

CHAPTER THREE - ZONING DISTRICTS

I. AGRICULTURAL DISTRICT

The predominant use of land in an agricultural district is that of general farming and ranching activity. It is the purpose of this Ordinance and of this district to encourage the use of rural land for agricultural activities, and to discourage any use which would be detrimental thereto. Land with potentially irrigable soils or with prime productive soils (Class II and III lands as determined by the Mercer County Soil Conservation District) shall be reserved for agricultural activity.

Permitted Uses--

- A. Usual buildings, structures and operations incidental to the operation of a farm or ranch.
- B. Churches and cemeteries.
- C. Public and private schools.
- D. Greenhouses and nurseries.
- E. Fishery facilities including hatching, growing, processing and related activities.
- F. Animal hospitals and clinics.
- G. Local governmental facilities.
- H. Public and private conservation areas.
- I. Recreation vehicle situated on a parcel of land whose ownership is in the same person as is title ownership of the recreation vehicle, provided the recreation vehicle is unoccupied or is occupied only by its owner or persons related to said owner by blood, marriage or adoption.
- J. Transmission line and associated facilities with a design of 115kv or less.
- K. Environmental quality monitoring station which:
 - 1. Has a floor space not in excess of 100 square feet, and;
 - 2. Does not exceed ten feet (10') in height.

Conditional uses--

- A. Transmission facility provided that:
 - 1. The approval of a transmission facility conditional use shall make reference to and be accompanied by a map which shall show the line upon which the transmission facility is to be situated, and no transmission facility shall be located other than upon the line which is referred to and shown in the conditional use approval for that transmission facility.
 - 2. In that the laws of North Dakota contemplate action by both Mercer County and the North Dakota Public Service Commission (hereafter referred to as PSC) in the siting of transmission facilities in Mercer County, it is deemed both reasonable and necessary to facilitate this dual

action that special requirements be followed in the procedure for approval of transmission facility conditional use. Therefore, in addition to the requirements and provisions specified elsewhere in this Ordinance for the procedure for approval of conditional uses, and except as hereafter provided for instances of PSC waiver or emergency certification under NDCC Section 49-22-07.2 or 49-22-12.1, an applicant, the Planning Commission and the Board of County Commissioners shall also comply with the following:

- a. Each application for approval of a transmission facility conditional use shall include a map which shows each line and the proposed routes. Applicant shall show which routes are preferred in its application for a PSC transmission facility permit. The application for approval of a transmission facility conditional use shall contain the information required by Chapter Two, Section IX of this Ordinance, except for requirements that do not apply.
- b. Upon formal designation of a transmission facility corridor by the PSC for the transmission facility in question, the applicant shall file a complete description of such corridor in the office of the County Auditor. Thereafter, a public hearing on the application shall be held by the Planning Commission.
- c. The published notice of public hearing before the Planning Commission shall:
 - 1) State the name of the applicant and the time and place of the public hearing.
 - 2) Describe the nature of the transmission facility.
 - 3) Include a map which (i) shall show the transmission corridor formally designated by the PSC for the transmission facility in question and (ii) shall show each line for which a route, whether preferred, alternate or otherwise, is proposed by the applicant in its application for a PSC transmission facility permit for such transmission facility.
 - 4) State that the transmission facility may be located anywhere within the corridor shown on the aforementioned map; and
 - 5) State that a complete description of the corridor is available for public inspection at the office of the County Auditor during regular business hours.
- d. The recommendation of the Planning Commission:
 - 1) Shall recommend either approval or denial of a conditional use for each of the applicant's routes.

- 2) May recommend approval of a conditional use upon any route or routes in addition to those proposed by the applicant.
 - 3) Shall, in the event there are recommendations for approval of two or more routes, include the Planning Commission's order of preference, if any, of each as a final route; and
 - 4) May recommend the attachment of such conditions to the conditional use as the Planning Commission deems necessary, or appropriate.
- e. Upon the receipt of the recommendation of the Planning Commission and upon completion of the PSC hearings on the application for a transmission facility permit for the transmission facility in question, or as soon thereafter as the Board of County Commissioners deems practicable, the Board of County Commissioners shall approve or deny the transmission facility conditional use and, if granting approval shall select a final route, which may vary from the recommendation of the Planning Commission, as the Board deems advisable.
 - f. Nothing herein stated shall be construed so as to limit either the power of the Board of County Commissioners to attach conditions or to require that said conditions, or any other conditions applying as stated in this Ordinance, be timely complied with in accordance with Chapter Two, Section XII of this Ordinance.
3. Each transmission facility approved shall be located or conditioned, or both, so as:
 - a. To avoid unreasonable interference with any approved conditional uses and existing permitted uses of this Ordinance.
 - b. To encourage the public convenience and welfare.
 - c. To foster the purpose of the agricultural district by not unreasonably interfering with or hindering methods of agricultural production including, but not limited to, the use of modern irrigation systems.
 - d. To the extent that the above can best be accomplished by locating the transmission facility, or any portion thereof, on quarter lines or section lines, that same shall be so located.
- B. Radio, television and/or telephone microwave transmitting stations and towers provided that written evidence of authorization by the landowner is submitted with the application for approval of this conditional use.
 - C. Water reservoirs, water storage tanks, water pumping stations and sewer lift stations provided that written evidence of authorization by the landowner is submitted with the

application for approval of this conditional use.

D. Coal excavation and mining provided that:

1. A preliminary public hearing shall be conducted in the county concerning site location, and the needs of the operation and of the company and its concerning roads, housing, community facilities and county and community services.
2. The applicant shall provide to the Planning Commission a copy of all information submitted to the North Dakota Public Service Commission.
3. The applicant shall provide written evidence of approval by the Public Service Commission for operation of the mine.
4. Coal excavation and mining operations adjacent to adjoining unmined property, occupied residences, public roads and buildings, and cemeteries shall be conducted in a manner consistent with the laws, rules, and regulations of the State of North Dakota and in accordance with approved surface coal mining permits issued by the North Dakota Public Service Commission.
5. This sub-section was deleted and combined in sub-section number 4 above by Mercer County Zoning Ordinance No. 5051, a zoning amendment approved on February 4, 1997, by the Mercer County Commission.
6. The applicant shall conform to all State and Federal laws relating to the preservation, removal or relocation of historical or archeological artifacts and to the reclamation of strip-mined lands.
7. The applicant shall post with the County Auditor a performance bond for reclamation of the site if not already posted with the State. The amount of the bond shall be determined by the Board of County Commissioners.
8. The applicant shall provide any reasonable information the Planning Commission deems necessary.
9. The approval of a coal excavation and mining conditional use shall also constitute zoning approval for coal haul roads, or those portions thereof, located within the site approved for such excavation and mining conditional use.

E. Livestock auction ring provided that:

1. Off-street parking and storage of farm implements associated with the operation of said livestock auction shall be provided.
2. Adequate off-street facilities for parking of motor vehicles shall be provided.
3. Sufficient space for truck maneuvering shall be provided off street.
4. Use of a building or structure (temporary or permanent) for restaurant-type purposes shall be permitted upon written evidence or approval of the County Sanitarian, or, in his absence, of the Custer District Health Unit.

F. Commercial animal feedlot and feeding operations provided that:

1. Written evidence of compliance with the Mercer County Concentrated Animal Feedlots and Animal Feeding Operations Ordinance is submitted to the Planning Commission. Note: The State Model Ordinance for Animal Feeding Operations has been adopted as the Mercer County Zoning Ordinance for Concentrated Animal Feedlots and Animal Feeding Operations. Copy of State Model Ordinance for Animal Feeding Operations is found at end of chapter.

G. Railroad tracks and spurs provided that:

1. The applicant shall conform to all requirements of the Public Service Commission.
2. No rail beds/tracks shall be placed within 300 feet of an existing residence unless a written agreement is made with the owner of said residence.
3. The applicant shall conform to all requirements regarding the preservation, removal or relocation of historical or archeological artifacts.
4. The applicant shall provide any reasonable information the Planning Commission deems necessary.

H. Nonfarm residence located on a minimum two (2) acre parcel or tract of land provided that:

1. Water supply and sewage disposal is approved by local health authority; parcel has access to a well graded public road; and is served by school busing.
2. A home business is engaged in only by dwelling residents, after a conditional use is specifically authorized as to type(s) of use.

I. Coal haul road, or those portions thereof, not located within a site approved for a coal excavation and mining conditional use.

J. Solid waste landfill and/or solid waste recycling center and/or Transfer Station provided that:

1. There is no substantive evidence that the facility will endanger the public health or the environment.
2. The facility must be located at least one-half (2) mile from any residence or residentially zoned area unless written approval is obtained from 60% of the owners of residences within this area.
3. A site plan shall be provided prior to the issuance of a Certificate of Conditional Use Approval, and all development within the approved site shall be in accordance with such site plan. The site plan shall be drawn to a scale of not less than 1:3600, and shall show

excavation and storage areas and the location and size of proposed buildings, structures and improvements within the use area. The site plan shall also include all buildings, structures and improvements within one-half (2) mile of the use area.

4. Written evidence of site approval by the Regional Solid Waste Board and operational approval by the North Dakota State Health Department shall be provided prior to the issuance of a Certificate of Conditional Use Approval.

K. Welding shop.

L. Rifle range or shooting range.

M. Private airport and related facilities.

N. Dog kennel and breeding facility.

O. Wind Energy Facilities.

1. A preliminary public hearing shall be conducted by the Planning and Zoning Commission concerning site location, needs of the operation and company employees regarding roads, housing, community facilities and county and community services. These hearings are separate from any environmental impact statement process that may be required.
2. "Wind Energy Facility" shall mean one or more wind turbines rated at a combined 500 kilowatts nameplate capacity or larger.
3. General Requirements.
 - a. Wind turbines and related towers shall be painted a non-reflective non-obtrusive color.
 - b. Wind turbines and related towers shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.
 - c. Each wind tower shall be marked with a visible identification number to assist with provision of emergency services, and the permittee shall file with the local fire and sheriff departments, a wind energy facility map identifying wind turbine locations and numbers.
 - d. Tower lighting shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment. Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the

Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.

- e. The design of buildings and related structures at wind energy facility sites shall, to the extent reasonably possible, use materials, colors, textures and location that will blend the wind energy facility to the natural setting and existing environment.
- f. At wind energy facility sites, the location and construction of access roads and other infrastructures shall, to the extent reasonably possible, minimize disruption to farmland, the landscape and agricultural operation within Mercer County.
- g. The permittee shall promptly replace or repair all fences or gates removed or damaged during all phases of the wind energy facility's life, unless otherwise negotiated with the affected land owner. When the permittee installs a gate where electric fences are present, the permittee shall provide for continuity in the electric fence circuit.
- h. The permittee shall ensure that, all County roads and section lines will be maintained and repaired or restored to a condition at least equal to the condition prior to construction of such facility, as inspected and approved by the Mercer County Superintendent of Highways.
- i. The permittee shall place electrical line, known as collectors, and communication cables underground when located on private property, except when total distance of collectors from the substations require an overhead installation due to line loss or current from an underground installation. Collectors and cables shall also be placed within or adjacent to the land necessary for wind turbine access roads, unless otherwise negotiated with the affected landowner. (Does not apply to feed lines)
- j. The permittee shall place overhead feeder lines on public rights of way, if a public right of way exists, or the permittee may place feeder lines on private property . A change of routes may be made as long as the feeders remain on public rights of way and approval has been obtained from the governmental unit responsible for the affected right of way. When placing feeders on private property, the permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.

4. Setback Requirements.

- a. Each wind turbine shall be set back from the nearest

occupied dwelling, commercial building or publicly used structure or facility a distance of not less than one thousand (1000) feet, unless otherwise negotiated with the land owner of the occupied dwelling, commercial building or publicly used structure.

- b. Each wind turbine shall be set back from the nearest public road or above ground communication or electrical lines a distance not less than one hundred ten (110%) percent the height of the wind turbine (measured from the ground surface to the tip of the blade when in a fully vertical position) from the edge of the existing right of way.
 - c. Each wind turbine shall be set back from the wind energy facility perimeter a distance not less than one hundred ten (110%) percent the height of the wind turbine (measured from the ground surface to the tip of the blade when in a fully vertical position). A Variance may be granted if an authorized representative or agent of the permittee and those affected parties of adjoining properties with associated wind rights sign a formal and binding agreement expressing all parties' support for a variance that might reduce the setback requirement.
 - d. Distance from any property line shall be one hundred and ten percent (110%) the height of the wind turbine, measured from the ground surface to the tip of the blade when in a fully vertical position unless wind easement has been obtained from adjoining property owner.
5. Minimum ground clearance.
- a. The blade tip of any wind turbine shall, at its lowest point, have ground clearance of no less than seventy five (75) feet.
6. Restoration of property.
- a. Within one hundred eighty (180) days of termination or abandonment of leases or easements for a wind facility in Mercer County, the current permittee shall cause, at its own expense, removal of all structures to a depth of four (4) feet below preconstruction grade.
 - b. Buried cable at a depth of three (3) feet or deeper does not need to be removed.
7. Transfer of Permit.
- a. Prior to any change in ownership or controlling interest of any entity owning a wind energy facility permitted in Mercer County, application shall be made to the Mercer County Planning and Zoning Commission, requesting transfer of the wind energy facility sitting permit. Approval of such transfer shall be conditioned upon explicit agreement by the new

permittee to comply with all provisions of this Ordinance and the original permit. The application may be in letter form and shall be signed by the authorized representatives or agents of both the current permittee and the prospective permittee.

8. Permit Expiration.

- a. The permit shall terminate after four (4) years.

District Regulations--non-agricultural land uses are subject to the following:

- A. A minimum of 150 feet shall be maintained between structure and improvements, including trees, and the centerline of all county, state, and federal highways and roads.
- B. A minimum of 50 feet shall be maintained between each structure and side lot lines.
- C. A minimum of 50 feet shall be maintained between each structure and the rear lot line.
- D. Minimum lot size - two acres - Exception: environmental quality monitoring stations may locate on a lot of any size.
- E. No more than one permitted use and one conditional use shall be located on any one lot, tract or parcel. No more than two conditional uses shall be located on any one lot, tract or parcel.

II. RESIDENTIAL DISTRICTS

Purpose -- These districts are intended to provide for orderly residential development. It is the purpose and function of Residential Districts to preserve the quiet and comfort of residential neighborhoods, and to protect the value of property by prohibiting the intrusion of large incongruous structures and incompatible land uses.

A. Residential District 1 Regulations (R-1)

The R-1 Residential District is established as a district in which:

1. The predominant use of land is low-density single-family dwellings.
2. Industrial land uses, commercial land uses and mobile homes are excluded and prohibited; and
3. Accessory uses are clearly subordinate to principal uses.
4. A detached garage shall have a maximum width, length and height determined as follows:
 - a. The County Planning and Zoning Commission, after holding a public hearing, shall forward a recommendation to the County Commission as to the maximum width, length and height of a detached garage located within Residential Zoning Districts.

R-1 Permitted Uses -

1. Dwellings, Single-family; Includes Conventional, Manufactured, and Modular Dwellings. All Conventional, Manufactured, and Modular Dwellings must meet the definition of Dwelling, Single Family.
2. Churches.
3. Schools.
4. Public Park or Playground.
5. Recreational vehicle situated on a parcel of land whose ownership is in the same person as is title ownership of said recreation vehicle, provided said recreation vehicle is unoccupied or is occupied only by its owner or persons related to said owner by blood, marriage or adoption.
6. Transmission line and associated facilities with a design of 115 kilovolts or less.

R-1 Conditional Uses --

1. Temporary Mobile Home Residential occupancy, to be used by a landowner for a period not to exceed two (2) years, while constructing a new single-family dwelling. Mobile Home must be removed from site within sixty (60) days of owners moving into new dwelling. A bond may be required prior to approval.
2. Home business engaged in only by dwelling residents, specifically authorized as to type(s) of use.

R-1 District Regulations

1. Minimum lot size of two (2) acres and minimum lot width of 150 feet. (see exceptions to minimum lot size under 2).
2. Exceptions to the minimum lot size requirement may be made under the following conditions:
 - a. If the planning goals support exceptions to required lot size of two (2) acres, the Planning and Zoning Commission shall make such a designation at a regular public hearing before the subdivision pre-application is approved. The Planning and Zoning Commission may require such documentation as it needs to carry out a comprehensive review of the accommodations and systems needed to provide exceptions. The developer shall provide all documentation requested by the Planning and Zoning Commission. At a minimum, a licensed and bonded professional soil engineer shall provide a written determination that the minimum lot size can be modified. This determination shall be based on an in-depth analysis of site soils, site topography, downstream watershed, proposed on-site domestic water supply, proposed on-site sewage disposal and other factors that may be determined by the Planning Commission. If a licensed and bonded soil engineer determines that the minimum lot size can be less than two (2) acres, said engineer shall provide in writing what the minimum lot size can be. The applicant shall be responsible for all costs associated with this engineering analysis to be paid in full before the final plat is approved.
3. Meet all building setback, water setback and water buffer strip requirements.

B. Residential District 2 Regulations (R-2)

The R-2 District is established as a district in which:

1. The predominant use of land is low-density single and duplex family dwellings, and mobile homes on permanent foundations.
2. Industrial land uses and commercial land uses are excluded and prohibited.
3. Accessory uses are clearly subordinate to principal uses.

R-2 Permitted Uses --

1. All uses permitted in R-1 Districts.
2. Duplex family dwelling.
3. Mobile home on permanent foundation.

R-2, R-3, and R-4, Conditional Uses --

1. Home business engaged in only by dwelling residents.

R-2 District Regulations - Same as R-1 District

C. Residential District 3 Regulations (R-3)

The R-3 Residential District is a district in which:

1. The predominant use of land is low-density single-family dwellings.
2. Industrial land uses, commercial land uses and mobile homes are excluded and prohibited.
3. Accessory uses are clearly subordinate to principal uses.

R-3 Permitted Uses --

1. All uses permitted in R-1 and R-2 Districts.
2. Maintenance of a maximum of two (2) of the following animals and their young of one gestation period: cattle, horses, goats or sheep. Provided, however, that the excess must be removed from the property within one (1) year.

R-3 District Regulations

1. Minimum lot size: four (4) acres
2. Minimum lot width: 300 feet
3. If animals are maintained as in permitted use No. 2, such animals shall not be allowed to become public or private nuisances as defined by the North Dakota Century Code.
4. Meet R-1 District setback and buffer strip requirements.

D. Mobile Home District 4 Regulations (R-4)

The R-4 Mobile Home District is established as a district in which:

1. The predominate use of land is mobile home type dwellings.
2. Industrial land uses and commercial land uses are excluded and prohibited; and
3. Accessory uses are clearly subordinate to principal uses.

R-4 Permitted Uses --

1. All uses permitted in R-1 and R-2 Districts.
2. Mobile homes on permanent foundations.

R-4 District Regulations

1. Minimum lot size: 80,000 sq. ft.
2. Minimum lot width: 150 feet

Other R-1, R-2, R-3, and R-4 District Requirements:

1. Setback Requirements
 - a. Front yard --

- (1) A minimum of 200 feet from lot lines fronting on state and federal highways.
 - (2) A minimum of 100 feet from lot lines fronting on county roads.
 - (3) A minimum of 25 feet from lot lines fronting on frontage roads and local streets.
- b. Side yard --
- (1) A minimum of 10 feet from all side lot lines.
- c. Rear yard --
- (1) A minimum of 25 feet from rear lot lines.
2. Maximum height requirements - 35 feet.
 3. Fences - none in sight line.
 4. No more than one permitted use shall be located on a lot, tract or parcel.
 5. Meet all water setback and water buffer strip requirements.

E. Mobile Home Park District 5 Regulations (R-5)

The R-5 Mobile Home Park District is established as a district in which:

1. The predominant use of land is mobile homes located on allocated spaces which are connected to central water supply and sewage disposal systems.
2. Industrial land uses and commercial land uses are excluded and prohibited; and
3. Accessory uses are clearly subordinate to principal uses.

R-5 Permitted Uses --

1. Mobile homes located on allocated rental spaces.

R-5 Conditional Uses --

1. Single-family dwellings.
2. Recreational Vehicle Park.

R-5 District Regulations for mobile home parks --

1. Minimum space size: 6,000 sq. ft.
2. Minimum space width: 50 feet
3. Minimum space depth: 120 feet
4. Minimum local street driving surface width: 34 feet
5. Setbacks
 - a. Front yard - minimum 15 feet from unit line
 - b. Side yard - minimum 8 feet from unit line
 - c. Rear yard - minimum 10 feet from unit line

R-5 District Regulations for Recreation Vehicle Park --

1. Minimum area per unit: 1,200 sq. ft.
2. Minimum distance between units: 15 feet

Other R-5 District Regulations --

1. Written evidence of approval and compliance with State Health Department regulations and specifications.
2. Written evidence of approval of on-site sewer and water systems by the State Health Department.

III. COMMERCIAL DISTRICT

Purpose -- The Commercial District is established as a district in which commercial activities constitute the principal use of land.

Permitted Uses --

- A. Agriculture.
- B. Automobile and trailer sales service and repair provided that work is conducted wholly within a building.
- C. Commercial warehousing - warehousing providing storage space for retail establishments permitted in commercial zoning districts and for non-business individuals.
- D. Farm implement sales and service.
- E. Golf driving range and miniature golf course.
- F. Lumber yard and/or building supply center.
- G. Mobile home, boat and recreational vehicle sales.
- H. Veterinary clinic.
- I. Restaurant/cafe.
- J. Service station.
- K. Transmission line and associated facilities with a design of 115kv or less.

Accessory Uses -- Residential occupancy may be permitted provided said occupancy is that of the owner or person(s), employed on the premises, and their families. Such residential accessory uses shall be limited to one per permitted use.

Conditional Uses --

- A. Vocational training school.
- B. Drive-in theater.
- C. Motel.
- D. Light manufacturing provided that such use meets state and local health department standards.
- E. Truck stop.
- F. Outdoor Advertising signs provided that they meet all federal, state and county regulations.
- G. Camping, Eating Facilities, including Bed and Breakfast Establishment and Lodging.
- H. Fee Hunting and Fee Fishing.
- I. Casinos.

District Regulations --

- A. Setback requirements:

1. Improvements or activities shall not encroach upon the established right-of-way or sight triangle of any county, state or federal road.
2. Front yard - a minimum of 200 feet shall be maintained between structure and improvements, including trees, and the centerline of all county, state, and federal highways and roads.
3. Side yard - a minimum of 50 feet shall be maintained between each structure and side lot lines.
4. Rear yard - a minimum of 50 feet shall be maintained between each structure and the rear lot line.
5. Fences - none in sight line.
6. Motor vehicle parking: adequate off-street motor vehicle parking shall be provided at a minimum ratio of one space per 400 square feet of the floor area of any permitted use.
7. Outdoor storage of materials for processing shall not be permitted on any front yard or in any sight line.
8. Building construction: all buildings erected on any lot, any additions thereto, or alterations thereof shall be on concrete slabs or footings.
9. Minimum lot size: two (2) acres; road right-of-way may not be included when computing lot size.
10. No more than one permitted use shall be located on any one lot, tract or parcel. No more than one conditional use shall be located on any one lot, tract or parcel; nor shall both a permitted use and a conditional use be located on any one lot, tract or parcel.

IV. INDUSTRIAL DISTRICT

Purpose -- The Industrial District is established to provide for the most practical location for industrial uses and businesses primarily engaged in providing equipment, service, supplies, sales and storage to such heavy industries as coal mines, electric power generating plants, coal gasification plants, oil production or drilling companies and road construction companies.

Permitted Uses --

- A. Agriculture and related activities.
- B. Railroad tracks and spurs for permitted uses as listed herein.
- C. Transmission line and associated facilities with a design of 115 kilovolts or less.
- D. Fishery facilities including hatching, growing, processing and related activities.
- E. Horticulture and/or greenhouse facilities and related activities.

Conditional Uses --

- A. Chemical fertilizer plants.
- B. Coal gasification plants.
- C. Electric power generating plants.
- D. Refineries and petro-chemical plants.
- E. Ethyl alcohol plants.
- F. Petroleum and/or fertilizer bulk storage yards or plants.
- G. Factories for the manufacture of farm equipment, vehicles, modular homes, campers or products.
- H. Grain and feed elevators or mills.
- I. Road and highway maintenance facilities.
- J. Sewage disposal plants, pumping stations and lagoons.
- K. Trucking or freight terminals.
- L. Warehouses.
- M. Railroad tracks and spurs for conditional use as listed herein.
- N. Other industrial uses not listed.

The following conditions shall apply to the above conditional uses:

1. A preliminary hearing shall be conducted in the County concerning site, location, needs of the plant, construction crews, employees, roads, housing, community facilities, and county and community services.
2. The applicant shall provide twelve (12) copies of an environmental impact statement to the Planning Commission for distribution to the appropriate agencies.
3. The applicant shall provide written evidence of approval of the State Department of Health on pollution control.
4. The applicant shall provide written evidence of approval for a water permit from the State Water Commission.

5. The applicant shall conform to all requirements regarding preservation, removal or relocation of historical or archeological artifacts.
6. The applicant shall provide any reasonable information the Planning Commission deems necessary.

F. Concrete and asphalt mixing plants provided that:

1. Written evidence of authorization by the land owner shall be submitted with the application for approval of a conditional use.
2. The applicant shall prepare a plan to control erosion that may result from the proposed construction. Written evidence of approval of such plan by the Mercer County Soil Conservation District shall be submitted prior to the issuance of a Certificate of Zoning Compliance. If such conditional use is approved, the applicant shall comply with and follow the requirements and recommendations of such plan.
3. The applicant shall provide any other information deemed necessary by the County Planning Commission.

G. Regional and municipal airports and related facilities including aircraft maintenance and repair provided that:

1. Written evidence of approval by the Federal Aeronautics Administration and the North Dakota Aeronautics Commission shall be provided to the Planning Commission.
2. The Planning Commission or the Board of County Commissions may attach any reasonable conditions it deems advisable.

H. Junk and/or Salvage Yard provided that:

1. All junk, salvage and vehicles shall be screened by plantings or solid fences approved by the Planning Commission.
2. No burning of salvaged material and/or junk shall be permitted.
3. The applicant shall provide any additional information the Planning Commission deems necessary, and shall comply with any additional requirements of the County Commission.

I. Coal excavation and mining:

Same requirements as conditional use in Agricultural District.

J. The addition of a generator or generating unit to an electric power generating plant.

K. Railroad tracks and spurs:

Same requirements as conditional use in Agricultural District.

L. Transmission Facilities:

1. The procedures, provisions and requirements of subdivisions 1, 2 and 3, of the transmission facility conditional use of Chapter Three, Section I of this Ordinance shall be followed and complied with except that, with respect to subdivision 3 thereof, a transmission facility in an Industrial District need not comply with the purpose(s) of the Agriculture District.

M. Coal Mining Facilities:

1. The approval of a coal mining facility's conditional use shall extend to, authorize and approve only those particular structures as specified in the Certificate of Approval of a Conditional Use for said conditional use.

N. Coal haul roads, or those portions thereof, not located within a site approved for a coal excavation and mining conditional use.

O. Outdoor Advertising Signs provided that they meet all federal, state and county regulations.

P. Solid waste landfill and/or solid waste recycling center and/or Transfer Station:

1. Same requirements as conditional use in Agricultural District.

Q. Hazardous Waste Storage or Disposal Facility provided that:

1. Applicants shall comply with all conditions listed under solid waste landfill.
2. Hazardous waste facilities may be located only in conjunction with the facility producing the waste to be stored, treated or disposed of at the site. Only materials specified on the conditional use permit may be stored, treated or disposed of at the facility. Permits may only be issued to applicants that actually produce hazardous waste within the county.
3. Substantive changes in the operation of the facility shall require an application to the County Commission to modify the permit as specified in Chapter Two, Section IX, including, but not limited to:
 - a. Changes in types of materials handled at the facility.
 - b. Changes in the boundaries of the facility outside the area originally permitted.
 - c. Changes in the operation that may affect adjacent landowners, such as access roads, dust or odor production, or water impoundment.
 - d. Modifications or additions of structures, facilities or site appurtenances.

District Regulations --

A. Setback requirements:

1. A minimum of 200 feet shall be maintained between structure and improvements, including trees, and the centerline of all county, state, and federal highways and roads.
2. Front yard - a minimum of 200 feet shall be maintained between each structure and the right-of-way line of any county, state or federal road.
3. Side yard - a minimum of 50 feet shall be maintained between each structure and side lot lines.
4. Rear yard - a minimum of 50 feet shall be maintained between each structure and the rear lot line.

B. Fences: none in sight lines.

C. Motor vehicle parking for all rolling equipment and for employee and customer vehicles shall be provided off-street. Vehicle parking shall be allowed on setbacks and yards.

D. Outdoor storage of materials for processing of sale shall not be permitted on any front yard or in any sight line.

E. Building construction: all buildings, additions thereto, or alterations thereof shall be on permanent foundations.

F. Buffer strip: a buffer strip approved by the Planning Commission shall be required to provide a sight and sound barrier when an industrial use is adjacent to a residential district.

G. Minimum lot size: two (2) acres.

V. RECREATION DISTRICT

It is the purpose of these district regulations to provide for compatible zoning between general farming and recreational uses, thereby discouraging potentially damaging development.

Permitted Uses -

- A. Agriculture: usual buildings, structures and operations incidental to farming and ranching.
- B. Marinas, boat rental and launching facilities.
- C. Golf courses and driving ranges.
- D. Public parks.
- E. Transmission line and associated facilities with a design of 115 kilovolts or less.

Conditional Uses --

- A. Transmission facilities and lines in excess of 115 kilovolts.
- B. Water reservoirs, water storage tanks, water pumping station and sewer lift stations.
- C. Convenience stores and resorts.

District Regulations --

- A. Lot size:
 - 1. Minimum width - 75 feet
 - 2. Minimum area - 20,000 square feet
- B. Setback requirements:
 - 1. A minimum of 100 feet shall be maintained between all sanitary facilities and the historical high-water line of streams, rivers, lakes, reservoirs of other water areas. A reasonable distance shall be maintained between the high-water line and all principal structures.
 - 2. A minimum of 200 feet shall be maintained between structure and improvements, including trees, and the centerline of all county, state, or federal highways and roads.
 - 3. A minimum of 50 feet shall be maintained between each structure and side lot lines.
 - 4. A minimum of 50 feet shall be maintained between each structure and the rear lot line.
 - 5. A buffer strip of trees or other natural growth of at least 50 feet and located on the side or rear yard shall provide a sight and sound barrier when a commercial use

is adjacent to a residential use. The buffer strip shall meet with the approval of the Planning Commission.

- C. Maximum height restrictions: all structures - 35 feet.
- D. Fences: none in sight line. No fence, wall, or retaining wall may be built within 30 feet of a natural or man-made shoreline. Fences shall not be allowed to restrict visual access to public recreational or water areas.
- E. Motor vehicle parking: adequate off-street parking shall be provided. Parking may be permitted on setbacks and yards.
- F. Highway access - when a lot abuts a state or federal highway:
 - 1. Access shall be limited to one per quarter mile.
 - 2. The land owner shall provide for a frontage road, to the nearest quarter-mile access point to a public highway.
 - 3. Written evidence of approval by appropriate authorities shall be provided to the Planning Commission.

VI. CONSERVATION DISTRICT

The purpose of this district is to provide for protection of the valuable resources base from potentially damaging forces, to prevent undesirable alteration of its delicate characteristics.

Permitted Uses --

- A. Recreational activities which do not disturb the land.

VII. FLOOD HAZARD DISTRICT

The Flood Hazard District includes all areas within the FEMA identified 100-year flood frequency area. The purpose of this district is to promote health, safety, public convenience, general prosperity and public welfare, and to minimize public and private losses caused by periodic inundation which results in health and safety hazards, loss of life and property, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief and impairment of the tax base. See Chapter Seven (7) for further information.

Permitted Uses --

- A. Transmission line and associated facilities with a design of 115 kilovolts or less.

Conditional Uses --

- A. Non residential buildings incidental to the operation of a farm or ranch.
- B. Transmission facility:
 - 1. Same requirements as listed under Agricultural District.

C. Coal Excavation and mining:

1. Same requirements as listed under Agricultural District.

D. Railroad tracks and spurs:

1. Same requirements as listed under Agricultural District.

In addition to the respective conditions or requirements applying to the given conditional use as stated above, each of the above conditional uses shall also comply with the following:

1. Comply with all provisions of Chapter Seven - Flood Damage Prevention.
2. A determination shall be made as to whether or not the proposed conditional use adversely affects the flood carrying capacity of the Flood Hazard District. For the purposes of this condition, "adversely affects" means damage to adjacent properties because of rises in flood stages attributed to physical changes of a watercourse channel and the adjacent bank areas.

The above determination shall be made initially by the Planning Commission. The Planning Commission, in its recommendation to the Board of County Commissioners for approval or disapproval of the proposed conditional use, shall state whether or not said adverse effect exists. If the Planning Commission determines the adverse effect exists and also recommends approval of the proposed conditional use, it shall specify and recommend to the Board of County Commissioners attachment to the approval of the conditional use a certain condition or conditions as flood damage mitigation measures.

The Board of County Commissioners, after considering the recommendations of the Planning Commission, may accept, reject or modify the same, or a part thereof and, in any event, shall make a final determination as to whether or not the adverse effect exists. If the Board of County Commissioners determines said adverse effect exists, and also approves the conditional use, it shall state and attach to the approval of the conditional use a specific additional condition or conditions as flood damage mitigation measures.

3. If the application for the conditional use proposes any alteration or relocation of a watercourse or stream, the applicant, prior to the public hearing before the Planning Commission, shall notify adjacent communities and the North Dakota State Water Commission of the proposal and shall submit evidence of such notification to the Federal Insurance Administration.

The proposed conditional use shall not be approved unless an additional condition or conditions are specified and

attached to the approval to require that maintenance be provided within the altered or relocated portion of the watercourse or stream, so that the flood carrying capacity is not diminished.

4. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
5. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

District Regulations -- land uses are subject to the following:

- A. Setback - a minimum of 150 feet shall be maintained between any structures and the nearest right-of-way line of a county, state or federal road or highway.
- B. Minimum lot size - two (2) acres.
- C. No more than one permitted use shall be located on any one lot, tract or parcel.

VIII. DISTRICT ZONING MAP

The District Zoning Map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance.

The District Zoning Map shall remain on file with the Mercer County Auditor at all times and shall constitute the official record of the initial division and classification of the lands of Mercer County into zoning districts. The initial division and classification is that made and adopted by the Board of County Commissioners on June 3, 1975, in conjunction with the Board's adoption on same date of the original written text of this Ordinance. The official record of changes in the zoning district classification of lands in Mercer County shall be those certified copies of resolutions adopted by the Board of County Commissioners which have been or are at any time subsequent to June 3, 1975, filed with the Mercer County Register of Deeds and which contain descriptions of changes of zoning district classifications and the lands subject thereto.