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NOTE:

1. All provisions of these Zoning Ordinances, relating to lot size, building density, building setback, parking and loading requirements, building height, etc., may be relaxed by the Board of Adjustment under provisions contained in Section 509 - Variances.
2. These Zoning Ordinances shall be on file for inspection at the Offices of the Register of Deeds, County Auditor, and at the County Planning Department. Copies are available at the Planning Department at the cost of printing.

**PENNINGTON COUNTY ZONING ORDINANCE  
PENNINGTON COUNTY, SOUTH DAKOTA**

**SECTION 100 - STATUTORY AUTHORIZATION AND JURISDICTION**

**SECTION 101 - STATUTORY AUTHORIZATION**

Whereas, Chapter 11-2, South Dakota Codified Laws, 1967, as amended, has delegated the responsibility to the Board of County Commissioners of each county to adopt and enforce regulations designed for the purpose of promoting health, safety, morals, and the general welfare of the County, therefore, the Board of County Commissioners of Pennington County, South Dakota, hereby ordains as follows:

**SECTION 102 - JURISDICTION**

This Zoning Ordinance shall govern all unincorporated lands within the jurisdiction of the Board of County Commissioners for Pennington County, South Dakota.

**SECTION 103 - DEFINITIONS**

Unless specifically defined below, words used in these Zoning Ordinances are to be understood in their ordinary sense, except as they may be defined in general in SDCL 2-14.

ACCESSORY: Incidental to a primary use or structure on the same lot.

ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE: A commercial establishment which, as one of its principal purposes offers for sale or rental for any form of consideration any one or more of the following:

- a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas;” or,
- b. Instruments, devices, or paraphernalia that are designed for use in connection with “specified sexual activities.”

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.” A principal business purpose is defined as a business that maintains at least 40% of its inventory items for sale or rent that are characterized by an emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas.”

The definition under this subsection shall not include a store that, as its principal business purpose, sells or rents films, motion pictures, video cassettes, video reproductions or other visual representations that contain an official industry rating of G, PG, PG 13, R or NC 17.

**ADULT CABARET:** A nightclub, bar, juice bar, restaurant, bottle club or similar commercial establishment whether or not alcoholic beverages are served which regularly features persons who appear nude or semi-nude.

**ADULT MOTEL:** A hotel, motel or similar commercial establishment which offers accommodations to the public in any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, DVD's or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from a public right-of-way which advertises the availability of this adult type of photographic reproductions. A hotel, motel or similar commercial establishment which offers a sleeping room for rent for a period of time that is less than ten (10) hours. A hotel, motel or similar commercial establishment which allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

**ADULT MOTION PICTURE THEATER OR DRIVE-IN THEATER:** An enclosed building or outdoor drive in theater used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as herein defined, for observation by patrons therein. The definition under this subsection shall not include a store that, as its principal business purpose, sells or rents or shows films, motion pictures, video cassettes, video reproductions, DVD's or other visual representations that contain an official industry rating of G, PG, PG 13, R, or NC 17.

**ADULT ORIENTED BUSINESSES:** An adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theatre, adult photo studio or nude model studio.

**ADULT PHOTO STUDIO:** An establishment, which, on payment of a fee, provides models for the purpose of photographing "specified anatomical areas."

**AIRPORT:** A place from which aircraft operate that usually has paved runways and maintenance facilities.

#### **AIRPORT HEIGHT & HAZARD ZONING DEFINITIONS: (SECTION 301)**

**APPROACH SURFACE:** A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in Section 301 of this Ordinance. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.

**APPROACH, TRANSITIONAL, HORIZONTAL, AND CONICAL ZONES:** These zones are set forth in Section 301 of this Ordinance.

**CONICAL SURFACE:** A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

**HAZARD TO AIR NAVIGATION:** An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

**HORIZONTAL SURFACE:** A horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.

**LARGER THAN UTILITY RUNWAY:** A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet-powered aircraft.

**NON-PRECISION INSTRUMENT RUNWAY:** A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach procedure has been approved or planned.

**OBSTRUCTION:** Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section 301(D) of this Ordinance.

**PRECISION INSTRUMENT RUNWAY:** A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.

**PRIMARY SURFACE:** A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; for military runways or when the runway has no specially prepared hard surface or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface is set forth in Section 301C of this Ordinance. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

**RUNWAY:** A defined area on an airport prepared for landing and takeoff of aircraft along its length.

**TRANSITIONAL SURFACES:** These surfaces extend outward at 90-degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at 90-degree angles to the extended runway centerline.

**UTILITY RUNWAY:** A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and less.

**VISUAL RUNWAY:** A runway intended solely for the operation of aircraft using visual approach procedures.

ARSD – Administrative Rules of South Dakota.

**ASSEMBLY:** A gathering together of people at any location, at any single time, for any purpose other than regularly established permanent places of worship, government-sponsored fairs, rodeos, farm sales, auctions, family gatherings, or assemblies licensed under other laws.

**AUTOMOBILE REPAIR SHOP:** An area of land, including structures thereon, that is used for the repair and servicing of automobiles.

**AUTOMOBILE WRECKING:** The dismantling, storage, sale, crushing or dumping of used motor vehicles, trailers or parts thereof, or the accumulation of four (4) or more unlicensed vehicles in a residential area.

**BAKERY:** A place where breads, confections and pastries are produced and sold.

**BASEMENT:** A story partly underground and having at least one-half of its height above the average level of the adjoining ground. A basement shall be counted as one-half story.

**BEDROOM:** Any portion of a dwelling which is so designed as to furnish the minimum isolation necessary for use as a sleeping area. It may include, but is not limited to, a den with a closet or a study with a closet. Estimates of wastewater generated are based on two persons per bedroom.

**BOARD:** The Pennington County Board of Commissioners.

**BOARD OF ADJUSTMENT:** The Pennington County Board of Commissioners.

**BUILDABLE AREA OF A LOT:** That portion of a lot bounded by the required rear and side yards and front yard of the building setback line.

**BUILDING:** Any structure, either temporary or permanent, having a roof or other covering designed and used for the shelter or enclosure of any person, animal, or property of any kind.

**CHILD CARE CENTER:** A facility, by whatever name, in which care is provided on a regular basis for seven (7) or more children, under twelve (12) years of age, at one time, including children related to the operator or manager thereof. Such facilities include those commonly known as daycare centers, day nurseries, and play groups, but exclude foster homes and family daycare homes.

**CLINIC:** A facility where medical or dental care is furnished to persons on an outpatient basis only.

**COMMERCIAL AUTOMOBILE WRECKING YARD:** The dismantling, storage, sale, crushing or dumping of used motor vehicles, trailers or parts thereof.

**COMMERCIAL JUNK OR SALVAGE YARD:** A structure, lot or premises where junk is bought, sold, exchanged, stored, placed, packed, baled, disassembled, crushed, handled or prepared for recycling. A commercial automobile wrecking yard is classified as commercial junk or salvage yard.

COMMISSION: The Pennington County Planning Commission.

CONSTRUCTION PERMITS DEFINITIONS: (SECTION 507)

**BEST MANAGEMENT PRACTICES (BMP):** Non-structural or structural device, measure, facility, or activity which helps to achieve soil erosion and storm water management control objectives at a site.

**CLEAN WATER ACT (CWA):** The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

**CLEARING:** Any activity that removes the vegetative surface cover.

**CONSTRUCTION ACTIVITY:** Ground surface disturbing activities, which include, but are not limited to, clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads, staging areas, stockpiling of fill materials, and borrow areas. Construction Activity does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility.

**CONSTRUCTION PERMIT:** Permit issued by Pennington County for construction, excavating, clearing, and/or any land disturbing activity.

**DISTURBANCE:** Any type of activity that involves grading, clearing, moving topsoil, rock, or any other natural surface from property. Includes bringing in fill material on to the site.

**DRAINAGE WAY:** A channel that conveys surface runoff throughout the site.

**EROSION CONTROL:** Measures which prevent erosion.

**ILLICIT DISCHARGE:** Any direct or indirect non-storm water discharge to the storm drain system.

**ILLICIT CONNECTION:** Either of the following:

- a. Any drain or conveyance, whether on the surface or subsurface, which allows an Illicit Discharge to enter the storm drain system, including but not limited to, any conveyance which allows any non-storm water discharge to enter the storm drain system and any connections to the storm drain system from indoor drains, sinks, or toilets, regardless of whether said drain or conveyance had been previously allowed, permitted, or approved; or,
- b. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by DENR.

**IMPERVIOUS AREA:** Impermeable surfaces such as paved driveways, parking areas, sidewalks, or roads which prevent infiltration of water into soil.

**INDUSTRIAL DISCHARGE:** The discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122.

**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4):** A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

- a. Owned and operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
- b. Designed or used for collecting or conveying storm water;
- c. Which is not a combined sewer;
- d. Which is not part of a Publicly Owned Treatment Works as defined at 40 CFR §122.2; and,
- e. Determined by the EPA from census data and identified in Attachment A and Attachment B.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER PERMIT:** A permit issued by the Environmental Protection Agency (or DENR under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to Waters of the State, whether the permit is applicable to an individual, group, or geographic area.

**NON-STORM WATER DISCHARGE:** Any discharge to the storm drain system that is not composed entirely of storm water.

**PERMITTEE:** Person(s) or entity to whom the Construction Permit from Pennington County is issued.

**POLLUTANT:** Any dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, munitions, chemical wastes, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, cellar dirt, or other industrial, municipal, or agricultural waste discharged into Waters of the State. This term does not mean sewage from watercraft; or water, gas, or other material which is injected into a well to facilitate production of oil or gas; or water derived in association with oil and gas production and disposed of in a well, if the well is used to facilitate production or for disposal purposes and is approved by the appropriate state authority.

**SITE PLAN:** Plan showing, in detail, the boundaries of a site and the location of all improvements, utilities, drainage, structures, and specific measures, and their location, used to control sediment and erosion, for a specific parcel of land.

**STABILIZATION** – The use of practices that limit exposed soils from eroding, including but not limited to grass, trees, sod, mulch, or other materials which prevent erosion and maintain moisture.

**STORM DRAIN SYSTEM:** Refer to “Municipal Separate Storm Sewer System” definition.

**STORM WATER:** Any surface flow, runoff, and/or drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

**STORM WATER POLLUTION PREVENTION PLAN (SWPPP):** A plan identifying potential sources of storm water pollution at a construction site and specifying structural and non-structural controls that will be in place to minimize negative impacts caused by storm water discharges associated with construction activity. The purpose of these controls is to minimize erosion and run-off of pollutants and sediment.

**WATERCOURSE:** A natural or artificial channel through which storm water or flood water can flow, either regularly or intermittently.

**WATER QUALITY STANDARDS:** A water quality standard defines the water quality goals of a water body, or a portion of the water body. The water quality standards regulations establish the use or uses to be made of a water body, set criteria necessary to protect the uses, and establish policies to maintain and protect water quality. South Dakota has developed surface water quality standards for all Waters of the State, as required by the Clean Water Act.

**CONTRACTOR’S EQUIPMENT STORAGE YARD:** A facility for the storage of equipment, material, and supplies used in conjunction with a contractor’s business.

**CORNER LOT:** A lot of which at least two adjoining sides abut for their full lengths on a street, providing that the interior angle at the intersection of the two such sides is less than one hundred thirty-five (135) degrees.

**COVERAGE:** The lot area covered or occupied by all buildings located therein, including the area covered by all overhanging roofs.

**DELI:** A place where domestic and imported meats, cheeses, wines (with the proper licenses) and prepared foods are sold. Equipment and ingredients for home and/or garden may also be sold.

**DENR:** Department of Environment and Natural Resources (State of South Dakota).

**DEVELOPMENTAL LOT:** Two or more lots or portions of lots with continuous frontage in single ownership of record prior to February 1, 1994, where all or part of the lots do not meet the requirements established for lot width and area, which for the purposes of these Zoning Ordinances shall be considered to be an undivided lot.

**DISTRICT:** An area of land under the jurisdiction of these Zoning Ordinances for which the regulations governing the use of land are unique and uniformly applied.

**DOUBLE FRONTAGE LOT:** A lot, which runs through a block from street to street excluding the side dimension of a corner lot.

**DRIVE-IN:** A business establishment so developed that its retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles to serve patrons while in the motor vehicle.

**DWELLING:** Any structure, building, or any portion thereof which is used, intended, or designed to be occupied for human living purposes including, but not limited to, houses, mobile homes, hotels, motels, apartments, business, and industrial establishments.

**FAMILY:** An individual or a group of two (2) or more persons related by blood, marriage or adoption, including foster children and domestic servants, or a group not to exceed five (5) persons not related by blood, marriage or adoption, living together as a single housekeeping unit and using common cooking facilities.

**FAMILY CARE FACILITY:** A home approved under SDCL 28-1-40 or licensed under SDCL 34-12-1 which provides resident service, except nursing care to the sick or injured, to a small number of adults determined by the State Department of Social Services, or the Department of Health, not related to the resident household by blood or marriage. These individuals are aged, blind, physically or developmentally disabled and receive care and service according to their individual needs in a family situation.

**FAMILY DAYCARE HOME:** A facility providing care and supervision of children from more than one unrelated family, in a family home, on a regular basis for part of a day, as a supplement to regular parental care, for no greater than twelve (12) children at any time, including children under the age of six (6) years related to the owners, operators, or managers thereof, without transfer of legal custody or placement for adoption.

**FARMERS MARKET:** A place where vendors offer the community new/fresh products, including but not limited to: dairy, produce, livestock, meats and all other agriculture products for the home and garden.

**FEED LOT, COMMERCIAL:** A lot for the concentrated feeding of livestock, fowl, or fur animals where such feeding is not done as an accessory use to the production of crops on the premises of which the feed lot is a part.

**FLOOR AREA:** The total gross area on all floors as measured to the outside surfaces of exterior walls, excluding crawl spaces, garages, carports, breezeways, attics without floors and open porches, decks, balconies, and terraces.

**FRONT LOT LINE:** The line separating said lot from the street.

**FRONTAGE:** All the property on one side of a street between two intersecting streets measured along the line of the street, or if the street is dead-ended, then all of the property abutting on one side between an intersecting street and the dead-end of the street.

**GARAGE:** A fully enclosed building designed for the storage of motor vehicles.

**GOVERNMENT AGENCY:** Any department, commission, independent agency or instrumentality of the United States, of a state, county, incorporated or unincorporated municipality, township, authority, district, volunteer fire department, or other governmental unit.

**GROUP FACILITIES:** A facility, licensed by the appropriate state or local agency, which provides resident service to five or more individuals of whom one or more are unrelated. These individuals are handicapped, aged or disabled, are undergoing rehabilitation and are provided services to meet their needs. This category includes uses, licensed or supervised by any federal, state or county health/welfare agency, such as group homes (all ages), halfway house, resident schools, resident facilities and foster or boarding homes.

**GUEST HOUSE:** Living quarters within a detached accessory building located on the same premises with the main building for use by guests of the occupants of the premises.

**HEIGHT:** The vertical distance from the highest point on a structure, excepting any chimney or antenna on a building, to the average ground level of the grade where the walls or other structural elements intersect the ground. For the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

**HIGHWAY:** Every way or place of whatever nature open to the public, as a matter of right, for purposes of vehicular travel, is a highway. The term "highway" shall also include private access easements and roadways.

**HISTORICAL MONUMENTS AND/OR STRUCTURES:** Any structure or building existing contemporaneously with and/or commonly associated with the outstanding person, event or period of history, and any structure or building in which the relics and/or mementos of such person, event, or period are housed and preserved.

**HOME OCCUPATION:** A use conducted entirely within an enclosed structure (other than a mobile home), which is clearly incidental and secondary to the residential occupancy and does not change the character of the property.

**HOME OFFICE:** An occupation, profession, or activity conducted by members of the family residing on the premises and no additional employees which is clearly incidental use of a residential dwelling unit and does not alter the exterior appearance of the property or affect the residential character of the neighborhood. No home office shall be conducted in any accessory structures. A home office shall not allow any storage of materials, stock or equipment, except for product samples stored wholly within the structure and customary office equipment used in the operating of the business; shall not have any customer traffic physically visiting the residential dwelling unit, and shall not allow any signage advertising the home office or activity.

**HOTEL:** A building designed, used, or offered for temporary residential occupancy, including tourist homes and motels, but not including hospitals or nursing homes.

**INTERIOR LOT:** A lot other than a corner lot.

**ISOLATED CABINS:** Isolated recreation cabins located on National Forest Land on sites not planned or designated for recreational cabin purposes. Use of these cabins originated from situations other than occupancy trespassed of invalid mining claims.

**JUNK:** Used machinery, scrap, iron, steel, other ferrous and nonferrous metals, tools, implements, appliances or portions thereof, glass, plastic, paper or paper products, building materials, or other waste that has been abandoned from its original use and may be used again in its present or in a new form.

**KENNEL:** A shelter for the breeding and boarding of four (4) or more dogs more than six (6) months of age.

**LOADING SPACE:** A space within the building or on the same lot therewith, providing for the standing, loading, or unloading of a vehicle.

**LOCAL CONTACT:** a local property manager, owner or agent of the owner, who is authorized to respond to questions, concerns, and emergencies.

**LOT:** A portion of a subdivision, or any other parcel of land intended as a unit for transfer of ownership or for development or both and shall not include any part of the right-of-way of a street or road.

**LOT AREA:** The total horizontal area included within the lot lines.

**LOT DEPTH:** The average distance from the street line of the lot to its rear line, measured in the general direction of the sidelines of the lot.

**LOT LINES:** The lines bounding a lot as defined herein.

**LOT WIDTH:** The width of a lot at the building setback line measured at right angles to its depth.

**MANUFACTURED HOME:** A factory-built, single-family structure that is manufactured under the authority of the National Manufactured Home Construction and Safety Standard Act of 1974, which became effective June 15, 1976, is transportable in one or more sections, is built on a permanent chassis, and is used as a place of human habitation.

**MOBILE HOME:** A transportable, factory-built home, designed to be used as a year-round single-family residential dwelling unit and not constructed to the Federal Manufactured Housing Construction and Safety Standard Act of 1974, which became effective June 15, 1976.

**MOBILE HOME PARK:** Any parcel of land with a minimum of ten (10) mobile home spaces as herein defined are placed, located or maintained, or intended to be placed, located or maintained, including all accessory buildings used or intended to be used as part of the equipment thereof. In the mobile home park, all land is intended to be held in common ownership, with individual mobile home spaces rented to residents.

**MOBILE HOME SPACE:** A plot of ground within a mobile home park, which is designed as the location for one (1) mobile home and any customary accessory use thereof.

**MOBILE HOME SUBDIVISION:** Any parcel of land, subdivided according to County Subdivision Ordinances, which has been issued a Conditional Use Permit to locate mobile homes. The mobile home subdivision is intended to be an area where lots are sold to individual mobile home owners. Mobile home subdivisions are subject to all restrictions of the district in which they are located.

**MODEL HOME AND SALES OFFICE:** A dwelling unit used initially for display purposes, which typifies the type of unit that will be sold and constructed, including accessory office space used for the sale of the dwelling units.

**MODULAR HOME:** A factory fabricated transportable building consisting of units installed on a permanent foundation construction, as per manufacture's recommendation, and used as a single-family residential dwelling unit.

**MOTEL:** A building or group of buildings used for the temporary residence of motorists or travelers.

**MOTOR VEHICLE:** Every vehicle which is self-propelled by power other than muscular power.

**MULTIPLE-FAMILY DWELLING:** A structure designed or used for residential occupancy by two or more families living independently of each other, which may include, but not limited to: condominiums, townhomes, apartments and assisted living/nursing homes.

**NONCOMMERCIAL AUTOMOBILE WRECKING YARD:** A lot or premises where used motor vehicles, mobile homes, trailers or parts thereof, are dismantled, stored, or dumped where said vehicles, or parts thereof, are to be used by the owner of the property. The presence on any lot or premises of four or more motor vehicles, whether licensed or unlicensed, which, for a period exceeding thirty (30) days, have not been capable of operating under their own power or from which parts have been or are to be removed for reuse shall be classified as a noncommercial automobile wrecking yard. This definition shall not apply to property meeting the criteria for classification of land as agricultural as determined by the County Director of Equalization's Office.

**NONCOMMERCIAL JUNK OR SALVAGE YARD:** A structure, lot, or premises where junk is stored, placed, packed, baled, disassembled, crushed, handled, or prepared for recycling. A noncommercial automobile wrecking yard is classified as a noncommercial junk or salvage yard.

**NONCONFORMING USE:** A building, structure, or use of land existing at the time of enactment of these Zoning Ordinances and which does not conform to the regulations of the district in which it is situated. Any preexisting structure, object of natural growth, or use of land, which is inconsistent with the provisions of this Ordinance or an amendment thereto.

**NUDE MODEL STUDIO:** Any place where a person who appears nude, or who displays "specified anatomical areas" and is provided to be sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of South Dakota, or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

**NURSING HOME:** A structure designed or used for residential occupancy and providing limited medical or nursing care on the premises for occupants, but not including a hospital or mental health center.

## ON-SITE WASTEWATER TREATMENT SYSTEM DEFINITIONS: (SECTION 204-J)

**ABSORPTION BED:** A subsurface absorption system which consists of excavations wider than three feet each, no more than 36 inches deep, containing a minimum depth of 12 inches of clean aggregate, together with a system of absorption lines, through which effluent may seep or leach into surrounding soils.

**ABSORPTION FIELD:** The soil or soils through which wastewater from an absorption system percolates.

**ABSORPTION SYSTEM:** A system which utilizes absorption lines (i.e. perforated pipe, gravelless pipe or chambers) in trenches or beds to distribute wastewater to adjacent soils in an absorption field.

**ABSORPTION TRENCH:** A long, narrow excavation made in soil for the placement of an absorption line.

**ALTERNATIVE ON-SITE WASTEWATER TREATMENT SYSTEM:** A system for treatment and disposal of domestic wastewater or wastes which consists of a building sewer, a septic tank or other sewage treatment or storage unit, and a disposal facility or method which is not a conventional system; but not including a surface discharge to the waters of the state.

**BEDROCK:** The rock, usually solid, that underlies soil or other unconsolidated, superficial material.

**BUILDING SEWER:** A pipe that conveys wastewater from a building to the first on-site wastewater treatment system component or sewer main.

**CERTIFICATION:** Program to substantiate the capabilities of a service provider by documentation of experience and learning.

**CESSPOOL:** An underground pit into which raw household wastewater is discharged and from which the liquid seeps into the surrounding soil; may or may not be partially lined; if septic tank effluent is discharged to such a component it is considered a seepage pit.

**CHAMBERED TRENCH:** A type of absorption system where the media consists of an open bottom, chamber structure of an approved material and design, which may be used as a substitute for the gravel media with a perforated distribution pipe.

**CHANGE IN DESIGNATION:** Any alteration or modification in the specified zoning, change in use (i.e. Conditional Use Permit), or change to platting for a parcel or property.

**CISTERN:** A watertight receptacle of nontoxic material designed for the storage of potable water.

**CURTAIN DRAIN:** Any groundwater interceptor or drainage system that is gravel backfilled and is intended to interrupt or divert the course of shallow groundwater or surface water away from the on-site wastewater treatment system. (Also known as a "french drain")

**DISPERSAL SYSTEM:** A system for the distribution of effluent into the final receiving environment by such methods as transpiration, evapotranspiration, soil absorption or other DENR-approved dispersal methods.

**DISTRIBUTION BOX:** A watertight structure which receives septic tank effluent and distributes it concurrently, in essentially equal portions, into two or more distribution pipes leading to an absorption system.

**DISTRIBUTION PIPE:** Approved perforated pipe used in the dispersion of septic tank effluent.

**DOMESTIC WASTEWATER:** Effluent from a septic tank or other treatment device originating from plumbing fixtures and appliances such as sanitary (toilets), bath, laundry, dish washing and garbage disposals.

**DROP BOX:** A watertight structure which receives septic tank effluent and distributes it into one or more distribution pipes and into an overflow leading to another drop box and absorption system located at a lower elevation.

**EFFLUENT:** The partially or completely treated liquid waste discharge containing fecal and urinary waste from a wastewater treatment system.

**EFFLUENT LIFT PUMP:** A pump used to lift septic tank effluent to a disposal area at a higher elevation than the septic tank.

**EJECTOR PUMP:** A device to elevate or pump untreated sewage to a septic tank, public sewer, or other means of disposal.

**EVAPOTRANSPIRATION SYSTEM:** An imperviously lined dispersal system that uses a process of evaporation and plant transpiration to withdraw water from the soil.

**EXPERIMENTAL ON-SITE WASTEWATER TREATMENT SYSTEM:** An on-site wastewater treatment and/or disposal system which is still in experimental use and requires further testing in order to provide sufficient information to determine its acceptability.

**GRAYWATER:** The wastewater generated by water-using fixtures and appliances which do not discharge garbage or urinary or fecal wastes.

**GRAYWATER SYSTEM:** A wastewater system designed to recycle or treat wastes from sinks, tubs, showers, washers, or other devices which do not discharge garbage or urinary or fecal wastes. See “graywater” definition.

**GREASE INTERCEPTORS:** An outdoor unit similar to a septic tank, used to remove, by flotation, excessive amounts of grease and oils which may interfere with subsequent treatment of the waste (also known as “grease traps”).

**GROUNDWATER:** That portion of subsurface water that is in the zone of soil or rock saturation.

**GROUNDWATER TABLE:** The surface of a body of unconfined groundwater in which the pressure is equal to that of the atmosphere.

**GROUNDWATER TABLE, PERCHED:** Unconfined groundwater separated from an underlying body of groundwater by an unsaturated zone. Its water table is a perched water table. It is underlain by a restrictive strata or impervious layer. Perched groundwater may be either permanent, where recharge is frequent enough to maintain a saturated zone above the perching bed, or temporary, where intermittent recharge is not great or frequent enough to prevent the perched water from disappearing from time to time as a result of drainage over the edge of or through the perching bed.

**INSTALLER:** Service provider who is certified to construct an on-site wastewater treatment system.

**INVERT:** The lowest portion of the internal cross section of a pipe or fitting.

**LIQUID WASTE OPERATION:** Any business activity or solicitation, by which liquid wastes are collected, transported, stored, or disposed of by a collection vehicle. This shall include, but not be limited to, the cleaning out of septic tanks, sewage holding tanks, chemical toilets, and vault privies.

**LIQUID WASTE PUMPER:** Service provider who removes the contents of septic tanks, pump tanks, holding tanks, and advanced treatment units and disposes of the waste according to 40 C.F.R. part 503 (October 25, 1995).

**MAJOR COMPONENT REPAIR OR REPLACEMENT:** Repairs to or replacement of an on-site wastewater treatment system major component include the following:

- a. Septic/holding tank removal/addition.
- b. Addition, expansion or replacement of drainfield area.
- c. Change in type of system (i.e. trench system to mound system).
- d. Movement of system to a replacement area.
- e. Conversion to/from an alternative or experimental system.

**MALFUNCTIONING OR FAILING SYSTEM:** An on-site wastewater treatment system which is not functioning in compliance with the requirements of this Ordinance includes the following:

- a. Absorption systems which seep or flow to the surface of the ground or into waters of the state.
- b. Systems which have overflow from the absorption system.
- c. Systems which, due to failure to operate in accordance with their designed operation, cause backflow into any portion of a building plumbing system.
- d. Septic tanks or holding tanks which leak.
- e. Absorption systems installed in bedrock or in the groundwater table.
- f. Steel septic tanks or steel holding tanks.
- g. Any other on-site wastewater treatment system not defined as a conventional or alternative system. (i.e.: cesspools, seepage pits, and pit privies).

**MAXIMUM GROUNDWATER TABLE:** The highest elevation that the top of the “groundwater table” or “groundwater table, perched” is expected to reach for any reason over the full operating life of the on-site wastewater treatment system at that site as determined by the profile hole evaluation.

**MOUND SYSTEM:** An alternative on-site wastewater treatment system where the bottom of the absorption system is placed above the elevation of the existing site grade, and is contained in a mounded fill body above that grade.

**NON-DOMESTIC WASTEWATER:** Water or liquid-carried waste, including but not limited to, water or wastes from an industrial process resulting from industry, manufacture, trade, automotive repair, vehicle wash, business or medical, activity; this wastewater may contain toxic or hazardous constituents.

**ON-SITE WASTEWATER TREATMENT SYSTEM:** A system designed to contain, distribute, or treat wastewater on or near the location where the wastewater is generated, including sewers, septic tanks, absorption fields, mound systems, evaporatranspiration systems, vault privies, holding tanks, subsurface sand filters, graywater systems, pumping stations, dosing chambers, any equipment related to on-site wastewater treatment systems and/or any other approved alternative or experimental system.

**OVERLAY DISTRICT:** A district that is superimposed over one or more zoning districts or parts of districts and imposes specified requirements that are in addition to those otherwise applicable for the underlying zone.

**OWNER:** A person or persons who are the owner of record of the land on which an on-site wastewater treatment system is to be or has been designed, constructed, installed, altered, extended, or operated

**PERCOLATION RATE:** The time expressed in minutes per inch required for water to seep into saturated soil at a constant rate during a percolation test.

**PERCOLATION TEST:** A soil test at the depth of a proposed absorption system to determine the water absorption capability of the soil, the results of which are normally expressed as the rate at which one inch of water is absorbed over an interval of time.

**POLLUTION:** Any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for public health and safety.

**POTABLE:** Water of sufficient quality to serve as drinking water; presumed to meet safe drinking water standards.

**PUBLIC HEALTH HAZARD:** For the purpose of this Ordinance, a condition whereby there are sufficient types and amounts of biological, chemical, or physical agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogenic viruses and bacteria, parasites, toxic chemicals and radioactive isotopes. A malfunctioning or failing on-site wastewater treatment system constitutes a public health hazard.

**REPAIR:** Action of fixing or replacing substandard or damaged components; repairs can be categorized as required repairs, recommended repairs, and upgrades.

**REPLACEMENT AREA:** Sufficient land with suitable soil, excluding streets, roads, and permanent structures, which complies with the setback requirements of these rules, and is intended for the 100 percent replacement of absorption systems.

**SEEPAGE PIT:** An excavation (deeper than it is wide) which receives septic tank effluent and from which the effluent seeps into the surrounding soil through the bottom and openings in the side of the pit; emphasis is on disposal rather than treatment.

**SEPTAGE:** The liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

**SEPTIC TANK:** Water-tight, covered receptacle for treatment of sewage; receives the discharge of sewage from a building, separates settleable and floating solids from the liquid, digests organic matter by anaerobic bacterial action, stores digested solids through a period of detention, allows clarified liquids to discharge for additional treatment and final dispersal, and attenuates flows.

**SERVICE PROVIDER:** Any person who performs work in relation to on-site wastewater treatment systems; this includes installers, O&M service providers, and liquid waste pumpers.

**SEWAGE:** Untreated wastes consisting of blackwater and graywater from toilets, baths, sinks, laundries, and other plumbing fixtures in places of human habitation, employment or recreation.

**SEWAGE HOLDING TANK:** A watertight receptacle which receives water-carried wastes from the discharge of a drainage system and retains such wastes until removal and subsequent disposal at an approved site or treatment facility.

**SLUDGE:** Accumulated solids and associated entrained water within a pretreatment component, generated during the coagulation, clarification or biological, physical, or chemical treatment of wastewater.

**SOIL EXPLORATION PIT:** An open pit dug to permit examination of the soil to evaluate its suitability for absorption systems.

**SOIL SCIENTIST:** An individual qualified to conduct soil surveys. A soil scientist is qualified if:

- a. He or she is certified as a soils scientist/classifier by the ARCPACS (A Federation of Certifying Boards in Agronomy, Biology, Earth and Environmental Sciences); or
- b. He or she has a Bachelor's, Master's or Doctoral degree in soil science.

**STATIC WATER LEVEL:** Elevation or level of the water table in a well when the pump is not operating or the level or elevation to which water would rise in a tube connected to an artesian aquifer or basin in a conduit under pressure. (USEPA)

**VAULT PRIVY:** An enclosed non-portable toilet into which non-water-carried human wastes are deposited to a subsurface storage chamber that is water tight.

**WASTE OR POLLUTANT:** Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

**WASTEWATER:** Clear water, storm water, industrial waste, sewage (domestic or nondomestic), or any combination thereof, carried by water.

**WATER SUPPLY:** A system of pipes and other structures through which water is obtained and distributed for consumption from springs, wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks, cisterns, and related appurtenances.

**OWNER:** The person or entity that holds legal and/or equitable title to a private property.

**PARKING LOT:** An off-street facility, including parking spaces, along with adequate provision for drives and aisles for maneuvering and giving access and for entrance and exit, all laid out in a way to be usable for the parking of more than six (6) automobiles.

**PARKING SPACE:** An off-street space available for the parking of one (1) motor vehicle and having an area of not less than one hundred sixty two (162) square feet nor less than nine (9) feet wide by eighteen (18) feet long, exclusive of passageways and driveways appurtenant thereto and giving access thereto and having direct access to a street or right-of-way.

**PENNINGTON COUNTY:** Any personnel, including, but not limited to: Pennington County Planning and Zoning Department personnel, the Pennington County Planning Commissioners and/or the Pennington County Board of Commissioners.

**PERSON:** Responsible party. An individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state.

**PLANNING DIRECTOR:** Any person appointed by the Pennington County Board of Commissioners to supervise the Pennington County Planning & Zoning Department. The Planning Director and his/her designee charged with the administration and enforcement of this Ordinance.

**PLANNED UNIT DEVELOPMENT:** A development planned in accordance with the provisions of these Zoning Ordinances.

**PLATTED PRIVATE DRIVE:** A tract of land delineated on a subdivision plat approved by the governing board for use as a street or road owned for use as a private way.

**PRINCIPAL USE:** The specific primary purpose for which land or building is used. In any commercial or industrial district, more than one principal industrial or commercial use may be permitted on a single lot. In any zoning district, more than one principal use may be permitted on a single lot if one of the uses is operated by a government agency.

**PUBLIC RIGHT-OF-WAY:** A strip of land dedicated or required for use as a public way.

**REAR LOT LINE:** The lot boundary opposite and most distant from the front lot line. In the case of a pointed or irregular lot, it shall be an imaginary line parallel to and farthest from the front lot line, not less than ten (10) feet long and wholly within the lot.

**RECREATION RESIDENCES:** Residences located on National Forest Land that occupy planned, approved tracts, or those groups established for recreation residence use.

**RECREATIONAL VEHICLE:** A vehicle:

1. Built on a single chassis;
2. Designed primarily as temporary living quarters for recreational, camping, travel or seasonal use, not to be used as a permanent dwelling; and,
3. That has a minimum of a food preparation area, storage area, bed and table.

**RESIDENTIAL DISTRICT:** Any lands designated on the official Zoning Map as being either the Low Density Residential District or the Suburban Residential District, pursuant to the provisions of Section 207 or 208 of these Zoning Ordinances.

**SANITARY SEWER:** A municipal, community or individual sewage disposal system of a type approved by the Health Department.

**SEASONAL CABIN\DWELLING:** A dwelling that does not meet the South Dakota Department of Environment and Natural Resources minimum absorption area for a residential individual on-site wastewater treatment system. The dwelling unit shall not be occupied for more than one hundred eighty (180) days in each year.

**SETBACK:** The required distance between every structure and any lot line on the lot on which it is located.

**SIDE LOT LINE:** Any lot line, which meets the end of a front lot line or any other lot line.

**SIGNS, BILLBOARDS, and other ADVERTISING STRUCTURES: (SECTION 312)**

**ABANDONED SIGN/BILLBOARD:** A sign or sign structure that is blank, obliterated or displays obsolete advertising material for a period in excess of twelve continuous months. The twelve-month period for determining if a sign is abandoned commences upon notification of violation to the offender.

**ADVERTISING SIGN:** A sign which directs attention to a business, commodity, service or entertainment conducted, sold, or offered elsewhere than on the premises and only incidentally on the premises, if at all.

**BACK-TO-BACK SIGN:** An Off-Premise or On-Premise sign consisting of two sign facings oriented in the opposite direction with not more than one face per side.

**BUSINESS SIGN:** A sign, which directs attention to the business or profession conducted on the premises. A “For Sale,” “For Rent,” or “Information” sign shall be deemed a business sign.

**COMMUNITY SIGN:** A sign not exceeding thirty-two (32) square feet in area and approved by the County Board which directs attention to community events that are educational, cultural, or recreational in nature. In no event, however, shall such sign or part thereof contain a commercial advertising message.

**DIRECTIONAL SIGN:** A sign erected for the convenience of the public, such as directing traffic movement, parking or identifying restrooms, public telephones, walkways and other similar features or facilities and bearing no advertising in the message.

**DOUBLE-FACED SIGN:** An off-premise or on-premise sign with two adjacent faces oriented in the same direction and not more than 10-feet apart at the nearest point between the two faces.

**FACING:** That portion of a sign structure upon which advertising is affixed or painted and visible in one direction at one time.

**OFF-PREMISE SIGN:** A sign/billboard that advertises goods or services not available at the location of the billboard or advertising sign.

**ON-PREMISE SIGN:** A sign identifying an establishment's activities, products or services conducted or available on the property upon which it is located and signs advertising the sale or lease of the property upon which they are located.

**SIGNS/BILLBOARDS:** Any sign defined in this ordinance which displays or conveys any identification, description, illustration, or device illuminated or non-illuminated, which directs attention to a product, service, business activity, institution, business or solicitation, including any permanently installed or situated merchandise, or any emblem, painting, banner, pennant or placard designed to advertise, identify or convey information, with the exception of window displays.

**SIGN STRUCTURE:** The sign face and support members that are permanently affixed to the ground or attached to a structure.

**TEMPORARY SIGNS:** Signs and sign structures that are temporary in nature used in conjunction with a specific event, that are placed or erected in such a manner to be easily removed from the property and are not permanently affixed. All political signs shall be considered temporary signs. Temporary signs shall not exceed 32 square feet in size.

**SINGLE-FAMILY DWELLING:** A building designed to be occupied exclusively by one family.

**SITE OR STICK-BUILT HOME:** A dwelling unit constructed on-site with a single kitchen designed for occupancy by only one (1) family for cooking, living, and sleeping purposes.

**SPECIFIED ANATOMICAL AREAS:** (1) Less than completely and opaquely covered (a) human genitals, pubic region; and (b) female breast below a point immediately above the top of the areola. (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**SPECIFIED SEXUAL ACTIVITIES:** (1) Human genitals in a state of sexual stimulation or arousal; (2) acts of human masturbation, oral copulation, sexual intercourse, or sodomy; (3) fondling or other erotic touching of another's human genitals, pubic region, buttock, anus or female breast.

**STREET:** A public or private thoroughfare, which affords the principal means of access to abutting property. May be used interchangeably with "road," "drive," or "highway."

**STREET LINE:** The legal line between street right-of-way and abutting property.

**STRUCTURE:** Any material or combination of materials, completely or partially constructed, or erected in or upon the ground, including, but not by way of limitation, buildings; mobile homes; radio towers; sheds; signs; and storage bins, but excluding sidewalks and paving on streets, driveways, parking areas, fences, earthwork, wind-breaks, and nonbusiness signs related to farming or ranching operations. An object, including a mobile object, constructed or installed by man, including but without limitation; buildings; towers; cranes; smokestacks; earth formation; and overhead transmission lines.

#### **TELECOMMUNICATIONS FACILITY DEFINITIONS: (SECTION 316)**

**ACCESSORY EQUIPMENT:** Any equipment servicing or being used in conjunction with a Telecommunication Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, guy wires or other structures.

**ADMINISTRATOR:** The Planning Director or individual designated by the Planning Commission to conduct the Administrative Review referred to in this Ordinance.

**ADMINISTRATIVE APPROVAL:** Zoning approval that the Administrator is authorized to grant after Administrative Review.

**ADMINISTRATIVE REVIEW:** The procedures established in Section 316 of this Ordinance.

**ANTENNA:** Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional and whip antennas.

**CAMOUFLAGED FACILITY:** A Telecommunications Facility that resembles a tree or naturally occurring environmental feature, or, if the facility resembles or is a flag pole, antennas are snug or stealth mounted and/or a flag is attached to the pole.

**“CARRIER ON WHEELS” OR “CELL ON WHEELS” (COW):** A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna Support Structure.

**CO-LOCATION:** The use of a Telecommunications Facility by more than one wireless telecommunications provider. Co-location also means locating wireless telecommunications facilities on an existing structure (for example: buildings, water tanks, towers, utility poles, etc.) without the need to construct a new Support Structure.

**FEDERAL AVIATION ADMINISTRATION (FAA):** A Federal agency that is responsible for the safety of civilian aviation.

**FEDERAL COMMUNICATIONS COMMISSION (FCC):** A Federal agency that regulates interstate and international communications by radio, television, wire, cable, and satellite.

**LATTICE TOWER:** A Support Structure constructed of vertical metal struts and cross-braces forming a triangular or square structure which often tapers from the foundation to the top.

**MAJOR MODIFICATIONS:** Improvements to existing Wireless Telecommunication Facilities or Support Structures that result in a “substantial” change to the facility or structure. Major Modifications include any one of the following: (1.) Extending the height of the Support Structure by more than 10 percent of its current height; and, (2.) The Support Structure does not meet the definition of “Replacement” as defined in this Ordinance. Co-location of new Telecommunications Facilities to an existing Support Structure without Replacement or extension of the structure shall be considered a Minor Modification. Major Modifications shall require approval of a Telecommunications Facility Permit.

**MINOR MODIFICATIONS:** Improvements to existing Wireless Telecommunications Facilities and Support Structures that result in some material change to the facility or Support Structure but of a level, quality, or intensity that is less than a “substantial” change. Such Minor Modifications include, but are not limited to, extending the height of the Support Structure by less than 10 percent of its current height and the expansion of the compound area for additional Accessory Equipment.

**MONOPOLE:** A Support Structure constructed of a single, freestanding pole-type structure supporting one or more antennas.

**ORDINARY MAINTENANCE:** Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing, and modifications that maintain functional capacity and aesthetic and structural integrity. For example, the strengthening of a Support Structure’s foundation or of the Support Structure itself. Ordinary Maintenance includes replacing Antennas and Accessory Equipment on a like-for-like basis within an existing Telecommunications Facility and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing Tower upon which they are currently located. Ordinary Maintenance does not include Minor and Major Modifications.

**REPLACEMENT:** Constructing a new Support Structure of equal height and proportions to a preexisting Support Structure in order to accommodate co-location and removing the preexisting Support Structure.

**STEALTH TELECOMMUNICATIONS FACILITY:** Any Telecommunications Facility that is designed so that the purpose of the facility is not readily apparent to a casual observer.

**SUPPORT STRUCTURE(S):** A structure primarily designed to support Telecommunications Facilities including, but not limited to, Monopoles, Towers and other freestanding self-supporting structures.

**TELECOMMUNICATIONS FACILITY(ies):** Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Telecommunications Facility can consist of one or more Antennas and Accessory Equipment or one base station.

**TELECOMMUNICATIONS FACILITY PERMIT:** A Telecommunications Facility Permit is required for all proposed facilities that serve as telecommunication sites for the purpose of providing wireless communications.

**TOWER:** A lattice-type, guyed or freestanding structure that supports one or more Antennas.

**TOWER HEIGHT:** The vertical distance measured from the ground to the upper most point of the Telecommunications Tower and/or Antennae and all attachments.

**TEMPORARY CAMPGROUND:** An area for outdoor overnight accommodations and occupied by twenty (20) or more people.

**TOWNHOUSE:** Multiple-family or attached single-family dwellings in which the separate dwelling units and the ground they occupy are individually owned while the common areas are jointly owned.

**TRAVEL TRAILER:** A portable or mobile home living unit designed for human occupancy away from the principal place, or residence of the occupants. (See Recreational Vehicle)

**VACATION HOME RENTAL (VHR):** Any dwelling unit that is rented for pay or other consideration, leased, or furnished in its entirety to the public on a daily or weekly basis for more than 14 days in a calendar year and is not occupied by an owner or manager during the time of rental. This term does not include a bed and breakfast establishment as defined in SDCL 34-18-9.1(1). [ref. SDCL 34-18-1(21)]

**WATERS OF THE STATE:** All waters within the jurisdiction of this state, including streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering on the state, but not waste treatment systems, including

treatment ponds or lagoons designed to meet the requirements of the CWA other than cooling ponds as defined in 40 C.F.R. § 423.11(m) (July 1, 1991).

#### WIND ENERGY SYSTEMS DEFINITIONS: (SECTION 317)

**AIRSPACE IMAGINARY SURFACES:** A structure of imaginary surfaces that exist primarily to prevent existing or proposed manmade objects, objects of natural growth or terrain from extending upward into navigable airspace. These imaginary surfaces either slope out and up from all sides and ends of runways or are a horizontal plane or a sloping plain above airports. Imaginary surfaces are shown on Exhibit A.

**DECIBEL (dB):** A unit for expressing the relative intensity of sounds on a scale from zero to the average least perceptible sound to about 130 for the average pain level.

**dB(A):** A frequency weighting that relates to the response of the human ear to sound.

**CLASS DELTA AIRSPACE:** Ellsworth Air Force Base and Rapid City Class D Airspaces overlap. Ellsworth Air Force Base and Rapid City Air Traffic Control facilities mutually agree that the ridge of hills southeast of Ellsworth Air Force Base constitute the geographical boundary between the Class D Airspaces (Exhibit A). Ellsworth Air Force Base's Class D Airspace extends from the surface up to and including 5,800 feet mean sea level (MSL) and a 5.9 nautical mile radius of the airport center. Rapid City's Class D airspace extends from the surface up to and including 5,700 feet mean sea level (MSL) and a 4.3 nautical mile radius from the airport center.

**COLLECTOR LINE:** A single or group of transmission lines that links one generator or a group of generators to the bulk power grid.

**FEEDER LINE:** A primary or main distribution power line that distributes or "feeds" power from a substation to the surrounding area. Feeder lines typically have many smaller "taps" or "pull-off" lines that lead to transformers and service lines serving homes and businesses.

**LARGE WIND ENERGY SYSTEM OR LWES:** All WES facilities excluding Small Wind Energy Systems.

**METEOROLOGICAL TOWER:** A tower which is erected primarily to measure wind speed and direction plus other data relevant to siting of a WES. Other meteorological towers, such as those used by airports, municipalities, weather services or research facilities, are not affected by this definition or this section of the Ordinance.

**NOAA:** National Oceanic and Atmospheric Administration.

**OBSTRUCTION EVALUATION / AIRPORT AIRSPACE ANALYSIS (OE/AAA):** Required for all systems 200 feet or above in total height. The process for aeronautical studies of obstructions to air navigation or navigational facilities to determine the effect on the safe and efficient use of navigable airspace, air navigation facilities or equipment; and the process to petition the Federal Aviation Administration (FAA) for discretionary review of determinations, revisions, and extensions of determinations.

**PARKS:** National parks, national monuments, national grasslands, wilderness areas and state parks.

**RECREATION AREAS:** Formally designated recreation areas, picnic areas, hiking trails, public beaches and lakeshores.

**SMALL WIND ENERGY SYSTEM OR SWES:** A WES facility with a single System Height of less than one hundred (100) feet used primarily for on-site consumption of power.

**SUBSTATIONS:** Any electrical facility designed to convert electricity produced by wind turbines to a voltage for interconnection with transmission lines.

**SYSTEM HEIGHT:** The height of the total system measured from grade to the tip of a vertically extended blade.

**TELECOMMUNICATIONS:** Any communication transmission that effects two-way communication within this state.

**TURBINE:** The parts of the WES, including the blades, generator, and tail.

**UTILITY:** Any person or entity engaged in the generation, transmission or distribution of electric energy in this state including, but not limited to: a private investor owned utility, a cooperatively owned utility, a consumer's power district and a public or municipal utility.

**WIND ENERGY SYSTEM OR WES:** A system that converts wind movement into electricity. All of the following are encompassed in this definition of system:

- a. Tower or multiple towers, including foundations;
- b. Generator(s);
- c. Blades;
- d. Power collection systems, including pad-mount transformers;
- e. Access roads, meteorological towers, on-site electric substations, control building, and other ancillary equipment and facilities; and,
- f. Electric interconnection systems or portion thereof dedicated to the WES.

**WIND FARM:** A commercial facility whose main purpose is to generate and sell electricity, consisting of two (2) or more Large Wind Energy Systems and other structures, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

**WIND GENERATOR:** A mechanical device designed and operated so as to generate electricity.

**YARD:** An open space between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward except where otherwise specifically provided in these Zoning Ordinances that a building or structure may be located in a portion of a yard required for a principal structure. In measuring a yard for the purpose of determining the width of the side yard, the depth of the front yard or the depth of a rear yard, the shortest horizontal distance between the lot line and the principal structure shall be used.

**YARD, FRONT:** An open unoccupied space on the same lot with a principal structure extending the full width of the lot and situated between the street line and the front line of the building projected to the side line of the lot. The depth of the front yard shall be measured between the front line of the building and the street line.

**YARD, REAR:** A space on the same lot with the principal structure, between the rear line of the structure and the rear line of the lot and extending the full width of the lot, which is unoccupied except for permitted accessory structures.

**YARD, SIDE:** An open unoccupied space on the same lot with the building and the sideline of the lot and extending from the front yard to the rear yard. Any lot line, not a rear line or a front line, is a sideline.

**ZERO LOT LINE STRUCTURE:** A multi-family dwelling unit located on a single lot line. The unit is constructed as one unit but is intended to be sold as separate home sites and which otherwise meets all requirements of the zone in which it is located.

**ZONING DISTRICT:** See District.

## **SECTION 200 - ESTABLISHMENT OF ZONING DISTRICTS AND MAP REFERENCE**

### **SECTION 201 - ESTABLISHMENT OF DISTRICTS**

The County of Pennington is hereby divided into zoning districts as named and described in the following sections.

### **SECTION 202 - OFFICIAL ZONING MAP**

The Official Zoning Map, together with all explanatory materials thereon and attached thereto, is hereby adopted by reference and declared to be part of these Zoning Ordinances. The Official Zoning Map bearing the signature of the Chairman of the Board, attested by the County Auditor, dated February 1, 1994, shall be on file in the Office of the Pennington County Planning and Zoning Department.

### **SECTION 203 - INTERPRETATION OF THE OFFICIAL ZONING MAP**

Where, due to the scale, lack of detail or illegibility of any part of the Official Zoning Map, there is any uncertainty, contradiction or conflict as to the intended location of any zoning district boundary as shown thereon, the Planning and Zoning Director shall make an interpretation of said Map upon request of any person. The Planning and Zoning Director, the Commission and the Board, in interpreting the Official Zoning Map, shall apply the following standards:

- A. The detail of property boundaries shown on recorded or approved plats, tracts, lots, parcels or acreages shall, together with the record of Board action approving them or other zoning action separate from them, be superior to any other consideration.
- B. Zoning district boundary lines are intended to follow lot lines, or be parallel or perpendicular thereto, or along the centerlines of alleys, streets, right-of-ways, or water courses, unless such boundary lines are fixed by dimensions shown on the Official Zoning Map.
- C. Where zoning district boundary lines are so indicated that they approximately follow lot lines, such lot lines shall be construed to be such boundary lines.
- D. Where zoning district boundary lines are so indicated that they approximately follow railroad lines, such zoning district boundary line shall be construed to lie midway between the main tracks of such railroad lines.
- E. Where zoning district boundary lines are so indicated that they approximately follow the limits of political jurisdiction, such boundary lines shall be construed as following such limits.
- F. Whenever any street, alley, Section Line or other public easement is vacated, the zoning district classification of the property to which the vacated portions of land accrue shall become the classification of the vacated land.
- G. If, after the application of the foregoing rules, uncertainty still exists as to the exact location of a zoning district boundary line, the Commission shall interpret the proper zoning.

Any person aggrieved by any interpretation made by the Planning and Zoning Director may appeal such interpretation to the Commission and to the Board.

## **SECTION 204 - GENERAL DISTRICT PROVISIONS**

A. Intent:

The following provisions shall apply to all zoning districts as applicable and shall further modify or define provisions within each district.

B. Accessory Uses:

Within each district there are certain accessory uses or structures which are commonly allowed within the district.

Permitted accessory uses shall:

1. Be customarily incidental to the principal use established on the same lot.
2. Be subordinate to and serve such principal use.
3. Be subordinate in extent and purpose to such principal use.
4. Contribute to the comfort, convenience, or necessity of users of such principal use.
5. Not be interpreted to allow a structure or use which would be contrary to the use as allowed under the district.

C. Customary Home Occupation:

A customary home occupation is a gainful occupation or profession conducted by members of the immediate family residing on the premises and, no more than one (1) additional employee in residential districts, no more than two (2) additional employees in a Limited Agriculture District and no more than four (4) additional employees in a General Agriculture District. The home occupation shall be conducted entirely within an enclosed structure and no stock in trade shall be displayed outside the enclosed structure. Other than an approved home occupation sign, no alteration to the property or any structure thereon shall indicate that it is being utilized in whole or in part for any purpose other than residential use.

D. Temporary Uses:

Within each district there may be certain seasonal or transient uses which are nonpermanent in nature and which do not alter the intent of the district. Temporary use permits for any district shall require a Conditional Use Permit as regulated in Section 510.

E. Height:

Within each district there are certain exceptions to the height requirement within the district. These exceptions include uses normally found within a district, such as a church spire, chimney, utility poles, or communication towers and antennas. Such exceptions to the height requirement shall not allow structures which are not clearly incidental to the primary use and shall in no way infer exceptions to height requirements within any FAA or militarily controlled airfield flight patterns.

F. Conditional Uses:

Within each district there are certain uses which are permitted as a Conditional Use in accordance with the provisions contained in Section 510 - Conditional Use Permits. The listed conditional uses under each district are illustrative of those which the Commission and the Board may approve temporarily, permanently or for a specific time interval. Other uses may be allowed, which are not listed, provided they are not contrary to the intent of the district in which they are to be located.

Uses which clearly do not meet the intent of the district, may be specifically prohibited by the Board upon recommendation by the Planning Director or Commission.

G. Special Animal Keeping Regulations (except in Agricultural Districts A-I and A-II):

1. A large animal must be housed or stabled on at least one-half acre in accordance with the following minimum criteria:
  - a. Fencing shall be adequate to keep the animal(s) from infringing in any way on adjacent property, and selected and maintained for safety according to generally accepted standards, with lockable gates and appropriate to the animal(s) and the conditions under which they are being kept. The Commission may, at its discretion, require screening for reasons of safety or aesthetics to meet the requirements or conditions in a particular neighborhood.
  - b. Manure, urine, and other organic wastes shall be disposed of and sanitized so as to preclude the presence of flies and to prevent the presence of odors and noises offensive to neighboring residences. Such disposal shall also avoid pollution of groundwater or any lake or stream.
  - c. Animal housing or stabling shall be safe, humane, and generally consistent with the appearance of other structures appurtenant to residences in the same area.
  - d. No large animal shall be kept or allowed to run within 50 feet of adjoining residences. The foregoing is not applicable to adjacent property classified agriculture under SDCL 10-6-31.3.
  - e. By "large animal" is meant bovine or equine; as an equivalent it may include 5 sheep or 100 chickens.

H. Section Line Setbacks:

In all zoning districts, any part of any principal or accessory building or structure shall be set back a minimum of fifty-eight (58) feet from a Section Line. No set back shall be required from any legally vacated section line; however, if the vacated section line forms a property line, the applicable side, rear, or front yard setbacks shall be observed.

- I. Standards for Manufactured Homes, Modular Homes and Site, or Stick Built Homes
  - 1. Manufactured homes, modular homes and site, or stick-built homes may be constructed out of any of the following materials: wood, metal, stone, brick, stucco, masonry, adobe, concrete block, precast, or cement.
  - 2. The siding may be constructed out of any of the following non-reflective materials: metal, vinyl, wood, simulated wood, brick, stone, stucco, masonry, or adobe. The reflections from all exterior siding shall not be greater than from siding coated with clean, white, gloss, or exterior enamel.
  - 3. All roofs shall have a minimum pitch of 2 1/2 to 12 pitch and must be nonreflective.
  - 4. The minimum dimensions of any single-family residence shall be twenty (20) feet by twenty (20) feet.
  - 5. The domestic water connection to manufactured homes, modular homes, and site or stick built homes shall be identical to any dwelling in that zoning district. The waste disposal system shall be installed as required by the Pennington County Health Department.
  - 6. All foundations to be installed as recommended by the manufacturer.
  - 7. Manufactured homes, modular homes and site or stick built homes not meeting the above standards shall obtain a Conditional Use Permit in according with Section 510.
  
- J. On-Site Wastewater Treatment Systems (Revised 03-28-12).

- 1. AUTHORIZATION AND JURISDICTION

- a. Purpose:

The Pennington County Board of Commissioners adopts Section 204-J stating the procedures, standards, and enforcement which shall be used by the Planning Department, under the authority of the Planning Director, for the design, installation, inspection, and permitting of on-site wastewater treatment systems on any commercial or residential premises to promote clean water, to protect public health and the environment, and to prevent a nuisance.

- b. Rules Adopted:

In addition to the requirements set forth in Section 204-J, all on-site wastewater treatment systems shall comply with the provisions of Chapter 74:53:01 (and any amendments thereto) of the Administrative Rules of South Dakota. Pennington County adopts and incorporates herein by this reference, the Administrative Rules of South Dakota, Chapter 74:53:01, as minimum standards relating to public

health and environmental quality and said Administrative Rules shall supersede all local minimum standards previously enacted that are inconsistent with Section 204-J.

c. Authority:

This section of the Zoning Ordinance is enacted pursuant to the authority granted in Title 7 of the South Dakota Codified Laws and Chapter 74:53:01 of the Administrative Rules of South Dakota for the protection of public health and the safety and welfare of the citizens of Pennington County.

d. Jurisdiction:

The Pennington County Board of Commissioners shall have the authority to delegate the administration and enforcement of Section 204-J to the Planning Director, as provided herein. Nothing in Section 204-J, however, shall be construed to restrict or abrogate the authority of any sanitary district or township in Pennington County to adopt an On-site Wastewater Treatment Systems Ordinance that meets or exceeds the standards set by Section 204-J.

e. Public Nuisance:

Any on-site wastewater treatment system that is found by the Planning Department to be malfunctioning or failing, as defined in Section 103 and in accordance with South Dakota Codified Law, is presumed to create an imminent danger to the public health, safety and welfare and is hereby declared to be a nuisance subject to abatement and special assessment as allowed by law. Owners of a malfunctioning or failing on-site wastewater treatment system shall have 72 hours to notify the Planning Department.

f. Administration:

Section 204-J shall apply to all on-site wastewater treatment systems in Pennington County outside the jurisdiction of a municipality. Section 204-J shall be enforceable within the extraterritorial jurisdiction of a municipality to the extent the municipality does not currently regulate such systems or ceases to regulate such systems within its extraterritorial jurisdiction. Section 204-J shall also be enforceable within the boundaries of a sanitary district or township located within Pennington County, if the district or township does not regulate such systems or fails to regulate such systems in conformity with State of South Dakota or Pennington County laws and regulations.

g. Definitions. See Section 103 – Definitions.

## 2. OPERATING PERMIT

### a. Administrative Requirements.

Inspections of existing on-site wastewater treatment systems are required by Pennington County to protect and enhance the quality of the surface water and groundwater resources and to avert adverse impacts upon public health and the environment. All on-site wastewater treatment systems within the jurisdiction of Pennington County shall obtain an Operating Permit.

### b. Inspection of Existing On-site Wastewater Treatment Systems.

#### On-Site Wastewater Treatment System Operating Permit Application Procedure and Requirements.

- i. If an Operating Permit has never been issued to an owner of an on-site wastewater treatment system, Pennington County will, by mail, notify the owner of operating permit requirements, including inspections, schedules and fees. The initial implementation of the Operating Permit program will include prioritization, based upon the proximity of an on-site wastewater treatment system to surface water and/or areas where aquifers are recharged. Full implementation of the program may take up to six (6) years.
- ii. All owners of an on-site wastewater treatment system shall obtain an On-site Wastewater Treatment System Operating Permit for the operation and maintenance of such a system when notified by Pennington County.
- iii. An administrative fee for the On-site Wastewater Treatment System Operating Permit shall be required for operation and maintenance of any on-site wastewater treatment system in Pennington County.

#### Procedure for Obtaining An Operating Permit.

- aa. Pennington County will send permit renewal letters at least 60 days prior to the expiration date of an On-site Wastewater Treatment System Operating Permit.
- bb. The septic tank or holding tank shall be pumped. The owner of the on-site wastewater treatment system will be responsible for the scheduling of the pumping with a septic liquid waste pumper of his/her choice. The on-site wastewater treatment system shall be pumped no later than

30 days after actual receipt of the initial or permit renewal notification letter from Pennington County.

- cc. An Observation Form will be filled out by a septic liquid waste pumper and submitted to Pennington County for review. The Observation Form shall include:
    - The name of the owner of the on-site wastewater treatment system.
    - The physical address of the property on which the on-site wastewater treatment system is located.
    - The property identification number (tax ID) and legal description of the property (to be filled out by Pennington County Planning personnel).
    - Date and time of inspection and person(s) who performed inspection.
    - Basic site evaluation.
    - Size and type of septic or holding tank.
    - A description of the current operation status of the system.
    - Any other pertinent observations made by the septic liquid waste pumper.
    - GPS coordinates of septic tank, if possible.
  - dd. Pennington County will review the Observation Form and prepare and complete an Inspection Summary Form, if necessary, to determine compliance with Section 204-J.
- iv. If Pennington County determines that the on-site wastewater treatment system is in violation of Section 204-J, notification will be sent to the property owner within 30 days following pumping of the septic tank. Requirements for repair, alteration or replacement will be included in the notification.
- aa. If repair, replacement, or alteration of any major component(s) is required, an on-site wastewater treatment system Construction Permit Application shall be submitted including the appropriate fees as determined in Section 204-J-3-r-i.
  - bb. Pennington County shall inspect the system for compliance after the repair, replacement, or alteration of any major component(s) of the system.
  - cc. Fees are required for additional inspections, if the system is found to violate Section 204-J.

- v. If Pennington County finds that the on-site wastewater treatment system is in compliance with Section 204-J, the On-site Wastewater Treatment System Compliance Fee will be collected and an Operating Permit will be issued to the owner of the on-site wastewater treatment system.
  - vi. The On-site Wastewater Treatment System Operating Permit shall expire six (6) years after the issue date.
  - vii. Pennington County may require a different permit frequency for which an on-site wastewater treatment system needs an On-site Wastewater Treatment Systems Operating Permit:
    - aa. For non-residential structures.
    - bb. For unique, unusual or alternative on-site wastewater treatment systems.
    - cc. When the on-site wastewater treatment system is determined by Pennington County to be inadequate for the current use or size of the structure it serves.
    - dd. When a valid On-site Wastewater Treatment Systems Operating Permit has not been issued prior to any sale, transfer or change in designation of the property.
    - ee. When the property is located in close proximity to surface water or within the aquifer recharge area or overlay district.
    - ff. For any other reason that Pennington County considers necessary to protect public health and the environment or prevent a nuisance.
    - gg. Commercial on-site wastewater treatment systems.
  - viii. Pennington County may take samples including, but not limited to, soils, surface water and wells on or near the on-site wastewater treatment system to ensure proper function of the system. The results of such testing will be available to the property owner.
  - ix. Pennington County will notify the homeowner 60 days prior to expiration of the Operating Permit.
- c. Limitations on Sale, Transfer, or Change in Designation.
- i. Prior to any sale, transfer or change in the designation of a property, all of the following shall occur:
    - aa. Pennington County will have reviewed the request to determine if the property has a current On-site Wastewater Treatment Systems Operating Permit or requires an On-site

Wastewater Treatment Systems Operating Permit. A current On-site Wastewater Treatment Systems Operating Permit is transferable up to the last year of the existing term of the permit.

- bb. Pennington County will have determined that the on-site wastewater treatment system on the parcel or lot is not creating a health hazard, a nuisance and is protective of the environment, and issues the initial On-site Wastewater Treatment Systems Operating Permit.
  - cc. Any necessary repairs, alterations or system upgrades will have been completed and in compliance with this Ordinance.
  - dd. Any property owner or person purchasing a property containing an on-site wastewater treatment system may request to implement the process for issuance of a new On-site Wastewater Treatment Systems Operating Permit.
- ii. It is the responsibility of the property owner to notify Pennington County prior to the sale or transfer of property.
  - iii. The owner of a property containing an on-site wastewater treatment system shall provide evidence to a prospective buyer or transferee, prior to closure, of compliance with Section 204-J.
- d. Change in Structure Served by an On-Site Wastewater Treatment System.

When a structure on a property is altered or replaced and is currently served by an on-site wastewater treatment system, Pennington County shall require the owner of the property to obtain an On-site Wastewater Treatment Systems Operating Permit prior to the issuance of a Building Permit, if the newly constructed or altered structure's number of bedrooms increases from the original structure for which the existing on-site wastewater treatment system served, Pennington County shall require:

- i. The on-site wastewater treatment system to be sized correctly for the newly constructed or altered structure; and,
  - ii. An On-site Wastewater Construction Permit.
- e. On-Site Wastewater Treatment System Compliance Fee.

Any person who owns property on which an on-site wastewater treatment system is located shall pay an administrative fee of \$20.00 each time an Operating Permit

for the system is issued or renewed. The revenue from these fees will support administration of Pennington County's Clean Water programs.

3. INSTALLATION, ALTERATION AND REPAIR

a. Legal, Nonconforming On-Site Wastewater Treatment System.

Any on-site wastewater treatment system existing at the time of adoption of Section 204-J, which is not in violation of any Federal, State, or Local Law, rule or regulation, may be continued in use until such time the system is found by Pennington County to be malfunctioning or failing, at which point the entire system, or any portion thereof which is deemed to have malfunctioned or failed, shall be brought into full compliance with the provisions of Section 204-J.

b. Administrative Requirements.

**On-Site Wastewater Treatment System Required** - The drainage system of each dwelling, building or premises covered herein shall receive all wastewater (including, but not limited to, bathroom, kitchen, and laundry wastes) and shall have a connection to a public sewer except when such sewer is not available or practicable for use, in which case connection shall be made to an on-site wastewater treatment system found to be adequate and constructed, installed and maintained in accordance with the requirements of Section 204-J.

**Repair of A Failing System** – Whenever an on-site wastewater treatment system is found by Pennington County to be malfunctioning or failing, or to cause a nuisance, the owner shall take the necessary action to cause the condition to be corrected or eliminated or otherwise to come into compliance. Corrective action shall be completed by the owner of a malfunctioning or failing system in accordance with Section 204-J-5-a.

c. General Requirements.

**Units Required in An On-Site Wastewater Treatment System** – The on-site wastewater treatment system shall consist of the following components:

- i. A building sewer.
- ii. A septic tank.
- iii. An absorption system. This may be a standard trench, a chambered trench, an absorption bed, or alternative or experimental systems as specified in Section 204-J, depending on location, topography, soil conditions and groundwater table.
- iv. A holding tank, if a conventional, alternative, or experimental system cannot be used.

Multiple-Family Dwelling Units – multiple single-family dwelling units under individual ownership shall not be served by a single on-site wastewater treatment system except where that system is under the sponsorship of a management district or a body politic or in extenuating circumstances, when individual systems are not feasible. Plans and specifications for such systems shall be submitted to and approved by DENR prior to submission to Pennington County.

d. Design Requirements.

Site Location and Installation.

- i. On-site wastewater treatment systems are not suitable for all areas and situations. Location and installation of each system, or other approved means of treatment, shall be such that with reasonable maintenance, it will function in a sanitary manner and will not create a nuisance, public health hazard, or endanger the quality of any waters of the state. Systems shall be located on the same lot as the building served whenever possible.
- ii. In determining a suitable location for the system, due consideration shall be given to such factors as: size and shape of the lot; slope of natural and finished grade; location of existing and future water supplies; depth to groundwater and bedrock; soil characteristics and depth; potential flooding or stormwater catchments; possible expansion of the system, and future connection to a public sewer system.
- iii. The depth of a well is determined by the static water level in the well for setback requirements.

Replacement Area For Absorption System - Properties with severe soils (as defined by the United States Department of Agriculture Soil Survey), less than 3 acres in size, located over an aquifer recharge area, contain 100-year floodplain or any other constraint that would restrict the location and installation of an on-site wastewater treatment system will require a replacement area for the absorption system. This may require additional soil profile and percolation information at the location of the replacement area as determined by the Environmental Planner. This area must be designated on the site plan and kept free of permanent structures, traffic, or adverse soil modification.

Tracer Wire Required – In order to assist in the location of on-site wastewater treatment system components located below ground, all new or replacement absorption systems shall have tracer wire installed. All tracer wire shall be No. 12 solid single strand type TW or THHN, or equivalent. The tracer wire shall be accessible at the tank cleanout and shall extend along the building sewer from the house to the tank, around the septic tank access hole, and from the tank through

all system trenches or around the perimeter of any bed, mound or evapotranspiration system. To prevent corrosion, all buried ends of the tracer wire and all wire splices shall be sealed with an approved direct bury splice kit or gel-type connector. All tracer wire installation shall be inspected during the final inspection by Pennington County and prior to back filling. The installer is responsible for ensuring that the tracer wire has conductivity.

e. Housing Subdivisions and Planned Unit Developments.

Review Criteria For Establishing On-Site Wastewater Treatment System Feasibility Of Proposed Housing Subdivisions And Other Similar Developments - On-site Wastewater Treatment systems shall meet the requirements of Pennington County Subdivision Regulations Section 500.10 and Section 204-J.

f. Variances.

Variances to ARSD § 74:53:01 must be approved through DENR prior to submission of an On-site Wastewater Treatment System Construction Permit Application to Pennington County.

g. Exceptions.

Requirements For An Exception To This Ordinance – The purpose of an exception is to modify specific requirements of this Ordinance in the case of exceptionally irregular conditions whereby such application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of their property. Justification for the need of the exception must be provided and is such that they will not cause a violation of any existing water quality standard, cause a health hazard, or create a nuisance.

Application Requirements For Exceptions:

- i. Information demonstrating that connection to a public or community-based sewerage system is not available, there is no other option for sewage treatment, and site conditions prevent construction or use of an on-site wastewater treatment system that is in compliance with Section 204-J.
- ii. A detailed description of the proposed system, including engineering and/or reliability information, if necessary, and information about its proposed location and proposed replacement area.
- iii. An operation, maintenance and troubleshooting plan to keep the installed system operating as described in the application.

- iv. A contingency plan describing how a system that cannot meet the requirements of Section 204-J will be replaced.
  - v. Approval letter from DENR, if necessary.
  - vi. Final approval from Pennington County.
- h. Soil and Groundwater Requirements.

General Requirements - A suitable soil for absorption systems shall meet the following criteria:

- i. Have the capacity to adequately disperse the designed effluent loading as determined by field percolation rates and/or visual inspection of soil exploration, and;
- ii. Does not exhibit inhibiting swelling or collapsing characteristics, and;
- iii. Does not visually exhibit a jointed or fractured pattern of underlying bedrock, and;
- iv. Meets the requirements of ARSD § 74:53:01:15.

Groundwater Requirements:

- i. The seasonal high groundwater table shall be determined by direct visual observation of the maximum groundwater table in a soil exploration pit. The observation of soil in a soil exploration pit may show evidence of crystals of salt left by the seasonal high groundwater table, or chemically reduced iron in the soil, reflected by a mottled coloring if water is not visible in the soil exploration pit.
- ii. A curtain drain or other effective groundwater interceptor may be required to be installed for an absorption system as a condition for its approval. Pennington County may require that the effectiveness of such devices in lowering the groundwater table be demonstrated, for a period of at least one year, during the season of maximum groundwater table elevation.

Soil Exploration Requirements:

- i. Pennington County will perform a preliminary evaluation of the site. A Preliminary Evaluation form is required for each new soil exploration pit. The form will include:
  - aa. The soil exploration log, including a statement of soil explorations to a depth of eight feet or to a depth of at least

- four feet below the bottom of the proposed absorption system;
  - bb. A statement of the present and anticipated seasonal high groundwater table, and,
  - cc. A field/site evaluation .
- ii. Suitable soil exploration pits, of sufficient size to permit visual inspection by Pennington County (at least a two foot by five foot hole), and to a minimum depth of eight feet, or at least 48 inches below the bottom of proposed on-site wastewater treatment systems, shall be dug near each absorption system site to determine the groundwater table and subsurface soil and bedrock conditions. A log of the soil and bedrock formations encountered must be recorded describing the texture, structure, and depth of each soil type, the depth of the groundwater table encountered, and indications of the seasonal high elevation of the groundwater table. Soil logs should be prepared in accordance with the United States Department of Agriculture Soil Classification System.
  - iii. The preliminary evaluation is valid for two years from the evaluation date.
  - iv. Pennington County may impose stricter requirements as to the depth of absorption system excavation in order to meet the four foot separation requirements set forth in SDAR § 74:53:01:15.
  - v. The Pennington County Planning Department may require that soil evaluations be performed by a licensed or certified soil scientist or a representative from DENR.

#### Percolation Test Requirements:

At least three stabilized percolation tests for the design flow less than 2,000 gallons per day, or six tests, if the design flow is more than 2,000 gallons per day but less than 5,000 gallons per day, shall be performed on the site of each absorption system to determine minimum required absorption area. More tests may be required where soil structure varies, where limiting geologic conditions are encountered, or where the proposed property improvements will require large treatment systems.

- i. When percolation tests are made, such tests shall be made at points and elevations selected as typical of the area in which the absorption system will be located. Consideration should be given to the finished grades of building sites so that test results will represent the percolation rate of the soil in which absorption systems will be constructed. After the suitability of any area to be

used for on-site wastewater treatment systems has been evaluated and approved for construction, no grade changes shall be made to this area unless Pennington County is notified and a reevaluation of the area's suitability is made prior to the initiation of construction.

- ii. Test results shall be submitted on the On-site Wastewater Treatment System Construction Permit Application. The permit application shall contain the following:
  - aa. The name and signature of the individual conducting the tests;
  - bb. The date of the tests;
  - cc. The location of the property;
  - dd. The depth and rate of each test in minutes per inch;
  - ee. All other factors affecting percolation test results; and,
  - ff. Calculated average percolation rate.
- iii. The percolation test results are valid for two years from the date the tests were performed.
- i. Building Sewer and Distribution Pipe:

General Requirements - Building sewer and distribution pipe materials shall be composed of PVC and shall conform to the applicable standards as outlined in Tables in the section, and shall comply with the following:

- i. Pipe, pipe fittings, and similar materials comprising building sewers are listed by material and applicable standard (See Table 1).

**Table 1. Standards for Distribution and Building Sewer Pipe(a)(b).**

MATERIALS	MINIMUM STANDARDS
<b>Polyvinyl Chloride (PVC)</b>	
<b>PVC - Schedule 40 (foam or cell core is prohibited)</b>	<b>ASTM D 1785-06(c)</b>
<b>SDR-35 PVC (Gravity)</b>	<b>ASTM D 3034-08 (c)</b>
<b>PVC (Pressure)</b>	<b>ASTM D 2241-05 (c)</b>

- ii. The following is a list of solid-wall perforated pipe, approved as distribution pipe in absorption systems. Solid-wall pipe must be perforated in accordance with this Ordinance, and all burrs must be removed from the inside of the pipe. The pipe is listed by material and applicable standard (See Table 2).

**Table 2. Standards for Perforated Pipe(a).**

<b>MATERIALS</b>	<b>MINIMUM STANDARDS</b>
<b>SDR-35 PVC</b>	<b>ASTM D 3034-08 (c)</b>

- (a) Each length of building sewer and absorption system pipe shall be stamped or marked as required by the International Plumbing Code.
  - (b) Building sewers include (1) the pipe installed between the building and the septic tank and (2) between the septic tank and the distribution box (or absorption system). The installation of building sewers shall comply with the International Plumbing Code.
  - (c) American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.
- iii. Where two different sizes or types of sewer pipes are connected, a proper type of fitting or conversion adapter shall be used.
  - iv. They shall have a minimum inside diameter of four inches. They shall have watertight, root-proof joints and shall not receive any groundwater or surface runoff. They shall be laid in straight alignment and on a firm foundation of undisturbed earth.
  - v. Building sewers shall be laid on a uniform minimum slope of not less than 1/4 inch per foot (2.08 percent slope).
  - vi. The lines shall have cleanouts every 100 feet and at all changes in direction or grade.
- j. Septic Tanks.

**Septic Tank Design and Construction Requirements:**

- i. The pipe entering and exiting the septic tank shall be at least six feet in length of Schedule 40 (see Table 1) and unperforated until the first tee, distribution box, or drop box before the absorption field is encountered.
- ii. Some septic tanks may have an effluent filter installed at the outlet of the tank. The filter shall prevent the passage of solid particles larger than a nominal 1/8-inch diameter sphere. The filter should be easily removed for routine servicing through watertight access from the ground surface.

Septic Tank Sizing (Minimum Capacities):

The minimum liquid capacity of septic tanks serving single-family dwellings shall be based on the number of bedrooms in all structures utilizing an on-site wastewater treatment system:

**Table 3. Minimum Capacities for Septic Tanks.**

<b>Number of Bedrooms(a)</b>	<b>Minimum Liquid Capacity(Gallons)(b)(c)</b>
<b>1, 2, 3, or 4 (with or without garbage disposal)</b>	<b>1,500</b>
<b>5 (without garbage disposal)</b>	<b>1,500</b>
<b>For each additional bedroom, add</b>	<b>250</b>

- (a) Based on the number of bedrooms in use or that can be reasonably anticipated in the dwelling or structure(s) served, including the unfinished space available for conversion as additional bedrooms.
- (b) The liquid capacity is calculated on the depth from the invert of the outlet pipe to the inside bottom of the tank.
- (c) Table 3 provides for the normal household appliances, including automatic sequence washers and dishwashers. Add 20 percent to the total capacity for use of a garbage disposal for a dwelling or structure(s) having five or more bedrooms.

Septic Tank Installation Requirements:

- i. All tanks shall be located in an area which is accessible by a liquid waste pumper truck for the pumping of their contents. There shall be no structure(s) of any kind covering any of the tanks or impeding access to the tank(s) or require the truck to drive over the absorption system.
- ii. Flotation collars, one-piece tanks, or shallow belly tanks shall be used in areas with high groundwater potential.
- iii. Septic tanks installed in sensitive areas, such as an aquifer recharge area, may be required to be double-sealed if constructed of two separate pieces.
- iv. The tank inlet and outlet devices shall consist of baffles or sanitary tees at least four inches in diameter and constructed of PVC.

k. Discharge of Septic Tank Effluent to Absorption Systems.

General Requirements – Septic tank effluent shall be connected to the absorption system through watertight pipe and fittings. Tees, wyes, ells, or other distributing devices may be used as needed.

Tees and Wyes – Tees and wyes shall be installed level and not in line with any distribution pipe to permit equal flow to all branches of the fitting.

l. Absorption Systems.

General Requirements - Absorption systems shall be designed and installed at the shallowest practicable depth to maximize elements critical to effective treatment of effluent in the soil. The maximum depth of the absorption system shall be 36 inches unless an exception is granted by the Pennington County Planning Department. Excavation, grading and/or removal of topsoil are not permitted to meet absorption system depth requirements as it may compromise the integrity of the absorption system.

Determining Required Absorption System Area - Minimum absorption area is equal to the total number of bedrooms times the required absorption area within the applicable percolation rate category.

- i. In every case, sufficient absorption area shall be provided for at least three (3) bedrooms.
- ii. Any unfinished space available for conversion as additional bedrooms, Table 4, shall be determined by:  
(Provisions of Table 4 shall apply to new construction and/or additions with unfinished space.)

**Table 4. Determination of Additional Absorption System Area Based Upon Unfinished Space.**

<b>Square Footage of Unfinished Space</b>	<b>Bedrooms</b>
<b>144-1000</b>	<b>Add 1 additional</b>
<b>1001-2000</b>	<b>Add 2 additional</b>
<b>2001+</b>	<b>Add 3 additional</b>

Gravelless Pipe Absorption Trenches and Gravelless Chamber Trenches:

- i. All gravelless pipe and chambers shall be approved by DENR.
- ii. Gravelless systems (pipe and chambers) shall be installed, according to specified manufacturer’s instructions.

m. Alternative On-Site Wastewater Treatment Systems.

General Requirements:

- i. The certified installer of any alternative on-site wastewater treatment system must submit the following to DENR prior to submission to Pennington County:
  - aa. Detailed basis of design of all components.
  - bb. Site plan.
  - cc. Operation and maintenance instructions for the system which describe the activities necessary to properly operate, maintain, and troubleshoot the system.
- ii. Upon DENR approval, Pennington County must review and approve sufficient design, installation and operating information prior to installation.

n. Experimental On-Site Wastewater Treatment Systems.

Administrative Requirements:

- i. Where unusual conditions exist, experimental methods of on-site wastewater treatment and disposal may be employed provided they are approved by DENR and acceptable to Pennington County.
- ii. When considering proposals for experimental on-site wastewater treatment systems, Pennington County shall not be restricted by Section 204-J provided that:
  - aa. The experimental system proposed is attempting to resolve an existing pollution or public health hazard, or when the experimental system proposal is for new construction, it has been predetermined that an acceptable back-up wastewater system will be installed in event of failure of the experimental system.
  - bb. The proposal for an experimental on-site wastewater treatment system must be in the name of and bear the signature of the person who will own the system.
  - cc. The person proposing to utilize an experimental system has the responsibility to maintain, correct, or replace the system in event of failure of the experimental system.

General Requirements:

- i. All experimental systems shall be designed, installed and operated under the following conditions:
  - aa. Pennington County may impose more stringent design, installation, operating and monitoring conditions than those required by DENR.
  - bb. All failures, repairs or alterations shall be reported to Pennington County. All repairs or alterations must be approved by DENR and Pennington County.
  - cc. Pennington County shall require a signed contract between the homeowner and a licensed/certified O&M service provider prior to approval of the experimental on-site wastewater treatment system. The contract shall be maintained for the duration the on-site wastewater treatment system is utilized. The contract must be filed with the Pennington County Planning Department and updated if any changes are made or a new contract is established.
- ii. All experimental systems must be submitted by the applicant to DENR and approved through DENR prior to submission to Pennington County.
- o. Sewage Holding Tanks.

Administrative Requirements - Sewage holding tanks are permitted only under the following conditions:

- i. Where an on-site wastewater treatment system, for an existing dwelling, has failed and installation of a replacement on-site wastewater treatment system does not meet the requirements of Section 204-J; or,
- ii. For other extenuating situations where Pennington County agrees that a conventional, alternative or experimental system will not meet the criteria set forth in Section 204-J.

Requests for the use of sewage holding tanks must receive approval from Pennington County prior to installation.

General Requirements:

- i. A statement must be submitted by the owner indicating that, in the event his sewage holding tank is approved, he or she pump the tank periodically, at regular intervals or as needed, and that the wastewater contents will be disposed of in a manner and at a facility meeting approval of 40 C.F.R. Part 503. The agreement shall be filed with the Pennington County Planning Department and updated if any changes are made or a new agreement is established.
- ii. Pumping records, maintenance records and manifests must be kept by the owner for a period of six years for review by Pennington County to ensure pumping of the holding tanks.
- iii. Pennington County may require that sewage holding tanks be filled with water and allowed to stand overnight to check for leaks. Tanks exhibiting obvious defects or leaks shall not be approved unless such deficiencies are repaired.
- iv. Holding tanks that receive both black and gray water (combined) the capacity of the tank must hold a minimum of seven days sewage flow or 1,500 gallons, whichever is greater.
- v. Holding tanks which receive only gray water, the capacity of the tank must hold a minimum 1,500 gallons.
- vi. Holding tanks which receive only black water, the capacity of the tank must hold a minimum seven days sewage flow or 1,000 gallons, whichever is greater.
- vii. All tanks shall be located in an area which is accessible by a pumper truck for the pumping of their contents. There shall be no structure of any kind covering any of the tanks or impeding access to the tank(s).
- viii. Must be located in an area where it will not tend to float out of the ground due to a high groundwater table or a saturated soil condition, since it will be empty or only partially full most of the time. In areas where the groundwater table may be high enough to float the tank out of the ground when empty or partially full, adequate ground anchoring procedures shall be provided.
- ix. There shall be no discharge of effluent from a holding tank that receives black water or combined black and gray water.

- x. Septic tanks and cisterns shall not be allowed to be used as a holding tank.
- p. Service Providers.

Applicability – This section does not apply to a person who is employed by, or performs labor and services for:

- i. A certified installer in connection with the construction, installation, repair, or alteration of an on-site wastewater treatment system performed under the direct and personal supervision of the certified installer.
- ii. A pumper in connection with the pumping of septic tanks, pump tanks, media filters, and ATU's performed under the direct supervision of the pumper.
- iii. An O&M Service Provider in connection with the operation and maintenance of alternative, experimental or unconventional, on-site wastewater treatment systems performed under the direct supervision of the O&M Service Provider.

Requirements For All Service Providers – All service providers operating in Pennington County must:

- i. Have a Sales and/or Excise Tax License Number; and,
- ii. Have general liability insurance.

Proof of these documents must be registered with the Planning and Zoning Department prior to any work on on-site wastewater treatment systems in Pennington County and submitted with any necessary applications. Property Owners and/or homeowners installing an on-site wastewater treatment system on his or her own property that are certified installers of on-site wastewater treatment systems (as described below under INSTALLERS) are exempt from the sales and/or excise tax license and liability insurance requirements of service providers.

Installers:

Installer Certification Required - No person shall construct, install, alter, repair or offer to construct, install, alter or repair an on-site wastewater treatment system in Pennington County without certification from Pennington County.

Requirements – Pennington County shall issue certification to an applicant who satisfies all of the following requirements:

- i. Is at least 18 years of age;

- ii. Has received certification from South Dakota DENR for installation of on-site wastewater treatment systems;
- iii. Submits a properly completed application to Pennington County;
- iv. If the applicant has prior experience providing on-site wastewater treatment system services and has a current DENR installer certification, he or she must complete one of the following:
  - aa. Pass the National Environmental Health Association (NEHA) Certified Installer Examination (Basic or Advanced); or,
  - bb. Attend eight-hour Installer Education Course; or,
  - cc. Obtain Continuing Education Credits (minimum eight hours of contact time); or
- v. If the applicant has no prior experience, he or she must, at a minimum, pass the NEHA Basic On-site Wastewater Installer Certification Exam.

Pennington County shall require continuing education as a condition of certification and renewal. The Board of Commissioners, or its designee, shall determine the number of hours, a minimum of eight contact hours, per year. The Board of Commissioners, or its designee, may approve a continuing education program or course if that program or course provides useful educational information or experience that will enhance the construction, installation, repair, or alteration of on-site wastewater treatment systems.

Certification Renewal - All certifications shall expire two years from the application date. To renew a certification, an installer must submit an application for renewal and meet one of the following conditions:

- i. Attend eight-hour Installer Education Course; or,
- ii. Obtain Continuing Education Credits (minimum eight hours of contact time); or,
- iii. Pass the NEHA Certified Installer Examination (Basic or Advanced)

#### Liquid Waste Pumpers:

Pumper Certification Required - No person or entity shall pump septic tanks, pump tanks, holding tanks, and ATU's in Pennington County without meeting the requirements set forth in "Requirements for All Service Providers" above.

Requirements – A pumper who fills out an Observation Form for the purposes of the issuance of an Operating Permit, must, at a minimum, obtain the South Dakota DENR certification for installing on-site wastewater treatment systems.

Service Providers, O&M:

O&M Certification Required - No person shall perform operation and maintenance, typically on alternative, experimental or unconventional, on-site wastewater treatment systems in Pennington County without meeting the requirements set forth in "Requirements for All Service Providers" above.

Requirements – An O&M service provider must meet one of the two criteria:

- i. Be certified through manufacturer of equipment to be serviced or maintained, or,
- ii. Pass the NEHA Advanced Certified Installer Examination.

Timeframe For Which To Comply - All service providers operating in Pennington County for the purpose of constructing, installing, repairing, altering, servicing, maintaining or pumping on-site wastewater treatment systems must comply by February 11, 2011.

- q. Inspection of newly installed, altered or repaired on-site wastewater treatment systems.

New Construction, Installation, Alteration Or Repair - A person intending to construct, install, alter or repair a major component of an on-site wastewater treatment system shall, before construction begins, apply to Pennington County for an On-site Wastewater Treatment System Construction Permit. That person shall not begin construction until Pennington County approves the On-site Wastewater Treatment System Construction Permit Application and the Preliminary Evaluation is complete. The process for obtaining an On-site Wastewater Treatment System Construction Permit will include the following:

- i. The property owner shall submit an On-site Wastewater Treatment System Construction Permit Application, which could include:
  - aa. Type of system.
  - bb. Components of the system.
  - cc. Size of septic tank or holding tank.
  - dd. Size of drainfield.
  - ee. Distance of system to pertinent areas (i.e. setbacks).
  - ff. Site plan.
  - gg. Floor plan of dwelling, including all finished and unfinished areas.
  - hh. Field evaluation.
  - ii. Soil profile log.
  - jj. Percolation test information.
  - kk. Source and location of domestic water supply.
  - ll. Replacement Area for absorption system.

- mm. Printed name and signature of certified installer.

The On-Site Wastewater Treatment System Construction Permit for a new on-site wastewater treatment system shall remain valid for 24 months from the date of issuance. The Planning Director may allow the term of the On-site Wastewater Treatment System Construction Permit to be extended for a 12-month period. The On-Site Wastewater Treatment System Construction Permit for a repair, alteration, or replacement to an existing system shall remain valid for 6 months from the date of issuance. If the on-site wastewater treatment systems are not completed within the time limits as listed above, the permit, including any variances or decisions issued through the exception process or by the Planning Director, shall expire

- ii. Pennington County will conduct a Preliminary Evaluation of the proposed system. If the Preliminary Evaluation is acceptable, Pennington County will notify the property owner that construction of the system may begin. If the Preliminary Evaluation is not acceptable, Pennington County will specify changes or additions that must be made to the permit application to make it acceptable. The property owner may not begin construction until the Preliminary Evaluation is complete and acceptable.
- iii. Following construction of the system and before backfill of the system, Pennington County will conduct an on-site wastewater treatment system inspection.
- iv. Pennington County will complete a Final Evaluation Form, which includes:
  - aa. System Sizing.
  - bb. Trench or bed configuration, if applicable.
  - cc. Engineered design and DENR approval, if applicable.
  - dd. Setbacks.
  - ee. Final “as-built” drawing of system – must be signed by an Installer certified in Pennington County.
  - ff. GPS coordinate of septic tank.
- v. Following the completion of the final evaluation by Pennington County, the system will then be registered with the County and an Operating Permit issued.
- r. Construction Permit Fees. **(Effective June 6, 2012)**

Fees to cover expenses, including, but not limited to: administration, overhead, labor, storage, training, mileage, analytical testing, etc., by the Planning and

Zoning Department, shall be set by resolution by the Pennington County Board of Commissioners.

On-Site Wastewater Treatment System Construction Permits:

- i. The permit fee of an on-site wastewater treatment system shall be \$250.00.
- ii. The \$250.00 fee allows for two on-site inspections. Any additional inspections will require a fee of \$100.00.
- iii. For inspections outside normal office hours, the rate shall be \$250 in addition to the original fee.

4. Exemption For Operating Permit

a. Qualifications For Exemption:

To qualify for the exemption, the following criteria must be met:

- i. The land consists of not less than 40 acres of unplatted land; and,
- ii. The land is not zoned Commercial, or Industrial.

5. Administration and Enforcement

a. Notice of Non-Compliance and Corrective Action:

Upon receiving written notice from Pennington County of a violation of this Ordinance, the owner of the property containing such on-site wastewater treatment system shall, within 30 days, submit a proposed corrective action. Pennington County shall review the proposed corrective action and amend it as required to conform to this Ordinance. The owner shall complete all necessary corrective actions within a maximum of 180 days following approval from Pennington County. Once final approval of the completed corrective action is granted, the system shall be deemed in compliance with this Ordinance.

b. Appeals:

Appeal to the Pennington County Planning Director:

An owner aggrieved by the decision made pursuant to Section 204-J, referencing their on-site wastewater treatment system, may appeal to the Pennington County Planning Director. The appeal must be in writing and must specify the grounds for appeal. The written appeal must be received by the Pennington County Planning Department no later than 30 days after actual receipt of the Notice of Non-Compliance by the owner or after the date of the Notice of Non-Compliance is mailed by the Planning Department, whichever is sooner. The Notice of Decision from the Planning Director, on that appeal, shall be mailed within 30 days after the receipt by the Planning Department of a timely appeal.

If the appeal to the Planning Director is denied, the owner may file a second appeal with the Pennington County Planning Commission. If the owner chooses not to file a second appeal, the owner shall complete all necessary corrective actions within a maximum of 180 days following the date the Notice of Decision was received. If the appeal is granted, the Planning Director will notify the owner with a Notice of Decision by mail.

Appeal to the Planning Commission:

If the appellant is not satisfied with the Pennington County Planning Director's decision, the appellant may file a second written appeal to be heard by the Pennington County Planning Commission. Such an appeal shall be filed with the Pennington County Planning Department no later than 30 days after receipt by the appellant of the Planning Director's decision or 30 days after the date the Notice of the Decision is mailed by the Pennington County Planning Department, whichever is sooner. The Planning Commission meets the second and fourth Monday of each month. The agenda for each meeting is prepared the first and third Monday of each month. A Notice of Hearing will be mailed to the appellant at least 14 days prior to their scheduled hearing date. The Planning Commission's decision and/or recommendation shall be forwarded to the next scheduled Pennington County Board of Commissioners meeting. The Board of Commissioners shall vote to uphold, overrule, or amend the decision and/or recommendation of the Planning Commission. The decision shall be final.

K. Adult Oriented Businesses:

It is recognized that there are some uses, which because of their very nature, are recognized as having serious objectionable operational characteristics, and are not compatible with certain uses. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding area.

No more than one adult use may be established, operated, or maintained within 2,500 feet of another adult use as measured from the closest point of the outside wall of the building or tenant space.

None of the following uses may be established, operated, or maintained within one thousand (1,000) feet of a residential dwelling, a residential district, a church, a school meeting all the requirements of the Compulsory Education Laws of the State of South Dakota, or a public park, as measured from the closest point of the property lines.

1. Adult bookstore
2. Adult theater
3. Adult photo studio

4. Adult cabaret
5. Adult motel
6. Nude model studio
7. Adult video store
8. Adult novelty store.

Any Conditional Use approved by the Planning Commission or County Commission shall conform to the standards set forth for such uses below. These standards shall be construed to be the minimum requirements for any of the specified conditional uses, and the Planning Commission or County Commission can require additional stipulations at their discretion. In all cases, the impact of the proposed use on the adjacent properties will be a major consideration.

1. That the proposed use will not be injurious to adjacent properties and that the spirit and intent of this ordinance will be observed.
2. That the proposed use will not enlarge or encourage the development of a "skid row" area or reduce the property values within 1,000 feet of the subject property.
3. That the establishment of such use will not be contrary to any program of neighborhood conservation nor will it interfere with any program of urban renewal.
4. That all applicable regulations of this Ordinance will be observed.
5. That the normal and orderly development and improvement of adjacent vacant properties will not be negatively impacted.
6. That the proposed use(s) will not produce offensive odors, fumes, dust, noise, vibration, or lighting in any amount that will constitute a nuisance.

## **SECTION 205 - A-1 GENERAL AGRICULTURE DISTRICT**

### A. Intent:

The intent of the A-1 General Agriculture District is to provide a district that will support and encourage agriculture.

### B. Permitted Uses:

All agricultural uses shall be allowed in the A-1 General Agriculture District, including, but not limited to, the following:

1. General farming and harvesting.
2. General ranching and grazing.
3. Animal and poultry husbandry.
4. Sod and tree farming.
5. Apiculture.
6. Forest preserves.
7. Roadside stands exclusive for sale of products raised on the premises.
8. Manufactured homes, modular homes, and site or stick-built homes in compliance with Section 204-I.
9. Water treatment, purification, storage and pumping facilities.
10. Transportation and utility easements and rights-of-way.
11. Accessory uses and structures (as regulated in Section 204-General District Provisions).
12. Nurseries and greenhouses.
13. Temporary quarries.
14. Sawmills.
15. Business and Community signs.
16. Drilling for oil or natural gas or the extraction of sand, gravel, or minerals, provided that a Construction Permit is obtained in accordance with these Zoning Ordinances.
17. Mining provided a Construction Permit is obtained in accordance with these Zoning Ordinances.
18. Family Daycare Home.
19. Isolated cabins and recreation residences, including groups of residences on National Forest Land.
20. Home Offices.
21. Telecommunication Facilities in accordance with Section 316.
22. Small Wind Energy System, on 40 acres or more, in accordance with Section 317.
23. Meteorological tower, as part of a wind farm, in accordance with Section 317.

### C. Conditional Uses:

The following uses are illustrative of those which may be permitted upon review by the Board upon recommendation of the Commission according to the provisions contained in Section 510 - Conditional Use Permits:

1. Commercial feed lots.
2. Kennels and catteries.
3. Livestock auction yards.
4. Fur farms.

5. Fish hatcheries.
6. Home occupations (as regulated in Section 204 - General District Provisions).
7. Organized group camps.
8. Churches and other religious structures and cemeteries.
9. Airports, schools, playgrounds, parks, fairgrounds, and community centers.
10. Public service structures, such as fire stations, police stations, and post offices.
11. Utility substations and electric generation facilities.
12. Gun and archery ranges, riding stables and academies.
13. Temporary uses as regulated by Section 204 - General District Provisions.
14. Advertising signs.
15. Lodge hall, etc.
16. Recreational resort area; provided all requirements of a Planned Unit Development are met (See Section 213).
17. Historical monuments and structures.
18. Solid waste disposal sites.
19. Child Care Center.
20. Seasonal Cabin/Dwelling.
21. Model Home and Sales Office.
22. Manufactured homes, modular homes, and site or stick-built homes not in compliance with Section 204.
23. Contractor's equipment storage yard.
24. Multiple-family dwellings and housing for hired help.
25. Farmers Markets, Deli's and Bakery's.
26. Recreational vehicle as temporary living quarters. (This ordinance shall not allow multiple recreational vehicles as temporary living quarters on the same parcel and shall not allow additional living quarters when living quarters already exist on the property). The site must have an approved wastewater disposal system including bathroom/shower facilities and an improved site area for the recreational vehicle. If the recreational vehicle is not equipped with a bathroom/shower facility, said facility must be provided on the premises and connected to the wastewater disposal system. The recreational vehicle shall not be used as temporary living quarters on premises for more than 180 days per calendar year.
27. Small Wind Energy System in accordance with Section 317.
28. Large Wind Energy System in accordance with Section 317.
29. Wind Farm in accordance with Section 317.
30. Guest House in accordance with Section 318.
31. Vacation Home Rental in accordance with Section 319.

D. Minimum Lot Requirements:

There are no lot dimensions required. The minimum area is forty (40) acres or a government lot when surrounded by public land. However, when the lot is to be occupied as a residence of someone directly engaged in the operation of a farm or ranch, the Commission may instruct the Planning Director to issue one additional permit.

E. Minimum Setback Requirements:

All structures shall have front, side, and rear setbacks of twenty-five (25) feet from the property lines.

F. Structure Placement and Lot Coverage:

No accessory structure exceeding 5,000 square feet in area and/or thirty-five (35) feet in height shall be located closer than five hundred (500) feet from any residential zoning district without a Variance.

**SECTION 206 - A-2 LIMITED AGRICULTURE DISTRICT**

A. Intent:

To establish areas for limited agricultural and low-density residential uses.

B. Permitted Uses:

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

1. General farming and harvesting, not including fur farms.
2. General ranching and grazing not including commercial feed lots or rendering plants.
3. Animal and poultry husbandry.
4. Sod and tree farming.
5. Apiculture.
6. Forest preserves.
7. Roadside stands exclusively for the sale of produce raised on the premises.
8. Manufactured homes, modular homes, and site or stick-built homes in compliance with Section 204-I.
9. Water treatment, purification, storage, and pumping facilities.
10. Transportation and utility easements and rights-of-way.
11. Historical monuments and structures.
12. Accessory uses and structures (as regulated in Section 204 - General District Provisions).
13. Parks, playgrounds, play fields and community centers.
14. Nurseries and greenhouses.
15. Family Daycare Center.
16. Home Offices.
17. Community Signs.
18. Telecommunication Facilities in accordance with Section 316.
19. Small Wind Energy system, on 40 acres or more, in accordance with Section 317.

C. Conditional Uses:

The following uses may be permitted upon review by the Board upon recommendation of the Commission according to the provisions contained in Section 510 - Conditional Use Permits:

1. Fish hatcheries.
2. Country clubs, driving ranges, and golf courses.
3. Home occupations (as regulated in Section 204 - General District Provisions).
4. Organized group camps.
5. Churches and other religious structures and cemeteries.
6. Multiple-family dwellings and housing for hired help.

7. Schools, playgrounds, and fairgrounds.
8. Swimming pools and tennis courts.
9. Public service structures, such as fire stations, police stations, and post offices.
10. Community centers.
11. Utility substations.
12. Kennels, catteries, and animal hospitals.
13. Gun and archery ranges, riding stables, and academies.
14. Mobile homes (as regulated in Section 304 - Mobile Homes).
15. Neighborhood commercial uses (as regulated in Section 302 - Neighborhood Commercial).
16. Lodge hall, etc.
17. Sawmill.
18. Child Care Center.
19. Seasonal Cabin/Dwelling.
20. Model Home and Sales Office.
21. Manufactured homes, modular homes, and site or stick-built homes not in compliance with Section 204.
22. Contractor's equipment storage yard.
23. Recreational vehicle as temporary living quarters. (This ordinance shall not allow multiple recreational vehicles as temporary living quarters on the same parcel and shall not allow additional living quarters when living quarters already exist on the property). The site must have an approved wastewater disposal system, including bathroom/shower facilities and an improved site area for the recreational vehicle. If the recreational vehicle is not equipped with a bathroom/shower facility, said facility must be provided on the premises and connected to the wastewater disposal system. The recreational vehicle shall not be used as temporary living quarters on premises for more than 180 days per calendar year.
24. Small Wind Energy System in accordance with Section 317.
25. Large Wind Energy System in accordance with Section 317.
26. Guest House in accordance with Section 318.
27. Vacation Home Rental in accordance with Section 319.

D. Minimum Lot Requirements:

1. Lot Area

All permitted uses together with all accessory uses shall be located on a lot having a minimum of ten (10) acres, exclusive of dedicated public streets or platted private drives.

2. Lot Width

Lots shall abut a dedicated public street for a distance of not less than fifty (50) feet or shall have access to a public street by way of a platted private drive or an easement approved pursuant to the provisions of Section 313.

E. Minimum Setback Requirements:

All structures shall have front, side and rear setbacks of twenty-five feet from the property lines.

F. Maximum Height:

No structure shall exceed two and one-half stories or thirty-five (35) feet in height without a Variance.

G. Structure Placement and Lot Coverage:

All accessory structures exceeding 5,000 square feet in area and/or thirty-five (35) feet in height shall be located at least five hundred (500) feet from any residential district without a Variance.

**SECTION 207 - LDR LOW DENSITY RESIDENTIAL DISTRICT**

A. Intent:

To allow low density residential areas by design or to establish low density residential areas which may not be suited to higher density development by reason of topography, geology, drainage, or similar problems.

B. Permitted Uses:

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

1. Manufactured homes, modular homes, and site or stick-built homes in compliance with Section 204-I.
2. Transportation and utility easements and rights-of-way.
3. Accessory uses and structures (as regulated in Section 204 - General District Provisions).
4. Temporary buildings for uses incidental to construction work. These buildings shall be immediately adjacent to the construction work and shall be removed upon completion or abandonment of the construction work and shall require a temporary Building Permit. Temporary living quarters shall require an accessory Building Permit.
5. Family Daycare Home.
6. Home Offices.
7. Community Signs.
8. Telecommunication Facilities in accordance with Section 316.
9. Small Wind Energy System, on 40 acres or more, in accordance with Section 317.

C. Conditional Uses:

The following uses are illustrative of those which the Board may approve. Other uses may be allowed, provided they are not found to be contrary to intended uses of the district under consideration. (See Section 204-F):

1. Home occupations (as regulated in Section 204 - General District Provisions).
2. Parks, play grounds, play fields, and community centers.
3. Utility substations.
4. Schools, including childcare centers and kindergartens.
5. Churches or similar places of worship.
6. Public service structures, such as fire stations, police stations, and post offices.

7. Libraries, museums and historical monuments, and structures.
8. Neighborhood commercial uses (as regulated in Section 302 - Neighborhood Commercial).
9. Multiple-family dwellings.
10. Mobile homes (as regulated in Section 304 - Mobile Homes).
11. Lodge hall, Veterans organization, service organizations.
12. Seasonal Cabin/Dwelling
13. Model Home and Sales Office
14. Manufactured homes, modular homes, and site or stick-built homes not in compliance with Section 204
15. Recreational vehicle as temporary living quarters. (This ordinance shall not allow multiple recreational vehicles as temporary living quarters on the same parcel and shall not allow additional living quarters when living quarters already exist on the property). The site must have an approved wastewater disposal system including bathroom/shower facilities and an improved site area for the recreational vehicle. If the recreational vehicle is not equipped with a bathroom/shower facility, said facility must be provided on the premises and connected to the wastewater disposal system. The recreational vehicle shall not be used as temporary living quarters on premises for more than 180 days per calendar year
16. Small Wind Energy System in accordance with Section 317.
17. Guest House in accordance with Section 318.
18. Vacation Home Rental in accordance with Section 319.

D. Minimum Lot Requirements:

1. All approved uses shall have a minimum lot size of three (3) acres, exclusive of dedicated public streets or platted private drives.
2. All lots shall have a minimum lot width of one hundred (100) feet at the front building line.
3. Lots shall abut a dedicated public street for a distance of not less than twenty-five (25) feet, or shall have access to a public street by way of a platted private drive, or an easement approved pursuant to the provisions of Section 313 of the Zoning Ordinance.

E. Minimum Setback Requirements:

All structures shall have front, side, and rear setbacks of twenty-five (25) feet from the property lines.

F. Maximum Height:

No structure shall exceed two and one-half stories or thirty-five (35) feet in height, without a Variance.

**SECTION 208 - SRD SUBURBAN RESIDENTIAL DISTRICT**

A. Intent:

To establish medium density residential areas where central water and/or sewer is provided, excluding uses which are not compatible with residential use but

permitting certain nonresidential uses which are of particular convenience to the residents of the district.

B. Permitted Uses:

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

1. Manufactured homes, modular homes, and site or stick-built homes in compliance with Section 204-I.
2. Transportation and utility easements and rights-of-way.
3. Accessory uses and structures (as regulated in Section 204-General District Provisions).
4. Temporary buildings for uses incidental to construction work. These buildings shall be immediately adjacent to the construction work and shall be removed upon completion or abandonment of the construction work, and shall require a temporary Building Permit.
5. Family Daycare Home.
6. Home Offices.
7. Community Signs.
8. Telecommunication Facilities in accordance with Section 316.
9. Small Wind Energy System, on 40 acres or more, in accordance with Section 317.

C. Conditional Uses:

The following uses are illustrative of those which the Board may approve. Other uses may be allowed, provided they are not found to be contrary to intended uses of the district under consideration.(See Section 204-F)

1. Multiple-family dwellings.
2. Mobile home parks (as regulated in Section 305 - Mobile Home Parks).
3. Rooming and boarding houses.
4. Convalescent and nursing homes.
5. Family and group care facilities.
6. Home occupations (as regulated in Section 204 - General District Provisions).
7. Parks, playgrounds, play fields, and community centers.
8. Schools, including childcare centers and kindergartens.
9. Churches or similar places of worship.
10. Public service structures, such as fire stations, police stations, and post offices.
11. Libraries, museums and historical monuments and structures.
12. Medical centers.
13. Neighborhood commercial uses (as regulated in Section 302 - Neighborhood Commercial).
14. Mobile homes (as regulated in Section 304 - Mobile Homes).
15. Utility substations.
16. Zero lot line or common wall dwellings.
17. Model Home and Sales Office.
18. Manufactured homes, modular homes, and site or stick-built homes not in compliance with Section 204.
19. Small Wind Energy System in accordance with Section 317.

D. Minimum Lot Requirements:

1. Lot Area

- a. For each dwelling and its accessory buildings served by a central water system approved by the Pennington County Health Department and a private water carriage waste disposal system, the lot size shall be at least 20,000 square feet, exclusive of dedicated public streets or platted private drives.
- b. For each dwelling and its accessory buildings served by a central water system approved by the Pennington County Health Department and a private well, the lot size shall be at least 20,000 square feet, exclusive of dedicated public streets or platted private drives.
- c. For each dwelling and its accessory buildings served by both an approved central water system and central sanitary sewer, the lot size shall be at least 6,500 square feet, exclusive of dedicated public streets or platted private drives.
- d. For all other uses and their accessory buildings, the lot area, exclusive of dedicated public streets or platted private drives, shall be adequate to provide the approved water and sewer systems, the yard area required in this district and the necessary off-street parking.

2. Lot Width

- a. All lots shall have a minimum lot width of sixty-five (65) feet at the front building line.
- b. Lots shall abut a dedicated public street for a distance of not less than twenty-five (25) feet or shall have access to a public street by way of a platted private drive, or an easement approved pursuant to the provisions of Section 313.

E. Density Bonus:

1. The Planning Commission may allow a density bonus of 500 square feet per lot if the subdivision is developed for cluster housing. Example: Under conventional development, a 10-acre site would yield a maximum of 67 home sites. If the density bonus were used, 73 home sites would be available.
2. Adequate provision must be made to ensure that common-open space abuts the cluster housing and that no future subdivision of the common-open space shall occur.
3. The Health Department shall approve sewer and water systems for cluster housing.

F. Minimum Setback Requirements:

1. Front Yard
  - a. All structures shall have a front yard setback of twenty-five (25) feet.
  - b. Decks (uncovered) shall be allowed to have a fifteen (15) foot setback.
  
2. Side Yard
  - a. For a single-story dwelling located on interior lots, side yards shall be not less than eight (8) feet in width.
  - b. For unattached buildings of accessory use, there shall be a side yard of not less than eight (8) feet, provided that unattached one-story buildings of accessory use shall not be required to be set back more than five (5) feet from an interior side lot line when all parts of the accessory building are located more than ninety (90) feet behind the front lot line.
  
3. Rear Yard (**Revised 8/10/11**)
  - a. For main buildings, there shall be a rear yard of not less than twenty-five (25) feet.
  - b. Unattached accessory buildings shall not be located closer than five (5) feet from the rear lot line.
  - c. Attached decks to the principal structure shall be allowed to have a 15 foot rear yard setback.

G. Maximum Height:

No structure shall exceed two and one-half stories or thirty-five (35) feet in height, without a Variance.

**SECTION 209 - GC GENERAL COMMERCIAL DISTRICT**

A. Intent:

To establish general commercial areas for the overall general retail, personal, and business services of the County.

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

1. Retail establishments, including incidental manufacturing of goods for sale at retail on the premises, when conducted entirely in an enclosed building.
2. The storage, display, and sale of new; used; repossessed and traded-in merchandise, when conducted entirely in an enclosed building.
3. Barber and beauty shops and schools.
4. Cleaning, dyeing, laundry, pressing, dressmaking, tailoring, and garment and shoe repair shops.
5. Medical and/or dental clinics or offices and hospitals.

6. Hotels, motels, rooming and boarding houses.
7. Clubs and lodges.
8. Eating and drinking establishments.
9. Offices, studios, clinics, and laboratories.
10. Financial and credit institutions.
11. Funeral homes.
12. Bakeries.
13. Auditoriums, libraries, art galleries, museums and other cultural structures, and activities and community centers.
14. Laboratories and establishments for production and repair of jewelry, eyeglasses, hearing aids, and prosthetic appliances.
15. Business and vocational schools not involving operations of an industrial character.
16. Commercial recreation and amusement structures and uses conducted entirely in an enclosed building, such as theaters, bowling alleys, and poolrooms.
17. Utility substations.
18. Public buildings and grounds other than elementary or high schools.
19. Churches or similar places of worship.
20. Bus stations.
21. Service and repair establishments, including automobile service and repair, but excluding airplane and railroad repair establishments.
22. Parking lots and garages.
23. New and used motor vehicle sales, rental and repair, including trailers; boat sales; motorcycle sales and service; and travel trailer sales.
24. Mobile home sales, including prefabricated and shell homes.
25. New and used farm implement and machinery sales.
26. Building material sales not to include central mix or transit mix concrete plants and asphalt plants.
27. Outdoor advertising and community signs (as regulated in Section 312 - Signs, Billboards and Other Advertising Structures).
28. Accessory uses and structures on the same premises and clearly incidental to permitted uses or structures, including a dwelling unit for occupancy only by owners or caretakers.
29. Vacation Home Rental.
30. Telecommunication Facilities in accordance with Section 316.
31. Small Wind Energy System, on 40 acres or more, in accordance with Section 317.

C. Conditional Uses:

The following uses are illustrative of those which the Board may approve. Other uses may be allowed, provided they are not found to be contrary to intended uses of the district under consideration. (See Section 204-F)

1. Golf driving ranges.
2. Drive-in theaters.
3. Racetracks.
4. Construction equipment sales.
5. Warehousing, wholesale, and distribution establishments.
6. Kennels, catteries, and animal hospitals.
7. Other general commercial uses, which, although they are not specified in this section due to omission or lack of technological development, in the

opinion of the Commission, are not contrary to the intent of the general commercial district.

8. Adult Amusement or Entertainment establishments, Adult bookstores, Adult motion picture theaters or drive in theaters, Adult photo studios, Adult cabarets, Adult motels, Nude model studios, Adult video stores, and Adult novelty stores in conformance with Section 204-K.
9. Small Wind Energy System in accordance with Section 317.
10. Large Wind Energy System in accordance with Section 317.
11. Recreational vehicle parks as regulated in Section 306.

D. Minimum Lot Requirements:

1. Lot Area

- a. For each principal structure and its accessory buildings served by a central water system approved by the Pennington County Environmental Planner and a private water carriage waste disposal system, the lot size shall be 20,000 square feet, exclusive of dedicated public streets or platted private drives.
- b. For each principal structure and its accessory buildings served by a central sewer system approved by the Pennington County Environmental Planner and a private well, the lot size shall be 20,000 square feet, exclusive of dedicated public streets or platted private drives.
- c. For each principal structure and its accessory buildings served by both an approved central water system and central sanitary sewer, the lot size shall be 7,500 square feet, exclusive of dedicated public streets or platted private drives.
- d. For all other uses and their accessory buildings, the lot area, exclusive of dedicated public streets or platted private drives, shall be adequate to provide the approved water and sewer system, the yard area required in this district and the necessary off-street parking.

2. Lot Width

Each lot shall have a width at the front building line of not less than seventy-five (75) feet and which abuts on a public right-of-way at least twenty-five (25) feet.

E. Minimum Yard Requirements:

1. Front Yard

All structures shall have a front yard setback of twenty-five (25) feet.

2. Side Yard

The minimum side yard shall be ten (10) feet except that the width of a side yard, which abuts a residential district, shall be not less than thirty (30) feet and screening may be required.

3. Rear Yard

Each lot shall have a rear yard setback of not less than ten (10) feet. Where a commercial building is serviced from the rear or abuts a street or a residential district, there shall be a rear yard setback of not less than thirty (30) feet.

F. Maximum Height of Structures:

No principal building or structure shall exceed three (3) stories or thirty-five (35) feet in height; whichever is the least, except as provided in Section 204 - General District Provisions. No accessory building or structure shall exceed one (1) story or twenty-five (25) feet in height. Variances may be granted from these height requirements.

G. Off-Street Parking:

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

H. Screening:

When required, screening between residential and commercial zones shall be fencing or shrubbery, which is sufficiently opaque or resistant to penetration to alleviate the apparent nuisance.

**SECTION 210 - HS HIGHWAY SERVICE DISTRICT**

A. Intent:

To establish areas for highway-oriented businesses and to provide development standards that will not impair or obstruct the traffic carrying capabilities of abutting roads and highways.

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

1. Hotels and motels.
2. Eating and drinking establishments, including drive-in eating establishments.
3. Service stations and garages.
4. Souvenir, gift, jewelry, arts, and crafts shops.
5. Retail businesses.
6. Coin-operated laundry and dry cleaning establishments.
7. Commercial recreation and amusement structures and uses, including theaters, amusement parks, bowling alleys, ice and roller rinks, archery ranges, and miniature golf.
8. Public service structures, such as police and fire stations and post offices.
9. Bus stations.
10. Outdoor advertising and community signs (as regulated in Section 312 - Signs, Billboards and Other Advertising Structures).
11. Accessory uses and structures on the same premises and clearly incidental to permitted uses or structures, including a dwelling unit for occupancy only by owners or caretakers.
12. Auction house.

13. Model home and sales office.
14. Vacation Home Rental.
15. Telecommunication Facilities in accordance with Section 316.
16. Small Wind Energy System, on 40 acres or more, in accordance with Section 317.

C. Conditional Uses:

The following uses are illustrative of those which the Board may approve. Other uses may be allowed provided they are not found to be contrary to intended uses of the district under consideration. (See Section 204-F)

1. Golf driving ranges.
2. Drive-in theaters.
3. Racetracks.
4. Other highway-oriented businesses which are not listed but which the Commission may determine meet the intent of the Highway Service District. This shall not be construed to include general commercial activities which more appropriately fit the General Commercial District.
5. Well drilling businesses and accessory exterior equipment and material storage.
6. Recreational vehicle parks as regulated in Section 306.
7. Adult Amusement or Entertainment establishments, Adult bookstores, Adult motion picture theaters or adult drive in theaters, Adult photo studios, Adult cabarets, Adult motels, Nude model studios, Adult video stores, and Adult novelty stores in conformance with Section 204.K.
8. Small Wind Energy System in accordance with Section 317.
9. Large Wind Energy System in accordance with Section 317.

D. Minimum Lot Requirements:

1. Lot Area
  - a. For each principal structure and its accessory buildings served by a central water system approved by the Pennington County Health Department and a private water carriage waste disposal system, the lot size shall be 20,000 square feet, exclusive of dedicated public streets or platted private drives.
  - b. For each principal structure and its accessory buildings served by a central sewer system approved by the Pennington County Health Department and a private water carriage waste disposal system, the lot size shall be 20,000 square feet, exclusive of dedicated public streets or platted private drives.
  - c. For each principal structure and its accessory buildings served by both an approved central water system and central sanitary sewer, the lot size shall be 7,500 square feet, exclusive of dedicated public streets or platted private drives.
  - d. For all other uses and their accessory buildings, the lot area, excluding dedicated public streets or platted private drives, shall be adequate to provide the approved water and sewer system, the yard area required in this district, and the necessary off-street parking.

2. Lot Width

Each lot shall have a width at the front building line of not less than seventy-five (75) feet of which fifty (50) feet must abut a public right-of-way.

E. Minimum Yard Requirements:

1. Front Yard

All structures shall have a front yard setback of twenty-five (25) feet.

2. Side Yard

Each side yard shall be not less than ten (10) feet. The depth of a side yard, which abuts a residential district or a street, shall be not less than thirty (30) feet.

3. Rear Yard

Each lot shall have a rear yard of not less than ten (10) feet. Where a commercial building is serviced from the rear, there shall be provided a rear yard of not less than thirty (30) feet. The depth of a rear yard, which abuts a street or a residential district, shall not be less than thirty (30) feet.

F. Maximum Height of Structures:

No principal building or structure shall exceed three (3) stories or thirty-five (35) feet in height except as otherwise provided. No accessory building or structure shall exceed one (1) story or twenty (20) feet in height. Variances may be granted from these height requirements.

G. Off-Street Parking:

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

**SECTION 211 - LI LIGHT INDUSTRIAL DISTRICT**

A. Intent:

To establish areas for industrial and related uses of such a nature that they do not create serious problems of compatibility with other kinds of land uses, and to make provision for certain kinds of commercial uses which are most appropriately located as neighbors of industrial uses or which are necessary to service the immediate needs of people in these areas.

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

1. Manufacturing.
2. Wholesaling.
3. Distributing.
4. Warehousing.
5. Bulk storage.

6. Building material sales yard and lumber yard, including the sale of rock, sand, gravel, and the like as an incidental art of the main business but not including a concrete batch plant or a transit mix plant or an asphalt plant.
7. Contractor's equipment storage yard or plant or the rental of equipment commonly used by contractors.
8. Freight or truck yard and terminal.
9. Public utility service yard or electrical receiving or transferring station.
10. Auction house, except for the sale of livestock.
11. Tire recapping or retreading.
12. Water treatment, purification, storage, and pumping facilities.
13. Outdoor advertising and community signs (as regulated in Section 312 - Signs, Billboards, and Other Advertising Structures).
14. The following uses when conducted within a completely enclosed building:
  - a. The manufacture, compounding, assembling, or treatment of articles or merchandise from the following previously prepared materials: aluminum; bone; cellophane; canvas; cloth; cork; feathers; felt; fiber; fur; glass; precious or semi-precious metals or stones; shell; rubber; textiles; tin; iron; steel; and wood.
  - b. The manufacture of pottery and figurines or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
  - c. The manufacture and maintenance of electric and neon signs, commercial advertising structures, light sheet metal products, including heating and ventilating ducts and equipment, cornices, eaves and the like.
  - d. Blacksmith and machine shop.
15. Accessory uses and structures on the same premises which are clearly incidental to the permitted use, including sleeping facilities required by a caretaker or night watchman.
16. A retail or service use only when it directly serves or is incidental to the needs of the industrial plants and the employees thereof.
17. Telecommunication Facilities in accordance with Section 316.
18. Small Wind Energy System, on 40 acres or more, in accordance with Section 317.

C. Conditional Uses:

Those General Commercial District uses deemed compatible with the surrounding Light Industrial District may be permitted upon review by the Board upon recommendation from the Commission, according to the provisions contained in Section 510 - Conditional Use Permits.

1. Small Wind Energy System in accordance with Section 317.
2. Small Wind Energy System in accordance with Section 317.

D. Special Provisions:

1. The foregoing use authorizations do not include any of such uses which emit any fumes, vibration, smoke or noise, except the noise of vehicles coming and going, which is detectable from off the premises by the senses of a normal human being and unless all operations, including the storage of anything except merchandise displayed for sale, are conducted in a fully enclosed building or entirely behind walls or fences which conceal them from visibility from off the lot.
2. No merchandise shall be displayed for sale in any required front yard.

E. Minimum Lot Requirements:

1. Lot Area

- a. Any principal use together with all accessory uses shall be located on a lot having a minimum area of 20,000 square feet, exclusive of dedicated public streets or platted private drives, if served by a central water system or a central sewer system provided approval is obtained from the Pennington County Health Department.
- b. The lot area, exclusive of dedicated public streets or platted private drives, shall be determined by the private water carriage waste disposal system based on individual requirements and data required by the Pennington County Health Department. When an individual water system is also to be used, the lot size, exclusive of dedicated public streets or platted private drives, will be increased to accommodate both the water and waste systems as approved by the Pennington County Health Department.

2. Lot Width

Each lot shall have a width at the front building line of not less than one hundred (100) feet of which fifty (50) feet must abut a public right-of-way.

F. Minimum Yard Requirements:

1. Front Yard

All structures shall have a front yard setback of twenty-five (25) feet.

2. Side Yard

No building shall be located closer than fifteen (15) feet to a side yard lot line, which must be maintained open as a fire lane. The width of a side yard, which abuts a residential district, shall be not less than fifty (50) feet and the Commission may require screening.

3. Rear Yard

No building shall be located closer than twenty-five (25) feet to the rear lot line. The depth of a rear yard, which abuts a residential district, shall be not less than fifty (50) feet.

G. Maximum Height of Structures:

No building or structure shall exceed four (4) stories or forty-five (45) feet in height except as hereinafter provided in Section 204 - General District Provisions, or with a Variance.

H. Minimum Off-Street Parking and Loading Requirements:

As regulated in Section 310 - Minimum Off-Street Parking Requirements or Section 311 - Off-Street Loading and Unloading Requirements.

**SECTION 212 - HI HEAVY INDUSTRIAL DISTRICT**

A. Intent:

To establish areas for necessary industrial and related uses of such a nature that they require isolation from many other kinds of land uses, and to make provision for commercial uses which are necessary to service the immediate needs of people in their areas.

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

1. Manufacturing, requiring yard storage and fabrication.
2. Wholesaling, requiring yard storage and assembly.
3. Warehousing, requiring yard storage.
4. Bulk storage.
5. Foundries.
6. General repair and service of trucks and construction equipment.
7. Railroad freight terminal and repair shop.
8. Power plants.
9. Stockyards, feeding pens, and auction houses for sale of livestock.
10. Tannery or curing or storage of raw hides.
11. Sawmills.
12. Rock, sand, gravel, or earth excavation, crushing or distribution.
13. Slaughter of animals, including poultry killing or dressing.
14. Processing of junk, waste, discarded or salvaged materials, machinery or equipment, including automobile wrecking or dismantling.
15. Outdoor advertising and community signs (as regulated in Section 312 - Signs, Billboards and Other Advertising Structures).
16. Accessory uses and structures on the same premises which are clearly incidental to the permitted use, including sleeping facilities required by a caretaker or night watchman.
17. Concrete batch plant, transit mix plant, or asphalt plant.
18. Concrete block, precast concrete and prestressed concrete fabrication and storage.
19. Structural and reinforcing steel fabrication, welding and storage.
20. A retail or service use only when it directly serves or is incidental to the needs of the industrial plants and the employees thereof.
21. Grain elevators.
22. Auction houses not for the sale of livestock.
23. Telecommunication Facilities in accordance with Section 316.
24. Small Wind Energy System, on 40 acres or more, in accordance with Section 317.

C. Conditional Uses:

1. Solid waste disposal sites.
2. Small Wind Energy System in accordance with Section 317.
3. Large Wind Energy System in accordance with Section 317.

D. Prohibited Uses:

None, so long as uses are consistent with the above intent.

E. Minimum Lot Requirements:

The following requirements shall apply to all uses permitted in this district.

1. Lot Area

Any principal use, together with all accessory uses, shall have a front lot area of adequate size to serve the needs of the proposed use provided that lots of less than 20,000 square feet shall not be allowed.

2. Lot Width

Each lot shall have a width at the front building line of not less than one hundred (100) feet of which fifty (50) feet must abut a public right-of-way.

F. Minimum Yard Requirements:

1. Front Yard

All structures shall have a front yard setback of twenty-five (25) feet.

2. Side Yard

No building shall be located closer than twenty-five (25) feet to a side lot line. The width of a side yard, which abuts a residential district, shall be not less than seventy-five (75) feet.

3. Rear Yard

No building shall be located closer than twenty-five (25) feet to the rear lot line. The depth of any rear yard, which abuts a street or residential district, shall be not less than fifty (50) feet.

G. Minimum Off-Street Parking and Loading Requirements:

As regulated in Section 310 - Minimum Off-Street Parking Requirements and Section 311 - Off-Street Loading and Unloading Requirements.

**SECTION 213 - PUD PLANNED UNIT DEVELOPMENT DISTRICT** (Revised 2/9/11)

A. General Description:

1. The intent of the Planned Unit Development is to allow districts in which ingenuity, imagination and design efforts on the part of the builders, architects, site planners, and developers can produce desirable residential developments.
2. Planned Unit Developments may be approved in areas designated Planned Unit Development Districts or such Planned Unit Developments may be approved for districts designated Suburban Residential District.

B. Permitted Uses:

1. Property and buildings in the Planned Unit Development are to be planned and organized as a single entity and as one complex land use unit rather than as a group of individual buildings located on separate lots.
2. Uses permitted in the Planned Unit Development may include single-family dwellings, duplexes, triplexes, four-plexes, apartments, townhouses, patio-houses, mobile homes, neighborhood commercial, school sites, parks, Wind Energy Systems in accordance with Section 317, Vacation Home Rentals in accordance with Section 319, and open space uses as necessary and as part of a general plat and plan.
3. Permitted uses other than single-family dwellings must be located either within the interior of the Planned Unit development or in areas where the adjacent uses outside the boundaries of the Planned Unit Development are compatible.
4. Resort developments where there will be no sale of individual lots shall be considered as a Planned Unit Development. The Commission may waive any portion of this section which is not appropriate to resort development and may require any additional information necessary to determine compatibility of the proposal.

C. Area Regulations:

The following requirements shall apply to all uses permitted in a Planned Unit Development:

1. Yard, setback, lot size, type of dwelling unit, height, frontage requirements and use restrictions may be waived within the Planned Unit Development, provided that the intent of this section is complied with in total development plan as determined by the Commission. The Commission may determine that certain setbacks are required within all or a portion of the site and shall exercise ultimate discretion as to whether the total development plan does comply with the intent of this section.
  - a. Setback requirements of the district containing the Planned Unit Development will apply on all major county highways and on all boundaries of the Development.

2. Off-street parking must be provided in each Planned Unit Development and the following factors are to be taken into consideration for such approval:
  - a. Probable number of automobiles and vehicles owned by occupants of dwellings in the Planned Unit Development
  - b. Parking needs of any nondwelling uses
  - c. Varying time periods of use whenever joint use of common parking areas is proposed
3. Approval of a Planned Unit Development does not eliminate the requirements of subdividing. A preliminary plan and plat must be submitted and processed through procedures specified in the Subdivision Regulations.
4. The Commission must be satisfied that the site plan for the Planned Unit Development has met each of the following criteria or can demonstrate that one or more of them are not applicable and that a practicable solution consistent with public interest has been achieved for each of these elements:
  - a. That there is an appropriate relationship to the surrounding area.
  - b. That provisions are made for an internal street system designed for the type of traffic generated, safety, separation from living areas, convenience, access, noise, and exhaust control. Private internal streets and walkways may be permitted if they may be used by police and fire department vehicles for emergency purposes. Bicycle traffic shall be considered when the site is used for an area for living purposes. Proper circulation in parking areas for safety, convenience, separation, and screening must be provided. Such streets shall be designed according to generally accepted specifications for residential streets and maintained in good condition.

Minimum right-of-way widths and roadway widths as required in the Subdivision Regulations may be waived by the Commission provided that adequate consideration is given to ingress and egress of emergency vehicles.
  - c. That there is functional open space for optimum preservation of natural features, including trees and drainage areas, recreation, views, density, relief, and convenience in function.
  - d. That privacy, in terms of the needs of individual families and neighbors, is provided.
  - e. That there is provisions for pedestrian traffic for safety, separation, convenience, access to points in common areas and attractiveness.
  - f. That building types are appropriate to the density and site relationship.

- g. That there are adequate provisions for sewer and water systems as approved by the Pennington County Health Department.
5. The Planned Unit Development may be subdivided or re-subdivided for purposes of sale or lease. An application for approval of a subdivision or re-subdivision will create a new plat line. The procedures applicable to the initial approval of the Planned Unit Development are also applicable to the approval of a subdivision or a re-subdivision.

A subdivision or a re-subdivision may be approved if it does not increase the dwelling unit density of the Planned Unit Development and if the subdivision or re-subdivisions are in compliance with the standards for Planned Unit Developments provided for in this district. At no time shall the common area be subdivided without the consent of the Board upon recommendation of the Commission after proper notice to the public and a hearing.

Any change in the use of any property, in an approved Development, will be subject to the procedures applicable to the initial approval of the Planned Unit Development.

6. Density (dwelling units per acre) may be increased if the character of the development and the advantages incorporated in the development warrant such increases.

D. Application:

A preliminary Planned Unit Development application shall be submitted for consideration by the Zoning Commission to allow for notice procedure set forth under Section 512 - Amendments. Upon submission of a preliminary plan of a sufficient scope to permit preliminary approval, a formal application for approval of a Planned Unit Development shall be filed. The application must include consent by the owners of all property to be included in the Planned Unit. The application must be accompanied by a site plan and a written statement containing:

1. A site plan showing the major details of the proposed Planned Unit Development, prepared to scale, shall be submitted in sufficient detail to evaluate the land planning, building design, and other features of the Planned Unit Development. The site plan must contain insofar as applicable the following minimum information:
- a. The existing topographic character of the land
  - b. Proposed land uses
  - c. Location and size of existing and proposed buildings, structures and improvements, including an indication of the buildable area of each lot
  - d. The minimum height of all buildings
  - e. The density and type of dwellings
  - f. The internal traffic and circulation system, off-street parking areas, service areas, loading areas, and major points of access to public right-of-way

- g. The location, height and size of proposed signs, lighting, and advertising devices
  - h. Areas which are to be conveyed, dedicated, or reserved as common areas, including parks and recreational areas and sites for schools and other public buildings
  - i. Drainage pattern and plan for disposing of runoff in such a manner as to protect adjacent property
2. A written statement to be submitted with the Planned Unit Development application must contain the following:
- a. A statement of the present ownership and a legal description of the land included in the Planned Unit Development
  - b. An explanation of the objectives to be achieved by the Planned Unit Development, including building descriptions, sketches, or elevations as may be required to describe the objectives
  - c. A development schedule indicating the approximate date when the construction of the Planned Unit Development or stages of the Planned Unit Development can be expected to begin and to be completed
  - d. Copies of any special agreements, conveyances, restrictions, or covenants which shall govern the use, maintenance, and continued protection of the Planned Unit Development and any of its common area
3. The developer and developers shall submit proof to the Planning Commission that all parks and open spaces shall be dedicated to the Homeowners Association and a performance bond equal to the cost of the improvements shall be posted prior to the final plat being filed.

E. Amendment to the Planned Unit Development:

Amendments to the Planned Unit Development shall be classified as either Major or Minor in character:

1. Major Amendments. Major Amendments to the Planned Unit Development (PUD) shall require the applicant to modify the approved PUD. Revised plans shall be submitted to the Planning Department, and upon submittal of any application for a Major Amendment for a PUD, the applicant shall pay Pennington County the appropriate fee as outlined in Section 511-I Fees.

Amendments shall be considered Major, if they include any of the following:

- a. A change in the PUD boundary;
- b. The use of the land;
- c. Any change in the density, or lot coverage development standards;

- d. Any relocation or reconfiguration of roads or parking areas;
- e. A change in dimensional requirements such as setbacks and building heights for the overall development. An individual lot setback request shall be considered a Minor Amendment; and,
- f. Any addition to the list of allowed uses in the PUD.

Upon review of the proposed amendments to the PUD by the staff, a public hearing shall be established for the review of the changes by the Pennington County Planning Commission and Pennington County Board of Commissioners.

Public advertisement shall be required to be published at least seventeen (17) days prior to the meeting date and shall run in the local newspaper(s) for advertising purposes.

Upon submittal of all the application materials and the required fees, the Planning Department will prepare the Notice of Hearing letters and the Property Owner's List of those persons who own land within the entire PUD and land within 500 feet outside of the PUD boundary. A minimum fee of \$20.00 is added to cover the costs of preparing the Property Owner's List.

The Planning Department shall provide, to the applicant, a sign which is to be posted on the property involved with the Major Amendment to the Planned Unit Development request, in a location with greatest visibility to the public. Said sign shall be placed no less than ten (10) days prior to the public hearing on the request held by the Planning Commission. A \$50.00 deposit (refundable) is required for the sign.

- 2. Minor Amendments: Minor Amendments to the Planned Unit Development (PUD) shall be construed as all other changes not considered Major Amendments and does not result in a change in the character of the development. Upon the filing of any application for a Minor Amendment for a PUD, the applicant shall pay Pennington County the appropriate fee as outlined in Section 511-I Fees. Amendments not meeting the criteria for a Major Amendment and deemed by the Planning Director to be a Minor Amendment, may be approved by the Planning Commission only.

Upon review of the proposed amendments to the PUD by the staff, a public hearing shall be established for the review of the changes by the Pennington County Planning Commission.

Public advertisement shall be required to be published at least ten (10) days prior to the meeting date and shall run in the local newspaper(s) for advertising purposes.

Upon submittal of all the application materials and the required fees, the Planning Department will prepare the Notice of Hearing letters and the Property Owner's List of those persons who own land within 500 feet of the subject property. A minimum fee of \$20.00 is added to cover the costs of preparing the Property Owner's List.

The Planning Department shall provide, to the applicant, a sign which is to be posted on the property involved with the Minor Amendment to the Planned Unit Development request, in a location with greatest visibility to the public. Said sign shall be placed no less than ten (10) days prior to the public hearing on the request held by the Planning Commission. A \$50.00 deposit (refundable) is required for the sign.

### **SECTION 214 - FP FLOODPLAIN ORDINANCE**

Floodplain considerations for any lands lying within the area of jurisdiction of the Pennington County Flood Damage Prevention Ordinance shall be regulated, according to the provisions of said Ordinance.

### **SECTION 300 - SUPPLEMENTARY REGULATIONS**

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

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

A. Intent:

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

B Definitions:

See Section 103 – Definitions.

C. General:

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

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

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

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

D. Airport Zones:

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

1. Utility Runway Visual Approach Zone

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

2. Utility Runway Nonprecision Instrument Approach Zone

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

3. Runway Larger Than Utility Visual Approach Zone

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

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

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

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

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

6. Precision Instrument Runway Approach Zone

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

7. Transitional Zones

The transitional zones are the areas beneath the transitional surfaces.

8. Horizontal Zone

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

9. Conical Zone

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

E. Airport Zone Height Limitations:

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

1. Utility Runway Visual Approach Zone

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

2. Utility Runway Nonprecision Instrument Approach Zone

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

3. Runway Larger Than Utility Visual Approach Zone

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

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

Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.

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

Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.

6. Precision Instrument Runway Approach Zone

Slopes fifty (50) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline; thence slopes upward forty (40) feet horizontally for each foot vertically to an additional horizontal distance of 40,000 feet along the extended runway centerline.

7. Transitional Zones

Slope seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is 100 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface, and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface, and extending a horizontal distance of 5,000 feet measured at 90-degree angles to the extended runway centerline.

8. Horizontal Zone

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

9. Conical Zone

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

10. Excepted Height Limitations

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

F. Use Restriction:

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

G. Nonconforming Uses:

1. Regulations Not Retroactive

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

2. Marking and Lighting

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

H. Permits:

1. Future Uses

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

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

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

## 2. Existing Uses

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

## 3. Nonconforming Uses Abandoned or Destroyed

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

4. Variances

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

5. Obstruction Marking and Lighting

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

I. Enforcement:

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

J. Appeals:

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

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

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

K. Judicial Review:

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

L. Conflicting Regulations:

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

M. Severability:

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

**SECTION 302 - NEIGHBORHOOD COMMERCIAL**

A. Intent:

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

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

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

C. Special Regulations:

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

**SECTION 303 - MULTIPLE-FAMILY DWELLINGS**

A. General:

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

B. Minimum lot Requirements:

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

C. Minimum Setback Requirements:

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

1. Front Yard

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

2. Side Yard

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

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

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

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

### **SECTION 304 - MOBILE HOMES**

#### A. Intent:

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

#### B. General:

##### 1. Location

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

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

##### 2. Foundations

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

C. Water and Waste Water Facilities:

1. Water

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

**SECTION 305 - MOBILE HOME PARKS**

A. Property Development Standards:

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

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

B. Area Regulations:

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

C. General Regulations:

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

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

D. Application for Conditional Use Permit:

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

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

**SECTION 306 - RECREATIONAL VEHICLE PARKS**

A. Property Development Standards:

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

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

B. Application for a Conditional Use Permit:

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

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

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

## **SECTION 307 - OTHER USES**

### A. Cemetery:

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

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

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

#### 1. Health Department Report

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

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

#### 2. Lot Area and Location

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

#### 3. Fencing and/or Screening

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

### C. Private Day Nurseries and Kindergartens:

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

D. Automobile Wrecking and Junk Yard:

1. Location

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

2. Screening

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

3. Off-Street Parking

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

E. Gasoline Service Stations:

The following regulations shall apply to all gasoline service stations:

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

F. Swimming Pools:

The following regulations shall apply to swimming pools:

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

**SECTION 308 - MOBILE HOME SUBDIVISIONS**

A. Intent:

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

B. General:

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

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

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

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

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

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

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

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

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

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

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

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

#### Table of Parking Spaces Required:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEFINITIONS:

See Section 103 – Definitions.

GENERAL PROVISIONS:

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

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

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

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

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

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

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

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

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

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

B. Enforcement of Sign Ordinance:

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

2. Unlawful Signs

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

3. Removal of Signs

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

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

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

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

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

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

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

- A. Purpose:

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

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

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

B. Permit Required:

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

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

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

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

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

C. Requirements for Permit:

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

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

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

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

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

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

D. Application for a Conditional Use Permit:

The application and accompanying site plan shall contain and disclose:

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

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

E. Revocation of Permit:

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

F. Injunction Proceedings to Prevent or Abate Violations:

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

G. Penalty:

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

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

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

- A. Purpose:

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

- B. Development Standards:

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

- C. Variances:

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

## LAND USE COMPATIBILITY

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### LEGEND

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

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

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

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

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

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

**A, B, or C** - Land use and related structures generally compatible; measures to achieve NLR for A(DNL 66-70), B(DNL 71-75), C(DNL 76-80), need to be incorporated into the design and construction of structures. See Appendix E, Vol. 11.

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

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

SLUC M NO.	NAME	ACCIDENT POTENTIAL ZONES			NOISE ZONES DNL			
		CLEAR ZONE	APZ I	APZ II	65-70	70-75	75-80	80+
<b>10</b>	<b>Residential</b>							
11	Household units							
11.11	Single units; detached	N	N	Y <sup>1</sup>	A <sup>11</sup>	B <sup>11</sup>	N	N
11.12	Single units; semidetached	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
11.13	Single units; attached row	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
11.21	Two units; side-by-side	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
11.22	Two units; one above the other	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
11.31	Apartments; walk up	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
11.32	Apartments; elevator	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
12	Group quarters	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
13	Residential hotels	N	N	N	A <sup>11</sup>	B <sup>11</sup>	N	N
14	Mobile home parks or courts	N	N	N	N	N	N	N
15	Transient lodgings	N	N	N	A <sup>11</sup>	B <sup>11</sup>	C <sup>11</sup>	N
16	Other residential	N	N	N <sup>1</sup>	A <sup>11</sup>	B <sup>11</sup>	N	N
<b>20</b>	<b>Manufacturing</b>							
21	Food & kindred products; manufacturing	N	N <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
22	Textile mill products- manufacturing	N	N <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
23	Apparel and other finished products made from fabrics, leather and similar materials – manufacturing	N	N	N <sup>2</sup>	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
24	Lumber and wood products (except furniture) – manufacturing	N	Y <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
25	Furniture and fixtures – manufacturing	N	Y <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
26	Paper & allied products – manufacturing	N	Y <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
27	Printing, publishing, and allied industries	N	Y <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
28	Chemicals and allied	N	N	N <sup>2</sup>	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>

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

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

<b>50</b>	<b>Trade</b>							
51	Wholesale trade	N	Y <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
52	Retail trade-building materials, hardware and farm equipment	N	Y <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
53	Retail trade-general merchandise	N	N <sup>2</sup>	Y <sup>2</sup>	Y	A	B	N
54	Retail trade-food	N	N <sup>2</sup>	Y <sup>2</sup>	Y	A	B	N
55	Retail trade-automotive, marine craft, aircraft and accessories	N	Y <sup>2</sup>	Y <sup>2</sup>	Y	A	B	N
56	Retail trade-apparel and accessories	N	N <sup>2</sup>	Y <sup>2</sup>	Y	A	B	N
57	Retail trade-furniture, home furnishings and equipment	N	N <sup>2</sup>	Y <sup>2</sup>	Y	A	B	N
58	Retail trade-eating and drinking establishments	N	N	N <sup>2</sup>	Y	A	B	N
59	Other retail trade	N	N <sup>2</sup>	Y <sup>2</sup>	Y	A	B	N
<b>60</b>	<b>Services</b>							
61	Finance, insurance and real estate services	N	N	Y <sup>6</sup>	Y	A	B	N
62	Personal services	N	N	Y <sup>6</sup>	Y	A	B	N
62.4	Cemeteries	N	Y <sup>7</sup>	Y <sup>7</sup>	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14,2</sup> <sub>1</sub>
63	Business services	N	Y <sup>8</sup>	Y <sup>8</sup>	Y	A	B	N
64	Repair services	N	Y <sup>2</sup>	Y	Y	Y <sup>12</sup>	Y <sup>13</sup>	Y <sup>14</sup>
65	Professional services	N	N	Y <sup>6</sup>	Y	A	B	N
65.1	Hospitals, nursing homes	N	N	N	A*	B*	N	N
65.1	Other medical facilities	N	N	Y	A	B	N	
66	Contract construction services	N	Y <sup>6</sup>	Y	Y	A	B	N
67	Governmental services	N	N	Y <sup>6</sup>	Y*	A*	B*	N
68	Educational services	N	N	N	A*	B*	N	N
69	Miscellaneous services	N	N <sup>2</sup>	Y <sup>2</sup>	Y	A	B	N
<b>70</b>	<b>Cultural, entertainment and recreational</b>							
71	Cultural activities	N	N	N <sup>2</sup>	A*	B*	N	N

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

**80 Resources production and extraction**

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

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

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

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

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

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

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

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

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

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

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

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

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

See Section 103 – Definitions.

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

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

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

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

D. EXEMPTIONS:

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

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

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

E. AESTHETICS:

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

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

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

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

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

1. Omnidirectional or Whip Antennas shall not exceed 20 feet in length/height and not exceed 7 inches in diameter and shall be of a color that is identical or similar in color of the Supporting Structure to make the Antenna and related Accessory Equipment visually unobtrusive.
  2. Directional or Panel Antennas shall not exceed 10 feet in length and 2 feet in width and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.
  3. Cylinder-Type Antennas shall not exceed 10 feet in length and not exceed 12 inches in diameter and shall be of a color that is identical or similar to the color of the Supporting Structure to make the Antenna and related Accessory Equipment visually unobtrusive.
  4. Satellite and microwave dishes shall not exceed 6 feet in diameter. Dish antennas greater than 3 feet in diameter shall be screened with an appropriate architectural treatment that is compatible with or integral to the architecture of the building to which they are attached. This screening requirement shall not apply to dishes located upon Towers or Monopoles.
  5. Other Antenna types not specifically mentioned shall be permitted if they are not significantly greater in size and will have a visual impact no greater than the Antennas listed above. This provision is specifically included in this Ordinance to allow for future technological advancements in the development of Antennas.
  6. Accessory Equipment shall be governed by the setback requirement of the underlying zoning.
2. New Support Structures
- a. New Support Structures less than 60 feet in height shall be permitted in all zoning districts in accordance with the requirements of this Section and shall be governed by the setback requirement of the underlying zoning district.
  - b. New Support Structures up to 199 feet in height (including antennas) shall be permitted in Light Industrial, Heavy Industrial,

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

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

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

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

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

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

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

5. **Administrative Review Process**

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

c. Procedure:

1. Upon receipt of an application for Administrative Review, the Administrator will review the application and confirm that the proposed Telecommunications Facility is consistent with the Ordinance. Within 15 business days of the receipt of an application for Administrative Review, the Administrator shall either: (1.) Inform the applicant in writing a decision granting or denying the request; (2.) Inform the applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or, (3.) Inform the applicant that the application does not meet the criteria of Section F for Administrative Review and shall require a Telecommunications Facility Permit.
2. If it is determined by the Administrator that a Telecommunications Facility Permit is required, the application will be placed on a scheduled Planning Commission meeting. This meeting is a public meeting and shall require the Telecommunications Facility Permit Application fees.
3. An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's failure to complete the application within 60 business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
4. Should the Administrator deny the application, written justification for the denial shall be provided. The denial must be based on substantial evidence of inconsistencies between the application and the Ordinance. The applicant may appeal such a denial as provided in the Ordinance.
5. The applicant or any member of the public may appeal any decision of the Administrator approving, approving with conditions, or denying an application or deeming an application incomplete, within 30 days to the Pennington County Board of Commissioners in accordance with this Ordinance.

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

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

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

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

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

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

#### H. GENERAL DESIGN REQUIREMENTS:

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

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

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

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

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

#### I. APPLICATION SUBMITTAL REQUIREMENTS:

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

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

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

J. ELECTRONIC EMISSIONS AND ELECTROMAGNETIC RADIATION:

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

K. ABANDONMENT, REMOVAL, AND SPECULATIVE APPROVAL:

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

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

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

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

M. CONFLICT WITH OTHER LAWS:

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

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

### **A. PURPOSE**

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

### **B. FEDERAL AND STATE REQUIREMENTS**

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

### **C. DEFINITIONS**

See Section 103 - Definitions.

### **D. DISTRICT REGULATIONS**

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

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

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

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

E. REQUIREMENTS FOR SITING SMALL WIND ENERGY SYSTEMS

1. Standards:

Small Wind Energy Systems are subject to the following requirements:

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

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

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

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

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

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

2. Building Permit Requirements:

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

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

3. Abandonment:

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

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

F. REQUIREMENTS FOR SITING LARGE WIND ENERGY SYSTEMS

1. Standards:

Large Wind Energy Systems are subject to the following requirements:

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

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

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

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

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

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

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

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

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

## 2. Building Permit Requirements

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

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

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

3. Abandonment

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

G. REQUIREMENTS FOR SITING WIND FARMS

1. Standards

Wind Farms are subject to the following requirements:

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

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

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

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

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

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

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

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

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

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

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

## 2. Mitigation Measures

- a. Site Clearance. The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the LWES.
- b. Topsoil Protection. The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
- c. Compaction. The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and confine compaction to as small an area as practicable.
- d. Livestock Protection. The permittees shall take precautions to protect livestock on the Wind Farm site from project operations during all phases of the project's life.
- e. Fences. The permittees shall promptly replace or repair all fences and gates removed or damaged by project operations during all phases of the project's life unless otherwise negotiated with the fence owner.
- f. Roads:
  - i. Public Roads. As part of the Conditional Use Permit process, the permittees shall identify all state, county or township "haul roads" that will be used for the Wind Farm project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads and haul road agreements must be in place before the conditional use permit is granted. Where

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

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

- ii. Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. Access roads shall avoid crossing streams and drainage ways wherever possible. If access roads must be constructed across streams and drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.
- iii. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
- iv. Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust during construction.

3. Soil Erosion and Sediment Control Plan.

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

4. Footprint Minimization.

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

5. Electrical Cables.

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

overhead installation because of line loss.

6. Feeder Lines.

The permittees will place feeder lines in public rights-of-way if a public right-of-way exists or immediately adjacent to the public right-of-way on private property. Changes in routes may be made as long as feeders remain on public rights-of-way or immediately adjacent to the public right-of-way on private property and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees must place the feeder in accordance with the easement(s) negotiated. The permittees must submit the site plan and engineering drawings for the feeder lines to the Planning Commission before commencing construction.

7. Conditional Use Permit Submittal Requirements

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

- a. Boundaries of the site proposed for the Wind Farm and associated facilities on United States Geological Survey Map or other map as appropriate;
  - b. Map and copies of easements for the Wind Farm;
  - c. Map of occupied residential, business, and public structures within one-half mile of the proposed Wind Farm site boundaries;
  - d. Preliminary map of sites for each LWES, access roads, and all utility lines, including collector and feeder. Location of other LWES within five (5) miles of the proposed Wind Farm site;
  - e. All necessary haul road agreements;
  - f. Project-specific environmental and cultural concerns (e.g. native habitat, rare species, and migratory routes). This information should be obtained by consulting with the following agencies:
    - i. South Dakota Department of Game, Fish and Parks;
    - ii. U.S. Fish and Wildlife Service; and,
    - iii. South Dakota State Historical Society;Evidence of such consultation must be included in the application;
  - g. Project schedule;
  - h. Mitigation measures;
  - i. Decommissioning Plan;
  - j. Conditional Use Permit fee;
  - k. FAA determination of “Does not exceed” or “Determination of No Hazard” in response to submission of Form 7460-1 through the OE/AAA Process; and,
  - l. Aeronautical Hazard Permit issued by the South Dakota Aeronautics Commission.
8. Conditional Use Permit fee shall be \$1,000.00, plus \$200.00 for each tower.

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

10. Building Permit Requirements

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

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

11. Post-Construction Filing.

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

12. Decommissioning

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

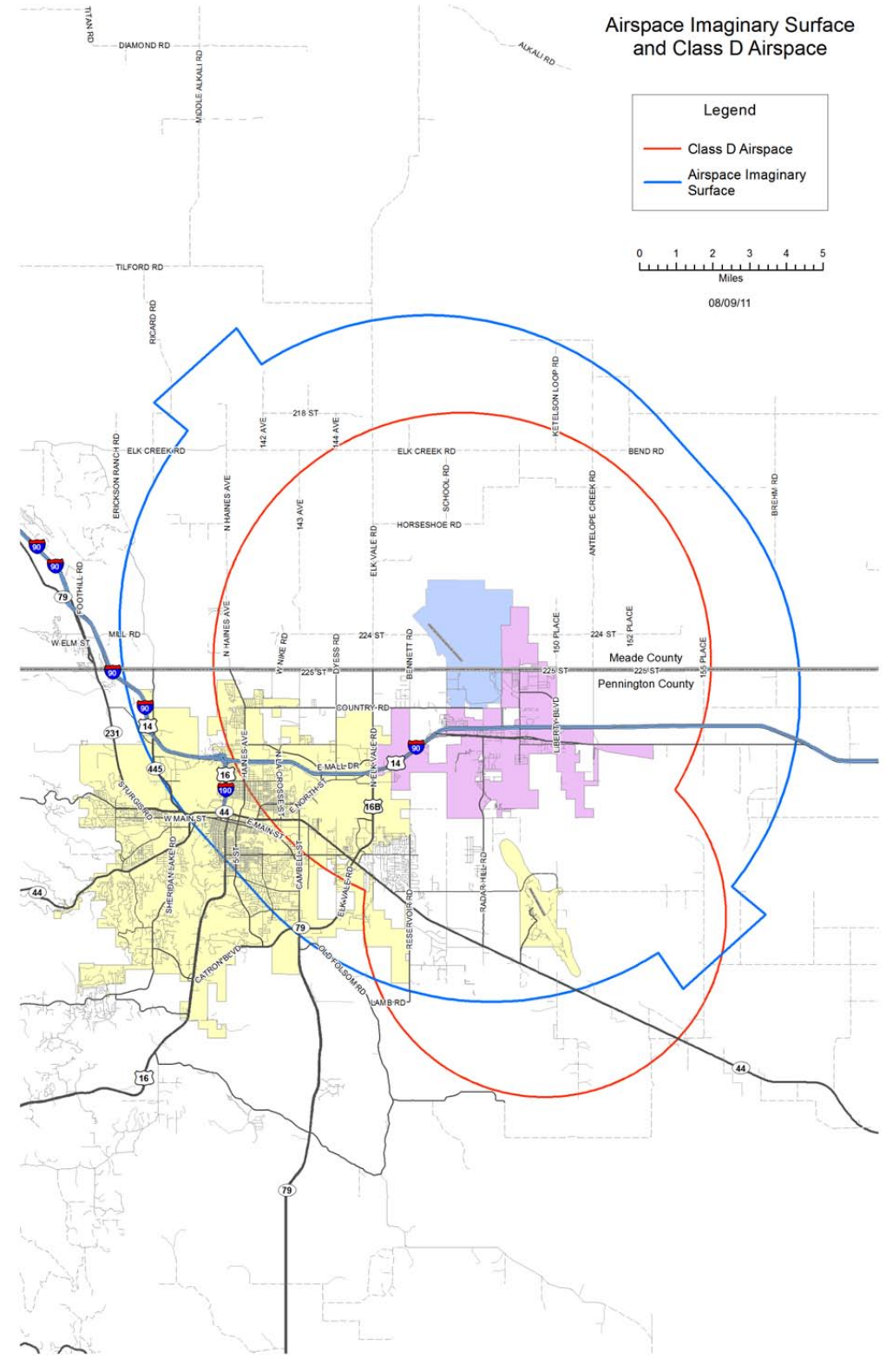
- outlining the steps and schedule for returning the Wind Farm to service within twelve (12) months of the submission.
- c. Decommissioning Period. The facility owner or operator must begin decommissioning a Wind Farm facility within eight (8) months after the time the facility or turbine reaches the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

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

#### H. VIOLATIONS

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

# Exhibit A



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

### **A. PURPOSE**

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

### **B. GENERAL PROVISIONS**

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

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

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

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

A. Purpose:

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

B. Zoning Requirements:

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

C. Permit Requirements:

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

D. Local Contact:

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

E. Application for Vacation Home Rental Conditional Use Permit:

The following information must be provided:

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

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

F. Performance Standards:

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

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

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

G. Sign and Notification Requirements:

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

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

**SECTION 400 - NONCONFORMING BUILDINGS, STRUCTURES AND USES OF LAND**

A nonconforming building or structure existing at the time of the adoption of these Zoning Ordinances may be continued, maintained, and repaired except as otherwise provided in this article.

**SECTION 401 - INTENT**

To permit nonconformities to continue until they are removed, it is further the intent of these Zoning Ordinances that nonconformities shall not be enlarged upon, expanded, or extended nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district, unless it is an agricultural use on forty (40) or more acres.

- A. Nothing in these Zoning Ordinances shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption of amendments to these Zoning Ordinances and upon which actual building construction has been carried on diligently.
- B. The use of a nonconforming building or structure may be changed to a use of the same or more restricted district classification.
- C. If a nonconforming building, structure, or portion thereof becomes vacant and remains unoccupied for a continuous period of one (1) year, any subsequent use or occupancy of the land and premises shall be in conformance with the official controls pursuant to the provisions of SDCL 11-2-26 and 11-2-27.
- D. Any nonconforming use of land shall not be expanded in such a manner so as to increase its nonconformity.
- E. Alterations may be made to a nonconforming structure for health and safety purposes provided that such alterations do not expand the use beyond that which existed at the time of Zoning Ordinance adoption.
- F. No building which has been damaged by fire, explosion, or an Act of God to the extent of more than fifty (50) percent of its value, shall be restored, except in conformity with these Zoning Ordinances unless special circumstances warrant a variance by the Board of Adjustment.

- G. Where an individual lot was held in separate ownership from adjoining properties or was platted prior to February 1, 1994, in a recorded subdivision, approved by the County Board of Commissioners, and has less area or less width than required in other sections of these Zoning Ordinances, such lot may be occupied according to the permitted uses and conditional uses as provided for in the district in which the lot is located.
- H. If two or more lots or portion of lots with continuous frontage in single ownership were of record prior to February 1, 1994, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be a developmental lot for the purposes of this title. Where developmental lots are larger than required by these Zoning Ordinances, said lots may be subdivided into smaller lots except no parcel may be divided so as to create a lot smaller in lot width or lot area than required by these Zoning Ordinances.

#### **SECTION 402 - USES UNDER CONDITIONAL USE PERMITS NOT CONFORMING USES**

Any use, which is permitted as a Conditional Use in a district under the terms of these Zoning Ordinances (other than a change through Board action for a nonconforming use to another use not generally permitted in the district), shall not be deemed a nonconforming use in such district.

#### **SECTION 500 - ADMINISTRATION AND ENFORCEMENT**

##### **SECTION 501 - ADMINISTRATIVE STANDARDS**

Whenever, in the course of administration and enforcement of these Zoning Ordinances, it is necessary or desirable to make any administrative decision, then, unless other standards are provided in these Zoning Ordinances, the decision shall be made so that the result will not be contrary to the purpose of these Zoning Ordinances or injurious to the surrounding neighborhood.

##### **SECTION 502 - PLANNING AND ZONING DIRECTOR**

The Pennington County Planning and Zoning Director, designated by the Board, shall administer and enforce the provisions of these Zoning Ordinances and shall administer the policies established by the Commission. His work shall be performed in cooperation with and under the direction of the Commission and the Board. He shall have no power to vary or waive the Zoning Ordinance requirements. The Planning and Zoning Director shall:

- A. Issue all building permits and make and maintain records thereof.
- B. Issue and renew, where applicable, all temporary use permits and make and maintain records thereof.
- C. Maintain and keep current the Official Zoning Maps and records of amendments thereto.
- D. Conduct inspections as prescribed by these Zoning Ordinances and such other inspections as are necessary to ensure compliance with the various provisions of these Zoning Ordinances.

- E. Notify in writing the person responsible for any violation of the provisions of these Zoning Ordinances, indicating the nature of the violation and ordering the action necessary to correct it.
- F. Maintain the records of the Pennington County Planning and Zoning Commission.
- G. Collect data and information, be present or represented, and prepared to answer technical questions at hearings or meetings of the Commission.
- H. Act as liaison between the Commission and the Board.
- I. Prepare and publish all public advertisement and notices for hearings of the Commission and Board relative to Planning and Zoning activities and coordinate publication with the County Auditor.

**SECTION 503 - PENNINGTON COUNTY PLANNING AND ZONING COMMISSION**

The Pennington County Planning and Zoning Commission shall hold a hearing on all requested zoning or zoning changes within forty-five (45) days of receipt of the request (SDCL 11-2-28, 11-2-28.1 and 11-2-28.2) and recommend to the Board approval with conditions or disapproval of the request. The Commission shall review and recommend action to the Board for all plans, plats, or proposals, including utility and facility proposals. The recommendation to the Board shall be included in a motion of approval, disapproval, or approval with conditions and the reasons for the recommendation.

A. Zoning or Rezoning Requests:

The Commission shall hear and recommend to the Board all requests to establish a zoning district, enlarge or change a zoning district, or request a rezoning of individual property. The zoning requests may be initiated by a petition of thirty (30) percent of the landowners in the zoning district or districts requesting the change (SDCL 11-2-28) or by petition of an individual landowner in regard to any or all of his property (SDCL 11-2-28). Such hearings must be held and recommendation forwarded to the Board no less than forty-five (45) days of receipt of petition.

B. Decision of Planning Commission:

The Commission shall consider the request and information furnished by the Director, staff, persons present at the hearing, and any written statements received to arrive at a decision on the request. The decision may grant the request, grant the request with conditions imposed by the Commission, postpone the decision for additional information, or deny the request. In the case of postponement, the decision to grant or deny the request must be made within forty-five (45) days of receipt of the request unless the applicant agrees to an extension of time.

C. Notice to the Board of Commissioners:

The action of the Commission on a request for a zoning change will be forwarded to the Board.

## **SECTION 504 - PENNINGTON COUNTY ZONING BOARD OF ADJUSTMENT**

The Pennington County Zoning Board of Adjustment shall hear and decide all requests for Variances. The Board of Adjustment shall have the power to approve, disapprove, or approve with conditions all requests.

### A. Variances:

The Board of Adjustment may authorize, after finding that all requirements have been met, such Variance from the terms of these Zoning Ordinances, as shall not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of these Zoning Ordinances would result in unnecessary hardship so that the spirit of these Zoning Ordinances shall be observed and substantial justice done.

No Variance shall have the effect of allowing in any district, uses prohibited in that district, injurious to surrounding property, or be in conflict with the comprehensive plan, or of lower standards than those required by State Law.

## **SECTION 505 - PENNINGTON COUNTY BOARD OF COMMISSIONERS**

### A. Hearings for Zoning Petitions:

The Board shall hold a public hearing to consider the petition to establish a zoning district, enlarge, or change a zoning district or rezone any or all of an individual property. The Board will consider the recommendations of the Commission and any other written or verbal information relative to the petition. The notice of hearing shall be published by the County Auditor for at least two (2) successive weeks. The Board, by resolution, shall either accept or reject the petition and a summary of the action shall be published once and take effect on the twentieth day after publication (SDCL 11-2-29).

### B. Appeal to the Board:

Appeals from any decision of the Commission may be taken to the Board by any person or persons, jointly or severally, aggrieved by any decision of the Planning Commission or Director. An appeal to the Board should be made at the time the Board reviews the decision of the Commission.

### C. Appeal to the Court:

Appeals from any decision of the Board may be taken by any person or persons, jointly or severally, aggrieved by the decision of the Board, or any taxpayer, or any officer, department, board or bureau of the County, to the court with competent jurisdiction. Such appeal shall be represented to the court within thirty (30) days after the filing of the decision in the office of the Board.

## **SECTION 506 - BUILDING PERMITS**

No building or other structure shall be erected, constructed, enlarged, or moved without a permit therefore issued by the Planning and Zoning Director. No Building Permit shall be issued by the Director, except in conformity with the provisions of these Zoning Ordinances, unless he/she receives a written order from the Board of Adjustment or the

Board in the form of an administrative review, Conditional Use, or Variance as provided in this Zoning Ordinance.

Building Permits are issued to ascertain that the proposed structure is in compliance with the zoning requirements of the district in which it is located. Building Permits may be issued by the Planning Director for existing legal nonconforming structures not meeting the minimum setback requirements, provided there is not an increase in the footprint of the structure. When applicable, the permit is reviewed by the County Environmental Technician for compliance with wastewater disposal and domestic water standards.

Residential, commercial, and industrial structure Building Permits for individual units shall fill the requirements for Construction Permits (Section 507). The applicant shall submit details of a Construction Permit included with the details for the Building Permit at the time of application.

A plot plan showing the location of the structure on the lot or tract with the yard setback distances and all recorded easements shall be included with each building permit. The location of wells, drainfields, easements, and driveways shall be included when applicable. No permit shall be issued for a building, structure, or other development that is affixed to a permanent foundation which conflicts with any recorded easement.

#### **SECTION 507 - CONSTRUCTION PERMITS (Effective 1/26/11)**

##### A. Erosion and Storm Water Control

###### 1. Administration

###### a. Requirement of Storm Water Regulations:

On November 16, 1990, the Environmental Protection Agency (EPA) promulgated regulations to improve the quality of storm water from earth disturbing activities and prevent illicit discharges from non-point sources. The purpose of Section 507(A) is to mitigate soil erosion and deposition of sediment and prevent illicit discharges to drain systems to the maximum extent practicable. The intent of Section 507(A) is to comply with the requirements of the EPA's Phase II Storm Water Regulations.

###### b. Compatibility with Other Permit and Ordinance Requirements:

Section 507(A) is not intended to interfere with, abrogate, or annul any municipal Ordinance, rule or regulation, statute, or other provision of law. The requirements of Section 507(A) should be considered minimum requirements, and where any provision of Section 507(A) imposes restrictions different from those imposed by any municipal Ordinance, rule, regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

c. Storm Water Quality Manual:

Pennington County shall furnish criteria and information, including specifications and standards, for the proper implementation of storm water and erosion control measures in the form of a manual. The Planning Director shall direct and require that all construction activity be performed in compliance with The Pennington County Storm Water Quality Manual (herein after referred to as “Manual”). Storm water treatment practices that are designed and constructed in accordance with the standards in the Manual shall be presumed to meet the minimum Water Quality Standards. The Manual shall be compiled by the Planning Director. It shall include a list of acceptable storm water treatment practices, including specific design criteria, operation requirements, and maintenance requirements for each storm water practice. The Manual may be updated, revised, or expanded from time to time, at the discretion of the Planning Director, based upon advances and improvements in engineering, science, monitoring, and local experience.

2. Definitions:

See Section 103- Definitions.

3. Construction Permits and Erosion Control:

a. Purpose

During Construction Activities, soil is vulnerable to erosion by wind and water. Eroded soil can reduce water quality, adversely affect aquatic life, and contribute to exceedences of water quality standards. Eroded soil impacts ditches, lakes, ponds, streams, and storm drains by accumulation of sediments which eventually require dredging or other removal techniques. Also, clearing and grading of land can causes loss of native vegetation. The purpose of Section 507(A) is to mitigate erosion during Construction Activities.

b. Construction Permit

1. A Construction Permit is required prior to persons engaging in any excavation, clearing, or land disturbance greater than or equal to 10,000 square feet, unless the disturbance is exempt under Section 507(A)(3)(b)(iv).

2. The following requirements shall be met before a Construction Permit is issued if the disturbance covers an area of one (1) acre or more:
  - The applicant shall obtain coverage under a General Permit for Storm Water Discharges Associated with Construction Activities through DENR, as required by ARSD 72:52:01 through 72:52:11. The applicant shall include the DENR's General Permit number on the Construction Permit Application.
  - The applicant shall obtain an Air Quality Construction Permit from the City of Rapid City in those areas defined in Section 102(A) of Pennington County Ordinance No. 12. The applicant shall include the permit number on the Construction Permit Application.
3. A Construction Permit shall designate the name, address, and phone number of the person(s) responsible for Erosion Control implementation and maintenance.
4. Exemptions – No Construction Permit will be required from Pennington County for the following activities:
  - Work in lands zoned General Agricultural District for construction that is agriculturally related.
  - Construction Activity covering an area of less than 10,000 square feet.
  - Clearing for a Fire Mitigation Plan.

Disturbances exempt from Construction Permits under Section 507(A)(3)(b)(iv) may still require other federal, state, or county permits.
5. All Construction Permits will be issued for a period of one (1) year but may be renewed for a period of one (1) year upon a site inspection and approval by the Planning Director.
6. Any person who performs Construction Activity without first obtaining a Construction Permit, as required by Section 507(A), commits a violation of that Section and is subject to the penalties set forth in Section 513 of this Ordinance.

c. Construction Permit Submittal Requirements

Before a Construction Permit may be issued, the applicant must submit to the Planning Director:

1. The name, address, and telephone number of the applicant and the person who prepared the Site Plan or SWPPP, and a description of the overall project, location, and type of Construction Activity.
2. Either a Site Plan or SWPPP:
  - Site Plan – Must include a legible map identifying the area to be disturbed, slopes, drainage, structures, utilities, waterways, floodplain, storm water inlets, and property lines, as well as specific measures that will be used to control sediment and erosion. The plan will also include a designated entry point, concrete washout area (if required), and measures to protect the nearest downstream storm water inlets (if applicable). The Site Plan will identify practices to prevent mud tracking from vehicles and equipment on the street. The minimum map size is 8½” x 11”.
  - SWPPP - If the applicant obtained coverage under the General Permit for Storm Water Discharge from DENR, the applicant may submit a copy of the SWPPP required by DENR instead of a Site Plan.
3. Controls - The applicant shall identify the type and location of all BMP's necessary to achieve soil stabilization on the site itself, including stock piles of any soil, rock, or any additional landscaping materials on the site.
4. Stabilization Practices - The permit application shall include a description and schedule of interim and permanent stabilization practices, a record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated. The applicant shall also specify the date on which final stabilization, as defined by Section 507(A)(5)(b), shall be completed.

d. Maintenance and Inspection

1. All erosion and sediment control facilities and measures shall be maintained in accordance with Construction Permit conditions.
2. The Planning Director may enter the property to which the Construction Permit applies to conduct on-site inspections and request inspection records.
3. Frequency of inspections:
  - Work authorized by Construction Permits where the disturbance is at least 10,000 square feet but less than one (1) acre may be inspected by the Planning Director:
    - At least once during the period of construction;
    - Within 24 hours following storm events of least 0.5” or a snowmelt event that causes surface erosion; and,
    - Following completion of Final Stabilization and/or remediation.
  - Work authorized by Construction Permits where the disturbance is greater than or equal to one (1) acre and the property is located within the designated MS4 shall be inspected by the owner of the property and/or the contractor:
    - Weekly during the period of construction OR monthly if no Construction Activity is occurring due to inclement weather following stabilization;
    - Within 24 hours following storm events of at least 0.5” or a snowmelt event that causes surface erosion; and,
    - Following completion of Final Stabilization and/or remediation.

Records of all on-site inspections shall be available to the Planning Director.

- Work authorized by Construction Permits where the disturbance is greater than or equal to one (1) acre and the property is located outside the designated

MS4 shall be inspected by the owner of the property and/or the contractor:

- Weekly during period of construction OR monthly if no Construction Activity is occurring due to inclement weather following stabilization;
- Within 24 hours following storm events of at least 0.5" or a snowmelt event that causes surface erosion; and,
- Following completion of Final Stabilization and/or remediation.

Records of all on-site inspections shall be available to the Planning Director.

4. The approved Construction Permit and Site Plan or SWPPP shall be maintained at the site during the progress of the Construction Activity. Records of the inspections must be kept with the Site Plan or SWPPP and Construction Permit, and the Site Plan or SWPPP must be updated as site conditions change.
5. If, upon inspection, existing site conditions are found to be in non-compliance with the approved Construction Permit, a Stop-Work Order may be issued by the Planning Director as provided in Section 507(A)(7)(a).
6. A revised Construction Permit Application and Site Plan or SWPPP shall be submitted for review and approval if major revisions are needed to comply with the requirements of Section 507(A). No additional fees are required for revisions if they are made before the expiration date of the original Construction Permit.
7. Any person who impedes, hinders, or attempts to prevent an inspection authorized by Section 507(A) commits a violation which and is subject to the penalties set forth in Section 513 of this Ordinance. Any person who fails to maintain the required Construction Permit, Site Plan or SWPPP, or inspection records at a site where Construction Activity is performed commits a violation and is subject to the penalties set forth in Section 513 of this Ordinance.

e. Additional Requirements

1. It shall be the responsibility of the Permittee to obtain approval from all required agencies (i.e., DENR, United States Army Corps of Engineers, Federal Emergency Management Agency) for any waterway crossings to be installed if a watercourse will be crossed regularly during Construction Activity.
2. If the site is located within the 100-year floodplain, a Floodplain Development Permit must be issued prior to any work being done in the floodplain. A copy of the Floodplain Development Permit must be submitted with the documents listed in Section 507(A)(3)(c).
3. When a new owner purchases a construction site after issuance of a Construction Permit, the current Permittee is responsible for notifying the new owner(s) of the Construction Permit requirements. Construction Permit coverage shall be transferred to the new owner. The new owner will be responsible for final stabilization as specified in Section 507(A)(5)(b).
4. If control measures do not achieve Final Stabilization within the timeframe specified in Section 507(A)(5)(b)(iv), the Planning Director may require the Construction Permit holder to submit an updated SWPPP or a Site Plan prepared by a professional engineer. The Planning Director will establish a timeline for Final Stabilization under the updated SWPPP or Site Plan.
5. Any person who performs Construction Activity without obtaining approval for waterway crossings as required by Subsection (i), above, commits a violation and is subject to the penalties set forth in Section 513 of this Ordinance. Any person who performs Construction Activity without obtaining a Flood Plain Development Permit as required by Subsection (ii), above, commits a violation and is subject to the penalties set forth in Section 513 of this Ordinance.

#### 4. MS4 Illicit Discharge Detection and Prevention

##### a. Purpose

Section 507(A) establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the NPDES Storm Water Permit process. The objectives of Section 507(A) are:

1. To regulate the contribution of pollutants to the MS4 by storm water discharges by any user;
2. To prohibit Illicit Connections and Discharges to the MS4; and,
3. To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with Section 507(A).

b. Applicability

Section 507(A) shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted in Section 507(A)(4)(c)(ii).

c. Discharge Prohibitions

1. No person shall discharge or cause to be discharged into the MS4 or watercourses any materials other than storm water, including but not limited to, pollutants or other materials that cause or contribute to a violation of applicable water quality standards.
2. Exemptions - The commencement, conduct or continuance of any Illicit Discharge to the Storm Drain System is prohibited except as described as follows:
  - Water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, sump pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, dechlorinated swimming pools, fire fighting activities, and any other water source not containing Pollutants.
  - Discharges authorized in writing by the Planning Director as being necessary to protect public health and safety.

- Dye testing, if authorized in writing by the Planning Director.
  - Any non-storm water discharge permitted under a NPDES Storm Water Permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the Storm Drain System.
3. Prohibition of Illicit Connections - The construction, use, maintenance, or continued existence of Illicit Connections to the Storm Drain System is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable at the time of connection.
  4. Any person who causes or allows a discharge prohibited by Subsection (iii), above, commits a violation and is subject to the penalties set forth in Section 513 of this Ordinance. Any person who constructs, maintains, or uses an illicit connection prohibited by Subsection (iii) commits a violation and is subject to the penalties set forth in Section 513 of this Ordinance.
- d. Suspension of MS4 Access
1. Suspension due to Illicit Discharges in emergency situations - The Planning Director may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the State. If the violator fails to comply with a suspension order issued by the Planning Director, the Planning Director may take such steps as he or she deems necessary to minimize damage to the MS4 and the Waters of the State and to minimize danger to the health and welfare of persons.

2. Suspension due to the detection of Illicit Discharge – The Planning Director may terminate the MS4 access of any person discharging into the MS4 in violation of Section 507(A), if such termination would abate or reduce an Illicit Discharge. The Planning Director will notify a violator in writing of the date on which access is suspended.
3. A person whose access to the MS4 is suspended under the provisions of Section 507(A) may apply in writing to the Planning Director to have access to the MS4 reinstated.
4. Any person whose access to the MS4 has been suspended pursuant to Section 507(A) and who accesses or attempts to access the MS4 prior to reinstatement by the Planning Director commits a violation and is subject to the penalties set forth in Section 513 of this Ordinance.

e. Industrial or Construction Activity Discharges

Proof of compliance, by written notice from the discharger, with a NPDES Storm Water Permit shall be required to the Planning Department prior to any discharges to the MS4, when applicable.

f. Monitoring of Discharges

1. Applies to all facilities that have storm water discharges associated with Industrial Activity and/or Construction Activity which requires a Construction Permit.
2. Access to Facilities
  - The Planning Director shall be permitted to enter and inspect facilities subject to regulation under Section 507(A)(4) as often as may be necessary to determine compliance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the Planning Director.
  - Facility operators shall allow the Planning Director ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of a NPDES Storm Water Permit to

discharge storm water, and the performance of any additional duties as defined by municipal, county, state, or federal law.

- The Planning Director shall have the right to set up on any permitted facility such devices as he or she determines necessary to conduct monitoring and/or sampling of the facility's storm water discharge.
- The Planning Director may require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and water quality shall be calibrated according to manufacturer recommendations to ensure their accuracy.
- Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Planning Director and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- Any person who impedes or hinders any inspection, access, or monitoring allowed under Section 507(A) commits a violation and is subject to the penalties set forth in Section 513 of this Ordinance. Any person who fails to install monitoring equipment as directed by the Planning Director under Subsection (ii) commits a violation and is subject to the penalties set forth in Section 513 of this Ordinance. Any person who fails to remove an obstacle after a request by the Planning Director under Subsection (ii) commits a violation and is subject to the penalties set forth in Section 513 of this Ordinance.

g. Watercourse Protection

Every person owning, occupying, or leasing property through which a watercourse passes shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In

addition, the owner, occupant, or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Any property owner, occupant, or lessee who fails to maintain a watercourse as required by Section 507(A) commits a violation and is subject to the penalties set forth in Section 513 of this Ordinance.

h. Notification of Spills

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in Illicit Discharges or pollutants discharging into storm water, the Storm Drain System, or Waters of the State, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Planning Director and DENR no later than the next business day. Verbal notice, in person or by phone, shall be confirmed by written notice, addressed and mailed to the Pennington County Planning Department (315 Saint Joseph St., Suite 118, Rapid City, SD, 57701), and postmarked within three (3) business days of the verbal notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least seven (7) years.

Any person who fails to notify the Planning Director of a spill as required by Section 507(A) commits a violation and is subject to the penalties set forth in Section 513 of this Ordinance.

5. Lands Modified by Human Activities

a. Purpose

The purpose of this Section is to mitigate impacts of storm water runoff from lands modified by human activities by implementing erosion and sediment control measures and final stabilization of

Construction Activity. Storm water runoff from lands modified by human activities can degrade surface waters and may cause exceedences to Water Quality Standards. Development increases the amount of impervious surface in watersheds as farmland, forests, and meadows are converted into structures with rooftops, driveways, sidewalks, roads, and parking lots that do not absorb storm water. Storm water runoff washes over impervious areas, picking up pollutants, which eventually flow, untreated, into creeks, streams and rivers.

b. Erosion and sediment control measures

All sites, including, but not limited to, construction sites, vacant lots or homes without landscaping, shall maintain erosion and sediment control measures, in accordance with the Manual, to prevent soil from going off-site into lands adjoining the site, public rights-of-way, and into the Storm Drain System. These control measures shall be repaired by the Permittee within 24 hours of notice of failure from Pennington County.

c. Final Stabilization

1. Final Stabilization occurs when all soil disturbing activities at the site have been completed and:

- Uniform perennial vegetative cover of at least 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures; or,
- Equivalent permanent stabilization measures (such as riprap, retaining walls, or geotextiles) have been utilized.

2. When background native vegetation will cover less than 100% of the ground (e.g., arid areas), the 70% coverage criteria set forth above is adjusted to require 70% of the naturally occurring coverage. For example, if native vegetation covers 50% of the ground, 70% of 50% ( $.70 \times .50 = .35$ ) would require 35% total cover for Final Stabilization. On sites with no natural vegetation, no vegetative stabilization is required.

3. For individual lots in residential construction, Final Stabilization requires that either:

- The Permittee has completed Final Stabilization as specified in Section 507(A)(5)(b); or,
  - The Permittee has established temporary stabilization (as defined in the Manual) for an individual lot before the property owner assumes control of the property, and the Permittee informs the property owner of the need for and requirements of Final Stabilization.
4. Final Stabilization must be completed within one (1) year of project completion or two (2) years from the Construction Permit issue date, whichever occurs sooner.
  5. Any person who fails to complete Final Stabilization as it is defined in Section 507(A) commits a violation and is subject to the penalties set forth in Section 513 of this Ordinance.

d. Special Conditions for Final Stabilization

Stabilization of Vacant Lots and New Building Sites

1. Vacant lots and new building sites shall be maintained and stabilized to the extent necessary to prevent debris transport from wind or water erosion, washout of debris onto adjacent lots or sites, and tracking of debris onto the street. The Planning Director may require the Permittee to provide periodic street sweeping if other measures are not sufficient and debris is tracked or washed onto the street.
2. Effective, permanent Erosion Control measures, such as seeding and mulching the disturbed area, shall be implemented immediately after the work is completed in the area, but in no case later than 14 days after the Construction Activity has stopped. Stabilization measures must also be taken on exposed areas where Construction Activities have temporarily stopped and are not expected to occur again for at least 21 days.
3. Any person who fails to maintain and stabilize a site as required by Subsection (i), above, or who fails to provide street sweeping after being directed to do so by the Planning Director under Subsection (i), above, commits a violation and is subject to the penalties set forth in Section 513 of this Ordinance. Any person who fails to provide the

stabilization and control required by Subsection (ii) commits a violation and is subject to the penalties set forth in Section 513 of this Ordinance.

6. Post Construction Run-off Control

a. Purpose

The purpose of Section 507(A) is to establish minimum storm water management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing in watersheds within Pennington County. Section 507(A) seeks to meet that purpose through the following objectives:

1. Minimize increases in storm water runoff from any development in order to reduce flooding, siltation, increases in stream temperature and stream bank erosion, and to maintain the integrity of stream channels;
2. Minimize increases in nonpoint source pollution caused by storm water runoff from development which would otherwise degrade local water quality;
3. Minimize the total annual volume of surface water runoff which flows from any specific site during and after development so as not to exceed the pre-development hydrologic regime; and,
4. Reduce storm water runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through storm water management controls and ensure that these management controls are properly maintained and pose no threat to public safety.

b. Applicability

All new development or redevelopment, which causes an increase in impervious area greater than 15%, shall be required to provide storm water treatment of the runoff generated by the first 0.5" of rainfall. (See Manual for impervious area requirements.)

c. Minimum Control Requirements

All storm water management practices will be designed so that the specific storm frequency storage volumes (e.g., recharge, water quality, channel protection, 10 year, 100 year) as identified in the

Manual are met, unless the applicant is exempt from such requirements under the provisions of Section 507(A)(3)(b)(iv).

If the minimum control requirements are inadequate or if hydrologic or topographic conditions warrant greater control than that provided by the minimum control requirements, the Planning Director may require additional measures as described in the Manual.

d. Pretreatment Requirements

Every storm water treatment practice shall have an acceptable form of water quality pretreatment, in accordance with the pretreatment requirements found in the current Manual.

7. Enforcement

a. Stop Work Order

The Planning Director may issue a Stop Work Order under the following circumstances:

1. A site is being maintained in a manner which violates Section 507(A);
2. Construction Activity is occurring contrary to the conditions of a Construction Permit;
3. Construction Activity is occurring without a permit required under Section 507(A) or other local, state, or federal law; or,
4. Site development is occurring in a manner which does, or is likely to, endanger the health, welfare, or safety of persons residing, working, or traveling near the site.

A Stop Work Order shall be issued in writing and delivered to the person responsible for the site, or his or her employee or agent. All Construction Activity and other site development shall cease at the time the Planning Director delivers the Stop Work Order, except such work to stabilize or secure the site as allowed or required by the Planning Director. Construction Activity and site development shall resume only when the Stop Work Order is rescinded in writing by the Planning Director.

Any person who fails to comply with a Stop Work Order issued by the Planning Director commits a violation and is subject to the penalties set forth in Section 513 of this Ordinance.

b. Injunction

In addition to all other remedies available to Pennington County to prevent, correct, or abate violations of Section 507(A), the Planning Director may seek injunctive relief pursuant to SDCL Chapter 21-8 against any property owner, Permittee, or other person in violation of Section 507(A) or against any Permittee in violation of the conditions of a Construction Permit issued pursuant to Section 507(A). The injunctive relief authorized by Section 507(A) may include a reparative injunction requiring any party who commits a violation of Section 507(A) to bring or return any affected property to a condition which does not constitute a nuisance, as that term is defined in Section 507(A)(7)(d).

c. Nuisance

Violations of Section 507(A) which endanger the comfort, repose, health, or safety of persons, or which render persons insecure in life or in the use of property, are hereby declared nuisances. A violation of Section 507(A) constituting a nuisance is subject to abatement under the provisions of SDCL Chapter 21-10, SDCL 7-8-33, and the applicable Pennington County Ordinances. Summary abatement of nuisances is authorized, if deemed necessary by the Planning Director.

d. Performance Bond

The Planning Director may, in his or her discretion, require any applicant for a Construction Permit issued under Section 507(A) to post a performance bond for any control measures, stabilization, or other work proposed in the applicant's Site Plan or SWPPP. The Pennington County Board of Commissioners may authorize the Planning Director to use the performance bond to complete any work proposed in the Permittee's Site Plan or SWPPP if the Permittee cannot or will not complete such work.

e. Inspection Warrant

The Planning Director and/or any certified law enforcement officer in Pennington County may obtain an inspection warrant as set forth in SDCL Chapter 34-43 to verify that the requirements of any

Construction Permit issued under Section 507(A) are complied with and to investigate any suspected violations of Section 507(A).

f. Review by County Commissioners

Any action taken by the Planning Director in administering or enforcing Section 507(A) may be reviewed by the Pennington County Board of Commissioners upon the request of any person affected by such action.

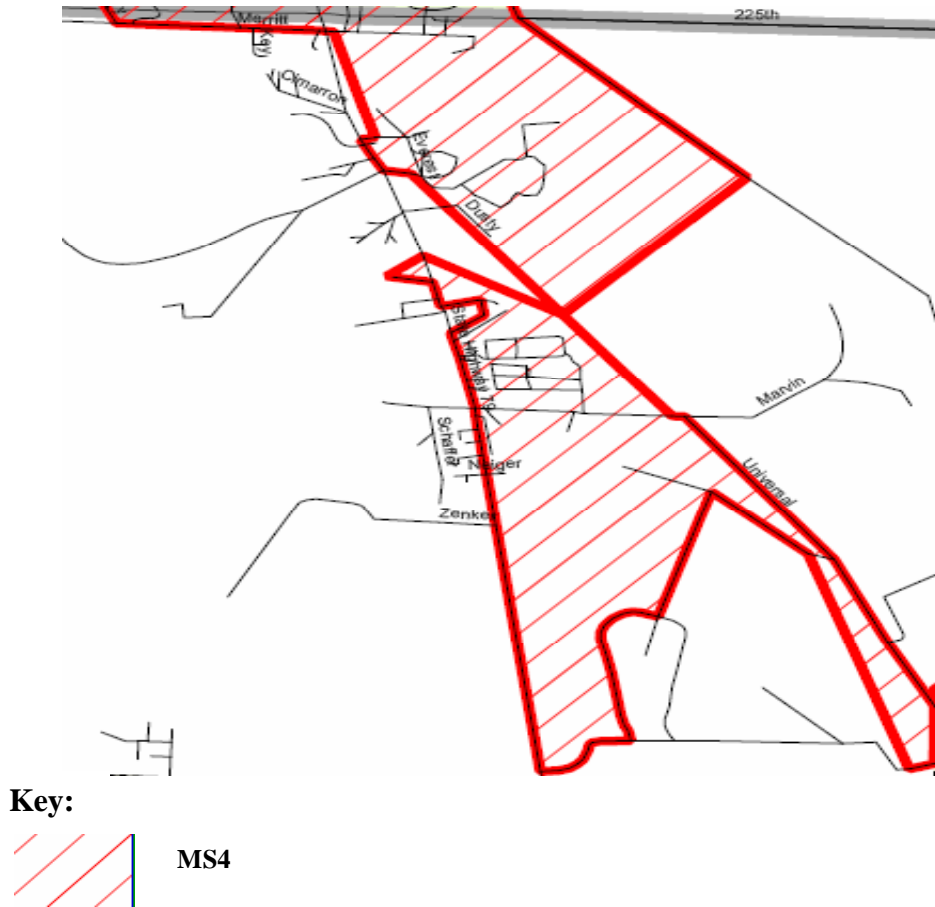
g. Conflicting Ordinances

If Section 507(A), or any part or portion thereof, is in conflict with any other Pennington County Ordinance, Section 507(A) shall be deemed to supersede any conflicting ordinance in matters relating to storm water and erosion control.



## Attachment B – Location of MS4

Universal Drive (according to 2000 Census Data):



B. Mining Permits

No extraction of any mineral or substance exceeding 100 cubic yards from the earth shall be conducted without a Mining Permit issued by the Commission. No Mining Permit shall be issued except in conformity with the provisions of this Zoning Ordinance unless he/she receives a written order from the Board of Adjustment in the form of an administrative review, Conditional Use, or Variance, as provided in this Zoning Ordinance. In addition to an application, all Mining Permits will require a site plan to be submitted for review. Detailed information, including a transportation plan, the location, amount, and type of material to be extracted shall be shown on a site plan. A written statement shall be submitted indicating the scope, duration of the mining activity, and plan outlining reclamation to be done at the conclusion of extraction. Mining Permits shall not be required for work in the A-1 General Agriculture District for construction, which is agriculturally related.

**SECTION 508 - ZONING OR REZONING**

A. Application:

A petition for a change or addition to present zoning districts as shown on the Official Zoning Map may be filed with the Commission. Petitions may be filed by a landowner of record for a requested change to alter the zoning on all or a part of his property or by landowners of thirty (30) percent of the land in the area requesting the change. If the zoning change is different from the Pennington County Comprehensive Plan, the applicant must first amend the Comprehensive Plan.

The Comprehensive Plan amendment notification shall be mailed with the rezoning notification request and shall be to all property owners within five hundred (500) feet and all agriculturally zoned property within two (2) miles of the property or district for which the request is filed. Said notice should state the changes requested and the legal description of the property as determined by the records of the Director of Equalization.

A rezoning request requires that an effort be made by certified mail with return receipt requested to notify all property owners (inclusive of Contract for Deed buyers) of record within five hundred (500) feet inclusive of right-of-way of the property or district for which the request is filed. Said notice should state the changes requested and the legal description of the property and shall be made by certified mail with return receipt requested to all property owners (inclusive of Contract for Deed buyers) within five hundred (500) feet inclusive of right-of-way as determined by the records of the Director of Equalization.

B. Requirements for Zoning Change:

Before the zoning change or rezone can become effective, the following steps must be complied with:

1. After public notice has been advertised once, no less than fifteen (15) days prior to the public hearing, the public hearing shall be held before the Commission. The Commission shall accept or reject the petition and recommend this action to the Board.

2. The Board shall hold a public hearing to consider the recommendation of the Commission. Such hearing shall be held regardless of the type of recommendation made by the Commission. The hearing by the Board must be advertised once a week for two (2) successive weeks prior to the hearing. This advertisement may be concurrent with the notice of hearing by the Commission.
3. The action of the Board must be published once in the official newspaper and shall become effective on the twentieth (20) day after publication.
4. The Planning Department shall provide a sign, which is to be posted by the Planning Department on or near the property involved in the rezoning request in a location with the greatest public visibility. If the property is not adjacent to any public right-of-way, the sign shall be placed at the access point to the property along the nearest public right-of-way. Said sign shall be so placed no less than ten (10) days prior to the date of the public hearing before the Planning Commission and shall remain placed until a decision has been made by County Board.

### **SECTION 509 - VARIANCE**

The purpose of the Variance is to modify the strict application of the specific requirements of these Zoning Ordinances in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions; whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land.

A. Application:

Application for a Variance may be made when the literal interpretation of these Zoning Ordinances caused undue hardship or the Planning Director has denied a Building Permit in writing.

B. Public Hearing:

Upon receipt of an application and fee, the Board of Adjustment shall hold a public hearing having first given ten (10) days' notice. Such notice of the time and place of such hearing shall be published in an official paper of general circulation. The Board of Adjustment shall consider and decide all applications for variances within thirty (30) days of such public hearing and in accordance with the standards provided below. Approval of a Variance request shall require a two-thirds vote of the full Board of Adjustment.

C. Standards and Variances:

In granting a Variance, the Board of Adjustment shall ascertain that the following criteria are met:

1. Variances shall be granted only where specific circumstances or conditions (such as exceptional narrowness, topography, or siting) fully described in the finding of the Board of Adjustment, do not apply generally in the district.

2. Variances shall not be granted to allow a use otherwise excluded from the particular district in which requested.
3. For the reasons fully set forth in the finding of the Board of Adjustment, the aforesaid circumstances or conditions are such that the strict application of the provisions of these Zoning Ordinances would be an unwarranted hardship, constituting an unreasonable deprivation of use as distinguished from the mere grant of a privilege.
4. The granting of any Variance is in harmony with the general purposes and intent of these Zoning Ordinances and shall not be injurious to the neighborhood or detrimental to the public welfare.

D. Requirements for the Granting of a Variance:

Before the Board of Adjustment shall have the authority to grant a Variance, the person claiming the Variance has the burden of showing:

1. That the granting of the permit shall not be contrary to the public interest.
2. That the literal enforcement of this Zoning Ordinance shall result in unnecessary hardship.
3. Notice of a request for a Variance, consisting of a sign one (1) foot by two (2) feet shall be posted on the frontage of the property for which a variance is requested. A good faith effort must be made by the applicant to notify all property owners (inclusive of Contract for Deed buyers) holding property within five hundred (500) feet of the property or district for which the request is filed. Said notice shall state the change requested and the legal description of the property and shall be sent by certified mail with return receipt requested to all property owners (inclusive of Contract for Deed buyers) within five hundred (500) feet inclusive of right-of-way as determined by the records of the Director of Equalization.

**SECTION 510 - CONDITIONAL USE PERMITS**

A Conditional Use Permit (CUP) is an approval by the Pennington County Planning Commission for certain uses listed in the Pennington County Zoning Ordinance. Within each zoning district there are uses that are permitted by right, and other uses allowed only under certain conditions. A CUP is needed for any use identified in the Zoning Ordinance as a Conditional Use.

A. Application:

1. Conditional Use Permit applications shall be obtained from the Planning Department. An application shall be accompanied by such site plans or drawings as are necessary for the Planning Commission to make a determination on the request.
2. A good faith effort must be made by the applicant to notify all property owners (inclusive of Contract for Deed buyers) of land laying within five hundred feet (500) feet, inclusive of right-of-way, of the outer boundaries of the property involved in the request. The list of landowners to be

notified shall be determined by records of the Director of Equalization. The Planning Department shall provide the applicant with the "Notice of Hearing" letters for this purpose, and the notices are to be sent by the applicant to all parties on the aforementioned list by certified mail with return receipt requested no less than ten (10) days prior to the public hearing on the request held by the Planning Commission.

3. The Planning Department shall provide to the applicant a sign, which is to be posted on the property involved in the Conditional Use Permit request, in a location with the greatest public visibility. Said sign shall be so placed no less than ten (10) days prior to the public hearing on the request held by the Planning Commission.

B. Public Hearing:

Upon receipt of an application and fee, the Planning Commission shall hold a public hearing on the request in a location to be prescribed by the Planning Commission. Said hearing is to be held not less than ten (10) days after publication of a notice of the time and place of such hearing in a legal newspaper of general circulation in the area affected. The Planning Commission shall then decide whether to grant the Conditional Use Permit with such conditions and safeguards as are appropriate or to deny a Conditional Use Permit when not in harmony with the purpose and intent of these regulations. The decision of the Planning Commission shall be final unless an appeal is filed in accordance with Section 510-C.

C. Appeal of Planning Commission Decision:

The decision rendered by the Planning Commission on a Conditional Use Permit may be appealed to the County Board. The applicant or any other person aggrieved by the decision of the Planning Commission shall file a written appeal with the Planning Department within five (5) working days of the Planning Commission's decision. (The County Commissioner serving on the Planning Commission may also request any Conditional Use Permit to be heard before the County Board.) When an appeal is filed, the Planning Director shall present the Planning Commission's decision to the County Board for review. The County Board shall vote to uphold, overrule, or amend the decision of the Planning Commission.

D. Findings:

The following factors may be considered by the Planning Commission in their review of Conditional Use Permit applications:

1. The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values within the immediate vicinity.
2. The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
3. That utilities, access roads, drainage, and/or other necessary facilities are provided.

4. That the off-street parking and loading requirements of these Zoning Ordinances are met.
  5. That measures are taken to control offensive odor, fumes, dust, noise, vibration, and lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.
- E. Time Limit on Approval:
1. A Conditional Use Permit shall automatically expire if:
    - a. The use for which the Conditional Use Permit was granted has ceased for a period of one year or more; or,
    - b. The use for which the Conditional Use Permit was granted has not been established, according to the terms and conditions of the Conditional Use Permit, within two years following the date of approval.
  2. The Conditional Use Permit can be renewed for one additional one-year period, if a request for renewal is filed not less than 14 days prior to the expiration of the permit. The cost to renew the permit shall be \$100.00, which includes a new list of property owners within 500 feet from the subject property and “Notice of Hearing” letters. Said letters are to be mailed out by the applicant to all parties on the aforementioned list by certified mail with return receipt requested no less than ten (10) days prior to the public hearing on the request held by the Planning Commission.
- F. Building Permit.
- A Building Permit shall be issued only after the expiration of the appeals time period (five (5) working days following action by the Planning Commission).
- G. Compliance:
- Any Conditional Use Permit granted under the provisions of these Zoning Ordinances shall be established and conducted in conformity with the terms of such permit and of any conditions attached thereto. Failure to comply with said terms or conditions constitutes cause for the County to pursue legal remedies and/or to revoke the Conditional Use Permit.
- H. All Conditional Use Permits in effect at the time of the Courts declaration of the invalidity of the Pennington County Zoning Ordinance on January 7, 1994, issued under such Pennington County Zoning Laws, are hereby ratified and approved pursuant to the terms of such permits and any conditions attached thereto.
- I. Amendments:
- Amendments shall be processed in the same manner as required for a separate Conditional Use Permit.

## **SECTION 511 - FEES**

All fees pertaining to these Zoning Ordinances are payable to Pennington County and shall be levied and collected by the Planning Department as provided below. All fees shall be rounded to the nearest whole dollar.

### A. Building Permits:

1. **Residential/Agriculture**: Erection, construction, and moving of buildings, buildings, additions, accessory structures, porches, decks, fencing, and finishing unfinished residential space: \$25.00 or .004 of the construction costs, whichever is greater. (Example: estimated cost of structure – \$125,000 x .004 = \$500.00.)
2. **Commercial/Industrial**: Erection, construction, and moving of commercial and/or industrial buildings, additions, accessory structures, porches, decks, fencing, and finishing unfinished space: \$100.00 or .1 of the construction cost of buildings, parking areas, and roads combined, whichever is greater. (Example: estimated cost of structure - \$125,000 x .01 = \$1,250.00.)
3. Temporary Building Permit: \$60.00
4. Removal of building: Building Permit required (No charge).
5. Renewal of Building Permit: \$50.00
6. South Dakota Housing acreage letter: \$25.00
7. A Building Permit is required for a fence over eight (8) feet in height and the fence must be located in accordance with the setbacks of the relevant zoning district.
8. **EXCEPTIONS**: a Building Permit is not required under the following circumstances:
  - a. All accessory structures that are 144 square feet or less and not permanently anchored to the ground. Structures must still meet all minimum setback requirements.
  - b. On agricultural properties of 40 acres or more: portable buildings, such as those used in calving/lambing operations, which are moved from place to place on the farm or ranch as part of the agricultural operation.
  - c. Fences eight (8) feet or under in height.
  - d. Fences of any height on agricultural properties of 40 acres or more.

### B. Sign Permits:

1. On-premise or Business Signs: \$100.00

- 2. Off-premise: \$260.00
- 3. Community Signs: \$60.00
- C. Construction: \$250.00:
  - 1. Exception: A Construction Permit is not required if the Construction Activity is related to an approved Building Permit.
- D. Mining Permit: \$250.00
- E. Variance: \$300.00
- F. Conditional Use Permit: \$300.00. If a structure is involved, a Building Permit is also required, pursuant to Section 511-A.
  - 1. Mobile Home Parks: A Building Permit is required for the placement of any mobile, manufactured or modular home within an approved mobile home park at \$50.00.
  - 2. Wind Farm: \$1,000, plus \$200.00 for each tower.
  - 3. Vacation Home Rental Conditional Use Permit Review Fee: \$100.00 per review.
- G. Rezoning: \$300.00
- H. Planned Unit Development: \$930.00 (Original).
  - 1. Major Amendments: \$400.00
  - 2. Minor Amendments: \$300.00
- I. Plat: See Pennington County Subdivision Regulations for Fees
- J. Plat Vacation: \$350.00
- K. Vacation/Relocation of Easement, Right-of-Way: \$250.00
- L. Vacation of Section Line: \$350.00
- M. Zoning Ordinance Amendments: \$350.00
- N. Subdivision Regulations Variance: \$250.00
- O. Floodplain Development Permits: \$75.00
- P. Section Line Opening: \$75.00
- Q. Road Construction Within A Section Line Right-of-Way: \$150.00
- R. Telecommunications Facility Permit: \$600.00

- S. Telecommunications Administrative Review Permit: \$300.00
- T. Tax Increment Financing District Submittal: \$1,000.00
- U. Sign Deposit: A \$50.00 refundable deposit is required for signs obtained from the Planning Department for Variances, Conditional Use Permits, Rezoning, Planned Unit Developments, and Comprehensive Plan Amendment applications. The \$50.00 deposit is refunded when the sign is returned within six (6) months of County Board action.
- V. Notice of Violation:
  - 1. Any owner of property upon which work has been done for which any permit is required by this Zoning Ordinance, without first securing such permit and paying the prescribed fee, shall be notified according to the following:
    - a. The Planning Department shall send written notification by certified mail, return receipt requested, to the owner of the property informing said owner of the violation and the requirement that a permit be obtained or other required action taken within a specified period. If the property owner does not contact the Planning and Zoning Department within seven (7) business days (excluding weekends and State recognized holidays) from the date of receipt of the letter, the matter may be turned over to the State's Attorney's Office for further legal action under Section 513.
- W. Late Charges:
  - 1. Any owner of property upon which work has been done for which a Conditional Use Permit, Variance, Mining Permit, Plat, Rezoning, or Planned Unit Development is required, prior to issuance of said permit, shall pay a doubled application fee, plus a \$500.00 penalty fee.
  - 2. Any owner of property upon which work has been done for which a Construction/Excavation/Fill Permit or Building Permit is required, prior to issuance of said permit, shall pay a doubled application fee.
  - 3. All late charges apply immediately upon discovery of any violation. The party/entity in violation is responsible for all applicable late changes whether or not they have yet to receive notice of said violation(s) as set forth above.
  - 4. The County Board of Commissioners shall have discretion to waive any or all late charges.
- X. Continuations: Any submittal being considered by the Planning Commission or County Board which requires more than one continuation because of the applicant's failure to meet conditions of approval shall be required to pay \$100.00 per continuation. The Board of Commissioners may waive the \$100.00 continuation fee.

## **SECTION 512 - AMENDMENTS**

The regulations, restrictions, areas, and boundaries set forth in these Zoning Ordinances may, from time to time, be amended, supplemented, revised, or repealed as conditions warrant, subject to the following conditions:

A. Application:

An application for a proposed amendment shall be filed with the Planning Department. Amendments may be initiated by a property owner or his designated representative, by a governmental agency, or by the Commission.

B. Public Hearing:

Upon application, the Commission shall hold a public hearing on the proposed amendment. Notice of the public hearing shall be given at least ten (10) days prior in advance by publication in a newspaper having general circulation in the County. The Commission shall then submit its report to the Board. The proposed amendments shall be acted upon by the Board as other ordinances except that a public hearing shall be held prior to the adoption of such Zoning Ordinance. Notice of the time and place when and where such hearing shall occur shall be given at least ten (10) days in advance of the hearing date in a newspaper having general circulation in the County.

C. Restrictions on Applications:

No more than one application for an amendment may be submitted by an individual, or his representative, or agent, in any twelve (12) month period concerning the same or similar amendment to a regulation, restriction, area, or boundary except upon a showing by the applicant of a material change of circumstances sufficient to justify reconsideration of the proposed amendment. This section shall not apply to a governmental agency or the Commission.

## **SECTION 513 – RESTRICTIONS ON APPLICATIONS UPON A DECISION OF THE RULING OF THE PLANNING COMMISSION OR COUNTY BOARD**

A. Restrictions on Applications:

No more than one application for an Ordinance Amendment, Rezoning, Planned Unit Development, Conditional Use Permit, or Variance, may be submitted by an individual, or his representative, or agent, in any twelve (12) month period concerning the same or similar request except upon a showing by the applicant of a material change of circumstances sufficient to justify reconsideration of the proposed request. This section shall not apply to a governmental agency or the Commission.

If the request is denied without prejudice, the applicant may apply for the same request within a years' time without having to pay the application fees. However, the advertising fee will need to be paid by the applicant and the notice of hearing letters for neighboring property owners must also be completed by the applicant.

**SECTION 514 – VIOLATIONS AND PENALTIES**

- A. In addition to all other remedies available to the County to prevent, correct, or abate Ordinance violations, a violation of these Zoning Ordinances is also punishable by a fine and/or imprisonment, pursuant to SDCL 7-18-2, as provided below:
1. A fine not to exceed \$500.00 for each violation or by imprisonment for a period not to exceed 30 days for each violation, or by both the fine and imprisonment. Each day the violation continues shall constitute a separate violation. The date of the first violation shall be the date upon which the property owner first received notice of the violation

**SECTION 515 - SEVERABILITY**

These Zoning Ordinances and the various parts, sections, subsections and clauses thereof, are hereby declared to be severable. If any part, sentence, paragraph, subsection, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, it is hereby provided that the remainder of these Zoning Ordinances shall not be affected thereby.

**SECTION 516 - REPEAL**

Any ordinance or regulation or portion thereof in conflict with the provisions contained herein is hereby repealed.