

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 sitting 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.

3. Residence has to be built in two (2) years or applicant has to reapply

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 (1/2) 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 (1/2) 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. Purpose: The purpose of this provision is to provide a regulatory framework for the siting, construction, and operation of wind energy facilities in Mercer County subject to reasonable restrictions, which will preserve the best interests, safety and well-being of the residents of Mercer County, while allowing equitable and orderly development of wind energy facilities.

2. Definitions

a. **Construction:** any clearing of land, excavation, or other action that would affect the environment of the site.

b. **Decommissioning:** the process of terminating operation and completely removing a wind energy facility and all related buildings, structures, foundations, access

roads, and equipment.

- c. Height (of turbine): the vertical distance from the grade of the property as existed prior to construction to the highest point of a turbine rotor blade when in the upright position.
- d. Interconnection agreement: agreement between owner and the Interconnection Utility regarding the interconnection of the facility to the transmission or distribution system of the Interconnecting Utility.
- e. Occupied Dwelling: (1) Where any person lives or carries on business or other calling; or (2) Which is used for overnight accommodation of persons for any duration.
- f. Operator: entity responsible for the day-to-day operation and maintenance of a wind energy facility
- g. Owner: individual or entity, including their respective successors and assigns, which have an equity interest or own the wind energy facility
- h. Power Purchase Agreement: a long-term agreement for the sale of wind energy between the owner and a purchaser
- i. Site: the location of the wind energy facility
- j. Wind Energy Facility: one or more wind turbines, including appurtenant structures and facilities, rated at an individual or combined nameplate capacity of over .3 MW.

3. Criteria

a. Wind Resource

1. Wind energy facilities shall only be installed where there is an established wind source, determined in any of the following;

1. Planned wind energy site has a minimum eleven (11) mph average wind speed at the designed hub height as documented on the ND department of commerce statewide wind speed maps

2. The applicant submits an analysis conducted by a certified wind energy installer or site assessor (e.g. North American Board of Certified Energy Professional).

b. Appearance. Wind turbines shall be painted with a non-reflective coating and in a uniform, white or gray color. Turbines shall be installed on tubular, monopole-type towers, shall be of similar size, height, design and appearance, and, to the extent possible, shall all rotate in the same

direction. Turbines shall not display any advertising except for reasonable identification restricted to one sign of the manufacturer or operator or the wind energy conversion facility. Such identification signage shall not exceed three square feet, be posted at the base of the tower and specify the following: the turbine identification number corresponding to the facility map as required in (u) below, a warning of high voltage, the manufacturer's name, and an emergency phone number for the operator. The design of the buildings and related structures at the wind energy conversion facility sites shall use materials, textures, and location that will blend the wind energy facility into the natural setting and existing environment.

c. Design.

1. All turbines must be self-supporting. The base for any tower shall be designed to anchor and support the tower for the site and is further subject to the industry standard for safety design.
2. The blade tip of any wind turbines shall, at its lowest point, have a ground clearance of not less than 75 feet.

d. Lighting. Wind turbines shall not be artificially lighted except to the extent required by the Federal Aviation Administration (FAA) or other applicable governmental regulatory authority. Beacon lighting is prohibited unless required by the FAA.

e. Weeds. All noxious weeds, or other weeds, grass, brush, or other unhealthful growths exceeding a height of 12 inches must be controlled by the applicant and comply with the directives of the County weed control officer.

f. Tree removal. The applicant shall minimize the removal of trees and shall not remove groves of trees or shelter belts without the written approval of the affected landowner.

g. Chemicals. The use of chemicals is limited to those herbicides and methods approved by the North Dakota Department of Agriculture and the North Dakota Department of Health. The applicant must contact the affected landowners prior to application.

h. Waste removal. The applicant shall remove all waste and scrap that is the product of construction, operation, restoration, and maintenance from the site and properly dispose of it upon completion of each task in compliance with county and state guidelines. Personal litter, bottles, and paper deposited by site personnel shall be removed on a daily basis.

i. **Hazardous waste.** The applicant shall be responsible for compliance with all federal, state, and local laws applicable to the generation, storage, transportation, clean up, and disposal of hazardous wastes generated during any phase of the project's life.

j. **Fence and gate repair.** The applicant shall promptly repair or replace all fences and gates removed or damaged during all phases of the wind energy conversion facility's life and provide continuity of electric fence circuits unless otherwise negotiated with the affected landowner. All access gates to the wind energy facility shall be no less than 20 feet wide.

k. **Drainage tile repair.** The applicant shall take into account, avoid, promptly repair or replace all drainage tiles broken or damaged during all phases of project life unless otherwise negotiated with the affected landowner.

l. **Collector lines and communication cables.** The applicant shall place electrical lines, known as collector lines, and communication cables at least four feet underground. Collectors and cables shall also be placed within or adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner.

m. **Feeder lines.**

1. All feeder lines used to collect power from individual turbines and all associated communication lines shall be buried underground at a depth of at least four feet, where practicable.

2. Where underground lines are not practicable, the applicant shall place overhead or underground electric lines, known as feeder lines, on private land immediately adjacent to public rights-of-way (whether improved or not) except as necessary to avoid or minimize human, agricultural, or environmental impacts.

3. Feeder lines may be placed on public rights-of-way only if approved or if the required permits have been obtained from the governmental unit responsible for the affected right-of-way.

4. In all cases, the applicant shall avoid placement of feeder lines in locations that may interfere with agricultural operations.

5. Any guy wires on the structures for feeder lines shall be marked with safety shields.

6. When feeder lines are placed on private property, the applicant shall place the feeder lines in accordance with the easement negotiated with the affected landowners. Such easements must specify the use, width and location of the easement, and be recorded with the

County Recorder.

7. 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. .

8. All trenches for underground burial of associated equipment or lines shall have a marking tape installed at $\frac{1}{2}$ of the trench depth.

n. Setbacks:

1. General: Must meet all applicable federal, state and county setback requirements.

2. From occupied dwelling, commercial building or publicly used structure or facility. The horizontal distance between the center of a turbine monopole and any occupied structure shall not be less than 2500 feet, unless otherwise negotiated with the landowner of the structure.

3. Setbacks from property lines, roadways, rights-of-way, and utilities. Each wind turbine shall be set back not less than 110% the height of the turbine from any public roadway (whether improved or not), above ground communication or electrical lines, railroad right-of-way, and property lines.

4. Site perimeter. Each wind turbine shall be set back from the wind energy facility perimeter at a distance no less than 110% the height of the wind turbine (measured from the ground surface to the tip of the blade when in a fully vertical position) from any public roadway (whether improved or not) above ground communication or electrical lines, railroad right-of-way, and property lines unless a variance is granted by the Mercer County Commissioner board.

5. Natural, recreational, and historical resources. Each turbine shall be set back a distance of no less than one mile from the nearest existing critical and irreplaceable natural and/or cultural resource area within the County, including, but not limited to Knife River Indian Villages. Each turbine shall be set back a distance of no less than one mile of any state, county, or city park or designated recreation area, water body, or wetland, including, but not limited to, Lake Sakakawea, Missouri River, and grasslands, wetlands and other public conservation lands managed by Game and Fish and USFWS. The setback for waterbodies and wetlands shall be measured from the ordinary high-water mark.

o. Shadow flicker. The applicant shall make every reasonable effort, including landscape design, to minimize the effects of shadow flicker on any neighboring occupied dwelling or roadways. Upon receipt of a verified complaint, the Land Use Administrator may request a shadow flicker and blade glint

study be prepared at the expense of the applicant by a registered professional engineer (qualified by training, education, and experience to conduct such a study) certifying that shadow flicker and blade glint present no deleterious effects for any neighboring occupied dwelling. If it is determined that shadow flicker and/or blade glint exists at any occupied structure, the applicant shall implement and maintain all necessary remedial measures.

p. Sound.

1. In order to reduce the risk of negative health impacts from large wind turbine noise, audible sound limits shall not exceed 50 dBA for any measurable period of time within 300 feet of any occupied dwelling, business, or place of public gathering; and a DBC limit not to exceed 50 dB above ambient background levels.
2. Construction noise or reasonable and necessary maintenance activities are allowed to exceed these sound limits except between the hours of 10 p.m. (CST) to 6 a.m. (CST).
3. Noise testing shall be regularly conducted, at the expense of the applicant Noise testing reports shall be available for inspection to the Land Use Administrator at any time, and shall include the following information: when, where and how was testing conducted. Noise testing shall have an acoustical analysis identifying noise levels in decibels at multiple distances from the turbine.
4. Upon receipt of a complaint regarding noise, the Land Use Administrator may require the applicant, at the applicant's expense, to have prepared, by an independent acoustical consultant an acoustical study that shall demonstrate compliance with the above noise standard. If it is determined that the noise standard is not met, the applicant shall implement and maintain all necessary remedial measures. The noise level generated by the operation of the wind energy facility will be determined by comparing the sound level measured when the turbine blades are rotating to the sound level measured when the blades are stopped.

q. Temporary staging areas. The applicant shall negotiate with landowners to locate sites for temporary equipment staging areas.

r. Archeological resource survey consultation. Unless the project is under the purview of the North Dakota Public Service Commission, and an Archeological Resource Survey is being prepared as part of that process, the applicant shall work with the State Historic Preservation Office (SHPO) at the State Historical Society of North Dakota at the beginning of the planning process for the wind energy conversion

facility to determine whether an archaeological survey is recommended for any part of the proposed project. If recommended, the applicant shall contract with a qualified archaeologist to complete such surveys, and shall submit the results to the county planner and the SHPO. The SHPO will make recommendations for the treatment of any significant archaeological sites which are identified. Any issues in the implementation of these recommendations will be resolved by the County in consultation with the SHPO at the expense of the applicant. All information provided or submitted under this provision is subject to North Dakota Century Code Section 55-02-07.1.

s. **Biological resources survey.** Unless the project is under the purview of the North Dakota Public Service Commission, the applicant, in consultation with the US Fish and Wildlife Service – Ecological Services Office (USFWS) and the North Dakota Department of Game and Fish (NDGF) shall, for the project site, conduct a preconstruction inventory of existing wildlife management areas, scientific and natural areas, recreation areas, native prairies and forests, wetlands, and any other biologically sensitive areas and wildlife resources, particularly birds and bats, within the site and assess the presence of state-listed or federally-listed or threatened species, and other protected species such as migratory birds. The results of the survey shall be submitted to the Land Use Administrator, USFWS, and NDGF.

t. **The county may create avoidance zones** to the proposed site location after considering the project area, the projects road plan, impact to other economies, impacts to other electrical generation sources, residential property use and right, and impacts to mine-able lignite deposits. Through an avoidance zone, the county may deny siting locations that materially adversely impact these specified interests, or condition a permit so mineral rights do not incur a burden of removing surface structures before mineral rights are exercised.

u. **Electromagnetic interference assessment.** Unless the project is under the purview of the North Dakota Public Service Commission and an electromagnetic interference assessment is being prepared as a part of that process, the applicant shall submit an assessment of microwave signal patterns in the project area prior to commencement of construction of the project,

1. The assessment shall be designed to provide data that can be used in the future to determine whether the turbines and associated facilities are the cause of disruption or interference of microwave patterns in the event residents complain about such disruption or interference after the turbines are placed in operation.

The assessment shall be completed prior to operation of the turbines.

2. The applicant shall be responsible for alleviating any disruption or interfere caused by the turbines or any associated facilities of residents' cell phone, television, radio, computer, satellite, or other electronic transmissions, receptions, or services.

3. The applicant shall not operate the wind turbine facility so as to cause microwave, television, radio, telecommunications, or navigation interference contrary to Federal Communications Commission (FCC) regulations or federal, state, or local laws.

4. In the event the wind turbine facility or its operations cause such interference as described in items 2 and 3 above, the applicant shall take measures necessary to correct problems within 30 calendar days of notification of such interference.

v. Fire protection and medical emergency plans. Prior to construction, the applicant shall prepare fire protection and medical emergency plans in consultation with the rural fire district, Sheriff's Department, Emergency Management, and local emergency medical service provides having jurisdiction over the area. The applicant shall submit the project for registry in the 911 system. Each turbine shall also be marked with a visible identification number to assist emergency services and the operator shall file with the local fire and Sheriff's Department a wind energy facility map identifying wind turbine locations and numbers.

w. Public safety plan. The applicant is encouraged to provide educational material to landowners within the site boundaries, and upon request, to interested persons about the project and any restrictions or dangers associated with the project. The applicant is encouraged to also provide any necessary safety measures, such as warning signs and gates for traffic control or to restrict public access to turbine access roads, substations, and wind turbines. The applicant shall comply with provisions outlined in their public safety plan.

x. Construction Timeframe. Construction at the site must be started within two years of approval of the project and must be completed and the facility operational within four years.

y. Length of permit. Permits shall be valid for five years unless otherwise determined by the Board of County Commissioners, and shall be renewable at the discretion of the Board of County Commissioners. Applicant must provide any information deemed relevant by the Board of County Commissioners, to include an updated decommissioning plan as described below.

z. Performance history.

1. All turbines shall be commercially available, utility scale, with an operational history of at least one year. Prototype turbines are not allowed.
2. A use record of the turbines must be completed annually and available upon request by the Land Use Administrator.
3. All turbines and related facilities must be routinely maintained, as recommended by the manufacturer and/or pursuant to the industry standard.

aa. As-built plans and specifications. Within 30 calendar days after completion of construction, the applicant shall submit to the Land Use Administrator, a copy of the as-built plans and specifications in both hard copy and in electronic digital format as specified by the county planner. Within 30 calendar days after completion of construction, the applicant shall file with the Mercer County Sheriff's Office and the local fire departments a wind energy facility map identifying wind turbine locations and identifying numbers.

bb. Changes. Any minor changes in the location or character of wind energy facilities and structures may be authorized in writing by the county.

cc. Pre-construction meeting. Prior to the start of any construction, the applicant shall conduct a preconstruction meeting with the County Road Superintendent and/or County Engineer to coordinate field monitoring of construction activities and to assess existing conditions of roads and drainage systems. The applicant shall provide photographs of the existing conditions to the Land Use Administrator. The pre-construction meeting shall be open to all interested parties and shall address staging, complaints, emergency plans, and other pertinent issues.

dd. Turbine access roads and protection of agricultural operations. The location and construction of access roads and other infrastructure shall, to the extent reasonably possible, not disrupt farming, agricultural operations, or the landscape of the County, in order to preserve the integrity of fields and capacity for efficient tilling, planting, and harvesting, the applicant shall work with the landowner to determine the most appropriate routing of access road locations.

ee. Approach permits. The applicant is responsible for obtaining an approach permit from the county engineer or the affected township for any new or reconstructed approach.

ff. Overweight load permits. The applicant is responsible for

abiding by the state and local overweight load permitting process in accordance with North Dakota Century Code chapter 39-12. A special use permit issued under this ordinance to erect a wind turbine facility does not negate a hauler's obligation to obtain overweight load permits for hauling.

gg. **Road repair (private roads).** The applicant shall promptly repair any damaged private roads, driveways, or lanes to a condition at least equal to the condition prior to construction of the wind energy conversion facility, unless otherwise negotiated with the affected landowner.

hh. **Road repair (public roads).** Any road, ridge, or drainage damage caused by the applicant, its independent contractor, employee, agent, contractor, or subcontractor shall be promptly repaired at the applicant's expense to County standard as determined by the County Road Superintendent. If it is reasonably foreseeable that continued trips will make prompt repair to this standard unreasonable, intermediary measures must be taken by the applicant, if approved by the political subdivision in charge of the road, to ensure the public road remains passable and useable as has been the tradition in the community. Final repairs to these standards must be made promptly after the completion of the construction of the wind turbine facility.

ii. **Road use arrangements.** Prior to construction, the applicant shall make satisfactory arrangements (including a haul road agreement and/or obtaining permits) for road use, access road intersections, maintenance and repair of damages with governmental jurisdiction with authority over each road. The applicant shall notify the Land Use Administrator of such arrangements on request.

jj. **Contact information.** The applicant must provide a local contact authorized by the applicant to receive service and respond to all notices, demands, complaints, concerns or other requests. Local contact information must include the name of the local representation, local phone number, and physical address. Said contact information must be filed with the Land Use Administrator prior to commencement of construction of the wind energy conversion facility.

kk. **Complaints.** Prior to the start of construction, the applicant shall submit to the county planner the company's procedures to be used to receive and respond to complaints.

ll. **Wildlife incidents.** Any fatality or injury to any state-listed or federally listed species or migratory bird or bat shall immediately be reported to the USFWS North Dakota Field Office and the USFWS Office of Law Enforcement. Extraordinary events. Within eight hours of an occurrence,

the applicant shall notify the Land Use Administrator of any extraordinary event.

mm. **Extraordinary events** include, but shall not be limited to, fires, tower collapse, thrown blade, collector or feeder line failure, or injured wind turbine facility worker or private person. The applicant shall, within 10 calendar days of the occurrence, submit a report to the Land Use Administrator describing the cause of the occurrence and the steps taken to avoid future occurrences.

nn. **Transfer of ownership of a wind energy facility.** Prior to any change in ownership or assignment of a controlling interest of any entity owning a wind energy conversion facility permitted in the county, including any assignment or transfer of a controlling interest to any corporation, partnership, or other entity controlled by or a subsidiary or affiliate of the wind energy conversion facility permitted in the county, application shall be made to the Mercer County Planning and Zoning Commission, requesting transfer of the wind energy conversion facility special use permit. Approval of such transfer shall be conditioned upon explicit agreement by the new applicant to the original special use permit and these ordinances. The application shall also include the new applicant's agent and contact information. A change of ownership that results in inability, unwillingness, or failure to abide by the terms of the original permit and the conditions of these ordinances may be a basis for revocation of the special use permit.

oo. **Land restoration (post-construction).** The applicant shall, as soon as practical following construction of each turbine, considering the weather and preferences of the affected landowner, restore the area affected by any construction activities to the condition that existed immediately before construction began. The time period may be no longer than 120 days after completion of construction of the turbine. Restoration shall be compatible with the safe operation, maintenance, and inspection of the wind turbine facility.

pp. **Decommissioning plan.**

1. Prior to commencement of operation of a commercial wind energy conversion facility, the facility or turbine owner or operator shall file the estimated decommissioning cost per turbine, in current dollars at the time of filing, for the proposed facility or turbine and a comprehensive decommissioning plan that describes any expected effect on present and future natural resource development and identify the financial resources that will be available to pay for decommissioning the facility or turbine as required by section 69-0910-05 at the appropriate time. Applicant must

provide an updated decommissioning plan reflecting any changes to prior plans and reflecting updated costs for decommissioning each turbine at the time of any permit extension request.

2. The applicant shall provide a description of any agreements with landowners regarding equipment removal upon lease termination.

3. A performance bond or equivalent financial instrument shall be posted in an amount determined by the County to be utilized in the event the decommissioning plan needs to be enforced with respect to tower removal, site restoration, etc. The bond shall be in favor of Mercer County and shall be an amount equal to decommissioning cost at time of permit application plus 25% to cover anticipated increased costs for the length of the permit. The costs of such bond shall be borne by the applicant.

4. The Land Use Administrator may at any time require the owner or operator of a commercial wind energy facility or wind turbine to provide verification describing how the facility or turbine owner or operator is fulfilling this obligation.

qq. Decommissioning requirements.

1. Turbines shall be considered discontinued after one year without energy production subject to decommissioning and site restoration as described in paragraph 2, unless a plan is developed by a qualified individual or firm and provided to the Land Use Administrator outlining the steps and schedule for returning the wind tower to service within 120 days. Where a turbine is not returned to service, decommissioning and site restoration shall be completed within 60 days of discontinuation of use of the turbine as described in paragraph 2.

2. Decommissioning and site restoration for the facility or for individual turbines shall include, but is not limited to all dismantling and removal of all towers, turbine generators, transformers, and overhead cables; removal of underground cables to a depth of four feet; removal of foundations, buildings, and ancillary equipment to a depth of four feet and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the commercial wind energy conversion facility or wind turbine. The site must be restored and reclaimed to the same general topography that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine and with topsoil respread over the disturbed areas at a depth similar

to that in existence prior to the disturbance. Areas disturbed by the construction of the facility and decommissioning activities must be graded, top soiled, and reseeded according to natural resource conservation service technical guide recommendations and other agency recommendations, unless the landowner requests in writing that the access roads or other land surface areas be retained. Any access roads shall be removed, cleared, and graded, unless the property owner wants to keep the access roads. Mercer County will not be assumed to take ownership of any access road unless through official action of the Board of Mercer County Commissioners.

rr. The Board may attach any such other conditions and restrictions as it shall deem advisable.

4. SPECIAL USE PERMIT APPLICATION.

The following items shall accompany the special use permit application.

- a. Legal descriptions of the proposed facility.
- b. Two (2) copies of a site plan. Site plans shall contain the following elements:

1. **Type.**

1. A description of the type of facility proposed.
2. A description of the purpose of the facility.
3. The technology to be deployed.

2. **Product.**

1. A description of the type of product to be transmitted
2. A description of the source of the product to be transmitted
3. A description of the final designation of the product to be transmitted
4. Size and design. A description of the proposed size and design, and any alternate size or design that was considered, including:
5. Lot line for parcel where the wind energy power interconnects to a utility line or building.
6. Location and height of all buildings, structures, aboveground utilities and trees on the site and within 500 feet of each proposed turbine.
7. Visual impact analysis
8. The width of right of way.
9. Approximate length of facility
10. Estimated span lengths for electric facilities
11. Anticipated type of structure for electric facilities
12. Voltage for electric facilities
13. The requirement for and general location of any new associated facilities for electric facilities
14. Estimated distance between surface structures for pipeline facilities
15. Pipe size for pipeline facilities
16. Maximum design operating pressure and temperature for pipeline facilities
17. Maximum design flow rate for pipeline facilities
18. The number and general location of compressor or pumping stations

3. **Access.** Identify all roads and drainage systems that may be impacted by or used for the purpose of transporting any equipment or supplies related to construction, operation, and maintenance of the facility.

4. **Time schedule.** The anticipated time schedule for the accomplishment of major events including:

1. The certificate of corridor compatibility
2. The route permit
3. Completion of right of way acquisition
4. Construction start date

5. Construction completion
 6. Testing operations
 7. In-service date
 8. Decommission plan
5. **Studies.** Provide a copy of any evaluative studies or assessments of the environmental impact of the proposed facility submitted to the federal and state agencies listed in section 69-06-01-05 and any response received from those agencies.

6. **Need.**

1. An analysis of the need for the proposed facility based on present and projected demand for the product transmitted, including the most recent system studies supporting the analysis of the need.
 2. A description of any feasible alternatives methods for serving the need.
- A statement justifying any deviations from the most recent ten-year plan that the facility may present.

7. **Location.**

1. Identification of current zoning districts of the proposed site and adjacent parcels.
2. The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless another appropriate length is determined by the commission.
3. Select a study area that includes a proposed corridor of sufficient width to enable the commission to evaluate the factors addressed in North Dakota Century Code section 49-22-09.
4. Discuss the factors in North Dakota Century Code section 49-22-09 to aid the commission's evaluation of the proposed route.
5. Discuss the utilities policies and commitments to limit the environmental impact of its facilities, including copies of board resolutions and management directives.
6. Identify and map the criteria that led to the proposed route location within the designated corridor.
7. The criteria to be evaluated must include all of the following:
 - 110 exclusion areas
 - 111 avoidance areas
 - 112 selection criteria
 - 113 policy criteria
 - 114 design construction limitations
 - 115 economic considerations
8. Discuss the relative value of each criteria and how the proposed corridor location was selected giving consideration to all criteria and how the

location, construction, and operation of the facility will affect each criteria.

9. Discuss the general mitigative measures that will be taken to minimize adverse impacts that result from a route location in the proposed corridor and the construction and operation of the facility.

10. List the qualifications of the people in the various disciplines that contributed to the corridor location study.

8. Maps.

1. Map the criteria that led to the proposed route location within the designated corridor and the location of any new associated facilities. Several different criteria may be shown on each map depending on the map scale and the density and nature of the criteria.

2. Include an 8 1/4 by 11 black and white map suitable for newspaper publication depicting the site area.

9. A power purchase agreement shall be provided no later than six months after approval of the permit. The applicant's failure to provide such an agreement within six months renders the permit void where no extension has been granted by the County.

10. An interconnection agreement for connection to the electrical grids that serve North Dakota (Midcontinent Independent Systems Operator ("MISO") and Southwest Power Pool ("SPP")).

c. Discuss present and future natural resource development in the area.

d. Fees. The conditional use permit fee is .002 (1/5th of 1%) of the cost to erect each wind turbine. An application fee of \$1,000.00 shall be payable at the time of the application of conditional use permit with the remainder of the conditional use permit fee remitted by the applicant prior to receiving the conditional use permit. The initial application fee of \$1,000.00 is non-refundable.

e. Public Hearing. A public hearing shall be conducted by the Planning and Zoning Commission concerning the Permit Application, and shall analyze the site location, needs of the operation and company employees regarding roads, housing, community facilities, and county and community facilities. Following the public hearing, the Planning and Zoning Commission shall make a recommendation on the Permit Application to the Board of County Commissioners. The Board of County Commissioners shall then issue a decision on the Permit Application.

P. Solar Energy Systems (SES)

1) **PURPOSE.** The purposes and objectives for which this ordinance was established are as follows:

- a) To preserve the dignity and aesthetic quality of the environment in Mercer County, North Dakota.
- b) To preserve the physical integrity of land of close proximity to residential areas.
- c) To preserve and protect the health and welfare of the citizens of Mercer County.
- d) To protect and enhance the economic viability and interests of the citizens and residents of Mercer County who have made substantial financial investments in homes, businesses, and industry in Mercer County.
- e) To facilitate the construction, installation, and operation of Solar Energy Systems in Mercer County in a manner that minimizes the adverse impacts to agricultural, commercial, and residential lands. This ordinance is not intended to abridge safety, health or environmental requirements contained in other applicable codes, standards, or ordinances. The provisions of this ordinance shall not be deemed to nullify any provisions of Local, State or Federal Law.

2) **DEFINITIONS.**

- a) Abandonment - will mean to give up, discontinue, and withdraw from any Solar Energy System that ceases to produce energy on a continuous basis for 12 months. Any facility or system that ceases to produce energy on a continuous basis for 12 months will be considered abandoned.
- b) Alternate Energy - will mean any energy generated or produced from solar or wind.
- c) Solar Energy Construction Permit (SECP) - Permit needed for construction.
- d) Ancillary Solar Equipment - will mean any accessory part or device of a Solar Energy System that does not require direct access to sunlight, such as batteries, electric meters, converters, or water heater tanks.
- e) Building - will mean any structure having a roof supported by columns or walls and designated or intended for the shelter, support, enclosure or protection of persons, animals, or chattels.
- f) Building-mounted SES - will mean a Solar Energy System affixed to a permanent principal or accessory building (i.e., roof or wall).
- g) Decommissioning Plan - will mean a document that details the planned shut down and/or removal of a solar energy

- facility or system from operation or usage.
- h) Dike - will mean a bank, usually but not limited to, earth construction to control or confine water or undesirable runoff. The height of which must be not less than (2) feet and of a size to be able to contain all runoff originating on the solar energy site. Dike must meet State requirements for its specific use.
- i) Electric Line - A set of conductors used to transmit and/or distribute electrical energy within the Solar Energy System or with outside transmission lines.
- j) Gate - a door or other device attached to a fence which, when opened, provides a means of ingress and egress of persons and things for which it was intended, and which, when closed, forms a continuous barrier as a part of the fence to which it is attached
- k) Ground-mounted SES - will mean a freestanding Solar Energy System that is NOT attached to and is separate from any building on the parcel of land on which the Solar Energy System is located.
- l) Improved Area - will mean any area containing solar panels, electrical inverters, storage buildings and access roads.
- m) Non-Participating Property - A parcel of real estate that is not hosting any Solar Energy System facilities but is contiguous with parcels that are.
- n) Occupied Structure - A building in which people live, work or frequent.
- o) Occupied Dwelling - Where any person lives or carries on business of other calling.
- p) Participating Property - A parcel of real estate on which Solar Energy System facilities will be constructed, or for which a participation agreement or contract has been executed.
- q) Public - will mean belonging or open to, enjoyed and used by and/or maintained for the public generally, but not limited to, a facility the control of which is wholly or partially exercised by some government agency.
- r) Public Road - will mean any road or highway which is presently designated and maintained by Mercer County, or organized townships, as part of the county or township road system, whether primary or secondary, hard-surfaced, or other dependable road.
- s) Permittee - An individual, group of individuals, corporations, partnerships, joint venture, owners, or any other business entity, or combination thereof, that leases or owns the Solar Energy System(s) and the associated improvements, and all subsequent assignees and/or transferees of these rights, and that submits Conditional Use and S Energy Construction Permits, develops a Solar Energy System, and subsequently operates such a facility.
- t) Personal-Scale SES - will mean a Solar Energy System that is an accessory to the principal use on the site. The total surface area of all solar collector surfaces within a

Personal-scale SES shall NOT exceed 1,000 square feet. The sale and distribution of excess available energy, if permitted, to an authorized public utility for distribution shall be incidental to this type of system and NOT its primary purpose. Sale of excess energy to anything other than an authorized public utility shall be prohibited.

u) Recreation - areas designated for the refreshment of body and mind through forms of play, amusement, or relaxation. The recreational experience may be active, such as boating, fishing, swimming, hunting or hiking, or be passive, such as enjoying the natural beauty of the shoreline or area wildlife.

v) Residential Area - will mean an area zoned for residential use.

w) Restoration - Returning permit area for all improved areas to their original state.

x) SES - Solar Energy System.

y) Setback - Distance determined by Mercer County Board of Commissioners required to beginning of SES construction items.

z) Shooting Range - Is defined as an area, established for three (3) years, for the discharge of weapons for sport under controlled conditions where the object of the shootings is an inanimate object such as, but not limited to, paper, metal, or wooden targets.

aa) SHPO - North Dakota State Historic Preservation Office.

bb) Solar Collector Surface - will refer to any part of a Solar Energy System that absorbs solar energy for use in the system's transformation process. The collector surface does not include frames, supports and mounting hardware.

cc) Solar Energy - will mean radiant energy received from the sun that can be collected in the form of heat or light by a Solar Energy System.

dd) Solar Energy System (SES) - will mean a system (including solar collectors and ancillary equipment) either affixed to a permanent principal or accessory building or functioning as a freestanding structure, that collects, stores and distributes solar energy for heating or cooling, or generating electricity. Solar Energy Systems include both systems for private use as well as those specifically for generating and selling power.

ee) Utility Road - any Road or Trail us for the purpose of the SES.

ff) Utility-Scale SES - will mean a Solar Energy System that meets one or more of the following:

i) Is primarily used for generating electricity for commercial sale and distribution on the electrical grid.

ii) Has a manufacturer's rating of greater than 20 Kilowatts (KW).

gg) Variance - A relaxation of the terms of these regulations where such variance will not be to the contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the Permittee, the literal enforcement of these regulations would result in unnecessary and undue hardship.

hh) Waterfowl Rest Area - An established area set forth by a state or federal agency for the protection of wildlife.

ii) Wildlife Management Area - An established area set forth by a state or federal agency for the protection of wildlife.

3) REGULATORY FRAMEWORK.

a) Zoning. Solar Energy Systems constructed within Mercer County are subject to the Restriction and conditions of this ordinance.

b) Principal of Accessory Use. A different existing use or an existing structure on the same parcel will not preclude the installation of a Solar Energy System or a part of such a system on the parcel. Solar Energy Systems that are constructed and installed in accordance with the provisions of this code shall not be deemed to constitute expansion of a non-conforming use or structure.

c) Applicability.

(i) The requirements of this code shall apply to all utility scale Solar Energy Systems within the county, outside of the city Extra Territorial Areas, plus ½ mile that are constructed after the effective date of this code. No additions or expansions of an existing Solar Energy System will be allowed without issuance of a new Solar Energy Construction Permit pursuant to this ordinance.

(ii) Modifications or alterations to any Solar Energy System(s), approved when issuing the Solar Energy System Construction Permit, may be completed through a Change Order, upon approval. Setbacks still apply.

iii) Modifications or alterations to a Solar Energy System approved when issuing the Solar Energy Construction Permit will require an amendment, approved by the Mercer County Planning and Zoning Board, to the Solar Energy Construction Permit for the Solar Energy System(s) and/or location(s) that are affected.

d) Archaeology Resource Surveys. Unless the project is under the purview of the North Dakota Public Service Commission (PSC), and an Archaeological Resource Survey is being prepared as a part of that process, the Permittee will work with the State Historic Preservation Office (SHPO) at the State Historical Society of North Dakota at the beginning of the planning process for the Solar Energy System to determine whether an archaeological survey is recommended for any part of the proposed project. If recommended, the Permittee will contact a qualified archaeologist to complete such surveys and shall submit the results to the Mercer County Planning and Zoning Board and the State Historic Preservation Office. The State Historic Preservation Office will make recommendations for the treatment of any significant archaeological sites which are identified. Any issues in the implementation of these recommendations will be resolved by the Mercer County Board of Commissioners in consultation with the State Historic Preservation Office. All information provided/submitted under this provision is subject to North Dakota Century Code 55-02-07.1. In addition, if any archaeological sites or human remains are found during construction, the Permittee shall follow standard operating procedures as established by the State Historic Preservation Office and in accordance with the NDCC Section 23-06-27 and associated North Dakota Administrative Code 40-02-03.

e) Biological resources survey. Unless the project is under the purview of the North Dakota Public Service Commission, the Permittee, in consultation with the US Fish and Wildlife Service - Ecological Services Office (USFWS) and the North Dakota Department of Game and Fish (NDGF) shall, for the project site, conduct a preconstruction inventory of existing wildlife management areas, scientific and natural areas, recreation areas, native prairies and forests, wetlands, and any other biologically sensitive areas and wildlife resources, particularly birds and bats, within the site and assess the presence of state-listed or federally-listed or threatened species, and other protected species such as migratory birds. The results of the survey shall be submitted to the Land Use Administrator, USFWS, and NDGF.

f) Avoidance Zones. The county may create avoidance zones to the proposed site location after considering the project

area and impacts to mine-able lignite deposits. Through an avoidance zone, the county may deny siting locations that have a materially adverse impact the specified interest, or condition a permit so mineral rights do not incur a burden of removing surface structures before mineral rights are exercised. Prior to making an application for a SES permit, Permittee may petition the Board of Commissioners at a regularly scheduled meeting to determine if an avoidance zone will affect the proposed project area. A petition must include a conceptual plan showing the proposed lands and approximate system location(s). Once a petition is made, the Board of Commissioners shall have thirty (30) days to determine whether an avoidance zone affects the proposed project area. In the event an avoidance zone is identified, the Board of Commissioners must issue a resolution outlining in detail, with supporting documentation, how the proposed SES materially and adversely impacts mineable lignite deposits. If the Board of Commissioners does not respond to the Permittee's avoidance zone petition within thirty (30) days, no avoidance zone may be implemented for the project area.

g) Power Purchase Agreement. A power purchase agreement shall be provided no later than twelve (12) months after approval of the permit. The Permittee's failure to provide such an agreement within twelve (12) months renders the permit void, unless a six (6) month extension has been granted by the Board of Commissioners, which shall not be unreasonably withheld.

h) Fire protection and medical emergency plans. Prior to construction, the Permittee shall prepare fire protection and medical emergency plans in consultation with the rural fire district, Sheriff's Department, Emergency Management, and local emergency medical service providers having jurisdiction over the area. The Permittee shall submit the project for registry in the 911 system. The SES shall be sectioned for the purposes of emergency response planning. Each section shall be clearly labeled, with detailed maps identifying access points and routes within the array sections so that emergency services may be rendered efficiently and effectively. A schedule for training(s) must be included in the plan, with initial training(s) taking place prior to commercial operation of the SES.

i) Public safety plan. The Permittee is encouraged to provide educational material to landowners within the site boundaries, and upon request, to interested persons about the project and any restrictions or dangers associated with the project. The Permittee shall comply with provisions outlined in their public safety plan.

j) Construction Timeframe. Construction at the site must be started within two years of approval of the project and must

be completed and the facility operational within four years. The Permittee may apply for an extension, which shall not be unreasonably withheld, if it provides just cause relating to permitting, interconnection, or market conditions outside of the Permittee's reasonable control.

k) Length of permit. Permits shall be valid for the service life of the facility, which ends when the system ceases the production of electricity for commercial purposes, triggering the decommissioning requirements herein. The Board of Commissioners, or its designee, may conduct a regular audit of the SES's compliance with the conditions of this ordinance and its permit every five (5) years, or as reasonably required (the "SES Audit"). The permittee shall bear all reasonable costs incurred by the county commission to prepare the SES Audit. If the SES Audit identifies the SES to be out of compliance with the conditions of this ordinance and / or its permit, the Permittee of the system shall be fined five hundred dollars (\$500.00) per day from the date the SES Audit is issued until the SES is determined to be back compliance and the fine is paid in full. If the Permittee does not return the SES to compliance and pay the associated fine in full within three hundred sixty-five (365) of issuance of the SES Audit, the SES permit shall be terminated.

l) Other certifications as may be required.

4) PERMITS.

a) A completed application must be received for each occurrence/incident by the Mercer County Land Use Administrator prior to the Mercer County Planning and Zoning Board accepting a request for Solar Energy Construction Permit. A Conditional Use Permit must be approved by the Mercer County Board of Commissioners prior to the start of any construction. Upon compliance with the Solar Energy Construction Permit and any additional requirements stipulated in the approved Conditional Use Permit, construction of the project may proceed. If the Mercer County Planning and Zoning Board finds that the conditions or restrictions set forth are not being complied with, the Mercer County Board of Commissioners shall issue to the Permittee a list of violations to which the Permittee must acknowledge and submit a plan to address within thirty (30) days. If the Permittee's plan to address the violations is not provided, the Mercer County Board of Commissioners may revoke the Permit after a public hearing.

b) The following items must accompany all applications for a Solar Energy Construction Permit:

i) A copy of the site plan with the name, address, and registration number of the professional engineer involved in preparing the site plan and the final blueprint to scale

ii) Name, dimensions, and locations of any above-ground utility easements, as available from public documents, within the project site.

iii) A copy of the Drainage Disposal Plan approved by the Mercer Soil Conservation District Office

iv) Proof of financial surety for decommissioning: The Permittee must provide a form of surety that can be assessed by the Mercer County Board of Commissioners.

v) The form of surety for decommissioning will be one hundred twenty-five (125) percent of the estimated removal and restoration costs less the salvage value of the equipment. A professional engineer or contractor who has expertise in the removal of a Solar Energy System will prepare a cost estimate for the decommissioning of the system. The Mercer County Board of Commissioners reserves the right to hire their own engineer to determine cost estimates and facts of decommissioning as required. The form of surety must be in place before construction can begin. The decommissioning cost estimate shall explicitly detail the cost before considering any project salvage value of the Solar Energy System. The amount shall include a mechanism for calculating and providing increased removal costs due to inflation. The Mercer County Board of Commissioners has the right to revisit decommissioning costs every five (5) years to determine the inflation calculated costs

vi) The owner / operator of the Solar Energy System must show proof of the form of surety to the Mercer County Board of Commissioners annually, or within thirty (30) days of a transfer of ownership after construction has begun. Any form of surety required by the state would be credited towards the Mercer County surety amount if the amount is greater. viii) Utility Permit Application and appropriate payment must be submitted and approved by the Mercer County Board of Commissioners and all county roadways will need to be bored for all electrical lines buried between the Solar Energy System components or sites.

ix) A copy of the State Historical Preservation Officer (SHPO) report of approval must be submitted, in addition to any other relevant studies, reports or certificates for approval as may be reasonably required by the Mercer County Planning and Zoning Board.

- x) The Permittee will have a third party, who is a qualified professional, conduct an analysis to identify and assess any potential impacts on the natural environment including wetlands and other fragile ecosystems, historical or cultural sites, antiquities, and adjacent agricultural uses such as rotating crops. The Permittee will respond appropriately to minimize, eliminate, or mitigate adverse impacts identified in the analysis. The Permittee will identify and evaluate the significance of any effects or concerns that will remain after mitigation efforts. In addition, a water usage or impact study must be completed that will indicate any impact that the Solar Energy System will have on township resources. The cost for this analysis shall be borne by the Permittee.
- xi) Routes of ingress and egress from all sites as proposed during Construction and thereafter, indicating:
 - (1) Proposed road surface and cover.
 - (2) Dust control.
 - (3) Width and length of access route(s).
 - (4) Road maintenance progress or schedule for proposed land.
- xii) Fees. The appropriate fee amounts.
- xiii) Documents to Provide Proof of Easement with Adjacent Property and Easement Owners. Evidence of covenants, easements, or similar documentation with abutting property owners to allow the crossing of their property with any part of the Solar Energy System, to include but not limited to output and utility lines.
- xiv) Proof of appropriate required storage battery storage. If the solar energy facility consists of batteries or storage of batteries, adequate design must be provided to ensure all county, state and federal requirements regulating battery storage have been met.

5) FEES. For Utility Solar Electric Scale Systems there are two fees:

- a) The permit application fee for a utility scale Solar Electric System will be one thousand dollars (\$1,000.00) and is due and payable upon submittal of the Solar Energy System's permit application. This fee is non-refundable.
- b) The second fee for the Conditional Use Permit shall be \$100 per MWac, which must be paid prior to commencement of construction of a Solar Energy System ("Solar Energy

System Permit Fee"). Once paid, the Solar Energy System Permit Fee shall be nonrefundable.

6) SETBACKS.

a) City Limits. This ordinance shall have no authority over or effect within the incorporated municipalities or their respective extra territorial areas.

b) Setbacks from property lines, roadways, rights-of-way, and utilities. All SES structure including fencing shall be two hundred fifty (250) feet from the center line of any public roadway, highway (whether improved or not), or railroad right-of-way.

c) Adjacent Non-Participating Property Lines. Utility-scale Solar Energy Systems will be set back at least two hundred fifty (250) feet from the adjacent non-participating property line. Permittee may build within the Adjacent Non-Participating Property Lines setback if written consent is obtained from the owner of the adjacent non-participating property.

d) Occupied dwelling, commercial building or publicly used structure or facility. The horizontal distance and any occupied structure shall not be less than two thousand five hundred (2,500) feet, unless otherwise negotiated with the landowner of the structure.

e) Buildings and Structures. Utility-scale Solar Energy Systems will be set back at least fifty (50) feet from any Unoccupied building or structure, unless otherwise negotiated with the landowner of the structure.

f) Shooting Range. For an established shooting range, the Utility-scale Solar Energy Systems must be located at least five thousand two hundred eighty (5,280) feet from the shooting position, as measured down-range.

g) General. Must meet all applicable federal, state and county setback requirements.

h) Above ground communication and electrical lines. All SES structures including fencing shall be located one hundred (100) feet from the centerline of any above ground communication and / or electrical line easement rights-of-way on the project site.

7) STANDARDS FOR UTILITY-SCALE SES.

a) Appearance. Where feasible, the design of the buildings and related structures at the Solar Energy System site shall use materials, textures, and location to integrate the Solar Energy System into the natural

setting and existing environment.

b) Design.

- (i) All solar panels shall be self-supporting.
- (ii) Glare and Reflection. The Permittee shall make every reasonable effort, including landscape design, to minimize the effects of Glare and or reflective light on any neighboring occupied dwelling or roadways. Upon receipt of a verified complaint, the Land Use Administrator may request a glare and reflection study be prepared at the expense of the Permittee by a registered professional engineer (qualified by training, education, and experience to conduct such a study) If it is determined that glare or reflective light exists the Permittee shall implement and maintain all necessary remedial measures.
- (iii) Height. Utility-scale ground-mounted Solar Energy Systems will have a maximum height of twenty (20) feet above ground.
- (iv) Electrical Interconnections. All electrical interconnection or distribution lines will comply with all applicable Federal, State, and Local codes and standard commercial utility requirements. Electric solar system components must have an Underwriters Laboratory (UL) listing. Power and communications lines running between banks of solar panels and to nearby electrical sub-stations or interconnections with buildings will be buried underground to a minimum depth of three (3) feet.
- (v) Road Crossings. All county road crossings must be bored and sleeved. If it is necessary to bore county roadways or bury electrical cable outside of the Solar Energy System boundary, a Utility Permit will also need to be submitted for approval prior to applying for a Solar Energy Construction Permit.
- (vi) Fences. Any security or perimeter fence placed at a Utility-scale Solar Energy System will be constructed from metal chain-link material, will be a minimum of six (6) feet in height and not exceed eight (8) feet in height. All fencing is to be maintained by the Permittee. Electric fencing will not be permitted.

- (vii) Lighting. Lighting will be limited to that required for safety and operational purposes, except for lighting that is required by the FCC and/or FAA, and will be directed downward and shielded so that no glare extends substantially beyond the boundaries of the Solar Energy System or facility.
- (viii) Waste. Any solid or liquid waste or any hazardous waste generated by the project will be properly disposed at a state approved location.
- ix) Sound Pressure Level. No Utility-scale Solar Energy System shall exceed sixty-five (65) dBA as measured at the property line.
- x) Roads. Any material damages to a public road located within Mercer County resulting from the construction, maintenance or operation of a Utility-scale Solar Energy System or facility will be repaired at the Permittee's expense. The Permittee shall abide by all Federal, State or requirements regarding the use of and/or repair of the roadways.
- xi) Signage. Utility-scale Solar Energy System installations will not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the Solar Energy System. Signs warning of the high voltage associated with Solar Energy System will be posted at every entrance to the facility and at the base of all pad mounted transformers and substations. A sign providing emergency contact information, such as phone number, will be posted near the entrance and at any operations and/or maintenance buildings. Signs shall be current and maintained by the operator of the solar energy facility.

8) LANDSCAPING.

- a) Vegetation. Topsoil will not be removed during development, unless part of a remediation effort. Soils will be planted to, and maintained in, perennial vegetation using approved NRCS seeds to prevent erosion, manage runoff and build soils. A Watershed Assessment must be completed and approved by the Mercer County Soil Conservation District, and paid for by the Permittee, prior to the start of

construction. It is required that any vegetation or crops planted must be in compliance with all federal and state laws protecting endangered species, to include pollinators such as bees. Dead or diseased vegetation will be removed and must be replanted at the next appropriate planting time until such time that it is considered established. Established vegetation must be maintained and if unable to do so must be replanted by the Permittee.

b) Assets. No land assets, i.e., topsoil, trees, and lumber, etc. will be removed from the premises without the written approval of the landowner. A copy of this permission letter must be attached to the Conditional Use Permit application.

b) Runoff. Each owner, operator, or maintainer of a Solar Energy System to which this Ordinance applies must regulate and control erosion and sediment runoff. If the topography of the site indicates this may be a problem, it is required that Dikes be installed to control runoff. A plan for runoff, containment, and reclamation, along with Dike-engineered blueprints, if required, must be included with the Conditional Use Permit application. Dike must meet state requirements for its specific use.

c) Weed Control. Permittee will keep all areas within the solar facility neat, clean and free of refuse or waste and unsightly, hazardous or unsanitary conditions. Mercer County has a Noxious Weed Ordinance, which will be followed. Only approved and labeled chemicals for weed control will be applied and no sterilant will be used. All plants or grasses present on site will be maintained by the facility operator and will not exceed twelve (12) inches in height.

9) AIRPORT AUTHORITY REVIEW.

a) For consideration of potential impacts to low-altitude airport flight paths, within 5 miles of the reference point of Mercer County Airports, notification of intent to construct a Solar Energy System will be sent to the Mercer County Airport Authority for its review of applicable requirements and coordination before the Mercer County Zoning Board's acceptance. Notification will include location of the Solar Energy System or site (i.e. map, coordinates, address, and structure placement), the type of solar technology being used and the area of the SES (e.g. 20 acres). Documentation of the Permittee's coordination with the Mercer County Airport Authority must be included with the Conditional Use Permit application.

10) BUILDING-MOUNTED-UTILITY-SCALE SOLAR ENERGY SYSTEM.

a) Utility-Scale building-mounted Solar Energy Systems will be subject to the following standards:

i) Height. Solar Energy Systems that are mounted on the roof of a building will not project more than five (5) feet above the highest point of the roof and, in any circumstances, will NOT exceed the maximum building height limitation for the zoning jurisdiction in which it is located, and will NOT project beyond the eaves of the roof.

ii) Weight. Solar Energy Systems mounted on the roof of a building will be only of such weight as can safely be supported by the roof. Proof thereof, in the form of certification by a professional engineer or other qualified person, must be submitted to the Zoning Board along with the Conditional Use Permit application.

iii) Attachment. Solar Energy Systems that are roof-mounted, wall-mounted or are otherwise attached to a building or structure must be permanently and safely attached to the building or structure. Proof of the safety and reliability of the means of such attachment will be submitted to the Zoning Board along with the Conditional Use Permit application.

iv) Wall-Mounted Solar Energy Systems. Solar Energy Systems that are wall-mounted will NOT exceed the height of the building wall to which they are attached.

v) Visual Impact. All Solar Energy Systems must not have any significant adverse visual impact on the natural features or neighborhood character of the surrounding area and will be located to minimize glare on adjacent properties and roadways. Solar Energy Systems that are visible from the street or road must be either composed of vi) Compliance with Additional Codes. Solar Energy Systems, and the installation and use thereof, will comply with all State and Local construction codes, the electrical code and other applicable State and Local codes. Installation of a Solar Energy System will NOT commence until all necessary permits have been issued and copies of each are on file with the County Zoning Board.

building-integrated components (such as solar shingles) that are not readily evident, or be designed and mounted to match the shape, proportions, and slope of the roof.

11) ANCILLARY SOLAR EQUIPMENT.

- a) Ancillary solar equipment will be located inside a building or be screened from public view. All ancillary solar equipment such as, but not limited to, water tanks, supports, batteries and plumbing will be screened to the maximum extent possible without compromising the effectiveness of the solar collectors. When solar storage batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure meeting the requirements of the state and local building codes and when no longer in use must be disposed of in accordance with all applicable laws and regulations.

12) BATTERIES.

- a) Each battery system will have its own Conditional Use Permit.
- b) Each battery system will be bermed, and lined. (lining material must be such to contain all hazardous material within the battery system) The berm must contain two times the amount of fluid contained in the installation. The company owning the installation(s) is responsible for maintaining the integrity of the berm barrier and making sure it is empty at all times.
- c) A battery system will be considered a separate facility from the adjacent solar facility.
- d) The owner will be responsible for providing the fire districts in the Mercer County a list of all hazardous materials within the battery system and provide training to the fire districts on suppression of a battery system fire.
- e) All property owners within a 2-mile radius will be listed and notified of the battery system, the inhalation hazards, if any, associated with a fire and escape routes.
- f) No used or discontinued material (fluids, machinery, batteries, may be stored on site). The exception is the build out of the site.
- g) The owner of the facility(s) will provide the Mercer County Board of Commissioners with documentation of the Hazardous Waste Disposal Site, contracted to receive hazardous waste from the permitted battery systems.

13) MISCELLANEOUS.

- a) Drainage Disposal Plan. Watershed Assessment Plan for drainage disposal and erosion control approved by the Mercer County Soil Conservation District.
- b) Avian and Wildlife Impact Documentation. The Permittee will have a third party, who is a qualified professional, conduct an analysis to identify and assess any potential impacts on wildlife and endangered species. The Permittee will respond appropriately to minimize, eliminate, or mitigate adverse impacts identified in the analysis. The Permittee will identify and evaluate the significance of any net effects or concerns that will remain after mitigation efforts, to include effects on pollinators.
- c) Operation and Maintenance Plan. A plan for the operation and maintenance of the Solar Energy System, which will include measures for maintaining safe access to the installation, storm water controls, weight, and safety limitations on buildings, as well as general procedures of operational maintenance of the installation.
- d) Emergency Plan. The owner/operator of the Solar Energy System will cooperate with local emergency services in developing an Emergency Response Plan to be submitted with the application. All means of shutting down the Solar Energy System will be clearly marked. The owner/operator will identify a responsible person for public inquires throughout the life of the installation. An information sign will be posted and maintained at the entrance(s), which lists the name and phone number of the operator. The emergency plan shall be kept current and updated no later than every five (5) years.

14) DECOMMISSIONING.

- a) Prior to commencement of operation of a Solar Energy System, the Permittee shall file the estimated decommissioning cost, in current dollars at the time of filing, for the proposed facility and a comprehensive decommissioning plan that describes any expected effect on present and future natural resource development and identify the financial resources that will be available to pay for decommissioning the facility. Permittee must provide an updated decommissioning plan reflecting any changes to prior plans and reflecting updated costs decommissioning at the time of any permit extension request.
- b) Complete Decommissioning Plan. The Solar Energy

System project will develop a Decommissioning Plan in accordance with NDCC 49-02-27 and NDAC 69-09-09 and this plan must and be submitted as a part of the Solar Energy System application. The Decommissioning Plan must contain the following information that provides for the removal and reclamation of the facility or site(s) within 365 days:

- i) All Solar Energy System components, aboveground improvements, and outside storage.
- ii) Foundations, pads and underground electric wires removed to a depth of four feet.
- iii) Restoring the site to its original, pre-construction, condition, unless authorized in writing by the Board of Commissioners.
- iv) Hazardous material(s) from the property must be disposed of accordance with Federal, State and Local Laws.
- v) The removal of all access roads or driveways by the Permittee, unless the property owner(s) requests, in writing, a desire to maintain any access roads or driveways.
- vi) Mercer County will not be assumed to take ownership of any access road or driveways.
- vii) On-site buildings may remain if a notarized Bill of Sale is provided to the Mercer County Zoning Board from the landowner, showing change in ownership.
- viii) In the event, the State of North Dakota enacts a law with regards to the decommissioning of a Solar Energy System, the state-level requirements will prevail.

c) Bonding Requirements. The bond must be submitted upon approval of the Conditional Use Permit and prior to construction. Within one year of termination of operations or abandonment of the Solar Energy System leases or easements for a Solar Energy System in the county, the permittees or current owner(s) and/or operators will, at its expense, comply with the following decommissioning requirements:

- i) Dismantling and removal of all solar panels and support structures distribution and or collection cables and transformers and overhead cables.
- ii) Removal of all underground cables to a depth of thirty-six (36) inches and backfill all trenches.
- iii) Removal of all foundations, buildings, and ancillary equipment to a depth of three (3) feet.
- iv) Removal of surface road materials and restoration of the roads to substantially the same physical condition that existed immediately before construction of the commercial Solar Energy System, unless prior arrangement has been made in writing, with a notarized signature from the

current landowner, to keep the roadways in place.
v) All sites must be restored and reclaimed to the same general topography that existed prior to the beginning of construction of the Solar Energy System. Areas disturbed by the construction of the Solar Energy System and decommissioning activities must be graded, top soiled and seeded according to the Natural Resources Conservation Services Technical Guide recommendations and other agency recommendation, an established stand is required within three (3) years. If not established, re-seeding is required. Reseeding is the responsibility of the Solar Energy System Permittee.

15) **OTHER REQUIRED DOCUMENTS.**

a) Any other relevant studies, reports, certificates, and approval as may be reasonably required by the Mercer County Planning and Zoning Board.

b) Prior to final inspection, proof that a permit issued by the State in accordance with all applicable state laws has been issued will be required.

c) The Permittee will construct no new or additional Solar Energy System(s) in Mercer County until the Mercer County Planning and Zoning Board and the Mercer County Board of Commissioners have approved a new Conditional Use Permit.

d) Review and Inspections.

i) The Mercer County Board of Commissioners, and/or its designee, will review the site plan and inspect the Solar Energy System and any facilities to insure conformity with the requirements of this ordinance.

ii) Inspections may occur during construction and may occur periodically during operations. A minimum forty-eight (48) hour notice shall be provided to Permittee for an inspection unless the inspections are related to an emergency response.

e) Variances. The Mercer County Planning and Zoning Board may grant a variance to these requirements based upon good cause, if shown. Completed and notarized variance request forms must accompany the Conditional Use Permit, if needed.

f) Appeals. Appeals of a Mercer County Planning and Zoning Board decision must be made to the Mercer County Board of Commissioners.

16) PUBLIC HEARINGS.

a) Public Hearing. A public hearing concerning the Solar Energy System permit application shall be conducted by the Mercer County Planning and Zoning Board within sixty (60) days of receipt of the application. The Mercer County Planning and Zoning Board shall analyze the site location, needs of the operation and company employees regarding roads, housing, community facilities, and county and community facilities. Following the public hearing, the Mercer County Planning and Zoning Board shall make a recommendation on the permit application to the Mercer County Board of Commissioners. The Mercer County Board of Commissioners shall then issue a final decision on the permit application within thirty (30) days.

b) Deliberation and Decision. The Mercer County Planning and Zoning Board, following the public hearing for the Conditional Use Permit, will make a recommendation to the Mercer County Board of Commissioners for the approval or denial, modification, and/or imposition of conditions on the application. Upon approval of the Mercer County Board of Commissioners, and all applicable fees paid, the Mercer County Board of Commissioners will approve the Conditional Use Permit for the Solar Energy System project.

17) DEMONSTRATION OF CONSTRUCTION COMPLIANCE.

a) The Application issued will be required upon the Permittee(s) or current owner(s), final demonstration of compliance with the requirements of the Conditional Use Permit following completion of the Solar Energy System. Within ninety (90) days from the start and within ninety (90) days of completion of the Solar Energy System(s) construction, the Permittee, permittee or current owner, must submit to the Mercer County Planning and Zoning Board all updated and final USGS Maps (to scale), surveys, or blueprints, if available, providing all of the information and demonstrating actual compliance with the requirements and conditions set forth for the Solar Energy Construction Permit.

18) LIABILITY INSURANCE.

a) The Permittee or current owner and/or operator of the Solar Energy System will defend, indemnify and hold harmless Mercer County and its officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including attorney's fees, without limitation, arising out of unlawful acts or

missions of the Permittee, or current owner and/or operator associated with the construction and/or operation of the Solar Energy System.

19) ABANDONMENT.

a) Any Utility-scale Solar Energy System that ceases to produce energy on a continuous basis for twelve (12) months will be considered abandoned unless the current responsible party (or parties) with ownership interest the Solar Energy System provides substantial evidence, (updated every six(6)months after a twelve-(12)month period of no energy production), to the Mercer County Planning and Zoning Board of the intent to maintain and reinstate the operation of the Solar Energy System.

b) Upon determination of abandonment, the Mercer County Zoning Board will notify the party (or parties) responsible of such determination and the responsible party or parties must respond within thirty (30) days.

c) If the responsible party (or parties) fails to comply, the Mercer County Planning and Zoning Board may remove the Solar Energy System, sell any removable materials, make use of the funds provided by the financial surety agreement, initiate judicial proceedings or take any other steps legally authorized against the responsible parties to recover the costs required to remove the Solar Energy System and restore the site to a non-hazardous, pre-development condition.

20) TRANSFER OF OWNERSHIP OF A SOLAR ENERGY SYSTEM.

a) Prior to any change in ownership or assignment of a controlling interest of any entity owning a Solar Energy System permitted in the county, including any assignment or transfer of a controlling interest to any corporation, partnership, or other entity controlled by or a subsidiary or affiliate of the Solar Energy System permitted in the county, application shall be made to the Mercer County Planning and Zoning Commission, notifying transfer of the Solar Energy System Conditional Use Permit.

b) Such transfer shall be conditioned upon explicit agreement by the new Permittee to the original Conditional Use Permit and this ordinance. The notification shall also include the new Permittee's agent and contact information. A change of ownership that results in inability, unwillingness, or failure to abide by the terms of the original permit and the conditions of these ordinances may be a basis for termination of the Conditional Use Permit.

21) PREEMPTION.

a) The regulations for Solar Energy Systems must follow county and state regulations and the government with the greater or stronger regulation will apply to the project.

22) ENFORCEMENT AND PENALTIES.

a) The Zoning Code Administrator, as designated by the Mercer County Board of Commissioners, will enforce this ordinance.

b) Mercer County will have the right to petition the District Court for an injunction prohibiting the continuing violation of this ordinance. Anyone found to be in violation of this ordinance and enjoined by said court will be assessed the cost and attorney fees incurred by Mercer County in seeking said injunction.

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.
5. Residence has to be built in two (2) years or applicant has to reapply.

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.
4. Residence has to be built in two (2) years or applicant has to reapply.

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.
4. Residence has to be built in two (2) years or applicant has to reapply.

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 a permitted or conditional use within a site approved under these district regulations.

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.
- O. Water Depot.
- P. Data Center

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.