings of accessory use, there shall be a side yard of not less than eight (8) feet, provided that unattached one-story buildings of accessory uses shall not be required to set back more than five (5) feet from an interior lot line when all parts of the accessory building are located more than ninety (90) feet behind the front lot lines.

c. For all other approved uses, all structures shall set back twenty-five (25) feet from all side lot lines.

3. Rear Yard

- a. For principal structures, there shall be a rear yard of not less than twenty-five (25) feet.
- b. Unattached accessory buildings shall not be located closer than five (5) feet from rear lot lines.

**SECTION 304 - MOBILE HOMES**

A. Intent:

The intent of this section is to specify certain rules and regulations on the construction, location, and permits required to locate mobile homes within the unincorporated areas of Pennington County.

B. General:

1. Location

- a. Mobile homes, modular homes, and manufactured homes may be located on an established farmstead in the A-1 General Agriculture District, as a permitted use, when occupied by persons directly engaged in the operation of the farm or ranch with the issuance of a Building Permit.
- b. Mobile homes, modular homes, and manufactured homes may be located in any approved mobile home park with the issuance of a Building Permit.
- c. Mobile homes which meet all the following minimum standards may be located on any lot in any General Agriculture, Limited Agriculture, Low Density Residential, or Suburban Residential District upon issuance of a Building Permit.
  - (1) The mobile home must be at least 20 feet wide.
  - (2) The mobile home must have factory installed wood, hardboard or siding with a wood appearance.
  - (3) The mobile home must have a factory installed peaked non-reflective roof.

A Conditional Use Permit, as provided in Section 510, shall be required if ~~all these conditions are not met.~~

2. Foundations

No mobile home shall be occupied unless it is supported on a concrete foundation; concrete, masonry, or wood basement; concrete piers; masonry blocks or jacks; connected to utilities and provided with skirting from the bottom of the walls to the ground, made of aluminum, wood, or other durable material comparable to the exterior of the home.

C. Water and Waste Water Facilities:

1. Water

The domestic water connection to a mobile home installed as a dwelling shall be identical to any dwelling in that district. The waste disposal system shall be installed as required by the Pennington County Health Department.

**SECTION 305 - MOBILE HOME PARKS**

A. Property Development Standards:

The following property development standards shall apply for all mobile home parks:

1. There shall not be less than 6,500 square feet of lot area for each space provided on the site. This space ratio shall include: Access roads, automobile parking, accessory building space, and recreational area.
2. Utility service connections, including any necessary easements, shall be indicated on the development plan.
3. Water and sewer facilities shall be approved by the County Health Department.
4. The mobile home park shall conform to all requirements of the South Dakota Fire Codes.

B. Area Regulations:

1. There shall be a front yard setback of ten (10) feet from all access roads within the mobile home park.
2. Minimum distance between units shall be twenty (20) feet.
3. Maximum lot coverage shall be twenty-five (25) percent.
4. There shall be at least two paved or graveled off-street parking spaces for each mobile home space.
5. Where a side or rear yard abuts a street, the yard shall be not less than twenty-five (25) feet.

- 
6. Each mobile home park shall have a rear yard and a side yard on both sides of the parcel of not less than ten (10) feet.

C. General Regulations:

1. Additional accessory structures shall require a Building Permit.
2. There shall be established and maintained within each park an automobile parking area for the use of guests. The number of spaces within this area shall be equal to one for every four mobile home spaces.

3. Mobile home spaces may abut upon a driveway of not less than twenty-five (25) feet in width, which shall have unobstructed access to the access road within the mobile home park. Vehicular access shall be provided from a public street, and all dead-end driveways shall include a minimum forty-two (42) foot turning radius.
4. Each mobile home park shall be provided with a management office and such service buildings as are necessary.

D. Application for Conditional Use Permit:

Application for a mobile home park Conditional Use Permit will be processed in accordance with Section 510 - Conditional Use Permits. The following information shall be shown:

1. Location and legal description of the proposed mobile home park.
2. Plans and specifications as required by the County Health Department for sewer and water facilities.
3. Layout plan of the proposed mobile home park indicating the location of all mobile home spaces, accessory facilities, and streets or roads to serve the park.
4. A time schedule for development shall be submitted and reviewed by the Commission.
5. The Commission may require additional information or may require conditions deemed necessary to protect the property rights of adjoining landowners.

**SECTION 306 - RECREATIONAL VEHICLE PARKS**

A. Property Development Standards:

The following property development standards shall apply for all recreational vehicle parks:

1. The density of the recreational vehicle park is subject to review by the Board on recommendation from the Commission on an individual basis with prime consideration given to location within the jurisdiction of these Zoning Ordinances. The burden of justifying the density shall be upon the applicant for the Conditional Use Permit.
2. Accessory buildings, electrical, water, and sewer facilities shall be designed to provide services adequate for the type of recreational vehicles and/or tent camps to be served. The adequacy will be reviewed by the Commission at the hearing for the Conditional Use.

B. Application for a Conditional Use Permit:

The application for a recreational vehicle park Conditional Use Permit shall be processed in accordance with Section 510 - Conditional Use Permits. Such

application shall be reviewed and approved by the Health Department, the Planning and Zoning Director, and the Board on recommendation from the Planning Commission. The following information shall be shown:

1. The location and legal description of the proposed recreational vehicle park.
2. Plans and specifications of all buildings, improvements, and facilities constructed or to be constructed within the recreational vehicle park.
3. The proposed use of buildings shown on the site.
4. The location and size of all recreational vehicle spaces.
5. The location of all points of entry and exit for motor vehicles and internal circulation pattern.
6. The location of all landscaping to be provided.
7. The location of all lighting standards to be provided.
8. The location of all walls and fences and the indication of their height and the materials of their construction.
9. The name and address of the applicant.
10. Such other architectural and engineering data as may be required to permit the Planning and Zoning Director, the Commission, and the Board to determine if the provisions of these Zoning Ordinances are being complied with.
11. A time schedule for development shall be prepared which shall demonstrate the applicant's readiness and ability to provide the proposed services; and all required improvements and facilities shall be installed within one (1) year, unless the Board, on recommendation from the Commission, approves a plan for staged construction.
12. Utility service connections to be provided.
13. A domestic water system approved by the Pennington County Health Department.
14. A water carriage wastewater disposal system approved by the Pennington County Health Department.

---

15. A typical lot plan for a recreational vehicle space detailing location and method.
16. A complete drainage plan to include topography to at least 5-foot-contour intervals.

## **SECTION 307 - OTHER USES**

### **A. Cemetery:**

1. The site proposed for a cemetery shall not interfere with the development of a system of collector and larger streets in the vicinity of such site. In addition, such site shall have direct access to a thoroughfare.
2. All other structures, including, but not limited to, mausoleums, permanent monuments, or maintenance buildings shall be set back not less than twenty-five (25) feet from any property line or street right-of-way line.
3. All graves or burial lots shall be set back not less than twenty-five (25) feet from any property line or street right-of-way.

### **B. Public and Private Utilities and Services:**

Where permitted, public and private utilities and services shall be subject to the following requirements:

#### **1. Health Department Report**

Application for permission to operate water works and/or sewage treatment plants shall be accompanied by a report and a recommendation from the County Health Department. Such recommendations as to design and construction, type of treatment, source of water, standards for testing and sampling, and standards for the quality of effluent shall be incorporated into and made a part of the application.

Due to the unique circumstances of a holding tank, it shall be used as a waste disposal system of last resort. The County Health Department shall approve in writing, on a form, approved by the Board, to be attached to the Building Permit, the circumstances under which a holding tank will be accepted, including an agreement to pay an inspection fee. Included in said form will be a requirement for periodic inspections by the County Health Department and the off-site location of waste disposal. A Building Permit will be issued only when these requirements are met.

#### **2. Lot Area and Location**

The required lot area and location shall be specified as part of the application and shall be determined in relation to the proposed use, the intensity of such use, and the effects of such use upon the environment.

---

#### **3. Fencing and/or Screening**

Where findings indicate that a hazard may result or that interference with the development or use and enjoyment of surrounding residential properties may ensue, fencing or screening with an evergreen hedge or other shielding material may be required in a manner consistent with such findings.

### **C. Private Day Nurseries and Kindergartens:**

The facilities, operation, and maintenance shall meet the requirements of the State Department of Social Services.

D. Automobile Wrecking and Junk Yard:

1. Location

No such operation shall be permitted closer than three hundred (300) feet from any established residential district.

2. Screening

All outdoor storage of salvage and wrecking operations shall be conducted entirely within an enclosed security fence. Screening by fence or natural planting may be required. Storage between the street and such fence or wall is expressly prohibited. Any fence or wall erected shall be within the buildable area of the lot and shall be properly painted or otherwise maintained in good condition.

3. Off-Street Parking

As regulated in Section 310 - Minimum Off-Street Parking Requirements.

E. Gasoline Service Stations:

The following regulations shall apply to all gasoline service stations:

1. There shall be a building setback from all right-of-way lines a distance of not less than forty (40) feet.
2. Service stations shall not be constructed closer than fifty (50) feet to any residential district.
3. The minimum distance between the intersection of right-of-way lines at a corner lot and the driveway to a service station shall be not less than forty (40) feet.
4. To ensure that sufficient room be provided on either side of the pumps without intruding upon sidewalks or on adjoining property, gasoline pumps shall not be located closer than fifty (50) feet from any residential district.
5. Gasoline pumps shall not be located closer than fifteen (15) feet to any street right-of-way line.
6. Screening shall be required when service station property abuts property zoned for residential purposes.
7. Off-street parking as regulated in Section 310 - Minimum Off-Street Parking Requirements.
8. Signs as regulated in Section 312 - Signs, Billboards, and Other Advertising Structures.

F. Swimming Pools:

The following regulations shall apply to swimming pools:

1. A private swimming pool shall be any pool or open tank not located within a completely enclosed building and containing or normally capable of containing, water to a depth at any point greater than one and one-half feet. Private swimming pools are permitted in any residential district provided:
  - a. The pool is intended and is to be used solely for enjoyment of the occupants of the property on which it is located and their guests.
  - b. No swimming pool or part thereof, excluding aprons, walks, and equipment rooms, shall protrude into any required front or side yard.
  - c. The swimming pool area shall be so walled or fenced so as to prevent uncontrolled access by children from the street or from adjacent properties. Said fence or wall shall be not less than five (5) feet in height and maintained in good condition.
2. A community or public swimming pool shall be any pool other than a private swimming pool and shall comply with the following conditions and requirements:
  - a. The pool and accessory structures thereto, including the areas used by the bathers, shall be not closer than twenty-five (25) feet to any property line of the property on which located.
  - b. The swimming pool and all of the area used by the bathers shall be walled or fenced so as to prevent uncontrolled access by children from the street or adjacent properties. Said fence or wall shall be not less than five (5) feet in height and maintained in good condition. The area surrounding the enclosure, except for parking spaces, shall be suitably landscaped and maintained in good condition.

**SECTION 308 - MOBILE HOME SUBDIVISIONS**

A. Intent:

It is the intent of these Zoning Ordinances that subdivisions may be allowed ~~where the intended use is to be individual mobile homes on individual lots.~~ For mobile home subdivisions approved under these Zoning Ordinances, a blanket Conditional Use Permit will be issued for the subdivision which shall allow mobile homes to be installed or replaced upon issuance of a Building Permit.

B. General:

1. Mobile home subdivisions may be located in any Limited Agriculture, Low Density Residential or Suburban Residential District.



2. The mobile home subdivision shall be subject to the yard, height, density, and parking regulations of the district in which it is located.
3. All mobile homes shall be positioned on the lots to allow for any accessory structures, driveways, or parking areas as required in the district in which it is located.
4. The mobile home subdivision is intended to provide lots owned by the individual residents where the mobile home park provides spaces for rent with the ownership of the entire park held in one ownership. The layout and approval of a mobile home subdivision will be regulated by the Subdivision Regulations.
5. Application for a Conditional Use Permit for a mobile home subdivision shall be made in accordance with Section 510 - Conditional Use Permits.
6. Mobile homes and all accessory structures located in approved mobile home subdivisions shall require a Building Permit prior to location or construction.

**SECTION 309 - YARD, BUILDING SETBACK EXCEPTIONS**

The following requirements are intended to provide exceptions, or qualify and supplement, as the case may be, the specific district regulations set forth in Section 200 - Establishment of Zoning Districts and Map Reference:

- A. No yard or lot area required for a building or structure shall, during its life, be occupied by any other building or structure except:
  1. Awnings and canopies.
  2. Bay windows and chimneys, not to exceed two (2) feet.
  3. Driveways, curbs, sidewalks, and steps provided; however, steps or stairs to a dwelling, non-enclosed, shall not extend into the front yard more than six (6) feet.
  4. Fences, walls and hedges, subject to the regulations as set forth in this section.
  5. Flag poles.
  6. Garbage disposal equipment, nonpermanent.
  7. Landscape features, planting boxes, and recreational equipment.
  8. Overhanging roof, eave, gutter, cornice or other architectural features, not to exceed four (4) feet six (6) inches. Open fire escapes may extend into any required yard not more than six (6) feet.
  9. Parking space, subject to the regulations set forth in Section 310 - ~~Minimum Off-Street Parking Requirements~~.
  10. Signs, subject to the regulations set forth in Section 312 - Signs, Billboards and Other Advertising Structures.
  11. Trees, shrubs, flowers, and other plants subject to the vision requirements in this section.
- B. The following regulations provide for the maximum safety of persons using sidewalks and streets and for the maximum enjoyment of the uses of property:
  1. Any corner lot, no wall, fence, sign, structure or any plant growth which materially obstructs sight lines at elevations between two and one-half feet

and ten feet above the crown of the adjacent roadway shall be placed or maintained within a triangle formed by measuring from the point of intersection of the front and exterior side lot lines a distance of twenty-five (25) feet along the front and side lot lines and connecting the points so established to form a sight triangle on the area of the lot adjacent to the street intersections.

C. The purpose here is to clarify certain conditions pertaining to the use of lots and access points:

1. In residential districts, if fifty (50) percent or more of the lots on one side of the street, between two intersecting streets, are improved with buildings all of which have observed an average setback line of greater than twenty-five (25) feet, and no building varies more than five (5) feet from this average setback line, then no building shall be erected closer to the street line than a minimum setback so established by the existing buildings; but, this regulation shall not require a front yard of a greater depth than fifty (50) feet.
2. Lots having frontage on more than one street shall provide the required front yards along those streets.
3. Division of a lot - no recorded lot shall be divided into two or more lots unless such division results in the creation of lots each of which conforms to all of the applicable regulations of the district in which the property is located. No reduction in the size of a recorded lot below the minimum requirements of these Zoning Ordinances shall be permitted without a variance.
4. No dwelling shall be erected on a lot which does not abut on at least one dedicated street or platted private drive or an easement approved pursuant to the provisions of Section 313 of the Zoning Ordinance for at least twenty-five (25) feet.
  - a. Such street or drive shall form the direct and primary means of ingress and egress for all dwelling units. Alleys, where they exist, shall form only a secondary means of ingress and egress.
  - b. However, the provisions of this Section shall not apply to any dwelling unit located on a parcel which is part of one hundred fifty-five (155) contiguous acres of land held in common ownership and zoned general agriculture.
- ~~5. An attached or detached private garage which faces on a street shall not be located closer than twenty-five (25) feet to the street right-of-way.~~
6. Accessory buildings shall not be located in any required front yard.
7. No lot or access road shall be placed so as to landlock any adjoining property that is not accessible by a physically passable and available route.

## **SECTION 310 - MINIMUM OFF-STREET PARKING REQUIREMENTS**

### **A. Off-Street Parking Requirements - General:**

In all districts, there shall be provided at any time any building or structure is erected or enlarged or increased in capacity, off-street parking space for automobiles in accordance with the following requirements:

1. Off-street parking, for other than residential use, shall either be on the same lot or within two hundred (200) feet of the building it is intended to serve measured from the nearest point of the building to the nearest point of the off-street parking lot, without crossing any major thoroughfares, provided; however, churches may establish joint parking facilities not to exceed fifty (50) percent of the required spaces, with institutions and agencies that do not have a time conflict in parking demand.
2. Residential off-street parking space shall consist of a parking lot, driveway, garage, or combination thereof and shall be located on the lot they are intended to serve.
3. For uses not specifically mentioned, off-street parking requirements shall be interpreted by the Planning Director with such interpretation subject to appeal to the Commission.
4. Off-street parking existing at effective date of these regulations, in connection with the operation of an existing building or use, shall not be reduced to an amount less than thereafter required for a similar new building or use.
5. Two or more buildings or uses may collectively provide the required off-street parking, in which case the required number of parking spaces shall be not less than the sum of the requirements for the several individual uses computed separately.
6. The required off-street parking shall be for occupants, employees, visitors, and patrons. The storage of merchandise, motor vehicles for sale, or the repair of vehicles on such parking area is prohibited.
7. Every company car, truck, tractor, and trailer normally stored at the plant site shall be provided with off-street parking spaces in addition to other required spaces.
8. In cases of dual functioning of off-street parking where operating hours do not overlap, the governing body may grant an exception.
9. The minimum number of off-street parking spaces shall be determined in accordance with the following:

#### **Table of Parking Spaces Required:**

- a. Automobile wrecking, junk, or salvage yard which offers for sale to the public any new or used merchandise: Six spaces, plus one for each five acres.

- b. Banks, business or professional offices: One per 300 square feet of usable floor area, plus two per each three employees.
- c. Barber shop or beauty parlor: Two per barber or beauty shop chair.
- d. Boarding or rooming house: One space for each three boarders, and one each for two guests provided overnight accommodations.
- e. Bowling alleys: Five per alley.
- f. Churches: One per four seats; or one per 30 square feet of usable floor area of auditorium, whichever is greater.
- g. Commercial recreation uses: One per five customers computed on the basis of maximum servicing capacity at any one time, plus one additional space for every two people regularly employed on the premises.
- h. Commercial or trade schools: One per three students, plus two per three employees.
- i. Country clubs: One per five members.
- j. Dormitories, fraternity or sorority: One per each three permanent residents.
- k. Dwellings (single- and two-family): Two per dwelling unit.
- l. Dwellings (multiple-family): Two spaces per dwelling unit for the first twenty units, plus one and one-half spaces for each dwelling unit exceeding twenty units.
- m. Establishments for sale and consumption, in the premises, of beverages, food or refreshment: One per three employees, plus one per one hundred square feet of usable floor space, or one per three fixed seats, whichever is greater.
- n. Gasoline service station: One parking space for each employee, plus two spaces for each service bay, plus one parking space for each company vehicle (tow truck or service vehicle).
- o. Governmental office buildings: One per three hundred square feet of usable floor area, plus one per each two employees. Every governmental vehicle shall be provided with a reserve off-street parking space.
- p. Homes for the aged, sanitariums, convalescent or nursing homes: One space for each four patient beds, plus one space for each staff doctor, plus one space for each two employees, including nurses.
- q. Hospitals: One per three patient beds, exclusive of bassinets, plus one space for each two employees, including nurses on the

maximum working shift, plus adequate area for parking emergency vehicles.

- r. Hotel: One per two rooms or suite, plus two per three employees.
- s. Hotel (apartment): One parking space for each apartment.
- t. Industrial establishments: Parking or storage for all vehicles used directly in the conduct of such industrial use, plus one parking space for every three employees on the premises at maximum employment on a single shift.
- u. Library: One for each 400 square feet of floor space.
- v. Medical clinics: Three patient parking spaces per staff doctor, plus two per three other employees.
- w. Mortuaries or funeral parlors: Five spaces per parlor or chapel unit, or one per four seats, whichever is greater; plus one for every two persons regularly employed on the premises.
- x. Motels and tourist courts: One per guest bedroom.
- y. Private clubs, lodge or union headquarters: One per three members based on the design capacity of the facility.
- z. Retail stores, supermarkets, department service establishments, except as otherwise specified: One per 200 square feet of retail floor space.
- aa. Schools shall be provided with parking spaces per the following schedule:
  - 1. Elementary, junior high, and the equivalent private or parochial schools: Two spaces per three teachers and employees normally engaged in or about the building or grounds, plus one space for each 150 square feet of seating area, including aisles, in any auditorium.
  - 2. Senior high schools and the equivalent private or parochial schools: Two spaces per three teachers and employees normally engaged in or about the building or grounds, plus one space per five students or one space for each one 150 square feet of seating area, including aisles, in any auditorium, whichever is greater.
  - 3. Kindergartens, day schools, and the equivalent private or parochial schools: Two parking spaces per three teachers and employees normally engaged in or about the building or grounds, plus one off-street loading space per eight pupils.

- bb. Shopping centers: There shall be a ratio of 6.5 parking spaces for each 1,000 square feet of gross leaseable floor area.
- cc. Stadiums and sports: One per four seats or twelve feet of benches.
- dd. Swimming pools: Twenty spaces, plus one space for each 500 square feet of floor area in the principal structure.
- ee. Theaters, auditoriums, and places of assembly with fixed seats: One per three seats.
- ff. Theaters, auditoriums, and places of assembly without fixed seats: One per three people based on the design capacity of the structure.
- gg. Vacation Home Rental: One per bedroom.
- hh. Wholesale establishments and business services: One for every 50 square feet of customer service area, plus two per three employees based on the design capacity of the largest shift.

**B. Off-Street Parking Lot Layout, Construction and Maintenance:**

Wherever the required off-street parking requires the building of a parking lot and wherever a parking lot is built, such parking lots shall be laid out, constructed, and maintained in accordance with the following regulations:

1. Except for parcels of land devoted to one and two family uses, all area devoted to off-street parking shall be so designed and be of such size that no vehicle is required to back into a public street to obtain egress.
2. Each parking space shall not be less than 162 square feet, or nine (9) by eighteen (18) feet, and each space shall be clearly designated as one parking stall.
3. Clearly defined driveways used for ingress and egress shall be confined to and shall not exceed twenty-five (25) feet in width, exclusive of curb returns.
4. All areas devoted to permanent off-street parking as required under this section shall be surfaced and maintained in such a manner that no dust will result from continuous use.
5. The parking lot shall be drained to eliminate surface water.
6. Where the parking lot abuts side lot lines of a residential district, there shall be established a setback line ten (10) feet from such side lot line.
7. Where the parking lot is contiguous to a residential district which has common frontage in the same block with the parking lot, there shall be established a setback line twenty-five (25) feet from the street lot line.

8. Where the parking lot lies across the street and opposite a residential district, wherein the lots front on such street, there shall be established a setback line twenty-five (25) feet from the street lot line.
9. Where the parking lot abuts rear property lines of a residential district, there shall be established a setback line five (5) feet from the rear lot line.
10. Where parking is to be provided in the front yard of a multiple-family dwelling, there shall be established a setback line ten (10) feet from the street lot line. The land between the setback line and the lot line of a parking lot is, for the purpose of these Zoning Ordinances, called a buffer strip.
11. Plans for the layout of parking lots shall be submitted with the Building Permit application and shall be reviewed by the Planning Director for compliance with these Zoning Ordinances. Decisions made by the Planning Director may be appealed to the Commission.
12. Lighting: Any lighting used to illuminate any off-street parking area shall be so arranged as to deflect the light from all adjoining premises.
13. Whenever a parking lot abuts a residential district, screening may be required by the Commission, at the request of the Planning Director, to protect the integrity of the built-up residential district.

#### **SECTION 311 - OFF-STREET LOADING AND UNLOADING REQUIREMENTS**

In all districts and on the same premises with every building, structure or part thereof, erected and occupied for manufacturing; storing warehousing goods; display; a department store; a wholesale store; a market; a hotel; a hospital; or other uses similarly involving the receipt of distributions of vehicles of materials or merchandise, there shall be provided and maintained on the lot adequate space for standing, loading, and unloading services adjacent to the opening used for loading and unloading in order to avoid undue interference with public use of the streets or alleys.

The following minimum off-street loading and unloading spaces shall be provided:

- A. One off-street loading and unloading space shall be provided for buildings up to and including 20,000 square feet of floor area, plus one additional off-street loading and unloading space for each additional 20,000 square feet of floor area up to and including 100,000 square feet.
- ~~B. There shall be provided an additional off-street loading and unloading space for each additional 40,000 square feet of floor area in excess of 100,000 square feet.~~
- C. Where trailer trucks are involved, such loading and unloading space shall be an area twelve (12) feet by fifty (50) feet with a fourteen (14) foot height clearance and shall be designed with appropriate means of truck access to a street or alley as well as adequate maneuvering area.

**SECTION 312 - SIGNS, BILLBOARDS, AND OTHER ADVERTISING STRUCTURES**

**AUTHORITY:** Pennington County's authority to regulate signs, billboards and other advertising structures is specified in South Dakota Codified Law 31-29.

**INTENT:** The purpose of this Section shall be to establish effective local regulation of outdoor advertising so as to promote the health, safety, and general welfare of those persons using and residing adjacent to public right-of-ways. The following regulations are intended to promote and preserve the natural aesthetics of Pennington County while providing for the convenience of the traveling public, for the promotion of locally available facilities, goods, and services, and to minimize negative impacts on property adjacent to public right-of-ways.

**DEFINITIONS:**

See Section 103 – Definitions.

**GENERAL PROVISIONS:**

- A. In any zoning district where signs are allowed, a Pennington County Sign Permit shall be required unless otherwise stated. In addition to all applicable state and federal regulations, any sign erected within the unincorporated area of Pennington County shall be required to conform to the following regulations:
1. New Signs
    - a. A Sign Permit shall be required for any new on-premise or off-premise sign installation. At the time of installation, the new sign must conform to all requirements of the Zoning Ordinance at the time of installation. All off-premise signs require a Conditional Use Permit.
    - b. The provisions of Section 510 of the Pennington County Zoning Ordinance apply to all Conditional Use Permits. In addition, due consideration shall be given to the relationship between the sign(s) and the natural horizon/view shed in the area of the proposed sign location.
    - c. The owner of any sign requiring a permit must apply for and obtain a valid permit as per State Law and this Ordinance before construction or placement of the sign occurs. A sign erected or maintained without a permit is a public nuisance and subject to abatement by the State Department of Transportation or Pennington County, as the case may be.
  2. No off-premise sign shall be erected or placed closer than 1,500 feet from any residential district and/or dwelling unit.
  3. Off-premise signs shall be located no closer than 1,500 feet from all other off-premise signs.
  4. No illuminated sign shall be permitted within 1,500 feet of any dwelling unit or residential district without an approved Conditional Use Permit.



All illuminated signs shall be installed and maintained so as to minimize spillage of light outside of the sign face.

5. Off-premise signs shall not exceed a height of 30 feet. The maximum display area of any off-premise sign located adjacent to a two or more lane highway shall not exceed 250 square feet on each face. The maximum display area of any off-premise sign located on the interstate shall not exceed 400 square feet on each face. The height of the off-premise sign shall be measured from the road surface.
6. All off-premise and on-premise signs shall be placed or erected in conformity with all applicable side and rear yard setback requirements for structures. The minimum front yard setback requirement for on-premise or off-premise signs shall be five (5) feet from any property line.
7. No sign, including political signs, is allowed to be located in any public right-of-way, public or private access easement. All signs issued by the Pennington County Planning Department for public notice of proposed land use changes are exempt from this requirement.
8. There shall be a 50 foot separation between an off-premise sign and an on-premise sign, unless agreed to by the sign owner and property owner.
9. All on-premise and off-premise sign structures shall be painted and maintained in muted colors as to blend into the natural surroundings. Colors shall include, but not be limited to, brown, black, or tan. Wood sign structure may remain unpainted and allowed to have a natural patina. At no time shall bright or neon colors be used for either wood or metal sign structures.
10. No debris, including, but not necessarily limited to, wood material, posts, metal, paper, plastic, cardboard or other materials from the construction or maintenance of a sign shall be left at the location or vicinity of a sign. Any violation of this section is hereby declared a nuisance and subject to abatement.
11. On-premise signs shall not exceed a height of 30 feet. The maximum display area of any on-premise sign shall not exceed 250-square feet on each side. The height of the on-premise sign shall be measured from the road surface.
12. On-premise signs, which advertise or direct attention to a home occupation shall not exceed six (6) square feet in area, and shall be limited to one such sign per approved home occupation. A home occupation shall be allowed to have one wall sign or one freestanding sign. The freestanding sign shall not be located closer than 17 feet to the nearest street right-of-way line. A Conditional Use Permit may allow for a larger size sign, if appropriate to the area.
13. Each real estate subdivision that has been approved in accordance with the regulations of the Zoning Ordinance shall be allowed one on-premise sign per entrance, not exceeding 100 square feet in area, advertising the sale of property in such subdivision and/or the name of such subdivision. The subdivision sign shall not encroach into a road right-of-way or road

easement. The signs should be aesthetically pleasing and blend into the surroundings.

14. In any zoning district, the following signs shall be allowed with no permit:
  - a. **Parking Area Permits:** For each permitted or required parking area that has a capacity of more than four cars, one sign, not exceeding four (4) square feet in area, may be allowed at each entrance to or exit from such parking area. In addition, one sign, not exceeding nine (9) square feet in area, is allowed for identifying or designating the conditions of use of such parking area.
  - b. **"For Sale" or "For Rent" signs:** Not more than one non-illuminated "For Sale" or "For Rent" sign, not exceeding 32 square feet in area is allowed for the purpose of advertising the sale, rental or lease of the premises on which the sign is located.
  - c. **"Under Construction" signs:** For construction on or development of lots, not more than three signs with a combined total area of 70 square feet, stating the names of contractors, engineers or architects, is allowed during the time that construction or development is actively underway.
  - d. **"Emergency 911" signs:** Residential locator or E-911 signs.
  - e. **"Political Campaign" signs:** Political campaign signs that are temporarily placed on the ground, pending an election, shall not exceed 32 square feet and shall be removed within three days after the election.
  - f. **"Directional" signs:** Directional signs shall not exceed 20 square feet.
  - g. **"Temporary" signs:** As defined in this Zoning Ordinance.

15. Applications and Permitting

Applications for a Sign Permit shall be made in writing upon forms furnished by the Pennington County Planning Department. No permit shall be issued until each sign application is approved by the Planning Official or the Pennington County Commission in the case of a Conditional Use Permit. At a minimum, the following complete information shall be provided before an application is considered:

- a. Name and address of the sign owner and the contractor.
- b. Name and address of the property owner where the sign is to be located.
- c. The legal description of the proposed sign location.
- d. Clear and legible drawing of the proposed sign to scale with description of the sign showing construction type and lighting.
- e. Site plan showing the location and setbacks on the property where the sign is to be located.
- f. The property owner's notarized signature.
- g. Global Positioning Systems (GPS) coordinates of proposed sign.

- h. Other such data and information deemed necessary by the Pennington County Planning Department.
- 16. No off-premise or on-premise sign shall be constructed which resembles any official marker erected by a governmental entity or which by reason of position, shape or color would conflict with the proper functioning of any official traffic control device, sign or marker.
- 17. Owners of on-premise and off-premise signs are encouraged to allow public service announcements to be located on signs that will display no advertisement for more than thirty calendar days.
- 18. A vehicle or trailer of any form or type, whether licensed or not or in working condition or not, intended to be used as or in conjunction with an on-premise or off-premise sign, shall not be located adjacent to any public right-of-way or on private or public property so as to be visible from the public right-of-way. Vehicles or trailers whose primary use is other than outdoor advertising shall be exempt from this section.
- 19. Outdoor Lighting For Outdoor Advertising:
  - a. Lighting: signs may be illuminated subject to the following restrictions:
    - 1. Signs that contain, include, or are illuminated by any flashing, intermittent (less than six seconds) moving light(s) are prohibited.
    - 2. Electronic variable message signs giving public information such as, but not limited to, time, date, temperature, weather, or other similar information, and commercial electric variable-message signs which function in the same manner as multiple-face signs are permitted, provided such signs do not interfere with traffic safety, do not change messages less than every six seconds and do not resemble or simulate traffic control or safety devices or signs.
    - 3. Signs must be effectively shielded to prevent beams or rays from being directed toward any portion of the traveled ways, and must not be of such intensity or brilliance to cause glare or impair the vision of the driver of any motor vehicle or otherwise interfere with any driver's operation of a motor vehicle.
    - 4. No off premise sign shall be lighted after 12:00 midnight, unless otherwise permitted through a Conditional Use Permit.
- 20. A nonconforming sign or sign structure existing at the time of the adoption of Section 312 of the Zoning Ordinance as amended, may be continued, maintained, and repaired as follows: Any sign or sign structure not required to be removed or until the time of actual removal, may be used

and may be repaired if the expense of ordinary and customary maintenance does not exceed fifty percent of the depreciated value of the sign or if the same has not been damaged beyond fifty percent of its depreciated value by an act of God unless special circumstances warrant a variance by the Board of Adjustment, such as, but not necessarily limited to acts of vandalism or an accident. Fees maybe waived by the Pennington County Board of Commissioners.

21. No sign shall exceed two (2) sides. Signs shall have no more than one frontal face (front) and one back face (back) as viewed from one static position.
22. No sign shall be constructed, placed or erected at or near any intersection such that it would violate Section 309-B pertaining to the required 25-foot sight triangle at intersections. No sign shall be allowed in an easement or in the 25-foot sight triangle of the intersection of two easements.
23. The changing of advertising messages or face on an existing sign shall be allowed without fee or permit. The changing of advertising messages on an existing sign shall be allowed without fee or permit.

B. Enforcement of Sign Ordinance:

1. In addition to any and all remedies allowed under the laws of the State of South Dakota and this Zoning Ordinance, a violation of any requirement of this Ordinance shall also be subject to the penalties as outlined in Section 513 of the Zoning Ordinance.

2. Unlawful Signs

Whenever it shall be determined by the Planning Official that any sign or sign structure has been constructed or erected or is being maintained in violation of the terms of this Zoning Ordinance or has been abandoned, said sign or sign structure is hereby declared to be unlawful. Any sign or sign structure found to be unlawful shall be made to conform to all applicable laws and regulations or shall be removed at the expense of the sign owner or landowner (if the sign owner is unknown and reasonable efforts have been made to locate the sign owner with no success).

3. Removal of Signs

- a. The Pennington County Board of Commissioners or the Planning Official may cause to be removed any unlawful sign or sign structure. ~~The Pennington County Planning Department shall~~ prepare a written notice which shall describe the sign and specify the violation involved and shall state that if the sign is not removed or the violation or condition is not corrected within 30 calendar days from the date of the notice, the sign shall be removed in accordance with the provision of this Zoning Ordinance at the expense to the sign owner or landowner (if the sign owner is unknown and reasonable efforts have been made to locate the sign owner with no success).

- b. Service of the notice shall be made upon the sign owner or landowner (as applicable) by mailing a copy of such notice by certified mail, postage prepaid, return receipt requested. If service is made upon the landowner, service shall be to the landowner at their address as it appears on the last equalized assessment role of the County.
- c. Any person receiving notice may appeal the determination of the Planning Official by filing a written notice of appeal to the Board of Adjustment within seven (7) days of receipt of the notice. Failure by any person to appeal the notice within that time period shall constitute a waiver of right to an administrative hearing.
- d. The sign owner or landowner, if the sign owner is unknown, shall have One (1) year to remove advertisements for establishments that are no longer in business.

C. The following types of signs shall be allowed in the following Districts:

- 1. General Agriculture District:
  - a. Business signs.
  - b. Advertising signs for agricultural products only. Signs four (4) square feet or less are exempted.
  - c. Off-premise signs, upon issuance of a Conditional Use Permit, as regulated in Section 510 - Conditional Use Permits.
  - d. Community signs.
- 2. Limited Agriculture or Residential Districts:
  - a. Business signs.
  - b. Community signs.
- 3. General Commercial, Highway Service, Light Industrial, and Heavy Industrial Districts:
  - a. Business signs.
  - b. Off-premise signs upon issuance of a Conditional Use Permit, as regulated in Section 510 - Conditional Use Permits.
  - c. Community signs.
- 4. Planned Unit Development District:
  - a. Business signs.
  - b. Off-premise signs provided they are permitted in the conditions of approval.
  - c. Community signs.
- 5. Permits and Fees:
  - a. Permits and fees for signs shall be regulated by Section 511.

### **SECTION 313 - ACCESS EASEMENTS**

- A. Where access to a lot or parcel is provided by platted or miscellaneous document easement recorded on or before October 31, 1994, the Planning Director shall recognize the access easement for purposes of issuing a Building Permit if the following requirements are met:
1. The easement is properly recorded in the Register of Deeds Office and grants the right of access for the purposes for which a Building Permit has been requested.
  2. The easement is being utilized to access a lot or parcel recorded before October 31, 1994.
- B. When access to a lot is provided by platted or miscellaneous document easement recorded on or before October 31, 1994, and the easement is being utilized to access a new lot or other increase in residential density or new use, an Access Permit must be obtained in accordance with the procedures established in Section 313-C.
- C. Where access to a lot or parcel is provided by platted or miscellaneous document easement recorded after October 31, 1994, the Planning Director shall recognize the access easement for purposes of issuing a Building Permit if the following requirements are met:
1. The easement providing access to the property must be in accordance with the width requirements for right-of-way as provided for in the Pennington County Subdivision Regulations.
  2. The easement is properly recorded in the Register of Deeds Office and grants the right of access for the purposes for which a Building Permit has been requested.
  3. The location of the easement shall be described by a legal description, plat or survey certified by a registered land surveyor or licensed professional engineer.
  4. If the easement is being utilized to access a new lot or parcel or other increase in residential density or a new use, written approval of the owner of the property crossed by the easement must be obtained. The total number of lots, residential dwelling units, or type of use utilizing the easement shall be established in an agreement signed by the owner of the property occupied by the easement and filed in the Register of Deeds Office.

---

### **SECTION 314 - TEMPORARY CAMPGROUNDS AND ASSEMBLIES OF PEOPLE**

- A. Purpose:

To regulate the use of land for temporary campgrounds of 20 or more occupants; and to regulate assemblies of people of large numbers in excess of those meeting the health; sanitary; fire; police; transportation; and utility service normally

provided, in order that the health, safety, and welfare of all persons in the County, residents, and visitors alike, may be protected.

This section shall not apply to regularly established, permanent places of worship, government-sponsored fairs, rodeos, farm sales, auctions, family gatherings, or assemblies licensed under other laws.

**B. Permit Required:**

1. No person shall permit, maintain, conduct, undertake, manage, sell, or give tickets for any actual or reasonably anticipated assembly or temporary campground area which continues, or can be reasonably be expected to continue for more than three (3) days, either consecutively or cumulatively in any calendar year, whether on public or private property, unless a Conditional Use Permit has been approved by the Pennington County Planning Commission.
  2. A Conditional Use Permit shall be required for each location of a temporary campground and/or assembly. In addition to the Conditional Use Permit filing charge, the permit fee listed below shall be tendered to the County Planning Department upon filing of the Conditional Use Permit application. The permit fee listed below will be held by the County Planning Department while the Conditional Use Permit application is pending. If the Conditional Use Permit is not approved, the permit fee shall be returned. The purpose of this fee is to pay for inspections by law enforcement agencies, Planning Department personnel, the Pennington County Fire Coordinator, and the Pennington County Environmental Health Officer, among others. Inspections may be conducted before, during, and after the event.
  3. In addition to the filing charge and permit fee, a bond shall also be required in the amounts listed below. Such a bond shall be in the form of a cash bond, surety bond, or certified check. A cash bond or certified check shall be required for campgrounds/assemblies of people of up to 1,000 occupants. A cash campground/assemblies of people of 1,001 occupants and over.
  4. The bond shall be submitted to the County Planning Department prior to any Planning Commission or County Board action on the Conditional Use Permit. Upon supplying the bond to the Department, a receipt shall be issued to the applicant. The Department shall forward the bond to the County Treasurer's Office. In the event a permit is revoked, bond funds shall be used to pay inspection and administration costs.
- 
5. The purpose of the bond is to ensure that the conditions placed on the Conditional Use Permit are followed and that the requirements of these Zoning Ordinances are complied with.
  6. Upon the expiration date of the Conditional Use Permit, the County Planning Department shall inspect the site and determine if the Conditional Use Permit conditions and Zoning Ordinance requirements have been met. If they have not, the County shall then use the bond to correct the non-complying situations. All funds unused shall be returned to the bond owner. If all Conditional Use Permit conditions and Zoning

Ordinance requirements have been met, the bond shall be returned to the owner. Should a situation arise whereby the cost of correct the non-complying situations exceeds the amount of the bond, the County shall pursue other remedies to recover their costs.

7. The amounts of the permit fee and bond are:

OCCUPANTS	PERMIT FEE (\$)	AMOUNT OF BOND (\$)
20 to 100 occupants	75	0
101 to 500 occupants	350	600
501 to 1,000 occupants	500	1,150
1,001 to 3,000 occupants	1,000	3,500
3,001 and over occupants	1,500	8,250

8. The person holding the Conditional Use Permit shall allow no more than the maximum number of people in the temporary campground or assemblage of people as approved by the County.

C. Requirements for Permit:

In addition to the requirements of Section 510, a Conditional Use Permit application shall contain the following information. The Planning Commission and County Board may require additional information. This information is to be provided to the County in the form of a narrative.

1. The maximum number of people to be accommodated.
2. Proof that the applicant will furnish, at his own expense, before the assembly commences or the temporary campground is open to the public:
  - a. Potable water is not required to be furnished. If it is, it must meet all federal and state requirements for purity and method of dispensing; sufficient to provide drinking water for the maximum number of people allowed at the rate of one (1) gallon per person per day, and water for washing at the rate of two (2) gallons per person per day. A water quality sample test shall be performed checking for nitrates and coliforms as part of the CUP application process; the results of which must be submitted to the Planning Department a minimum of one week prior to the Planning Commission hearing. The results of a second water quality sample test shall be submitted to the Planning Department approximately one week prior to the opening of the campground/assembly, ~~checking for coliforms only. In addition, proof shall be submitted~~ stating that the applicant will pay for the testing. The water quality sample shall be taken by either the County's Environmental Health officer or a State official.
  - b. Water storage reservoirs shall be covered, watertight, and constructed of impervious material. Overflows and vents of such reservoirs shall be effectively screened. All water piping, fixtures, and other equipment shall be constructed and maintained in



accordance with state and local regulations. The system shall be sanitized by chlorination before and during each fill.

- c. Water storage tanks must be constructed of an impervious material that is watertight and can be easily sanitized. Each tank load of water shall be chlorinated at the filling location to provide at least 3 ppm available chlorine.
- d. Separate enclosed toilets; one unit for every 50 occupants, meeting all state or local specifications and requirements, conveniently located throughout the grounds, together with an efficient sanitary means of disposing of the waste matter, which is in compliance with all state or local rules and regulations. The applicant shall provide a receipt or some other written proof stating that the source of the toilets and the number required can be provided. This proof shall be submitted to the Planning department no later than 10 days after the County Board has approved the Conditional Use Permit. This requirement shall be a condition placed on the Conditional Use Permit. Proof shall also be provided stating who will be collecting the sanitary waste and that it will be done on a daily basis.
- e. A sanitary method of disposing of solid waste; in compliance with state or local rules and regulations, together with a plan for holding and a plan for collecting all such waste at least once each day the assembly or temporary campground is in operation. A minimum of one 30-gallon capacity container per 25 people, with plastic liners and tight fitting lids shall be provided. The plan shall include a statement as to who will be collecting the trash and how it will be transported from the site.
- f. For assemblies of people, not temporary campgrounds, a parking area for assembly, sufficient to provide parking space for the maximum number of people at the rate of at least one (1) parking space for every four (4) persons; this area to be located inside the grounds.
- g. The density of the campground or assembly of people shall not exceed one person per 400 square feet.
- h. Security guards sufficient to provide adequate security for the maximum number of people at the rate of at least one (1) security guard for every two hundred (200) people. The names, addresses, and ages of all security personnel shall be provided. All security personnel must be at least 18 years old. Campgrounds shall have a responsible person on duty at all times.
- i. A statement specifying the amenities to be provided at each site and the target group in each area, such as families, recreational vehicles, tents, motorcyclists, etc; along with curfew and no curfew areas.
- j. Fire protection:

1. No open fire shall be permitted, except in applicant provided facilities and first approved by the Fire Coordinator.
  2. No fires shall be left unattended.
  3. No fuel shall be used and no material burned which emits dense smoke or objectionable odors.
  4. If fires are permitted, the owner must make available fuel suitable for the facilities.
  5. A minimum of one fire extinguisher, with a minimum rating of 4A:60BC (#10), accessible to the public at all times.
  6. Where feasible, there shall be a minimum of two entrances/exits.
- k. Barbecue pits, fireplaces, and incinerators shall be located, constructed, maintained and used so as to minimize fire hazard and smoke nuisance, both on and off the property. The Fire Coordinator shall approve these facilities before use is permitted.
- l. Garbage and rubbish storage and disposal shall be handled in such a manner so as not to create a health hazard, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution.
- m. Condition of grounds:
1. The condition of the soil, ground water, drainage, and topography shall not create hazards for adjoining property or endanger the health or safety of the occupants.
  2. The grounds shall be kept cleaned of rubbish, trash and debris daily.
- n. Soil and ground cover requirements:
1. The growth of brush, weeds, and grass shall be controlled.
  2. All areas shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac, and other noxious weeds considered detrimental health.
- o. A minimum of one 36-unit first aid kit, accessible to the public at all times.
- p. A minimum of one, public or private, telephone provided either at the registration office or within 1/8 mile of the campground, accessible during normal waking hours. At each phone location, a card shall be provided identifying the location and campground name.
- q. All food concessionaires or concessions that will be operating on the property must be registered, including their names and addresses and State license or permit numbers. All food service operations shall be inspected and approved by the local health authority or State Health Department before opening for business. All operations must have a temporary food license from the State Health Department.

- r. If alcoholic beverages are to be sold, proof that the appropriate permit or license has been obtained and is current.
  - s. All accesses onto State highways or County roads must meet the appropriate entity's specifications.
  - t. Each campground location shall be permitted one (1) on-premise business sign. Such a sign shall not exceed forty-five (45) feet in height. The maximum display area shall not exceed 1,200 square feet, or thirty (30) feet in height or sixty (60) feet in length. The sign shall be placed or erected in conformity with the side and rear yard setbacks required for structures in the appropriate zoning district. There is no front yard setback. All other signage requirements of these Zoning Ordinances shall apply, as pertains to advertising signs.
3. The narrative shall contain a statement, made upon oath or affirmation, that the statements contained therein are true and correct to the best knowledge of the applicant, and shall be signed and sworn to or affirmed by the individual making application in the case of an individual, by all officers in the case of a corporation, by all partners in the case of a partnership or by all officers of an unincorporated association, society or group or, if there be no officers, by all members of such association, society or group.

D. Application for a Conditional Use Permit:

The application and accompanying site plan shall contain and disclose:

- 1. The name, age, residence, and mailing address of all persons required to sign the application as above-provided, and, in the case of a corporation, a certified copy of the Articles of Incorporation, together with the name, age, residence, and mailing address of each person holding ten (10) percent or more of the stock of said corporation.
- 2. The address and legal description of all property upon which the assembly and/or temporary campground is to be held, together with the name, residence, and mailing address of the record owner(s) of all such property.
- 3. Proof of ownership of all property upon which the assembly and/or temporary campground is to be held or a statement made upon oath or affirmation by the record owner(s) of all such property that the applicant has permission to use such property for the purpose so stated in the application.
- 4. The nature or purpose of the assembly and/or temporary campground.
- 5. The total number of days and/or hours during which the assembly and/or temporary campground is to last, including the starting and ending dates.
- 6. The maximum number of persons which the applicant shall permit, not to exceed the maximum number which can assemble and/or camp within the boundaries of the property, as stated in the application.

7. The plans for supplying potable water, including the source, amount available, and location of outlets.
8. The plans for providing toilet and lavatory facilities, including the source, number and location, type, and the means of disposing of waste deposited.
9. The plans for holding, collecting, and disposing of solid waste material.
10. The plans, if any, to illuminate the location of the assembly, including the source and amount of power and the location of lamps.
11. The plans for points of highway access.
12. The plans for security, including the number of guards and their deployment.
13. The plans for fire protection, including the number, type, and location of all protective devices; including extinguishers and the number of emergency fire personnel available to operate the equipment.
14. The plans for sound control and sound amplification, if any; including number, location, and power of amplifiers and speakers.
15. The location of all food concessions.
16. Acknowledgment by applicant of permission to enter the subject property by those individuals identified in Section 314-H for the purposes set forth in this Zoning Ordinance.

E. Revocation of Permit:

The permit may be revoked by the Sheriff of Pennington County or the Pennington County Planning Director at any time if any of the conditions necessary for the issuing of or contained in the permit are not complied with, or if any condition previously met ceases to be complied with. Any such revocation may be made by the Sheriff of Pennington County or the Pennington County Planning Director without notice or hearing if he/she determines that an emergency exists and that it is not practical, in relationship to its obligation to protect the public health; safety; and welfare to allow the permit to proceed. In any such case, however, the owners of the permit may, within a period of three (3) days from and after revocation, apply or petition the Commissioners for an administrative hearing to show why the revocation should be set aside and the permit reinstated.

F. Injunction Proceedings to Prevent or Abate Violations:

The Pennington County State's Attorney, in addition to other remedies, may institute an appropriate action or proceedings to seek an injunction in a court of competent jurisdiction to prevent, restrain, correct or remedy a violation, or threatened violation, of this section.

G. Penalty:

It is declared unlawful for any person to violate any of the terms and provisions of this Section. Violation thereof shall be a misdemeanor and shall be punishable by a fine not exceeding \$100 dollars, or by imprisonment for a period not exceeding thirty (30) days, or by both such fine and imprisonment. Each and every calendar day that any violator fails to comply with the provisions of this Section shall constitute a separate violation.

- H. Any duly authorized officer, employee, or representative of any City; County; State; or Federal agency responsible for enforcing these Zoning Ordinances, or in enforcing the Conditional Use Permit, may enter and inspect any property upon which he has reasonable grounds to believe non-complying situations may exist. Said entry and inspection may be conducted at any reasonable time, without prior notice, for the purpose of ascertaining compliance with these Zoning Ordinances and the Conditional Use Permit. No person shall refuse entry or access to any City, County, State, or Federal agency representative who requests entry for the purpose of such investigation and who presents appropriate credentials. Nor shall any person obstruct, hamper, or interfere with any such investigation.

**SECTION 315 - DEVELOPMENT STANDARDS FOR THE ELLSWORTH AIR FORCE INSTALLATION COMPATIBLE USE AREA**

- A. Purpose:

The purpose of this Section is to provide standards for development in Ellsworth Air Force Installation Compatible Use Area for the protection of the public health, safety, and welfare. In order to carry out the provisions of this Section, there are hereby created and established the following overlay zones: Clear Zone, Accident Potential Zone I (APZI), Accident Potential Zone II (APZ II), 65-70 Noise Zone, 70-75 Noise Zone, 75-80 Noise Zone and 80+ Noise Zone.

- B. Development Standards:

In addition to the requirements of the underlying zoning district, all building, structures and land uses located within these overlay zones and initiated after July 18, 1995, shall comply with the development standards identified on the following chart:

- C. Variances:

Variances to these development standards may be approved by the Zoning Board of Adjustment in accordance with all provisions of Section 509.

## LAND USE COMPATIBILITY

---

### LEGEND

**SLUCM** - Standard Land Use Coding Manual, U.S. Department of Transportation.

**Y** - (Yes) - Land use and related structures are compatible without restriction.

**N** - (No) - Land use and related structures are not compatible and should be prohibited.

**Y'** - (yes with restrictions) - Land use and related structures generally compatible; see notes 1 through 21.

**N'** - (no with exceptions) - See notes 1 through 21.

**NLR** - (Noise Level Reduction) - NLR (outdoor to indoor) to be achieved through incorporation of noise attenuation measures into the design and construction of the structures. See Appendix E, Vol. II.

**A, B, or C** - Land use and related structures generally compatible; measures to achieve NLR for A(DNL 66-70), B(DNL 71-75), C(DNL 76-80), need to be incorporated into the design and construction of structures. See Appendix E, Vol. II.

**A\*, B\*, and C\*** - Land use generally compatible with NLR. However, measures to achieve an overall noise level reduction do not necessarily solve noise difficulties and additional evaluation is warranted. See appropriate footnotes.

**\*** - The designation of these uses as "compatible" in this zone reflects individual federal agencies and program considerations of general cost and feasibility factors, as well as past community experiences and program objectives. Localities, when evaluating the application of these guidelines to specific situations, may have different concerns or goals to consider.

SLUC M NO.	NAME	ACCIDENT POTENTIAL ZONES			NOISE ZONES DNL			
		CLEAR ZONE	APZ I	APZ II	65-70	70-75	75-80	80+

**10 Residential**

11	Household units							
11.11	Single units; detached	N	N	Y <sup>1</sup>	A <sup>11</sup>	B <sup>11</sup>	N	N
11.12	Single units; semidetached	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
11.13	Single units; attached row	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
11.21	Two units; side-by-side	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
11.22	Two units; one above the other	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
11.31	Apartments; walk up	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
11.32	Apartments; elevator	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
12	Group quarters	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
13	Residential hotels	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
14	Mobile home parks or courts	N	N	N	N	N	N	N
15	Transient lodgings	N	N	N	A <sup>11</sup>	B <sup>11</sup>	C <sup>11</sup>	N
16	Other residential	N	N	N <sup>1</sup>	A <sup>11</sup>	B <sup>11</sup>	N	N

**20 Manufacturing**

21	Food & kindred products; manufacturing	N	N <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
22	Textile mill products- manufacturing	N	N <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
23	Apparel and other finished products made from fabrics, leather and similar materials – manufacturing	N	N	N <sup>2</sup>	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
24	Lumber and wood products (except furniture) – manufacturing	N	Y <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
25	Furniture and fixtures – manufacturing	N	Y <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
26	Paper & allied products – manufacturing	N	Y <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
27	Printing, publishing, and allied industries	N	Y <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
28	Chemicals and allied	N	N	N <sup>2</sup>	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>

29	products – manufacturing Petroleum refining and related industries	N	N	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
<b>30</b>	<b>Manufacturing</b>							
31	Rubber and misc. Plastic products – manufacturing	N	N <sup>2</sup>	N <sup>2</sup>	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
32	Stone, clay and glass products – manufacturing	N	N <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
33	Primary metal industries Fabricated metal products – manufacturing	N N	N <sup>2</sup> N <sup>2</sup>	Y Y	Y Y	Y <sup>12</sup> Y <sup>12</sup>	Y <sup>13</sup> Y <sup>13</sup>	Y <sup>14</sup> Y <sup>14</sup>
34								
35	Professional, scientific, and controlling instruments, photographic and optical goods, watches and clocks - manufacturing	N	N	N <sup>2</sup>	Y	A	B	N
39	Miscellaneous manufacturing	N	Y <sup>2</sup>	Y <sup>2</sup>	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
<b>40</b>	<b>Transportation, communications and utilities</b>							
41	Railroad, rapid rail transit and street railroad transportation	N <sup>3</sup>	Y <sup>4</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
42	Motor vehicle transportation	N <sup>3</sup>	Y	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
43	Aircraft transportation	N <sup>3</sup>	Y <sup>4</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
44	Marine craft transportation	N <sup>3</sup>	Y <sup>4</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
45	Highway & street right- of-way	N <sup>3</sup>	Y	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
46	Automobile parking	N <sup>3</sup>	Y <sup>4</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
47	Communications	N <sup>3</sup>	Y <sup>4</sup>	Y	Y	A <sup>15</sup>	B <sup>15</sup>	N
48	Utilities	N <sup>3</sup>	Y <sup>4</sup>	Y	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>



SLUC M NO.	NAME	ACCIDENT POTENTIAL ZONES			NOISE ZONES DNL			
		CLEAR ZONE	APZ I	APZ II	65-70	70-75	75-80	80+
<b>50</b>	<b>Trade</b>							
51	Wholesale trade	N	Y <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
52	Retail trade-building materials, hardware and farm equipment	N	Y <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
53	Retail trade-general merchandise	N	N <sup>2</sup>	Y <sup>2</sup>	Y	A	B	N
54	Retail trade-food	N	N <sup>2</sup>	Y <sup>2</sup>	Y	A	B	N
55	Retail trade-automotive, marine craft, aircraft and accessories	N	Y <sup>2</sup>	Y <sup>2</sup>	Y	A	B	N
56	Retail trade-apparel and accessories	N	N <sup>2</sup>	Y <sup>2</sup>	Y	A	B	N
57	Retail trade-furniture, home furnishings and equipment	N	N <sup>2</sup>	Y <sup>2</sup>	Y	A	B	N
58	Retail trade-eating and drinking establishments	N	N	N <sup>2</sup>	Y	A	B	N
59	Other retail trade	N	N <sup>2</sup>	Y <sup>2</sup>	Y	A	B	N
<b>60</b>	<b>Services</b>							
61	Finance, insurance and real estate services	N	N	Y <sup>6</sup>	Y	A	B	N
62	Personal services	N	N	Y <sup>6</sup>	Y	A	B	N
62.4	Cemeteries	N	Y <sup>7</sup>	Y <sup>7</sup>	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14,2</sup> 1
63	Business services	N	Y <sup>8</sup>	Y <sup>8</sup>	Y	A	B	N
64	Repair services	N	Y <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
65	Professional services	N	N	Y <sup>6</sup>	Y	A	B	N
65.1	Hospitals, nursing homes	N	N	N	A*	B*	N	N
65.1	Other medical facilities	N	N	Y	A	B	N	N
66	Contract construction services	N	Y <sup>6</sup>	Y	Y	A	B	N
67	Governmental services	N	N	Y <sup>6</sup>	Y*	A*	B*	N
68	Educational services	N	N	N	A*	B*	N	N
69	Miscellaneous services	N	N <sup>2</sup>	Y <sup>2</sup>	Y	A	B	N
<b>70</b>	<b>Cultural, entertainment and recreational</b>							
71	Cultural activities	N	N	N <sup>2</sup>	A*	B*	N	N

	(including churches)							
71.2	Nature exhibits	N	Y <sup>2</sup>	Y	Y*	N	N	N
72	Public assembly	N	N	N	y	N	N	N
72.1	Auditoriums, concert halls	N	N	N	A	B	N	N
72.11	Outdoor music shell, amphitheaters	N	N	N	N	N	N	N
72.2	Outdoor sports arenas, spectator sports	N	N	N	Y <sup>17</sup>	Y <sup>17</sup>	N	N
73	Amusements	N	N	Y <sup>8</sup>	Y	Y	N	N
74	Recreational activities (including golf courses, riding stables, water recreation)	N	Y <sup>8,9,10</sup>	Y	Y*	A*	B*	N
75	Resorts and group camps	N	N	N	Y*	Y*	N	N
76	Parks	N	Y <sup>8</sup>	Y <sup>8</sup>	Y*	Y*	N	N
79	Other cultural, entertainment and recreation	N	Y <sup>9</sup>	Y <sup>9</sup>	Y*	Y*	N	N

**80 Resources production and extraction**

81	Agriculture (except livestock)	Y <sup>16</sup>	Y	Y	Y <sup>18</sup>	Y <sup>19</sup>	Y <sup>20</sup>	Y <sup>20,21</sup>
81.5 to 81.7	Livestock farming and animal breeding	N	Y	Y	Y <sup>18</sup>	Y <sup>19</sup>	Y <sup>20</sup>	Y <sup>20,21</sup>
82	Agricultural related activities	N	Y <sup>5</sup>	Y	Y <sup>19</sup>	Y <sup>19</sup>	N	N
83	Forestry activities and related services	N <sup>5</sup>	Y	Y	Y <sup>18</sup>	Y <sup>19</sup>	Y <sup>20</sup>	Y <sup>20,21</sup>
84	Fishing activities and related services	N <sup>5</sup>	Y <sup>5</sup>	Y	Y	Y	Y	Y
85	Mining activities and related services	N	Y <sup>5</sup>	Y	Y	Y	Y	Y
89	Other resources production and extraction	N	Y <sup>5</sup>	Y	Y	Y	Y	Y

1. Suggested maximum density of 1-2 dwelling units per acre, possibly increased under a Planned Unit Development (PUD) where maximum lot coverage is less than 20 percent.
2. Within each land use category, uses exist where further definition may be needed due to the variation of densities in people and structures (See Vol. 2, Appendix F).
3. The placing of structures, buildings, or aboveground utility lines in the clear zone is subject to severe restrictions. In a majority of the clear zones, these items are prohibited. See AFR 19-9 and AFR 86-14 for specific guidance.

4. No passenger terminals and no major aboveground transmission lines in APZ 1.
5. Factors to be considered: labor intensity, structural coverage, explosive characteristics, and air pollution.
6. Low-intensity office uses only. Meeting places, auditoriums, etc., are not recommended.
7. Excludes chapels.
8. Facilities must be low intensity.
9. Clubhouse not recommended.
10. Areas for gatherings of people are not recommended.
11.
  - a. Although local conditions may require residential use, it is discouraged in DNL 66-70 dB and strongly discouraged in DNL 71-75 dB. An evaluation should be conducted prior to approvals, indicating that a demonstrated community need for residential use would not be met if development were prohibited in these zones, and that there are no viable alternative locations.
  - b. Where the community determines the residential uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) for DNL 66-70 dB and DNL 71-75 dB should be incorporated into building codes and considered in individual approvals. See Appendix E for a reference to updated NLR procedures.
  - c. NLR criteria will not eliminate outdoor noise problems. However, building location and site planning, and design and use of berms and barriers can help mitigate outdoor exposure, particularly from near ground level sources. Measures that reduce outdoor noise should be used whenever practical in preference to measures which only protect interior spaces.
12. Measures to achieve the same NLR as required for facilities in DNL 66-70 dB range must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
13. Measures to achieve the same NLR as required for facilities in DNL 71-75 dB range must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
14. Measures to achieve the same NLR as required for facilities in DNL 76-80 dB range must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.

---

15. If noise sensitive, use indicated NLR; if not, the use is compatible.
16. No buildings.
17. Land use is compatible provided special sound reinforcement systems are installed.
18. Residential buildings require the same NLR as required for facilities in DNL 66-70 dB range.
19. Residential buildings require the same NLR as required for facilities in DNL 71-75 dB range.

20. Residential buildings are not permitted.
21. Land use is not recommended. If the community decides the use is necessary, hearing protection devices should be worn by personnel.

### **SECTION 316 – TELECOMMUNICATIONS FACILITY**

#### **A. PURPOSE:**

The purpose of this Ordinance is to regulate the placement, construction and modification of Telecommunication Facilities and to establish criteria under which wireless communications will be permitted in Pennington County. The goals of this Ordinance are:

To promote the health, safety and public welfare of the community;

To locate telecommunications towers and antennas in areas where adverse impacts on the community are minimized and to promote harmonious co-existence of telecommunications towers with other land uses;

To enhance the ability of the providers of telecommunications services to deliver such services to the citizens of Pennington County effectively and efficiently;

To encourage the design and construction of towers and antennas to minimize adverse visual impacts and promote visual quality; and

To encourage the joint use or co-location of new and existing tower sites among service providers.

#### **B. DEFINITIONS:**

See Section 103 – Definitions.

#### **C. APPROVALS REQUIRED FOR TELECOMMUNICATIONS FACILITIES AND SUPPORT STRUCTURES:**

##### **1. Administrative Review**

- a. Telecommunications Facilities located on any existing Support Structure shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in Section F of this Ordinance.
- b. New Telecommunications Facilities that are less than 60 feet in height shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in Section F of this Ordinance.

- c. New Telecommunications Facilities up to 199 feet in height (including antennas) shall be permitted in non-residential zoning districts (Highway Service, Light Industrial, Heavy Industrial, and General Commercial District) after Administrative Review and Administrative Approval in accordance with the standards set forth in Section F of this Ordinance.
  - d. New Telecommunications Facilities up to 300 feet in height (including antennas) shall be permitted in General Agriculture Zoning Districts containing 40 acres or more after Administrative Review and Administrative Approval in accordance with the standards set forth in Section F of this Ordinance.
  - e. Stealth Telecommunications Facilities shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in Section F of this Ordinance.
  - f. Telecommunications Facilities Permit
2. Telecommunications Facilities and Support Structures not permitted by Administrative Approval may be permitted in any district upon the granting of a Telecommunications Facility Permit from the Planning Commission in accordance with the standards set forth in this Ordinance.

**D. EXEMPTIONS:**

Ordinary Maintenance of existing Telecommunications Facilities and Support Structures, as defined herein, shall be exempt from the standards set forth in this Ordinance. In addition, the following facilities are not subject to the provisions of Section 316 of the Pennington County Zoning Ordinance:

- 1. Antennas used by residential households solely for broadcast radio and television reception;
  - 2. Satellite antennas used solely for residential or household purposes;
- 
- 3. A COW (Carrier on Wheels) placed for a period of not more than 120 days at any location within Pennington County after a declaration of an emergency or a disaster by the Governor or by the responsible official of Emergency Management, the Sheriff of Pennington County, and/or the Pennington County Board of Commissioners. If within the allotted timeframe of 120 days it is determined that the COW will be needed for a longer period of time, the carrier provider may submit a letter to the Director of the Planning Department requesting an extension;

4. A COW (Carrier on Wheels) placed for a period of not more than 2 weeks at any location within Pennington County in order to serve a community event authorized by the Pennington County Board of Commissioners; and,
5. Ham radio and amateur radio facilities.

**E. AESTHETICS:**

Telecommunications Facilities shall be designed to minimize the visual impact on the surrounding environment and shall be compatible with the aesthetic character of the surrounding area. The Antenna and Support Structure shall be designed to blend into the surrounding environment by use of available camouflaging, stealth design technology or other means where possible.

In reviewing an application for a Telecommunications Facility, the following factors, at a minimum, may be considered by the Administrator and/or Planning Commission in relation to aesthetics:

1. Type of terrain in the surrounding area.
2. Presence of trees or other existing natural features which help shield or block view angles.
3. Use of colors and materials which are compatible with the surrounding area.
4. FAA requirements for coloring and lighting.
5. New stealth designs.

**F. TELECOMMUNICATIONS FACILITIES AND SUPPORT STRUCTURES PERMITTED BY ADMINISTRATIVE APPROVAL:**

1. Telecommunications Facilities Located on Existing Structures
  - a. Antennas and Accessory Equipment are permitted in all zoning districts when located on any existing structure, including, but not limited to: buildings, water tanks, utility poles, existing Telecommunications Facilities, utility poles or any existing Support Structure in accordance with the requirements of this Section.
  - b. Antennas and Accessory Equipment may exceed the maximum building height limitations, provided the Antenna and Accessory Equipment are in compliance with the requirements and standards of this Section.
  - c. Each Antenna mounted on existing structures and any Accessory Equipment shall meet the following standards:

1. Omnidirectional or Whip Antennas shall not exceed 20 feet in length/height and not exceed 7 inches in diameter and shall be of a color that is identical or similar in color of the Supporting Structure to make the Antenna and related Accessory Equipment visually unobtrusive.
2. Directional or Panel Antennas shall not exceed 10 feet in length and 2 feet in width and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.
3. Cylinder-Type Antennas shall not exceed 10 feet in length and not exceed 12 inches in diameter and shall be of a color that is identical or similar to the color of the Supporting Structure to make the Antenna and related Accessory Equipment visually unobtrusive.
4. Satellite and microwave dishes shall not exceed 6 feet in diameter. Dish antennas greater than 3 feet in diameter shall be screened with an appropriate architectural treatment that is compatible with or integral to the architecture of the building to which they are attached. This screening requirement shall not apply to dishes located upon Towers or Monopoles.
5. Other Antenna types not specifically mentioned shall be permitted if they are not significantly greater in size and will have a visual impact no greater than the Antennas listed above. This provision is specifically included in this Ordinance to allow for future technological advancements in the development of Antennas.
6. Accessory Equipment shall be governed by the setback requirement of the underlying zoning.

---

## 2. New Support Structures

- a. New Support Structures less than 60 feet in height shall be permitted in all zoning districts in accordance with the requirements of this Section and shall be governed by the setback requirement of the underlying zoning district.
- b. New Support Structures up to 199 feet in height (including antennas) shall be permitted in Light Industrial, Heavy Industrial,

General Commercial and Highway Service Zoning District in accordance with the requirements of this Section.

1. The minimum distance from the property which the Support Structure is to be located on shall be at least 500 feet from any residential zoning district (i.e.: Low Density Residential, Planned Unit Development, Suburban Residential, Limited Agriculture and General Agriculture, containing less than 40 acres).
  2. The placement of the Support Structure shall be governed by the setback requirement of the underlying zoning district.
- c. New Support Structures up to 300 feet in height (including antennas) shall be permitted in a General Agriculture Zoning District containing 40 acres or more in accordance with the requirements of this Section. The placement of the Support Structure shall be setback a minimum of 500 feet from all property lines abutting residential zoning districts. Otherwise, Support Structures shall be setback a distance of 1.1 times the tower's height from property lines not abutting a residential zoning district.
- d. Monopoles or replacement poles that will support utility lines, as well as a Telecommunications Facility, shall be permitted within utility easements or rights-of-way, in accordance with the requirements of this Part.
1. The utility easement or right-of-way shall be a minimum of 100 feet in width.
  2. The easement or right-of-way shall contain overhead utility transmissions and/or distribution structures that are 80 feet or greater in height.
  3. The height of the Monopole or replacement pole may not exceed by more than 20 feet the height of existing utility support structures.
- 
4. Monopoles and the Accessory Equipment associated there with shall be setback a minimum of 15 feet from all boundaries of the easement or right-of-way.
  5. Single carrier Monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by items 1 through 4 above.



6. Poles that use the structure of a utility tower for support are permitted under this Section. Such poles may extend up to 10 feet above the height of the utility tower.
7. Monopoles or replacement poles located on public property or within public rights-of-way that will support public facilities or equipment, in addition to Telecommunications Facilities, shall be permitted in accordance with requirements of this Part. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, street lights, and other types of utility poles in the public right-of-way.

3. **Stealth Telecommunications Facilities**

Stealth Telecommunications Facilities up to 75 feet in height, that are sufficiently disguised to minimize the visual impact, shall be permitted in all zoning districts after Administrative Review and Administrative Approval in accordance with the following requirements:

- a. Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
- b. The structure utilized to support the Antennas must be allowed within the underlying zoning district. Such structures may include, but are not limited to: flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, steeples and "naturally occurring features" such as boulders and trees.
- c. The minimum setbacks requirement shall be 1.1 times the tower's height from all property lines

4. **General Standards, Submittal Requirements, and Miscellaneous Provisions**

Unless otherwise specified herein, all Telecommunications Facilities and Support Structures permitted by Administrative Approval are subject to the applicable General Design Requirements and Application Submittal Requirements of Section H and Section I.

---

5. **Administrative Review Process**

- a. All Administrative Review Applications, along with all supporting documentation, as outlined in Section I, shall be submitted to the Planning Department for review and approval.
- b. An Administrative Review application fee of \$300.00 (non-refundable).

c. Procedure:

1. Upon receipt of an application for Administrative Review, the Administrator will review the application and confirm that the proposed Telecommunications Facility is consistent with the Ordinance. Within 15 business days of the receipt of an application for Administrative Review, the Administrator shall either: (1.) Inform the applicant in writing a decision granting or denying the request; (2.) Inform the applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or, (3.) Inform the applicant that the application does not meet the criteria of Section F for Administrative Review and shall require a Telecommunications Facility Permit.
2. If it is determined by the Administrator that a Telecommunications Facility Permit is required, the application will be placed on a scheduled Planning Commission meeting. This meeting is a public meeting and shall require the Telecommunications Facility Permit Application fees.
3. An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's failure to complete the application within 60 business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
4. Should the Administrator deny the application, written justification for the denial shall be provided. The denial must be based on substantial evidence of inconsistencies between the application and the Ordinance. The applicant may appeal such a denial as provided in the Ordinance.

---

5. The applicant or any member of the public may appeal any decision of the Administrator approving, approving with conditions, or denying an application or deeming an application incomplete, within 30 days to the Pennington County Board of Commissioners in accordance with this Ordinance.

6. An Administrative Review Permit requires a ten (10) day "Intent to Locate" notice to be mailed by the applicant to all properties abutting the subject site.
7. The Administrator shall forward any Administrative Review application to the Planning Commission for review and approval if issuance of the application may be in conflict with the public interest, adversely affects property owners in the area or is not consistent with the general requirements of this Ordinance. No application shall be issued by the Administrator where the result will not be contrary to the purpose of this Ordinance.

**G. TELECOMMUNICATIONS FACILITIES AND SUPPORT STRUCTURES PERMITTED BY A TELECOMMUNICATIONS FACILITIES PERMIT:**

1. Any Telecommunications Facility or Support Structure that does not meet the requirements of Section F, shall require a Telecommunications Facility Permit and be subject to:
  - a. The setback requirements as stated in this Section, and;
  - b. The applicable standards of Sections H and I.
2. Setback Requirements:
  - a. Minimum setback requirements:
    1. Unless otherwise stated herein, Monopoles, Towers and Support Structures shall be setback from all property lines 1.1 times the tower's height.
    2. Accessory Equipment shall comply with the minimum setback of the underlying zoning district.
  - b. Maximum Height:
    1. Monopoles, Towers and Support Structures shall not exceed 300 feet above ground level to the top of the highest point.
    2. Unless otherwise stated herein, Accessory Equipment shall not exceed 12 feet in height.
  - c. Maximum size of equipment shelter: 400 square feet per carrier.
3. Procedure:

- a. A completed Telecommunications Facility Permit Application, along with all supporting documentation, as outlined in Section I, shall be submitted to the Planning Department for review at least 19 working days prior to a regularly scheduled Planning Commission meeting.
- b. A fee of \$600.00 (nonrefundable) shall be submitted with the application which includes publication costs. Additional fees are required for a property owner's list and a sign deposit.
- c. The Planning Department shall review the completed Telecommunications Facility Permit Application for compliance with this Ordinance. Any application not containing and/or addressing all the information required in Section H and Section I shall be rejected and returned to the applicant together with the reasons for rejection.
- d. The Planning Department will submit a legal notice to the local newspaper(s) for advertising purposes. The notice shall state the date the Planning Commission will review and consider the Telecommunications Facility Permit Application.
- e. Upon submittal of all the application materials and the required fees, the Planning Department will prepare the Notice of Hearing letters and the Property Owner's List of those persons who own land within 500 feet of the subject property. A minimum fee of \$20.00 is added to cover the costs of preparing the property owner's list.
- f. The Planning Department will notify the applicant when the Property Owner's List and the Notice of Hearing letters have been prepared. The applicant must send a copy of the Notice of Hearing letter to each of the property owners on the list by certified mail with return receipt requested. The notice letters must be mailed no less than 10 days prior to the date of the public hearing. The white receipts for certified mail must be returned to the Planning Department prior to the date of the public hearing. These are retained in the Planning Department as part of the official record to document that the required mailings were completed. If the mailing has not been completed as stated herein, the hearing must be continued to the next Planning Commission meeting and the applicant shall be required to re-notify the affected property owners of the rescheduled hearing date.
- g. A \$50.00 deposit (refundable) is required for a sign, provided by the Planning Department. This sign must be posted on the

property in such a manner that it is visible from the road, which provides access to the property. The sign must be posted no less than 10 days prior to the date of the hearing and must remain posted until final action by the Planning Commission. The \$50.00 deposit is refunded when the sign is returned within 6 months of the Planning Commission action.

- h. The Planning Department shall recommend to the Planning Commission either approval, approval with conditions, or denial of the application
- i. The Planning Commission shall consider the Telecommunications Facility Permit Application and public comment regarding the application's technical compliance with the Ordinance after receiving and reviewing the Planning Department's recommendation.
- j. The Planning Commission shall take formal action to approve, approve with conditions, or deny the Telecommunications Facility Permit Application within 30 working days of the initial hearing of the application. If the action is to deny the Telecommunications Facility Permit Application, the reasons for such action shall be stated in the minutes and specific reference shall be made to the requirements not met.
- k. The Planning Commissions' decision shall be final unless any aggrieved person files a written appeal within 5 working days with the Planning Department. When an appeal is filed, the Planning Director shall present the Planning Commissions' decision to the Pennington County Board of Commissioners for review. The Pennington County Board of Commissioners shall vote to uphold, overrule, or amend the decision of the Planning Commission. The public is invited to express their opinions.

#### H. GENERAL DESIGN REQUIREMENTS:

##### 1. Location of Telecommunications Facility

- a. Applicants for a Telecommunications Facility shall locate, site, and erect said Telecommunications Facility in accordance with the following priorities: one being the highest priority and five being the lowest priority.
  - 1. On existing Towers or other structures without increasing the height of the tower or structure;

2. On properties zoned, or if not zoned, characterized predominately by industrial use;
  3. On properties zoned General Commercial;
  4. On properties containing 40 acres or more and zoned General Agriculture;
  5. On properties zoned, or if not zoned, characterized predominately by residential use.
- b. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must demonstrate the reason or reasons why approval should be granted for the proposed site and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.
- c. An applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. The applicant shall address co-location as an option. If such option is not proposed, the applicant must explain why co-location is not possible.
- d. Notwithstanding the above, the Administrator and/or Planning Commission may approve any site located within an area in the above list of priorities, provided the Administrator and/or Planning Commission finds that the proposed site is in the best interest of the health, safety and welfare of the County and its residents and will not have a deleterious effect on the nature and character of the existing uses on the surrounding properties.
- e. The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection.
- f. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Administrator and/or Planning Commission may disapprove an application for any of the following reasons:

- 
1. The use or construction of Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation.
  2. Conflict with the character of the surrounding land uses.
  3. The owner(s) of the property do not agree to allow future co-location of other antenna(s).
  4. Conflicts with the provisions of this Ordinance.

2. In addition to all other requirements set forth in this Section, Telecommunications Facilities shall meet the following design requirements to minimize the visual impact of new facilities:
  - a. Based on potential aesthetic impacts, the order of preference for facility type is: façade-mounted, roof-mounted, Stealth, Monopole, lattice tower and guyed tower. If a Monopole, Lattice Tower or guyed tower is proposed, the application must include an explanation as to why other facility types are not feasible.
  - b. All facilities shall be designed and located to minimize their visibility to the greatest extent feasible, considering technological requirements, by means of placement, screening, and camouflage. The applicant shall use the smallest and least visible antennas feasible to accomplish the owner/operator's coverage objectives.
  - c. When feasible, a facility shall be sited so that at least 80 percent of the height of the tower and accompany structure(s) is screened from view by vegetation.
  - d. All Telecommunications Facilities proposed for locations where they would be readily visible shall incorporate appropriate techniques to camouflage or disguise the facility, and/or blend it into the surrounding environment to the extent feasible.
  - e. Colors and materials for facilities shall be chosen to minimize visibility. All visible exterior surfaces shall be constructed of non-reflective materials. Facilities shall be painted or textured using colors to match or blend with the background.
  - f. Façade-mounted equipment shall not project more than 18 inches from the face of the building or other Support Structure unless specifically authorized by the Administrator or the Planning Commission.
  - g. Roof-mounted antennas shall be located in an area of the roof where the visual impact is minimized.
  - h. Avoid tower heights and locations which necessitate FAA coloring and lighting. Towers of any height should not be lighted unless specifically required by FAA.
  - i. At the time of modification or upgrade of facilities, existing equipment shall, to the extent feasible, be replaced with equipment

of equal or greater technical capacity and reduced size so as to reduce visual impacts.

- j. All facilities shall be designed to be resistant to and minimize opportunities for unauthorized access, climbing and vandalism. The base of the tower shall be surrounded by a fence or wall at least 7 feet in height unless the tower is constructed entirely on a building over 7 feet in height. Screening may be required around the support structure and any related equipment buildings or cabinets.
  
- 3. Commercial advertising is strictly prohibited. Signs located at the Telecommunications Facility shall be limited to ownership, contact information, FCC antenna registration number (if required), and any other information, as required by government regulations, and, not greater than 6 square feet in area.
  
- 4. Towers shall be sited to contain all ice-fall or debris from tower failure on-site.
  
- 5. Any Tower extending over 100 feet in height shall be engineered and constructed to accommodate a minimum of three providers.
  
- 6. No Telecommunications Facility shall be constructed within one mile of other Towers unless documentation is provided showing that co-location on Towers within one mile is not technically feasible.
  
- 7. The proposed facility shall conform to the requirements of this Ordinance, the Pennington County Zoning Ordinance, and other laws, including pertinent regulations of the FCC and the FAA.

I. APPLICATION SUBMITTAL REQUIREMENTS:

- 1. All applications for the construction or installation of new Telecommunications Facility shall contain the information hereinafter set forth:
  - a. The application form shall be completed and signed by the applicant and landowner(s).
  
  - b. A signed Right of Entry Form from the Wireless Communications carrier.
  
  - c. A written report describing the proposed Telecommunication Facility, existing land uses, the capacity of the structure, and the tree line elevation of vegetation within 100 feet of the facility.



- d. A report explaining how the proposed tower fits into the applicant's telecommunications network. This does not require disclosure of confidential information.
  - e. A site plan prepared by a Professional Engineer showing the location and legal description of the site: height of existing structures on the property; means of access; setbacks from property lines; and elevation drawings of the proposed facility and any related improvements and/or equipment.
  - f. A vicinity map showing adjacent properties, general land uses, zoning, and roadways within 1,000 feet of the property line.
  - g. Documentation demonstrating legal access to the tower site.
  - h. In the case of locating on an existing structure, a structural analysis of the existing structure.
  - i. Visual impact demonstrations using photo simulations or line-of-sight diagrams of the proposed facility as it would be seen from residential areas, public rights-of-way and other sites deemed appropriate by the Planning Department. Each photo shall be labeled with the line of sight, elevation and the date taken.
  - j. Copies of permits from Federal and State agencies establishing compliance with applicable Federal and State Regulations.
  - k. A map outlining the boundaries of the coverage area.
  - l. Evidence of written contact with owners of existing towers who supply service within one mile of the proposed facility. The applicant shall inquire about potential co-location opportunities at all technically feasible locations. The contacted providers shall be requested to respond in writing to the inquiry within 30 days. The applicant's letter(s) as well as response(s) shall be included as a part of the submittal material as a means of demonstrating the need for a new tower.
- 
- m. In the case of a new Telecommunications Facility, greater than 100 feet in height, a statement from the carrier shall be provided which documents how many additional carriers can co-locate. If co-location is not possible, the statement must include such technical information and other justifications, as are necessary, to document the reasons why co-location is not a viable option.

- n. A list of all existing structures and sites considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing Tower or Monopole is listed among the alternatives, the applicant must specifically address why the modifications of such structure is not a viable option.
- o. When locating within a residential area, a written technical and operational analysis of why a façade-mounted, roof-mounted and/or stealth tower cannot be used.
- p. The FAA response to the notice of proposed construction or alteration (FAA Form 7460-1 or equivalent).
- q. Letter of Intent to remove the facility at the expense of the facility and/or property owner if it is abandoned, as provided in Section K.

J. ELECTRONIC EMISSIONS AND ELECTROMAGNETIC RADIATION:

At all times the permit holder must maintain compliance with current FCC Rules and Regulations.

K. ABANDONMENT, REMOVAL, AND SPECULATIVE APPROVAL:

- 1. The Pennington County Board of Commissioners, after a hearing, may determine that the health, safety and welfare interest of the citizens of Pennington County warrant and require the removal of a Telecommunications Facility.
- 2. Any Telecommunications Facility Permit granted under the provisions of this Ordinance shall be established and conducted in conformity with the terms of such permit and of any conditions attached thereto. Failure to comply with said terms or conditions constitutes cause for the County to pursue legal remedies and/or revoke the Telecommunications Facility Permit.
- 3. Any Telecommunications Facility or Support Structure that is not operated for a period of one year shall be considered abandoned.
  - a. The owner of the Telecommunications Facility or Support Structure shall remove the facility within 90 days of its abandonment.

4. No approval will be given for a Telecommunications Facility that is speculative in nature, which is defined as being one where a specific carrier has not been identified at the time of application.

L. TELECOMMUNICATIONS FACILITY IN EXISTENCE ON THE DATE-OF-ADOPTION OF THIS ORDINANCE:

- b. Telecommunications Facilities that were legally permitted on or before the date that this Ordinance was adopted shall be considered a permitted and lawful use as a non-conforming Antenna and Accessory Equipment.
- c. Ordinary Maintenance may be performed on a non-conforming Support Structure. However, if the proposed maintenance/modification exceeds the definition of this Ordinance, the following apply:
  - d. Minor Modifications to non-conforming Telecommunications Facilities may be permitted upon the granting of Administrative Approval by the Planning Director.
  - e. Major Modifications to non-conforming Telecommunications Facilities may be permitted only upon the granting of a Telecommunications Facility Permit by the Planning Commission.

M. CONFLICT WITH OTHER LAWS:

Whenever the provisions or regulations of this Ordinance conflict with the requirements of another State or Federal Law, or County Ordinance, the more restrictive standard shall apply.

**SECTION 317 - WIND ENERGY SYSTEMS (Effective 11-09-11)**

**A. PURPOSE**

The purpose of this section is to ensure that the placement, construction and modification of a Wind Energy System (WES) facility is consistent with the County's land use policies, to minimize the impact of WES facilities, to establish a fair and efficient process for review and approval of applications, to assure a comprehensive review of such facilities, and to protect the health, safety and welfare of Pennington County's citizens.

**B. FEDERAL AND STATE REQUIREMENTS**

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

**C. DEFINITIONS**

See Section 103 - Definitions.

**D. DISTRICT REGULATIONS**

A Small Wind Energy System (SWES) shall require a Conditional Use Permit on parcels of one (1) acre or larger in all zoning districts or a Minor PUD Amendment in a Planned Unit Development. A Building Permit is also required, and may be issued only after the Conditional Use Permit is approved by the Planning Commission. On 40 acres or more, a SWES can be authorized by the Planning Department with the issuance of a Building Permit provided the SWES meets the requirements of Section 317-E.

A Large Wind Energy System (LWES) shall require a Conditional Use Permit in General Agriculture, Limited Agriculture, General Commercial, Highway Service, Light Industrial, Heavy Industrial and a Minor PUD Amendment in a Planned Unit Development Zoning Districts. A Building Permit is also required, and may be issued only after the Conditional Use Permit is approved by the Planning Commission. A LWES is prohibited in Suburban Residential and Low Density Residential Zoning Districts.

A Wind Farm shall require a Conditional Use Permit in a General Agriculture District and a Major Amendment in a Planned Unit Development. Building Permits are also required for each LWES and each additional qualifying structure in the Wind Farm. ~~A Wind Farm is prohibited in Suburban Residential, Low Density Residential, Limited Agriculture, General Commercial, Highway Service, Light Industrial and Heavy Industrial Zoning Districts.~~

A Meteorological Tower, as part of a Wind Farm, is allowed in General Agriculture and Planned Unit Development Zoning Districts only. For setbacks, see Table 3: Setbacks and Lot Size Requirements for Wind Farms and Meteorological Towers.

E. REQUIREMENTS FOR SITING SMALL WIND ENERGY SYSTEMS

1. Standards:

Small Wind Energy Systems are subject to the following requirements:

- a. Setbacks and Minimum Lot Size. See Table 1.

**Table 1: Setbacks and Lot Size Requirements for Small Wind Energy Systems.**

REQUIRED	SMALL WIND ENERGY SYSTEM
Minimum Lot Size	1 acre
Setback from Property Lines <sup>1</sup>	1.1 times system height
Setback from Overhead Transmission Lines	1.1 times system height
Setback from Electrical Substations	1.1 times system height
Setback from Public Roads	1.1 times system height
Setback from Off-Site Occupied Dwellings <sup>1</sup>	1.1 times system height
Setback from Other Wind Turbine Towers	1.1 times system height
Setback from Telecommunications Facilities	1.1 times system height

- b. Access. All ground mounted electrical and control equipment will be labeled and secured to prevent unauthorized access, and the tower must be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of twelve (12) feet above the ground.
- c. Lighting. A SWES may not be artificially lighted unless such lighting is required by the FAA.
- d. Noise. SWES facilities may not exceed fifty-five (55) dB(A), as measured at the closest neighboring inhabited dwelling at the time the permit application is filed, unless a signed waiver or easement is obtained from the owner of the inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages or wind storms.
- e. Appearance, Color, Finish. The SWES will be painted in a neutral or natural color with a non-reflective finish, unless otherwise approved with the Conditional Use Permit.
- f. Signs. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a SWES visible from any public road, are prohibited.
- g. Code Compliance. A SWES must comply with all applicable state

<sup>1</sup>Setback requirements for a SWES may be waived FOR PROPERTY LINES AND DWELLINGS ONLY with written permission from all adjacent property owners.

- construction and electrical codes, and the National Electrical Code.
- h. Utility Notification. No SWES may be installed until documentation has been provided that the appropriate utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.

2. **Building Permit Requirements:**

The Building Permit application must be accompanied by a site plan which includes the following:

- a. Property lines and physical dimensions of the property;
- b. Location, dimensions, and types of existing structures on the property and their distances from property lines;
- c. Location of the proposed SWES and setback distances from property lines;
- d. The right-of-way of any public road that is contiguous with the property;
- e. Any overhead utility lines;
- f. Wind system specifications, including manufacturer and model, rotor diameter, tower height, and tower type (e.g. monopole, lattice, guyed);
- g. Tower foundation blueprints or drawings, stamped by a South Dakota Registered Professional Engineer;
- h. Tower blueprint or drawing, stamped by a South Dakota Registered Professional Engineer;
- i. Proof of notification to the utility in the service territory in which the SWES is to be erected; and,
- j. The status of all necessary interconnection agreements or studies.

3. **Abandonment:**

A SWES that is out-of-service for a continuous 12-month period will be deemed to have been abandoned. The Planning Commission may issue a Notice of Abandonment by Certified mail to the owner of a SWES that is deemed to have been abandoned. The owner has the right to respond to the Notice of Abandonment within thirty (30) days from Notice receipt date. The Planning Commission may withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the SWES has not been abandoned.

- a. If the SWES is determined to be abandoned, the owner of the SWES must remove the wind generator and tower at the owner's sole expense within three (3) months of receipt of Notice of Abandonment. If the owner fails to remove the wind generator and tower, the Planning Commission may pursue legal action to have the wind generator and tower removed at the owner's expense.

F. REQUIREMENTS FOR SITING LARGE WIND ENERGY SYSTEMS

1. Standards:

Large Wind Energy Systems are subject to the following requirements:

- a. Setbacks and Minimum Lot Size. See Table 2.

**Table 2: Setbacks and Lot Size Requirements for Large Wind Energy Systems.**

REQUIRED	LARGE WIND ENERGY SYSTEM
Minimum Lot Size	10 acres
Setback from Property Lines <sup>2</sup>	1.1 times system height
Setback from Overhead Transmission Lines	1.1 times system height
Setback from Electrical Substations	1.1 times system height
Setback from Public Roads	1.1 times system height
Setback from Occupied Dwellings	1.1 times system height
Setback from Other Wind Turbine Towers	1.1 times system height
Setback from Telecommunications Facilities	1.1 times system height
Setback from Border of Incorporated Municipality	1 mile
Setback from Parks	1 mile
Setback from Airports/Helipads <sup>3</sup>	3 miles
Setback from Rapid City Regional Airport	5 miles
Setback from Ellsworth Air Force Base <sup>3</sup>	Prohibited within Class Delta Airspace <sup>4</sup>
Setback from Recreation Areas	300 yards

- b. Access. All ground mounted electrical and control equipment will be labeled and secured to prevent unauthorized access. All towers must be unclimbable by design or protected by anti-climbing devices such as:
- i. Site appropriate security enclosures with locking portals at least seven (7) feet high, or
  - ii. Anti-climbing devices twelve (12) feet vertically from the base of the tower.
- c. Lighting. A LWES must be marked as required by the FAA. There may be no lights on the towers other than lighting required by the FAA and infrared heating devices used to protect monitoring equipment.
- d. Noise. LWES facilities may not exceed fifty-five (55) dB(A), as measured at the closest neighboring inhabited dwelling at the time the permit application is filed, unless a signed waiver or easement

<sup>2</sup> Setback requirements for LWES may be waived FOR PROPERTY LINES AND DWELLINGS ONLY with written permission from all adjacent property owners.

<sup>3</sup> Must abide by FAA regulations at a minimum and also by all other applicable Ordinances.

<sup>4</sup> See Exhibit A.

is obtained from the owner of the inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages or wind storms.

- e. Appearance, Color, Finish. The LWES will be painted in a neutral or natural color with a non-reflective finish, unless otherwise approved with the Conditional Use Permit. All towers must be singular tubular design, unless approved by the Planning Commission.
- f. Signs. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a LWES visible from any public road, are prohibited.
- g. Code Compliance. A LWES must comply with all applicable state construction and electrical codes, and the National Electrical Code.
- h. Utility Notification. No LWES may be installed until documentation has been provided that the appropriate utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.
- i. Electromagnetic Interference. The permittee may not operate the LWES so as to cause microwave, television, telecommunication, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. If the Planning Department receives a complaint about electromagnetic interference from existing telecommunication or navigation facilities in the area and, if the FCC and/or the Federal Aviation Administration (FAA) or any other state or federal regulatory agency determines such interference is caused by the LWES or its operation, the permittee must take the measures necessary to correct the problem.
- j. Height from Ground Surface. The minimum height of blade tips at their lowest possible point must be twenty-five (25) feet above grade.
- k. The developer must submit written documentation from Ellsworth Air Force Base acknowledging the location and size of the proposed large wind energy system.

## 2. Building Permit Requirements

The Building Permit application must be accompanied by a site plan and the following:

- a. Property lines and physical dimensions of the property;
- b. ~~Location, dimensions, and types of existing structures on the property and their distances from property lines;~~
- c. Location of the proposed LWES and setback distances from property lines;
- d. The right-of-way of any public road that is contiguous with the property;
- e. Any overhead utility lines;
- f. Wind system specifications, including manufacturer and model, rotor diameter, tower height, and tower type (monopole, lattice, guyed);



- g. Tower foundation blueprints or drawings, stamped by a South Dakota Registered Professional Engineer;
- h. Tower blueprint or drawing, stamped by a South Dakota Registered Professional Engineer;
- i. Proof of notification to the utility in the service territory in which the LWES is to be erected;
- j. The status of all necessary interconnection agreements or studies;
- k. FAA determination of "Does not exceed" or "Determination of No Hazard" in response to submission of Form 7460-1 through the OE/AAA Process; and,
- l. Aeronautical Hazard Permit issued by the South Dakota Aeronautics Commission.

3. Abandonment

- a. A LWES that is out-of-service for a continuous 12-month period will be deemed to have been abandoned. The Planning Commission may issue a Notice of Abandonment to the owner of a LWES that is deemed to have been abandoned. The owner has the right to respond to the Notice of Abandonment within thirty (30) days from Notice receipt date. The Planning Commission may withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the LWES has not been abandoned.
- b. If the LWES is determined to be abandoned, the owner of the LWES must remove the wind generator and tower at the owner's sole expense within three (3) months of receipt of Notice of Abandonment. If the owner fails to remove the wind generator and tower, the Planning Commission may pursue legal action to have the wind generator and tower removed at the owner's expense.

G. REQUIREMENTS FOR SITING WIND FARMS

1. Standards

Wind Farms are subject to the following requirements:

- a. Setbacks and Minimum Acreage. See Table 3.
- b. Access. All ground mounted electrical and control equipment will be labeled and secured to prevent unauthorized access. All towers must be unclimbable by design or protected by anti-climbing devices such as:
  - i. Site appropriate security enclosures with locking portals at least seven (7) feet high, or
  - ii. Anti-climbing devices twelve (12) feet vertically from the base of the tower.
- c. Lighting. Each LWES must be marked as required by the FAA. There may be no lights on the towers other than lighting required by the FAA and infrared heating devices used to protect monitoring equipment.
- d. Noise. No LWES may exceed fifty-five (55) dB(A), as measured at the closest neighboring inhabited dwelling at the time the permit

application is filed, unless a signed waiver or easement is obtained from the owner of the inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages or wind storms.

- e. Appearance, Color, Finish. Each LWES will be painted in a neutral or natural color with a non-reflective finish, unless otherwise approved with the Conditional Use Permit. All towers must be singular tubular design, unless approved by the Planning Commission.

**Table 3: Setbacks and Lot Size Requirements for Wind Farms and Meteorological Towers.**

REQUIRED	WIND FARM	METEOROLOGICAL TOWERS
Minimum Lot Size	40 acres	NA
Setback from Property Lines <sup>5</sup>	1.1 times system height	1.1 times tower height
Setback from Overhead Transmission Lines	1.1 times system height	1.1 times tower height
Setback from Electrical Substations	1.1 times system height	1.1 times tower height
Setback from Public Roads	1.1 times system height	1.1 times tower height
Setback from Occupied Dwellings <sup>4</sup>	1.1 times system height	1.1 times tower height
Setback from Telecommunication Facilities	1.1 times system height	1.1 times tower height
Setback from Border of Incorporated Municipality	1 mile	1 mile
Setback from Parks	1 mile	1 mile
Setback from Airports/Helipads <sup>6</sup>	3 miles	3 miles
Setback from Rapid City Regional Airport	5 miles	5 miles
Setback from Ellsworth Air Force Base <sup>5</sup>	Prohibited within Imaginary Airspace <sup>7</sup>	Prohibited within Imaginary Airspace <sup>7</sup>
Setback from Recreation Areas	300 yards	300 yards

- f. Signs. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with each LWES visible from any public road, are prohibited.
- g. Code Compliance. Each LWES must comply with all applicable state construction and electrical codes, and the National Electrical Code.
- h. Utility Notification. No LWES may be installed until documentation has been provided that the appropriate utility company has been informed of the customer's intent to install an

<sup>5</sup> Setback requirements for both LWES and meteorological towers may be waived FOR PROPERTY LINES AND DWELLINGS ONLY with written permission from all adjacent property owners.

<sup>6</sup> Must abide by FAA regulations at a minimum and by all other applicable Ordinances.

<sup>7</sup> See Exhibit A.

interconnected customer-owned generator. Off-grid systems are exempt from this requirement.

- i. Electromagnetic Interference. The permittee may not operate any LWES so as to cause microwave, television, telecommunication, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or any other law. If the Planning Department receives a complaint about electromagnetic interference from existing telecommunication or navigation facilities in the area and, if the FCC or the Federal Aviation Administration (FAA) or any other state or federal regulatory agency determines such interference is caused by the LWES or its operation, the permittee must take measures necessary to correct the problem.
- j. Height from Ground Surface. The minimum height of blade tips at their lowest possible point must be twenty-five (25) feet above grade.
- k. Turbine Spacing. The turbines may be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.
- l. The developer must submit written documentation from Ellsworth Air Force Base acknowledging the location and size of the proposed wind farm.

## 2. 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 LWES.
- 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 confine compaction to as small an area as practicable.
- d. Livestock Protection. The permittees shall take precautions to protect livestock on the Wind Farm site from project operations during all phases of the project's life.
- e. Fences. The permittees shall promptly replace or repair all fences and gates removed or damaged by project operations during all phases of the project's life unless otherwise negotiated with the fence owner.
- f. Roads:
  - i. Public Roads. As part of the Conditional Use Permit process, the permittees shall identify all state, county or township "haul roads" that will be used for the Wind Farm 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 and haul road agreements must be in place before the conditional use permit is granted. Where

practicable, existing roadways shall be used for all activities associated with the Wind Farm. Where practicable, all-weather roads shall be used to deliver concrete, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.

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

- ii. 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. Access roads shall avoid crossing streams and drainage ways wherever possible. If access roads must be constructed across streams and drainage ways, 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.
- iii. 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.
- iv. Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust during construction.

3. Soil Erosion and Sediment Control Plan.

The permittees will comply with all requirements of Section 507(A) of this ordinance. NOTE: A Wind Farm may also require a South Dakota Department of Environment and Natural Resources (SD DENR) Storm Water Permit.

4. ~~Footprint Minimization.~~

The permittees shall design and construct the Wind Farm so as to minimize the amount of land that is impacted by the Wind Farm.

5. Electrical Cables.

This paragraph does not apply to feeder lines. The permittees must place collector lines and communication cables located on private property underground, except where the distance to the substation necessitates an

overhead installation because of line loss.

6. Feeder Lines.

The permittees will place feeder lines in public rights-of-way if a public right-of-way exists or immediately adjacent to the public right-of-way on private property. Changes in routes may be made as long as feeders remain on public rights-of-way or immediately adjacent to the public right-of-way on private property 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 must place the feeder in accordance with the easement(s) negotiated. The permittees must submit the site plan and engineering drawings for the feeder lines to the Planning Commission before commencing construction.

7. Conditional Use Permit Submittal Requirements

The Conditional Use Permit application must be accompanied by the following:

- a. Boundaries of the site proposed for the Wind Farm and associated facilities on United States Geological Survey Map or other map as appropriate;
- b. Map and copies of easements for the Wind Farm;
- c. Map of occupied residential, business, and public structures within one-half mile of the proposed Wind Farm site boundaries;
- d. Preliminary map of sites for each LWES, access roads, and all utility lines, including collector and feeder. Location of other LWES within five (5) miles of the proposed Wind Farm site;
- e. All necessary haul road agreements;
- f. Project-specific environmental and cultural concerns (e.g. native habitat, rare species, and migratory routes). This information should be obtained by consulting with the following agencies:
  - i. South Dakota Department of Game, Fish and Parks;
  - ii. U.S. Fish and Wildlife Service; and,
  - iii. South Dakota State Historical Society;Evidence of such consultation must be included in the application;
- g. Project schedule;
- h. Mitigation measures;
- i. Decommissioning Plan;
- j. Conditional Use Permit fee;
- k. FAA determination of "Does not exceed" or "Determination of No Hazard" in response to submission of Form 7460-1 through the OE/AAA Process; and,
- l. Aeronautical Hazard Permit issued by the South Dakota Aeronautics Commission.

8. Conditional Use Permit fee shall be \$1,000.00, plus \$200.00 for each tower.

9. The Planning Department shall inspect the wind farm annually for compliance with this section of the Ordinance, and shall charge an annual permit review fee of \$200 per tower inspected.

10. **Building Permit Requirements**

The Building Permit application must be accompanied by a site plan and the following:

- a. Property lines and physical dimensions of the property;
- b. Location, dimensions, and types of existing structures on the property and their distances from property lines;
- c. Location of the proposed LWES and setback distances from property lines;
- d. The right-of-way of any public road that is contiguous with the property;
- e. Any overhead utility lines;
- f. Wind system specifications, including manufacturer and model, rotor diameter, tower height, and tower type (monopole, lattice, guyed);
- g. Tower foundation blueprints or drawings, stamped by a South Dakota Registered Professional Engineer;
- h. Tower blueprint or drawing, stamped by a South Dakota Registered Professional Engineer;
- i. Proof of notification to the utility in the service territory in which the LWES is to be erected;
- j. The status of all necessary interconnection agreements or studies;
- k. Certificate of Insurance for the denomination approved with the Decommissioning Plan;
- l. FAA determination of "Does not exceed" or "Determination of No Hazard" in response to submission of Form 7460-1 through the OE/AAA Process; and,
- m. Aeronautical Hazard Permit issued by the South Dakota Aeronautics Commission.

11. **Post-Construction Filing.**

Upon completion of construction of the Wind Farm, the applicant shall supply an "as-built" ALTA survey indicating that the proposed facilities are in compliance with the setbacks in the permit within ninety (90) days.

12. **Decommissioning**

- a. **Cost Responsibility.** The owner or operator of a Wind Farm is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities. The decommissioning plan must clearly identify the responsible party.
- b. **Useful Life.** A Wind Farm is presumed to be at the end of its useful life if the facility generates no electricity for a continuous period of twelve (12) months. The presumption may be rebutted by submitting to the Planning Commission for approval of a plan

- outlining the steps and schedule for returning the Wind Farm to service within twelve (12) months of the submission.
- c. Decommissioning Period. The facility owner or operator must begin decommissioning a Wind Farm facility within eight (8) months after the time the facility or turbine reaches the end of its useful life, as determined in 12(b). Decommissioning must be completed with eighteen (18) months after the facility or turbine reaches the end of its useful life.
  - d. Decommissioning Plan. Prior to approval of a Conditional Use Permit for a Wind Farm facility, the facility owner or operator must file with the Planning Commission the estimated decommissioning cost for each LWES and for restoring each haul road, in current dollars at the time of the application, for the proposed facility and a decommissioning plan that describes how the facility owner will ensure that resources are available to pay for decommissioning the facility at the appropriate time. The Planning Commission will review a plan filed under this section and shall approve or disapprove the plan in conjunction with the Conditional Use Permit application. The Planning Commission may at any time require the owner or operator of a Wind Farm to file a report describing how the Wind Farm owner or operator is fulfilling this obligation.
  - e. Decommissioning Requirements. Decommissioning and site restoration includes signing appropriate haul road agreements for the decommissioning process; dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of forty-two (42) inches; and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the Wind Farm. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the Wind Farm. Disturbed earth must be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained.
  - f. Financial Assurance. Before construction begins on the Wind Farm, the facility owner shall provide to the Planning Department a certificate of insurance, including either a performance or surety bond, which covers the total cost to decommission the facility. The certificate of insurance shall be renewed and a copy submitted to the Planning Department each year the facility is in operation.
  - g. Failure to Decommission. If the Wind Farm facility owner or operator does not complete decommissioning, the Planning Commission may take such action, as may be necessary, to complete decommissioning, including requiring forfeiture of the

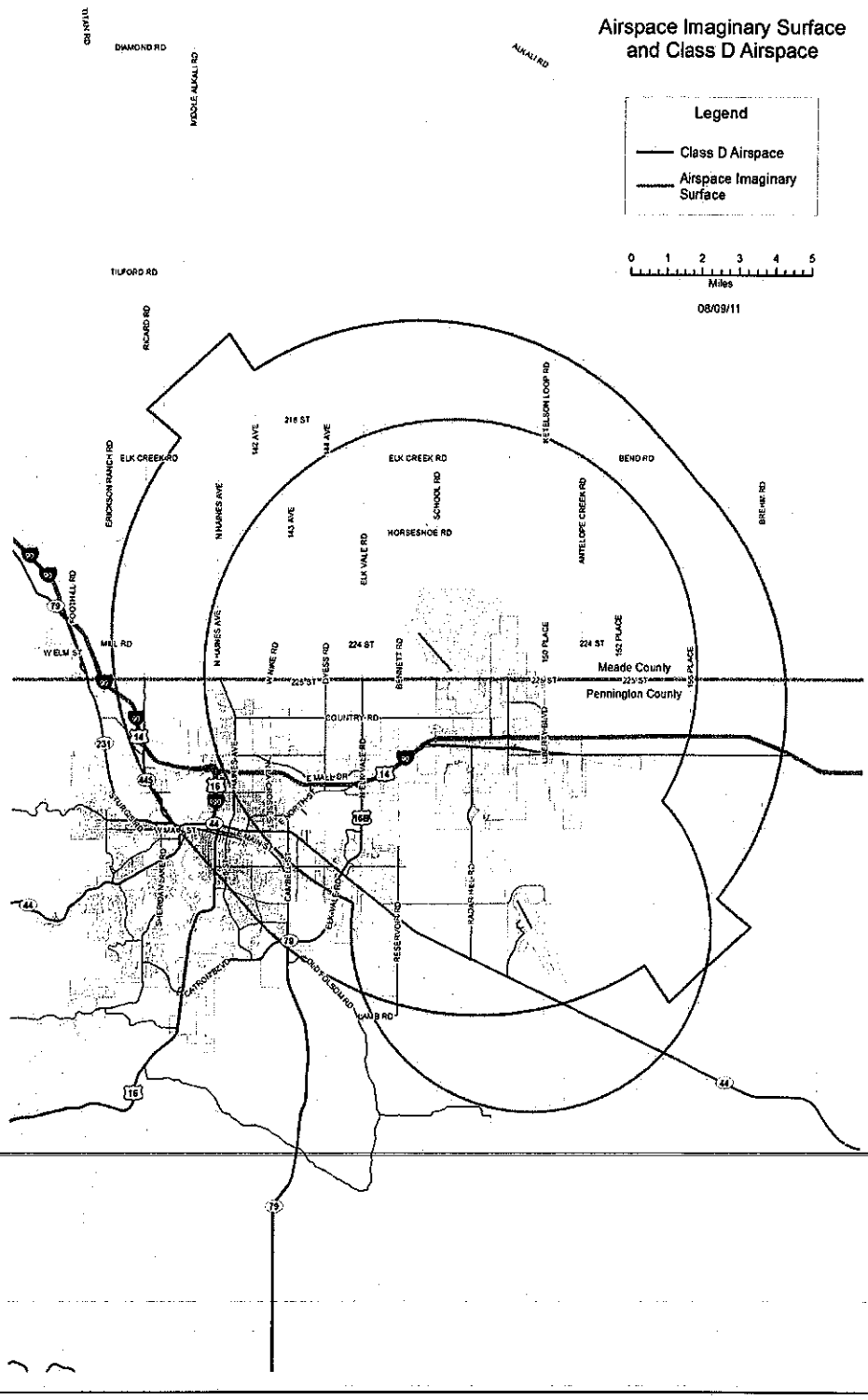
bond. The entry into a participating landowner agreement constitutes agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Planning Commission may take such action as may be necessary to decommission a Wind Farm facility and seek additional expenditures necessary to do so from the facility owner.

#### H. VIOLATIONS

It is unlawful for any person to construct, install, or operate a WES that is not in compliance with this section or with any condition contained in a Building Permit issued pursuant to this section. WES facilities installed prior to the adoption of this section are exempt.



# Exhibit A



**SECTION 318 – GUEST HOUSE (Effective 11-23-11)**

**A. PURPOSE**

The purpose and intent of this Section is to establish regulations for living space in a detached accessory building in order to protect the residential character of the neighborhoods in which they are located and to ensure adequate infrastructure is in place or will be provided to service the additional living space. A Guest House is intended to provide short-term accommodations for visiting guests of the owners of the primary dwelling units that are located in specified zoning districts. Specific regulations regarding the size and location of the Guest House have been established so as to assist the Guest House in appearing accessory to the main dwelling unit. A Guest House may also be known as, but not limited to, a studio or mother-in-law apartment.

**B. GENERAL PROVISIONS**

An accessory Guest House shall be permitted in Low Density Residential, Limited Agriculture and General Agriculture Zoning Districts upon the issuance of a Conditional Use Permit or in Planned Unit Developments with approval of a Planned Unit Development Amendment and is subject to the following standards:

1. Only one (1) Guest House shall be allowed on a lot and/or parcel.
2. The rental or lease of a Guest House or the use of a Guest House as a permanent residence for a second family on the premises shall be prohibited.
3. The minimum lot size requirement for the construction of an accessory Guest House shall be three (3) acres.
4. The maximum allowed living space of a Guest House shall not exceed 50% of the living space in the main dwelling unit or 1,000 square feet, whichever is less. Covered decks attached to the Guest House shall be included in the calculation for the overall square footage, but decking and garage space shall not.
5. The Guest House shall not be used for more than 180 days per calendar year.
6. The Guest House shall use the same driveway approach as the primary dwelling. One additional off-street parking space, measuring a minimum of nine (9) feet by eighteen (18) feet and maintained in a dust free manner, shall be provided for the Guest House.
7. The Guest House shall have a minimum setback of 25-feet from all property lines.
8. A single-wide mobile home shall not be allowed as a Guest House.

9. The Guest House shall be located closer to the primary dwelling on the subject lot than to a primary dwelling on any adjacent lot existing at the time the Building Permit is approved for the Guest House.
10. The primary dwelling unit shall be classified as owner-occupied. Proof of status must be provided.
11. Utilities: All public water, sewer, electricity, and natural gas for the Guest House shall be extended from the primary dwelling unit's services. No separate meters for the Guest House shall be allowed, unless required by the utility service provider.
12. On-Site Wastewater Treatment Systems: A Guest House shall use the same on-site wastewater disposal system as the primary dwelling, except when a separate system is required by the Pennington County Environmental Planner due to site constraints, failure of the existing system, or where the size or condition of the existing system precludes its use.
13. Prior to the issuance of a Building Permit for a Guest House, or for use of an existing structure as a Guest House, the applicant shall record a deed restriction stating the regulations applicable to the Guest House, including that the Guest House shall not be separately rented or leased from the main residence.

**SECTION 319 – VACATION HOME RENTAL. (Effective 05-23-12)**

A. Purpose:

To establish regulations and standards for owners of Vacation Home Rental (VHR) properties in Pennington County for the protection of the public health, safety and welfare, and to minimize the impacts of such use.

B. Zoning Requirements:

VHRs are allowed uses in Highway Service and General Commercial Zoning Districts and may be allowed in Planned Unit Developments (see Section 213). VHRs are permitted with approval of a Conditional Use Permit in General Agriculture, Limited Agriculture, and Low Density Residential Zoning Districts. VHRs are permitted with approval of a Conditional Use Permit in a Suburban Residential Zoning District, if the applicant has a permit from the State of South Dakota to operate a VHR at the date of passage of this Ordinance Amendment, or if the applicant has applied for such permit at the date of passage of this Ordinance Amendment.

C. Permit Requirements:

1. A Conditional Use Permit is required for a VHR prior to operation in those zoning districts designated in accordance with the Zoning Requirements of this Section.
2. A Conditional Use Permit is not required for VHRs of 14 days or less (cumulative) in a calendar year in any zoning district. [ref. SDCL 34-18-1(21)]
3. The Owner must have applied for a South Dakota Vacation Home Rental License from the South Dakota Department of Health. A copy of the application or license must be provided to the Planning Department prior to operation. At the time of issuance of the Vacation Home Rental License from the South Dakota Department of Health, a copy of the license shall be furnished to the Planning Department.
4. The Owner must obtain a South Dakota Sales Tax License from the South Dakota Department of Revenue. A copy of the License must be provided to the Planning Department prior to operation.
5. The Conditional Use Permit shall be revoked upon sale or transfer of ownership of the property.
6. Permits required by this Section are in addition to any license, permit, or fee required elsewhere in this Ordinance or required by State Law. Any person holding a CUP issued under this Section must also comply with all applicable federal, state, and local laws and regulations.

D. Local Contact:

An Owner may retain a Local Contact to comply with the requirements of this Section, including, without limitation, the filing of an application for a Conditional Use Permit, the management of the VHR, and compliance with the conditions of the Conditional Use Permit. The Conditional Use Permit shall be issued only to the Owner of the VHR. The Owner of the VHR is ultimately responsible for compliance with the provisions of this Section. The failure of the Local Contact to comply with this Section shall be deemed as non-compliance by the Owner.

---

E. Application for Vacation Home Rental Conditional Use Permit:

The following information must be provided:

1. Site plan depicting the layout of the property, including all existing and proposed structures with setbacks, wells and/or water lines, on-site wastewater treatment system and/or sanitary sewer lines, and on-site parking spaces.

2. An interior diagram/plan of the VHR.
3. The maximum number of overnight occupants.
4. Acknowledgement from the Owner that the VHR meets all Fire Safety Standards for Vacation Home Establishments requirements in accordance with SDCL 34-18-22.3.
5. Specifications of the existing wastewater treatment system.

F. Performance Standards:

All Conditional Use Permits issued, pursuant to this Section, are subject to the following standards:

1. The maximum occupancy allowed in a VHR shall be no greater than two (2) persons per bedroom, plus four (4) additional persons, but may be fewer based on the capacity of the wastewater system. Children age 5 and under are not counted as occupants.
2. VHRs are limited to a maximum of five (5) bedrooms.
3. The number of on-site parking spaces as determined in accordance with Section 310.
4. The Owner shall ensure that occupants and/or guests of the VHR do not create a Nuisance, per Pennington County Ordinance 106. It is not intended that the Owner or Local Contact act as a peace officer or be placed in harm's way through implementation of this directive.
5. Where the Owner does not reside full-time within 50 miles driving distance of the VHR, a Local Contact shall be designated. The Local Contact shall reside within 50 miles driving distance of the VHR. The Owner or Local Contact shall be responsible for responding in a reasonable time to complaints about the VHR. The name, address, and telephone contact number of the Owner and/or Local Contact shall be kept on file at the Planning Department. ~~The Notice of Hearing Letter shall also contain the name and phone number of the Local Contact.~~
6. The wastewater system utilized by the VHR must be approved by the South Dakota DENR and/or must comply with Section 204-J.
7. The Owner shall keep records as required per SDCL 34-18-21. The report shall be provided to the Planning Department upon request.

8. Any lights used for exterior illumination shall direct light away from adjoining properties. Lighting shall be pointed/shielded downward to minimize upward glare.
9. Occupancy of recreational vehicles (RVs), camper trailers and tents shall not be allowed. Children under the age of 13 are allowed to "camp out" in a tent on the premises, but count toward the maximum occupancy.
10. The minimum age allowed for the principal renter of a VHR is 21 years of age.
11. Quiet hours shall be from 10 p.m. until 7 a.m. No outside activities shall be allowed after 10 p.m.
12. The use of open fires, fire pits, fireworks, charcoal-burning grills or other devices (as applicable) shall be the responsibility of the Owner or Local Contact. All authorized open fires shall be extinguished by 10 p.m. (refer to Section 319-G-1-e.).
13. The maximum number of day guests allowed shall be 50 percent of the maximum occupancy of the VHR.
14. In granting or denying a Conditional Use Permit for a Vacation Home Rental, the Planning Commission and/or Board of Commissioners shall uphold any restrictive covenants applicable to the property.

G. Sign and Notification Requirements:

1. Interior Informational Sign. Each VHR shall have a clearly visible and legible notice posted within the unit on or adjacent to the front door, containing the following information:
  - a. The name of the Local Contact or Owner of the unit, and a telephone number at which that party may be reached on a 24-hour basis;
  - b. The maximum number of occupants permitted to stay in the unit;
  - c. The maximum number of day guests permitted to visit the unit;
  - d. The number and location of on-site parking spaces;
  - e. A statement that: "The use of open fires, fire pits, fireworks, charcoal-burning grills, or other devices (as applicable) shall not be allowed without permission from the Local Contact or Owner to ensure compliance with all federal, state and county laws and regulations;"
  - f. The rules/regulations for pets and applicable leash laws;
  - g. The quiet hours;
  - h. The trash pick-up day and location of trash disposal;

- i. Notification that the renter and occupants are responsible for the creation of any disturbances or for violating any other provisions of this Section;
- j. Notification that failure to conform to the parking and occupancy regulations of the VHR unit is a Violation of County Ordinance;
- k. A statement that: "Guests are expected to be courteous to all neighbors and to respect property boundaries;"
- l. Local emergency and law enforcement contact information; and,
- m. The property address.