

APPENDIX C – HAND COUNTY DOCUMENTS

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made as of the 4th day of December 2018 ("Effective Date") by and between Sweetland Wind Farm, LLC, a Delaware limited liability company ("Developer") and Hand County, South Dakota ("County"). In this Agreement, Developer and the County may be individually referred to as a "Party" and collectively, as the "Parties."

RECITALS

- A. Developer plans to develop, construct, and operate the up to 200 megawatt ("MW") Sweetland Wind Farm to be located in Hulbert, Pearl, and Rose Hill Townships in Hand County, South Dakota (the "Project").
- B. Pursuant to the Hand County Zoning Ordinance, dated February 2009 ("Zoning Ordinance"), the Project is proposed to be located in the County's Agricultural District (*see* Zoning Ordinance, Art. 3, Sec. 301) and is a "utility use," which is a permitted use in the Agricultural District (*see* Zoning Ordinance, Art. 5, Sec. 503.52).
- C. The Parties agree that it is in the best interest of each to memorialize the rights, obligations, and responsibilities of the Parties with respect to development of the Project.

NOW, THEREFORE, in consideration of the recitals (which are incorporated into the Agreement by this reference) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Effective Date and Termination

- 1.1. Effective Date. This agreement shall become effective on the Effective Date.
- 1.2. Termination. This Agreement may be terminated by mutual written agreement of the Parties. If the Agreement is terminated, Developer shall comply with all provisions of this Agreement that apply to any work already performed on the Project.

2. Vesting

This Agreement vests the Project to applicable existing County ordinances and regulations for the development, construction, ownership, and operation of the Project effective as the Effective Date of this Agreement to the extent such ordinances and regulations are not superseded or preempted by federal or state law or permit.

3. Development Standards

- 3.1. Wind Turbine Setback Commitments. Developer agrees that the Project wind turbines shall comply with the following setbacks:

Setback Type	Distance
Project wind turbines from currently occupied residence, unless waived in writing by the owner of the occupied residence	1,320 feet
Project wind turbines from maintained County roadway, unless waived in writing by the County	1.1 times wind turbine tip height
Project wind turbines from maintained township roadway, unless waived in writing by the applicable township	1.1 times wind turbine tip height
Project wind turbines from existing overhead distribution and transmission lines, unless waived in writing by the infrastructure owner	1.1 times wind turbine tip height
Pursuant to SDCL 43-13-24, Project wind turbines from property lines, unless the Developer has a written agreement with the adjacent landowner allowing the placement of the tower closer to the property line, in which case, the tower may be placed closer to the property line shared with that adjacent land owner.	500 feet or 1.1 times the height of the wind turbine tower, whichever is greater

- 3.2. Project Noise. Developer agrees to site Project wind turbines such that sound levels resulting from Project wind turbines will not exceed 50 dBA at the currently occupied residences of participating landowners and 45 dBA at the currently occupied residences of non-participating landowners unless waived in writing by the owner of the occupied residence.
- 3.3. Shadow Flicker. Developer agrees to site Project wind turbines so as to limit shadow flicker resulting from Project wind turbines at currently occupied residences to 30 hours per year or less, unless waived in writing by the owner of the occupied residence.
- 3.4. Wind Turbine Lighting. Developer agrees to light Project wind turbines according to applicable Federal Aviation Administration (FAA) requirements. Developer further agrees to comply with any South Dakota Public Utilities Commission energy facility permit conditions placed on the Project requiring the utilization of an Aircraft Detection Lighting System (ADLS), if applicable and if permitted by the FAA.
- 3.5. Compliance with Applicable Laws. The Developer shall comply with all applicable federal and state laws and regulations governing the development,

construction, and operations of the Project. Further, Developer shall develop, construct and operate the Project in a professional and workman like manner in accordance with standard industry practices.

4. **Amendments and Revisions.** This Agreement may be amended by mutual agreement of the Parties only if the amendment is in writing and signed by an authorized representative of each Party.
5. **Assignments.** Developer may, within the terms of this Development Agreement, assign this Agreement to a successor or assign with the written approval of the County Board; provided, however, that approval is not required for assignment to an affiliate of Developer or assignment for collateral purposes to a financing party. When required, approval shall not be unreasonably withheld or delayed. The assignees shall then assume all responsibilities and duties pursuant to this Agreement.
6. **General Provisions.**
 - 6.1. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the Developer and County and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring all or any portion of the Project or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever.
 - 6.2. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of South Dakota. For the purposes of resolving any dispute with respect to this Agreement, each Party agrees that the venue for any legal action shall be in Hand County, South Dakota.
 - 6.3. Severability. If any provisions of this Agreement are determined to be unenforceable, invalid or excessive by a court of competent jurisdiction, this Agreement can thereafter be modified to implement the intent of the Developer and County to the maximum extent allowable under law, and the remainder of this Agreement shall remain unaffected and in full force and effect.
 - 6.4. Authority. The Parties each represent and warrant that it has the respective power and authority and is duly authorized to enter into this Agreement on the terms and conditions herein stated and to execute, deliver and perform its obligations under this Agreement. Developer shall provide the County a list of officers authorized to act for the Developer.
 - 6.5. No Third-Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Developer and the County and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.
 - 6.6. Duty to Act Reasonably and in Good Faith. Unless otherwise expressly provided, the Parties shall act reasonably in giving consent, approval, or taking any other

action under this Agreement. The Parties agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement, and each of them covenants that it will not at any time voluntarily engage in any actions which frustrate the purpose and intent of the Parties to develop the Project in conformity with the terms and conditions specified in this Agreement. The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. The Parties agree to use best efforts to communicate regarding issues, changes, or problems that arise in the performance of the rights, duties and obligations hereunder as early as possible in the process, and not wait for explicit due dates or deadlines. Each Party agrees to work cooperatively and in good faith toward resolution of any such issues.

- 6.7. Road Haul Agreement. The Parties acknowledge and agree that, prior to the commencement of Project construction, a separate agreement or agreements will be negotiated between the County, the Developer, and Hulbert, Pearl, and Rose Hill Townships, as needed, with respect to the Developer's use of County and Hulbert, Pearl, and Rose Hill Townships roads and rights-of-way during construction of the Project.

7. Notices.

- 7.1. Written Notice. Either Party may give notice to the other at the address for that Party set forth below. Notices may be given by U.S. certified mail, personal delivery or professional messenger.
- 7.2. Addresses. Notices shall be given to the Parties at their addresses set forth below.

Hand County	Auditor- Hand County, SD 415 W. 1 st Avenue, #202 Miller, SD 57362
cc:	State's Attorney- Hand County, SD 214 North Broadway Avenue Miller, SD 57362
Developer	Matt Heck - Sweetland Wind Farm, LLC Director of Development Scout Clean Energy 4865 Sterling Drive, Suite 200 Boulder, CO 80301 E-mail: mheck@scoutcleanenergy.com
cc:	Mollie M. Smith - Sweetland Wind Farm, LLC Attorney Fredrikson & Byron, P.A.

	200 South Sixth Street Minneapolis, Minnesota 55402 E-mail: msmith@fredlaw.com
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7.3. When Notice Effective. Unless otherwise provided in this Agreement, notice by U.S. certified mail, personal delivery, or professional messenger shall be effective upon receipt. Any Party at any time by notice to the other Party may designate a different address or person to which such notice or communication shall be given.

8. Default.

8.1. Remedies. Any failure by a Party to perform a material obligation hereunder which is not remedied within forty-five (45) days after receipt by the defaulting Party of written notice of such failure shall be deemed a default under this Agreement and in such case, the non-defaulting Party shall be entitled to pursue any remedies available at law or in equity, including terminating this Agreement and collecting reasonable attorneys' fees from the defaulting Party. Notwithstanding the foregoing, so long as the defaulting Party has initiated and is diligently working to cure, the defaulting Party's cure period shall extend for a time period reasonably sufficient for the default to be remedied.

9. **Entire Agreement.** This Agreement, together with all exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. Agreement is specifically intended to supersede all prior agreements whether written or oral.

[Signatures follow on the next page.]

*This agreement pertains only
to the current project. No further
expansion is allowed.*

Luke Warren
Michael Miller

IN TESTIMONY WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

SWEETLAND WIND FARM, LLC

By: *Mina Miller*
Its: Manager

HAND COUNTY

By: *Luke Wern*
Its: Chairman

ATTEST

And: *Sandra Setling*
Hand County Auditor

**HAND COUNTY
COMPREHENSIVE PLAN**

2009

TABLE OF CONTENTS

	<u>PAGE</u>
Table of Contents -----	1
The Comprehensive Plan -----	2
Introduction -----	3
Hand County Development Concept-----	4
Land Use Development -----	5
Transportation Infrastructure-----	6
Public Utilities and Recreational Infrastructure-----	7
Public Facilities Infrastructure-----	8
County Beautification and Amenity Plan -----	9
Capital Improvement Programming -----	10
Development Policies -----	11
Land Development Policies -----	12
Hand County Zoning Ordinance -----	13
Notice of Adoption, Hand County Zoning Ordinance -----	14
Building Permits -----	15
Definitions -----	16
Article 1. Jurisdiction -----	23
Article 2. Application of District Regulations -----	27
Article 3. Establishment of Districts -----	30
Article 4. Official Zoning Map and Boundary Interpretation -----	32
Article 5. Agricultural Zone or District -----	37
Article 8. Supplementary District Regulations -----	45
Article 9. Administrative Procedure and Enforcement-----	49
Article 10. Planning and Zoning Commission -----	58
Article 11. Board of Adjustment -----	61
Article 12. Amendments -----	67
Article 13. Nonconformance -----	69
Article 14. Violations, Complaints, Penalties and Remedies -----	75
Article 15. Legal Status Provisions -----	78
Official Zoning Maps -----	83

THE COMPREHENSIVE PLAN

HAND COUNTY, SOUTH DAKOTA
Land Development Plan
February 2009

COUNTY COMMISSIONERS:

Larry Rowen
Ronald D. Campbell
Richard Strasburg
James Iverson
Todd Waring

PLANNING AND ZONING COMMISSIONERS:

Larry Rowen
Ronald D. Campbell
Richard Strasburg
James Iverson
Todd Waring

HAND COUNTY ZONING ADMINISTRATOR:

Terry Augspurger, Hand County Assessor
605-853-2115

DATES:

<u>1-21-09</u>	Notice of Public Hearing Published
<u>2-3-09</u>	Public Hearing Held by County Commissioners
<u>5-5-09</u>	Second Public Hearing and Resolution Adopted by County Commissioners
<u>5-13-09</u>	Summary of Plan and Resolution Published
<u>6-2-09</u>	Effective Date (20 days after publication of summary)

This comprehensive plan was prepared by the Hand County Commission and the Hand County States Attorney.

INTRODUCTION

The Comprehensive Plan for Hand County land development is intended to serve as a means for coordinating county programs and services; to aid in developing plans and regulation for the county and as a guideline for commerce, industry, agriculture and recreation. It shall serve to protect and guide the physical, social, economic, and environmental development of this county; to protect the tax base; to encourage a mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements; to lessen governmental expenditures; and to conserve and develop natural resources. Zoning regulations are a component part of the implementation of this plan.

HAND COUNTY DEVELOPMENT CONCEPT

The county commission believes that for over 100 years the private citizens of Hand County have devoted their energies and aesthetic sensibilities to the development of this county in a responsible manner and the commission has no desire to affect excessive interference with or over-regulate the citizens in their God-given right to pursue their own happiness.

LAND USE DEVELOPMENT

Hand County has existed as a governmental subdivision of the State of South Dakota since 1881. The population of the county peaked in the 1920's when it reached in excess of 10,000. [It now stands at approximately 3,600.]

With essentially no interference by the county government in the private use and development of these lands, this dwindling population has for decades provided massive quantities of grains and livestock for the world and its citizens.

The people of this county have been most judicious and responsible in their stewardship of the productive lands of Hand County, South Dakota.

The farmers and ranchers in this county have consistently adapted to ever-changing scales of economy imposed upon them by technological advances in the agricultural world while this population has continued to efficiently produce essential agricultural commodities.

The premise of this plan is that governmental intervention and regulation is best when governmental intervention and regulation is minimized. The people of Hand County are members of a larger protected class - they are United States citizens and as such are Constitutionally entitled to economic freedom.

To this end, the County Zoning Committee seeks to establish within its zoning Ordinance (an adjunct to this plan) all of Hand County (with the exception of incorporated municipalities within) as one Agricultural District. Within said district, the citizens, with few county-implemented restrictions, are encouraged to responsibly pursue their agricultural interests.

TRANSPORTATION INFRASTRUCTURE

Hand County currently maintains 402 miles of county highways and approximately 136 bridges. This plan anticipates no new major roadway construction projects in the immediately future. This plan is not intended to further regulate or otherwise interfere with maintenance of the existing county highway system.

PUBLIC UTILITIES AND RECREATIONAL INFRASTRUCTURE

This plan is not intended to interfere with or unnecessarily regulate the delivery of public utility services.

The county will continue to work with the Environmental Protection Agency (EPA) and the South Dakota Department of Environment and Natural Resources in investigating sources of environmental pollution and will continue to enforce laws governing their regulation, control or elimination.

PUBLIC FACILITIES INFRASTRUCTURE

Nothing in this comprehensive plan is intended to interfere with or further regulate the current or further maintenance and operation of any existing public facilities in the county including but not limited to the following:

1. Law enforcement services
2. Ambulance services
3. Fire departments
4. Recreational (public works) programs and services

COUNTY BEAUTIFICATION AND AMENITY PLAN

This comprehensive plan for Hand County anticipates no need for further governmental intrusion in these areas of its citizens' lives.

CAPITAL IMPROVEMENT PROGRAMMING

Hand County has, as a result of a taxing freeze imposed upon it by state government, no public improvements planned for the foreseeable future. Hand County has no discretionary funds available for these purposes. Therefore, further regulation is unnecessary.

DEVELOPMENT POLICIES

To promote responsible stewardship of the county's physical environment and manmade infrastructure (both public and private) and thereby maintain and/or enhance land values for property taxation purposes and to promote and enhance quality of life for the citizens.

LAND DEVELOPMENT POLICIES

To avoid environmental damage to the county's waters and to promote the maintenance of clean air, thereby enhancing Hand County's land values for taxation purposes, and thereby offering a better quality of life for Hand County citizens.

HAND COUNTY
ZONING ORDINANCE

February 2009

NOTICE OF ADOPTION
HAND COUNTY
ZONING ORDINANCE

HEREBY TAKE NOTICE that on the ____ day of _____, 2009, the Hand County Commission, County of Hand, State of South Dakota, pursuant to SDCL Chapter 11-2, has duly adopted a comprehensive plan and zoning controls which include the adoption of a zoning map, zoning ordinance and other official controls, which measures are more fully shown in the ordinance entitled:

AN ORDINANCE ESTABLISHING COMPREHENSIVE, ZONING
REGULATIONS FOR HAND COUNTY, SOUTH DAKOTA, AND PROVIDING
FOR THE ADMINISTRATION, ENFORCEMENT AND AMENDMENT
THEREOF, IN ACCORDANCE WITH THE PROVISIONS OF SDCL 11-2 (1995),
AND FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT THEREWITH.

The complete Ordinance referred to above is on file with the Hand County Auditor and may be inspected, reviewed or examined by any interested party by contacting the office at 605-853-2182.

Pursuant to SDCL 7-18A-4, this notice of adoption is published in lieu of publishing the entire Ordinance since said Ordinance adopts comprehensive regulations.

A public hearing will be held on the zoning ordinance in the Courtroom of the Hand County Courthouse at _____ P.M. on _____, the _____ day of _____, 2009.

Dated this _____ day of _____, 2009.

Sandra Selting
HAND COUNTY AUDITOR

(SEAL)

BUILDING PERMITS

NOT REQUIRED FOR:

1. Semi-portable agricultural structure
 - * Feed bunks and water tanks
 - * Calving, lambing or farrowing sheds
 - * Temporary grain storage facilities
2. Remodeling that does not increase the size of a structure
3. Fences and signs
4. Planting of trees and shrubs
5. Private wells, stock dams, irrigation facilities, rural water service lines and household septic systems (Provided they follow DENR rules)

REQUIRED FOR:

1. Erecting a NEW structure or building (Example: Putting a mobile home on a lot)
2. Moving a structure or building (Example: Putting a mobile home on a lot)
3. Adding to a structure or building (Example: Constructing a deck or room addition to a home)
4. Changing the principal use of a structure or building (Example: Using a rural house solely as a commercial business)

DEFINITIONS

For the purpose of this Ordinance, unless otherwise stated, words used in the present tense include the future; the singular number includes the plural and the plural the singular; the word shall means mandatory, not discretionary; the word may is permissive; the word person includes a firm, association, organization, partnership, trust, company or corporation, as well as an individual; the word lot includes the word plat or parcel; and the words used or occupied include the words intended, designed or arranged to be used or occupied.

For the purpose of this Ordinance, certain terms or words used herein shall be interpreted as follows:

Accessory Use of Structure

A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

Agriculture

The planting, cultivating harvesting and storage of grains, hay or plants, fruits or vineyards.

The raising and feeding of livestock and poultry shall be considered an agricultural use if the area in which the livestock or poultry is kept is twenty-five (25) acres or more in area, and if such raising of livestock and poultry is incidental or supplemental to the raising of crops and is not primarily for the growing and/or finishing of livestock.

An animal feeding operation primarily for the growing and/or finishing of livestock is not considered an agricultural use. The processing and/or storage of raw agricultural products, including facilities such as grain elevators and ethanol plants, shall not be considered an agricultural use if such use constitutes the main or principal use on a lot or parcel.

Agriculture Product Processing Facility

A business activity customarily designed to process raw agricultural products into value added products. Agricultural processing facilities include, but are not limited to: Feed mills, ethanol plants and soybean processing facilities.

Animal Feeding Operation[s]

An animal feeding operation is a facility where more than one thousand (1,000) animal units are confined at an operation; or where more than two hundred twenty-five (225) animal units are confined at an operation and pollutants are discharged into navigable waters through a man-made ditch, flushing system or other similar man-made device or pollutants are discharged directly into waters of the United States which originate

outside of and pass over, across or through the facility or otherwise come in contact with the animals confined in the operation.

Animal Units

A unit of measure for livestock equated as follows: One animal unit is equivalent to one beef cow, bull, steer, feeder or fat beef animal, excluding calves under 300 pounds; one horse, excluding colts one year and/or under; 0.7 mature dairy cattle, excluding dairy calves under 300 pounds; one swine over 300 pounds; 2.5 swine 55-300 pounds; 10 sheep or lambs; 30 laying hens or broilers; 30 ducks; and 55 turkeys.

Animal Waste Facility

Any structure, equipment, contrivance, device, conduit or containment or any combination thereof and any body of water or water channel (whether natural or manmade or any combination thereof) whether above ground and/or below ground, covered or uncovered, which is contemplated for use in connection with the handling or storage of animal sewage.

Automobile Service Station

Building and premises where motor fuel, oil, grease, batteries, tires and automobile accessories may be supplied and dispensed at retail, and where, in addition, customary repair services may be rendered.

Building Area

The portion of a lot remaining after required yards have been provided.

Building

Any structure for the support, shelter and enclosure of persons, animals, chattels or moveable property of any kind.

Conditional Use

A conditional use is a use that would not be appropriate, generally or without restriction, throughout the zoning district, but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, convenience, appearance, prosperity or general welfare. Such uses may be permitted in such zoning district as conditional uses, if specific provision for such conditional use is made in this Ordinance.

Domesticated Large Animals

Any animal that through long association with man, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind. For the purpose of this Ordinance the definition shall include,

but is not limited to, animals commonly raised on farms and ranches, such as cattle, horses, hogs and mules.

Dwelling, Multiple Family

A residential building designed for, or occupied by, two (2) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, Single Family

A detached residential dwelling unit other than a mobile home, designed for or occupied by one (1) family only.

Facility, Animal Feeding Operation

An animal feeding operation that stables, confines and feeds or maintains animals and/or poultry in either an open or housed lot for a total of 45 days or more in any 12-month period. The open lot does not sustain crops, vegetation, forage growth or post-harvest residues in the normal growing season. Two or more facilities under any degree of common ownership are a single animal operation if they adjoin each other, or if they use a common area or system for the disposal of manure.

Family

Any number of individuals living together as a single housekeeping unit, in which not more than four (4) individuals are unrelated by blood, marriage or adoption.

Farm, Ranch, Orchard

An area of twenty-five (25) acres or more which is used for growing usual farm products, vegetables, fruits, trees and grain, and for the raising thereon of the usual farm poultry and farm animals such as horses, cattle and sheep, and including the necessary accessory uses for raising, treating and storing products raised on the premises, but excluding an Animal Feeding Operation.

The processing and storage of raw agricultural products, such as grain elevator and ethanol plants, shall not be considered a farm, ranch or orchard if such constitutes the main or principal use of the lot or parcel.

Farm Building

All buildings and structures needed in agricultural operation, including dwellings for owners, operators, farm laborers employed on the farm, and other family members.

Farm Occupation

A business activity customarily carried out on a farm by a member of the occupant's family without structural alterations in the building or any of its rooms, without the installation or outside storage of any machinery, equipment or material other than that customary to normal farm operations, without the employment of persons not residing

in the home, which does not cause the generation of additional traffic in the area. Farm occupations include, but are not limited to, seed sales and custom combining support facilities.

Feedlot Commercial

The feeding of cattle, swine, sheep, horses, fowl, fur animals or other livestock, in lots or pens or concentrations of such animals in feeding areas, and such feeding is not done as a subordinate activity to the production of crops on the premises of which the feedlot is a part.

Flammable or Combustible Liquids or Hazardous Material

Flammable material is any material that will readily ignite from common sources of heat, or what will ignite at a temperature of 600° F or less. Flammable liquid is any liquid having a flash point below 100°F and having vapor pressure not exceeding forty (40) pounds per square inch (absolute) at 100°F. Combustible liquid is any liquid having a flash point at or above 100° F. Hazardous material includes any flammable solids, corrosive liquids, radioactive material, oxidizing materials, highly toxic materials, poisonous gases, reactive materials, unstable materials, hyperbolic materials, pyrophoric materials, and any substance or mixture of substances which is an irritant, a strong sensitizer or which generates pressure through exposure to heat, decomposition or other means.

Game Farm

An area of five (5) acres or more which is used for producing hatchery raised game and non-domestic animals for sale to private shooting preserves.

Game Lodge

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

Hobby Farm

An activity carried out in rural residential areas, which includes the planting, cultivating, harvesting and storage of grains, hay or plants, fruits or vineyards.

The raising and feeding of livestock and poultry shall be considered as part of a hobby farm if the area in which the livestock or poultry is kept is two (2) acres or more in area for every two (2) domesticated large animals, and if such livestock does not exceed ten (10) animals; or the raising of livestock and poultry is incidental or supplemental to the residential use and is not primarily for the growing of crops or raising of livestock.

Home Occupation

A business activity customarily carried on in the home by a member of the occupant's family without structural alterations in the building or any of its rooms, without the installation or outside storage of any machinery, equipment or material other than that customary to normal household operations, without the employment of persons not residing in the home, which does not cause the generation of additional traffic in the street.

Horticulture

The science or art of cultivating fruits, vegetables, flowers and plants.

Kennel

Any place where dogs, cats or other domesticated animals are housed, groomed, bred, boarded, trained, harbored, kept or sold for commercial purposes.

Lot

Land occupied or to be occupied by a building and its accessory building(s) having its principal frontage upon a public street or officially approved place.

Mobile Home

A moveable or portable dwelling which is eight (8) feet or more in width and thirty-two (32) feet or more in length, constructed on a chassis, and which is designed to be towed, designed for year-round occupancy, primarily to be used without a permanent foundation, but which may sit on a permanent foundation, and designed to be connected to utilities. It may consist of one or more units, separately transportable, but designed to be joined together into one integral unit.

The following shall not be included in this definition:

- a. Travel trailers, pickup coaches, motor homes, camping trailers, or other recreational vehicles.
- b. Manufactured modular housing which is designed to be set on a permanent foundation, and which uses standard sheathing, roofing, siding and electrical, plumbing and heating systems.

Modular Home

A structure or building module that is manufactured at a location other than the site upon which it is installed and used as a residence, transportable in one or more sections on a temporary chassis or other conveyance device; and to be used as a permanent dwelling when installed and placed upon a permanent foundation system. This term includes the plumbing, heating, air conditioning and electrical systems contained within the structure.

Private Shooting Preserves

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

Resident

A person 18 years of age or older who presently resides in and intends to continue to permanently reside in a given location and who is legally entitled to vote in his or her township elections.

Semi-Portable Agricultural Structures

Anything which requires placement on the ground for agriculture related purposes. Semi-portable agricultural structures include, but are not limited to, feed bunks, calving, lambing or farrowing sheds, and temporary grain storage facilities.

Street Line

The right-of-way line of a street.

Structure

Anything constructed or erected which requires location on the ground or attached to something having a fixed location on the ground. Among other things, structures include, but are not limited to, buildings and mobile homes. This definition does not include semi-portable agricultural structures.

Variance

A variance is a relaxation of the terms of the Zoning Ordinance where and when such variance will not be contrary to the public interest and where and when, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and/or undue hardship. A variance is authorized only for the area and size of the structure or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by a variance, nor shall a variance be granted due to the presence of nonconformities in the zoning district or uses in adjoining zoning jurisdiction or because of conditions created by the landowner.

Yard

An open space at grade, other than a court or plaza, between a structure and the adjacent lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward.

Yard, Front

An open, unoccupied space on a lot facing a street and extending across the front of the lot between the perimeters. Yard measurements do not include rights-of-way.

Yard, Side

An open, unoccupied space on the same lot with a building situated between the building and side line of the lot and extending through from the front yard to the required rear yard. Any lot line not the rear line or a front line shall be deemed a side line.

Yard, Rear

An open, unoccupied space extending across the rear of a lot from one side lot line to the other side lot line.

ARTICLE 1
JURISDICTION

Article 1. Section 101. General.

This Ordinance shall be known and shall be cited and referred to as "The Zoning Ordinance of Hand County, South Dakota," to the same effect as if the full title were stated.

Article 1. Section 103. Jurisdiction.

The provisions of this Ordinance shall apply only within the unincorporated areas of Hand County, South Dakota. Specifically excluded from the application of this Ordinance are the incorporated communities of Ree Heights, St. Lawrence and Wessington. Further excluded from the application of this Ordinance are the incorporated municipality of Miller and that area of Hand County located within three (3) miles of the corporate limits of the City of Miller. These jurisdictional structures shall be reflected on "The Official Zoning Map of Hand County, South Dakota."

*This jurisdiction was amended by County
effective August 11, 2017.*

Article 1. Section 105. Provisions of this Ordinance Declared to the Minimum Requirements.

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals or general welfare.

ARTICLE 2
APPLICATION OF DISTRICT REGULATIONS

Article 2. Section 201. General.

The regulations set forth by this Ordinance within the district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.

Article 2. Section 203. Zoning Affects Every Building and Use.

No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered except in conformity with all of the regulations herein specified for the district in which it is located.

ARTICLE 3
ESTABLISHMENT OF DISTRICTS

Article 3. Section 301. Districts Created.

For the purpose of this Ordinance, there is hereby created one (1) district of which the jurisdictional area defined in Section 103 shall be comprised:

AG - Agricultural

ARTICLE 4
OFFICIAL ZONING MAP AND BOUNDARY INTERPRETATION

Article 4. Section 401. General.

The county (excluding incorporated municipalities) shall be an agricultural zone or district as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the Chairperson of the County Commissioners, attested by the Auditor, and bear the seal of the county, under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 401 of Ordinance No. 09_____, of Hand County, South Dakota," together with the date of the adoption of this Ordinance.

Article 4. Section 403. Zoning Map Changes.

If changes are made in the district boundaries or other matter portrayed on the Official Zoning Map the County Commissioners shall record such amendment with an entry on the Official Zoning Map as follows: "On [date], by official action of the Hand County Commission, the following [change] changes were made in the Official Zoning Map: [brief description of nature of change]." This entry shall be signed by the Chairperson of the Commission and attested by the Auditor. No amendment to this Ordinance which involves matters portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on said map.

No changes of any nature shall be made in the official Zoning Map or matters shown thereon except in conformity with the procedures set forth in this Ordinance or as otherwise dictated by applicable state law.

Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance and punishable as provided under Section 1403.

Regardless of the existence of purported copies of the Official Zoning Map which may, from time to time, be made or published, the Official Zoning Map which shall be located in the office of the Zoning Administrator shall be the final authority as to the current zoning status of land and water areas, buildings and other structures in the County..

Article 4. Section 405. Zoning Map Replacement.

In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Hand County Commission may, by resolution, adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map, or any subsequent amendment thereof.

The new Official Zoning Map shall be identified by the signature of the Chairperson of the County Commission, attested by the Auditor, and bearing the seal of the County, under the following words:

"This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted [date of adoption of map being replaced] as part of Ordinance No. 96-3 of Hand County, South Dakota."

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

Article 4. Section 407. Rules for Interpretation of District Boundaries.

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the centerlines of streets, highways or alleys shall be construed to follow such center lines;
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
3. Boundaries indicated as approximately following city limits shall be construed as following such city limits;
4. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
5. Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shoreline shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center line of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such center lines;
6. Boundaries indicated as parallel to or extension of features indicated in subsections 1 through 5, above, shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;
7. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections 1 through 6, above, the Planning Commission shall interpret the district boundaries.

ARTICLE 5
AGRICULTURAL ZONE OR DISTRICT

Article 5. Section 501. Intent.

The intent of the Agricultural District (AG) is to protect agricultural lands and lands consisting of natural growth from unnecessary governmental restrictions and from pollution. It is recognized that the great abundance of land in the district should allow for the accommodation of widely varied yet compatible uses.

Article 5. Section 503. Permitted Principal Uses and Structures.

The following principal uses and structures shall be permitted in Agricultural Districts (AG):

1. Agriculture;
2. Farm;
3. Ranch;
4. Orchard;
5. Farm occupations;
6. Public parks, public recreational areas, and park facilities;
7. Farm buildings;
8. Farm drainage and irrigation systems, flood control and watershed structures and erosion control devices meeting all county, state and soil conservation district regulations;
9. Mobile homes;
10. Historic sites;
11. Veterinary services and kennels;
12. Off-site and on-site signs;
13. Cemeteries;
14. Schools, public and private;
15. Campgrounds;
16. Single-family dwellings;
17. Additional farm dwellings;
18. Churches, synagogues and temples;
19. Shelterbelts;
20. Stock dams;
21. Bed and breakfast commercial operations;
22. Game farms;
23. Private shooting preserves;
24. Game lodge;
25. Extraction of sand, gravel or minerals provided such uses meet requirements for conducting surface mining activities of SDCL 45-6B;
26. Roadside stands for sales of farm products, fish bait and other approved products;
27. Home occupations;
28. Professional offices;
29. Accessory uses, not specifically regulated by ordinance and structures customarily incidental to permitted uses and structures when established within the space limits of this district;
30. Multi-family dwellings;
31. Modular homes;
32. Horticulture;

33. Nursery, primary, intermediate, secondary schools and day care facilities;
34. Hobby farms;
35. Convalescent, nursing and rest homes;
36. Medical and other health facilities;
37. Governmental services;
38. Retail sales;
39. Wholesale sales;
40. Funeral and crematory services and supplies;
41. Farm products warehousing and storage;
42. Refrigerated warehousing;
43. Household goods warehousing and storage;
44. General warehousing and storage;
45. Automobile and machinery sales, repair and services, automobile service/fuel stations;
46. Contract construction services;
47. Bus garaging and equipment maintenance;
48. Motor freight and/or trucking terminals, garaging, maintenance;
49. Libraries, museums, art galleries, planetaria, aquariums, historic and monument sites, auditorium, exhibition halls and arcades;
50. Miniature golf, gymnasiums and athletic clubs, swimming pools, tennis courts, ice skating, roller skating;
51. Theaters, stadiums, drive-in movies, arenas and field houses, race tracks, amphitheaters, fairgrounds, amusement parks, golf driving ranges, go-car tracks, golf courses and country clubs, riding stables, playfields and athletic fields, bowling; swimming pools and rodeo grounds;
52. Communication and utility uses;
53. Automobile service stations;
54. Motels.

Article 5. Section 507. Conditional Uses.

After the provisions of this Ordinance relating to conditional uses have been fulfilled, the Planning Commission may permit as conditional use in the District (AG):

1. Utility substations, television, radio and telephone relay stations;
2. Airports;
3. Agricultural product processing facilities;
4. Grain elevators;
5. Animal waste facilities, sewage disposal and/or treatment sites, livestock, poultry lagoons and holding facilities to be used in connection with an animal feeding operation or commercial feedlot;
6. Sales and auction yards and barns;
7. Commercial feedlots;
8. Sanitary landfills;
9. Wildlife and game production areas;
10. Fireworks stands;
11. Animal feeding operations;
12. Convenience stores;
13. Colleges and universities;
14. Industrial parks.

Article 5. Section 509. Prohibited Uses and Structures.

All other uses and structures which are not specifically permitted or not permissible as conditional uses shall be prohibited from the Agricultural District (AG).

Article 5. Section 515. Performance Standards Applicable to Commercial Feedlots and Animal Feeding Operations.

All Commercial Feedlots and Animal Feeding Operations Must Meet Each of the Following Requirements:

1. All such entities must submit animal waste management system plans and specifications for review and approval prior to construction, and a Notice of Completion for a Certificate of Compliance, after construction, to the South Dakota Department of Environment and Natural Resources.
2. Prior to construction, all such entities shall obtain a storm water permit for construction activities from the South Dakota Department of Environment and Natural Resources. The storm water pollution prevention plan required by the permit must be developed and implemented upon the start of construction.
3. Animal waste facilities as adjuncts to such entities shall be no less than sixty hundred sixty (660) feet from adjoining domestic ground and surface water supplies.
4. All such entities must submit nutrient management plans assuring offensive odors and runoff minimization. Such management plans must, at a minimum, include
 - a. Proposed maintenance plans for animal waste facilities.
 - b. Nutrient transportation equipment maintenance plans.
 - c. Planned land application processes and/or methods.
 - d. A full and complete legal description and map depicting areas to be utilized for nutrient application.
5. Under no circumstance shall animal waste facilities be located closer than two (2) miles from any incorporated municipality.
6. Animal waste facilities shall be located no closer than two (2) miles from any occupied residence, excluding owner/operator's residential dwelling[s] if located within two (2) miles of the facility, unless sixty-six and two-thirds percent (66⅔%) of the full-time, adult residents of the area within the two (2) mile residential setoff shall have waived the same and in writing.

7. Animal waste shall be transported no more than seven (7) miles from the point of origination for land application. However, the Commission may, on a case by case basis, permit applications beyond said seven (7) mile limitation upon its acceptance of proofs evidencing adequate undertakings to ensure both public safety and due deference to environmental concerns.
8. Upon provision of three (3) hours written or oral notice to the owner[s] or operator[s] of any facilities governed by Section 515 standards, the Zoning Director or his authorized agent[s] may enter upon any such real property for the limited purpose of ascertaining premises/facility compliance with all applicable performance standards and/or other zoning ordinance regulations.

ARTICLE 8
SUPPLEMENTARY DISTRICT REGULATIONS

Article 8. Section 801. Accessory Buildings.

No accessory building shall be erected in any required yard area and no separate accessory building shall be erected within five (5) feet of any other building.

Article 8. Section 805. Shelterbelts.

All shelterbelts shall be one hundred fifty (150) feet from the centerline of the road to the first row on the North and West sides and one hundred (100) feet from the centerline of the road to the first row on the South and East sides.

ARTICLE 9
ADMINISTRATIVE PROCEDURE AND ENFORCEMENT

Article 9. Section 901. Hand County Zoning Administrator.

An administrative official who shall be known as the Zoning Administrator and who shall be designated by the Hand County Commission shall administer and enforce this Ordinance. The Administrator may be provided with the assistance of such other persons as the County Commission may direct. Administrative duties of the Zoning Administrator shall include, but are not limited to: All administrative duties necessary for the administration and enforcement of this Ordinance; all mailings required for notice to involved parties, mailing notices of board decisions, etc.; and the publication of public notices.

All questions of interpretation and enforcement shall be first presented to the Zoning Administrator. Recourse from the decisions of the Zoning Administrator may be had pursuant to the provisions of and in accordance with Section 1103.

The Administrator is authorized to investigate all activity in apparent violation of this Ordinance and is further authorized to order discontinuance of illegal use of land, buildings or structures, removal of illegal buildings, structures and illegal additions, alterations or structural changes, and/or discontinuance of any illegal work in progress.

Article 9. Section 903. Hand County Planning and Zoning Commission.

Pursuant to SDCL 11-2-2, the Hand County Commission shall serve as the Planning and Zoning Commission. The Planning and Zoning Commission shall adopt rules necessary for the conduct of its affairs and keeping with the provisions of this Ordinance. The Planning and Zoning Commission shall keep a record of all proceedings. Meetings shall be regularly scheduled and held at the call of the chairperson, at such other times as the Planning and Zoning Commission may determine. The Chairperson, or in his/her absence, the acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Hand County Auditor shall serve as the secretary for the Hand County Planning and Zoning Commission.

The Planning and Zoning Commission shall keep minutes of its proceedings, showing the vote of each member upon each questions, or if absent or failure to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be public record and be immediately filed with the Secretary of the Planning and Zoning Commission. The Planning and Zoning Commission shall adopt from time to time additional regulations as it may deem necessary to carry appropriate provisions of this Ordinance into effect.

Article 9. Section 905. Hand County Board of Adjustment.

The Hand County Commission shall serve as the Board of Adjustment. The Board of Adjustment is hereby designated to hear all zoning appeals. The County Auditor shall act as secretary to the Board of Adjustment when acting in zoning appeal cases, but shall take no part in the deliberations. Meetings of the Board of Adjustment acting in zoning appeal cases shall be held at the call of the chairperson or, in his/her absence, the acting chairperson may administer oaths and compel the attendance of witnesses (SDCL 11-2-25.1).

All meetings of the Board of Adjustment shall be open to the public. The Board, acting in zoning appeal cases, shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be public record. The Board of Adjustment, acting in zoning appeals, shall adopt from time to time, subject to the approval of the County Commission such rules and regulations as it may deem necessary to carry the appropriate provisions of this Ordinance into effect.

Article 9. Section 907. Building Permits Required.

No building or other structure shall be erected, moved, added to or use changed without a permit issued by the Zoning Administrator. No building permit shall be issued by the Zoning Administrator except in conformity with the provisions of this Ordinance unless the Administrator shall have received a written order from the Board of Adjustment in the form of an administrative review or conditional use permit as provided by this Ordinance.

Article 9. Section 909. Application for Building Permit.

All applications for building permits shall be accompanied by a site plan featuring a depiction to scale of subject property lines, to scale depictions of existing buildings, to scale depictions of proposed new construction or alterations, and actual dimensions of all the aforesaid along with a North-indicating arrow.

The application shall include such other information as may be lawfully required by the Zoning Administrator, including existing or proposed building or alterations, existing or proposed uses of the building and land, the number of families, housekeeping units, rental units, or animal units the building is designed to accommodate, conditions existing on the lot, and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this Ordinance. A fee commensurate with the building permit fee schedule requirement shall accompany all applications.

One copy of the plans shall be returned to the applicant by the Zoning Administrator after the Administrator shall have marked such copy as either approved or disapproved and shall have attested to the same by signature on such copy. If a building permit is refused, the Zoning Administrator shall state the reasons for such refusal in writing. The original and one copy of the plans, similarly marked, shall be retained by the Zoning Administrator. The issuance of a building permit shall in no case be construed as waiving any provisions of this Ordinance.

Article 9. Section 911. Expiration of Building Permit.

If the work described in any building permit has not begun within one hundred and eighty (180) days from the date of issuance thereof, said permit shall expire and shall be canceled by the Zoning Administrator. Written notice thereof shall be given to the person[s] affected. If the work described in any building permit has not been substantially completed within two (2) years from the date of issuance, the permit shall expire and be canceled by the Zoning Administrator. Written notice of such cancellation shall be provided to the person[s] affected, together with notice that further work shall cease.

Article 9. Section 913. Construction and Use to be as Provided in Application, Plans, Permits and Application for Zoning Compliance.

Building permits issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement or construction at variance with that authorized shall be deemed a violation of this Ordinance punishable as provided for at Section 1403.

Article 9. Section 915. Schedule of Fees, Charges and Expenses. - Forms

The Hand County Commission shall establish a schedule of fees, charges and expenses and a collection procedure for conditional uses, amendments, appeals and other matters pertaining to this Ordinance. The schedule of fees shall be posted in the office of the Zoning Administrator and may be altered or amended only by the Hand County Commission. Until all application fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal. The Zoning Administrator is authorized to provide forms for use in connection with the administration of this Ordinance. All such forms must first be approved for use by the Board of Adjustment.

Article 9. Section 919. Bad Actor Legislation.

The Hand County Commission may reject an application for any permit filed for a conditional use or otherwise for the reasons and on the grounds set forth in SDCL 1-40-27, as revised and amended. Such rejection shall be based upon a specific finding by the Commission that the applicant has engaged in the activity identified in the aforesaid statute. The burden on the Commission to make the specific finding provided for herein shall be by a preponderance of the evidence.

ARTICLE 10
PLANNING AND ZONING COMMISSION

Article 10. Section 1001. Hand County Planning and Zoning Commission.

The Hand County Commission shall serve as the Planning and Zoning Commission as provided in SDCL 11-2-2. The Planning and Zoning Commission shall adopt rules necessary for the conduct of its affairs and keeping with the provisions of this Ordinance. The Planning and Zoning Commission shall keep a record of all proceedings. Meetings shall be regularly scheduled and held at the call of the chairperson at such other times as the Planning and Zoning Commission may determine. The chairperson, or in his/her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Hand County Auditor shall serve as the Planning and Zoning Commission secretary.

The Planning and Zoning Commission shall keep minutes of its proceedings showing the vote of each member upon each question and shall keep records of its examinations and other official actions, all of which shall constitute a public record. The minutes shall be filed with the Planning and Zoning Commission secretary. The Commission shall adopt from time to time additional regulations as it may deem necessary to carry appropriate provisions of this Ordinance into effect.

Article 10. Section 1005. Duties of Zoning Administrator and Board of Adjustment on Matters of Appeal.

All questions of interpretation and enforcement of this Ordinance shall be first presented to the Zoning Administrator. A decision of the Zoning Administrator is appealable only to the Board of Adjustment. Appeal therefrom may be had pursuant to applicable South Dakota law.

ARTICLE 11
BOARD OF ADJUSTMENT

Article 11. Section 1101. Members, Terms, Meetings, Rules.

The Hand County Commission shall serve as the Board of Adjustment. The Board of Adjustment is hereby designated to hear all requests for conditional uses and zoning appeals. The County Auditor shall act as secretary to the Board of Adjustment when acting in zoning cases, but shall take no part in the deliberations. Meetings of the Board of Adjustment shall be held at the call of the chairperson and at such other times as the Board shall determine. Such chairperson, or in his/her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses (SDCL 11-2-25.1).

All meetings of the Board of Adjustment shall be open to the public. The Board, acting in zoning cases, shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be a public record. The Board of Adjustment, acting in zoning appeals, shall adopt from time to time, subject to the approval of the County Commission, such rules and regulations as it may deem necessary to carry the appropriate provisions of this Ordinance into effect.

Article 11. Section 1103. Appeals to Board of Adjustment, Record of Appeals, Hearing and Stays.

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the Zoning Administrator. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board of Adjustment by filing with the office from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certified to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown.

Article 11. Section 1105. Board of Adjustment Hearings and Notice.

Each session of the Board of Adjustment at which a hearing is held shall be a public meeting with notice of hearing to be published at least fifteen (15) days prior to the date of the hearing in the official newspaper of general circulation in the affected area.

Article 11. Section 1107. Powers and Duties.

The Board of Adjustment shall have the following powers and duties:

1. APPEALS:

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

2. CONDITIONAL USES:

The Board of Adjustment shall have the power to hear and pass on requests for conditional uses and upon other questions the Board of Adjustment is authorized by this Ordinance to decide; the Board of Adjustment may grant conditional uses with such conditions and safeguards as are appropriate under this Ordinance. A conditional use permit shall not be granted by the Board unless and until:

- a. A written application for conditional use is submitted, indicating the section of this Ordinance under which the conditional use is sought and stating the grounds on which it is requested.
- b. Notice of public hearing has been made at least fifteen (15) days in advance by publication in a newspaper of general circulation and the owner of the property for which conditional use is sought or his agent has been notified by mail.
- c. The Board of Adjustment has found on its record that it is empowered under the section of this Ordinance described in the application to grant the conditional use, and that the granting of the conditional use will not adversely affect the public interest.
- d. The Board of Adjustment shall have made and entered findings on its record documenting compliance with the specific rules governing individual conditional use[s] and that satisfactory provision and arrangement has been made concerning the following, where applicable:
 - (1) Ingress and egress to property and proposed structures thereon with particular reference to automotive and

pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

- (2) Off-street parking and loading areas where required; with particular attention to the items in "(1)", above, and the economic, noise, glare or odor effects of the conditional use or adjoining properties and properties generally in the district;
- (3) Refuse and service areas, with particular reference to the items in "(1)" and "(2)", above;
- (4) Utilities, with reference to locations, availability and character;
- (5) Screening and buffering with reference to type, dimensions and character;
- (6) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district; and
- (7) General compatibility with adjacent properties and other property in the district.

**ARTICLE 12
AMENDMENTS**

Article 12. Section 1201. Regulations.

The regulations, restrictions and boundaries set forth in this Ordinance may from time to time be amended, supplemented, changed or repealed, provided that such modification or repeal in each instance be proposed in an ordinance presented to the governing body for adoption in the same manner and upon the same notice as required for the adoption of the original Ordinance.

Prior to consideration of amending, supplementing, changing, modifying or repealing this Ordinance by the governing body, notice of public hearings shall be provided as follows:

1. At least fifteen (15) days before the date of hearing, the Zoning Administrator shall have published in a legal newspaper having a general circulation in the County, a notice of the time, place and subject matter of such hearing.
2. The Planning Commission shall review the proposed amendment[s] and make recommendations to the County Commission prior to the public hearing.

ARTICLE 13
NONCONFORMANCE

Article 13. Section 1301. General.

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

Nonconforming uses are declared to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of lawn, or a nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this revised Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses, of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

Article 13. Section 1305. Nonconforming Uses of Land (or Land with Minor Structures Only).

When, at the time of passage of this revised Ordinance, there is a lawful use of land which would not be permitted by this Ordinance, and when such use involves no individual structure with a replacement cost exceeding one thousand dollars (\$1,000.00), the use may be continued so long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
2. No such nonconforming use shall be moved, in whole or in part, to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance;
3. If any such nonconforming use of land ceases, for any reason, for a period of more than one (1) year, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located; and
4. No additional structure, not conforming to the requirements of this Ordinance, shall be erected in connection with such nonconforming use of land.

Article 13. Section 1307. Nonconforming Structures.

When, a lawful structure exists at the effective date of adoption or amendment of this Ordinance, which could not be erected under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, use of such structure may be continued so long as such use remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in any way which increases its nonconformity, but any structure, or portion thereof, may be altered to decrease its nonconformity;
2. Should such nonconforming structure, or nonconforming portion of structure, be destroyed by any means, to any extent of more than seventy-five percent (75%) of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance; and
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations of the district in which it is located after it is moved.

Article 13. Section 1309. Nonconforming Uses of Structures or of Structures and Premises in Combination.

When, the use involving individual structures with a replacement cost of one thousand dollars (\$1,000.00) or more, or when the use of such a structure and premises in combination is occurring at the effective date of adoption or amendment of this Ordinance which would not be allowed under the terms of this Ordinance, the nonconforming use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
2. Any nonconforming use may be extended throughout any part of a building which was manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building;
3. If no structural alterations are made, any nonconforming use of a structure or structure and premises in combination may, as a special exception, be changed to another nonconforming use provided that the Board of Adjustment, either by general rule or by making findings in the specific case, shall determine that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of this Ordinance;
4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed;
5. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for a period of more than one (1) year (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located; and

6. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

ARTICLE 14
VIOLATIONS, COMPLAINTS, PENALTIES AND REMEDIES

Article 14. Section 1401. Complaints Regarding Violations.

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a complaint. Such complaint must fully state the cause and basis therefor and must be filed with the Zoning Administrator. The Zoning Administrator shall report such complaint to the Board of Adjustment. The Zoning Administrator shall then undertake to investigate said complaint as authorized hereinbefore.

If the Zoning Administrator shall find probable cause supporting the allegation, the Zoning Administrator shall notify the alleged violator of the nature and basis of the violation, in writing and by certified mail with return receipt requested. The Zoning Administrator shall also advise the alleged violator of any remedial action[s] required on his or her part, giving the violator seven (7) days from receipt of the Zoning Administrator's communication to fully perform any ordered action. The alleged violator's failure to timely comply shall subject the alleged violator to prosecution under Section 1403.

Article 14. Section 1403. Penalties for Violations.

The owner or agent of a building or premises in or upon which a violation of any provisions of this Ordinance has been committed or shall exist, or lessee or tenant of an entire building or entire premises in or upon which such violation shall exist, may be prosecuted and determined guilty of a class II misdemeanor and may upon conviction be punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment for not more than thirty (30) days, or both, and in addition may pay all costs and expenses involved in the case. Each day such violation continues shall be a separate offense.

Any architect, engineer, builder, contractor, agent or other person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this Ordinance, appropriate authorities of the county may institute any appropriate action or proceedings to prevent or halt such unlawful erection, construction, reconstruction, alterations, repair, conversion, maintenance or use; to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

ARTICLE 15
LEGAL STATUS PROVISIONS

Article 15. Section 1501. Separability.

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

Article 15. Section 1503. Purpose of Subtitles.

The subtitles appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose of any index and they shall be wholly disregarded by any person, officer, court or other tribunal in construing the terms and provisions of this Ordinance.

Article 15. Section 1505. Repeal of Conflicting Ordinance.

All ordinances or parts of resolutions in conflict with this Ordinance, or inconsistent with the provisions of this Ordinance, are hereby repealed to the extent necessary to give this Ordinance full force and effect.

Article 15. Section 1507. Effective Date.

This Ordinance shall take effect and be in force from and after its adoption.

