

Clean Version

Land Development Code

Mountrail County, North Dakota

August, 2022

Revised XX, 2026



DR

Table of Contents

Article 1. General Provisions.....	1-1
1.1 Title	1-1
1.2 Purpose.....	1-1
1.3 Repeal	1-1
1.4 Severability.....	1-1
1.5 Authority	1-1
1.6 Effective Date.....	1-1
1.7 Jurisdiction.....	1-1
1.8 Compliance.....	1-2
1.9 Exemptions.....	1-2
1.10 Organization	1-2
Article 2. Rules and Definitions.....	2-1
2.1 Rules.....	2-1
2.2 Definitions	2-1
Article 3. Zoning Districts	3-1
3.1 Establishment of Districts	3-1
3.2 Official Zoning Map	3-1
3.3 Table of Uses by Zoning District.....	3-1
3.4 Temporary Uses	3-6
3.5 Agriculture District.....	3-7
3.6 Re – Residential District	3-12
3.7 R-Res – Rural Residential District.....	3-14
3.8 Co – Commercial District	3-19
3.9 In – Industrial District.....	3-21
3.10 Rec – Recreation District.....	3-24

Article 4. Supplemental Development Standards.....	4-1
4.1 Supplemental Setback Requirements.....	4-1
4.2 Signs.....	4-3
4.3 Fences and Walls.....	4-7
4.4 Utilities.....	4-8
4.5 Buffering and Screening Standards.....	4-10
4.6 Weed Management.....	4-11
Article 5. Supplemental Use Regulations.....	5-1
5.1 Animal Feeding Operations	5-1
5.2 Mineral Exploration and Mineral Production	5-19
5.3 Temporary Housing/Workforce Housing (Minor)	5-20
5.4 Temporary Housing/Workforce Housing (Major)	5-23
5.5 Landfills	5-26
5.6 Wind Energy Facility, Utility Scale	5-29
5.7 Solar Energy Systems, Utility-Scale	5-38
5.8 Medical Marijuana Facilities (Compassion Centers)	5-42
5.9 Temporary Freshwater Industrial Use Point of Diversion	5-49
5.10 Temporary Freshwater Industrial Use Water Lines	5-51
5.11 Storage of Construction Materials.....	5-52
5.12 Battery Energy Storage Systems (BESS)	5-53
5.13 Data Centers.....	5-65
Article 6. Administration and Enforcement	6-76
6.1 Duties.....	6-76
6.2 Building Permit.....	6-77
6.3 Demolition Permit	6-78
6.4 Amendments	6-78
6.5 Conditional Use.....	6-79
6.6 Variance	6-82

6.7	Temporary Uses	6-84
6.8	Schedule of Non-Refundable Fees.....	6-86
6.9	Appeal of Administrative Decisions	6-88
6.10	Penalties	6-89
6.11	Nonconforming Uses	6-90
6.12	Letter of Credit.....	6-90
6.13	Road Haul Agreement.....	6-91
6.14	Applicant and Property Owner(s) in Good Standing	6-92
Article 7. Subdivision Regulations		7-1
7.1	General Provisions.....	7-1
7.2	General Provisions for the Subdivision of Land	7-3
7.3	Sketch Plan.....	7-7
7.4	Platting	7-8
7.5	Administrative Subdivision	7-11
7.6	Exempt Subdivision.....	7-12
7.7	Design Standards.....	7-14
7.8	Improvements.....	7-17
7.9	Financial Guarantee.....	7-20

Article 1. General Provisions

1.1 Title

The regulations, provisions, and procedures contained herein shall be officially known as the "Mountrail County Land Development Code." Hereinafter, the Mountrail County Land Development Code is referred to as the "Land Development Code", the "LDC", or simply "the code."

1.2 Purpose

The purpose of this code is to preserve the agricultural use of the land and promote the health, safety, morals, general welfare, and orderly development of Mountrail County.

1.3 Repeal

All other ordinances of Mountrail County in conflict with this ordinance are hereby repealed.

1.4 Severability

If any provision or section of this code is adjudged invalid by a court of competent jurisdiction, the remainder of the code shall not be affected.

1.5 Authority

This code is adopted under the authority granted to the Mountrail County Board of County Commissioners in NDCC Chapter 11-33 County Zoning and NDCC Chapter 11-33.2 Subdivision Regulation.

1.6 Effective Date

This code shall become effective after a public hearing and adoption by the Mountrail County Board of County Commissioners.

1.7 Jurisdiction

The jurisdiction of this code shall include all incorporated and unincorporated areas within Mountrail County. Any incorporated area or unincorporated area may, by request, be excluded from applicable requirements of the Mountrail County Land Development Code upon presentation of a zoning ordinance and/or development regulations of their own.

1.8 Compliance

Except as hereinafter provided, no structure or land shall be erected, repaired or used except in conformance with these regulations.

1.9 Exemptions

- A. **Farming and Ranching Exemption:** No part of this code shall be applied for the purpose of preventing or restricting the use of land or structures for agriculture or any of the normal incidents of agriculture.
- B. **Public Utilities Exemption:** In the interpretation and application of this code, the provisions of this code shall be held to the minimum requirements. Where this code imposes a greater restriction than existing law, the provisions of this code shall govern.

1.10 Organization

The Land Development Code contains provisions for zoning, which regulates the use of land, and for subdivision controls, which pertain to the subdivision or modification of land interests such as parcels and right-of-way. Zoning and subdivision authority are separate but related powers of the County. Article 2 contains definitions for words and terms that are common to zoning or subdivision policy and procedures. Articles 3 through 6 focus on zoning, while Article 7 contains the County's subdivision regulations.

Article 2. Rules and Definitions

2.1 Rules

- A. The present tense includes the past and future tenses, and the future tense includes the present tense.
- B. Words used in the singular number shall also include the plural and vice versa.
- C. The word "person" includes a firm, partnership, association, corporation, or individual.
- D. The word "shall" is mandatory and not discretionary.
- E. The word "may" is discretionary.
- F. The masculine gender includes the feminine and neuter genders.
- G. In the event of conflicting provisions, the more restrictive shall apply.

2.2 Definitions

The section is adopted for the purpose of defining common zoning terms and uses that appear in this code. Other specialized sections of this code contain additional definitions.

Accessory Use or Accessory Structure: A use or structure incidental and subordinate to the main use of the property and located on the same lot as the main use, such as a garage or tool shed. Includes a recreational vehicle as an allowable accessory to any dwelling in Mountrail County.

Adult Entertainment: A media store, cabaret, movie theater, or any other business in which the preponderance of activities or sales is designed to display, show, perform, or depict sexual activities, sexually oriented devices, or specified anatomical areas as defined by North Dakota Century Code Section 40-05-17 (City restriction of adult establishments – Definitions).

Agriculture: The use of land for agriculture purposes, including the necessary structures for farm or farm labor use. Agriculture shall include farming, dairying, pasturage, horticulture, animal and poultry husbandry, and accessory uses and structures for packing, treating, or storing product, providing accessory uses are secondary to normal agricultural activities.

Animal Feeding Operation: A place where livestock have been, are, or will be confined, concentrated, and fed for 45 days or more in any 12-month period; pasture, crops, or other vegetation are not normally managed or sustained for grazing during the normal

growing season; and animal waste or manure accumulates. This term does not include an animal wintering operation. Adjoining animal feeding operations under common ownership are considered to be one animal feeding operation if they use common areas or systems for manure handling.

See Section 5.1, Animal Feeding Operations, for use regulations and related definitions.

Animal Production: The raising of animals or production of animal products, such as eggs or dairy products.

Animal Services, Large: Service-related uses involving animals. Examples include commercial stables, large animal clinics, kennels, or horse-riding academies. Includes livestock and other animals.

Animal Services, Small: Service-related uses involving animals. Examples include small animal clinics and kennels. Does not include livestock.

Applicant: The owner, owner's agent or person having legal control, ownership and/or interest in land for which the provisions of this Code are being considered or reviewed.

Bed and Breakfast Inn: A private home that is used to provide accommodations for a charge to the public with not more than four lodging units, in which no more than two family style meals per day are provided.

Block: An area of land within a subdivision which is entirely bounded by streets or by a combination of streets, railroad right-of-way, or public parks, the exterior boundary or boundaries of the subdivision, or the shoreline of the above with a lake, stream, or river.

Boat Livery: A boat dock. This use may include boat sales, rental, construction, and repair; and sale of bait, fishing equipment, and similar recreational items.

Buffer Yard: A strip of land utilized to screen or partially screen a use or property from another use or property or to shield or mitigate noise, lights, or other impacts.

Buildable Land: Land having a size and configuration capable of supporting principal and accessory structures, with an approved domestic wastewater treatment system and potable water system.

Building: Any structure having a roof which may provide shelter or enclosure of persons, animals, chattel, or property of any kind. See also: Structure.

Building or Structure Line: A line parallel to the street right-of-way line at its closest point to any story level of a structure and representing the minimum distance which all or part of the structure is set back from said right-of-way line.

Campground: Facilities providing camping or parking areas and incidental services for travelers in camping cabins, tents, and/or recreational vehicles. A camping cabin is a temporary living quarters only to be used in campgrounds.

Certificate of Survey: A land survey prepared by a land surveyor registered in the State of North Dakota with a certification that the information on the land survey is accurate.

Church: Any structure or site, the primary purpose of which is public religious assembly or worship, irrespective of denomination or practiced faith.

Commercial Lake Resort: Includes both permanent and seasonal dwellings, tourist-oriented facilities, water-based recreation uses, and related facilities all within a single development.

Common Open Space: Any open space including parks, nature areas, playgrounds, trails and recreational structures owned in common by a group of property owners.

Communication Tower: A freestanding structure, such as a monopole or guyed/tied-down tower, designed to support wireless facilities. Such towers may support services such as radio, television, or phone to the general public. This definition does not include utility poles. All communication towers shall comply with current FCC regulations in addition to local requirements. Includes MET towers, which are meteorological structures used to collect data on wind and/or weather conditions.

Comprehensive Plan: The Mountrail County Comprehensive Plan, as most recently adopted or amended by the Mountrail County Board of County Commissioners. The Plan establishes general land use patterns in Mountrail County and serves as a guide for implementation of the Land Development Code.

Conditional Use: A use conditionally permitted in order to reduce any adverse effects on surrounding property.

Conveyance System: Any path, including but not limited to, ditches, streams, overland flow channels, and storm sewer systems, traveled by water as it passes through the watershed.

County: The County of Mountrail, North Dakota.

County Commission: The Mountrail County Board of Commissioners.

County Engineer: The County Engineer or an engineer employed by the County.

Cul-de-sac: See Street.

Data Center: a use involving a building/premise in which the majority of the use is occupied by computers and/or telecommunications and related equipment, including supporting equipment, where information is processed, transferred and/or stored.

Day Care Center: Any facility, other than a dwelling, offering care, maintenance, and supervision for hire or compensation, for less than twenty-four (24) hours per day, for children under the age of twelve (12) years, having a fenced outdoor recreation area, and licensed by the North Dakota Department of Human Services as required by law. Child

care facilities operated in connection with a church, business, or other establishment where children are cared for during a period of time not exceeding four (4) continuous hours while the child's parent, guardian, or custodian is engaged in activities other than employment, on or near the premises, shall not be considered a day care center.

Day Care Center (Adult): As an alternative to child care, a day care center may focus on adult care, with all limits as stipulated by state law.

Developer: A person who submits an application for the purpose of land subdivision as defined herein. The developer may be the owner or authorized agent of the owner of the land to be subdivided.

Dwelling: A structure or portion thereof occupied exclusively for the purposes of residing, but not including mobile recreational vehicles.

Dwelling, Accessory Residential: A smaller, independent residential dwelling unit located on the same lot as a single-family dwelling. May be detached from or attached to the primary dwelling.

Dwelling, Farm: A single family dwelling or manufactured home located on a farm which is occupied by the farm's owner or person employed thereon.

Dwelling, Nonfarm: A single family dwelling or manufactured home whose occupants derive a majority of their income from non-farm activities.

Dwellings, Multifamily: Residential dwelling designed for occupancy by two or more families. Each separate structure shall be considered one (1) multi-family unit regardless of how many families the structure has been designed for.

Dwelling, Single Family: Housing that is maintained and used as a single dwelling unit. Even though a dwelling unit may share one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or common space and does not share heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit. This definition includes modular homes which are functionally and aesthetically similar to site-built homes. Manufactured homes as defined in this Ordinance are considered single family dwellings.

Easement: A grant by the property owner of the use of a portion of the land by the public, or by one or more persons or corporations for a specific purpose. An easement may be granted for the purpose of constructing and maintaining walkways, roadways, individual sewage treatment systems, utilities, drainage, driveway, or other uses.

Energy Conversion Facility: Any electric, gas, or other liquid conversion facility that is regulated by the Public Service Commission under NDCC Chapter 49-22 or 49-22.1.

Existing Use or Structure: Any structure or use in place and operational on or before the adoption of this Land Development Code. Such structures or uses are assumed to be

in existence legally and in conformance with then-applicable requirements but may or may not conform to all of the applicable requirements of this Land Development code.

Extraterritorial Area: An unincorporated area of Mountrail County under the extraterritorial authority of an incorporated city within Mountrail County, as exercised through NDCC Section 40-47-01.1 or by agreement with the Mountrail County Board of Commissioners.

Family: Four or fewer adults, together or without minor children in their care, living as a single housekeeping unit.

Farm: Any aggregate area operated by one person, family, partnership, corporation, or joint venture for agriculture or farming purposes.

Farmworker Housing: A detached or attached dwelling unit intended for farmworkers. Each unit can be occupied by no more than four occupants and can include a dwelling unit subject to a building permit.

Fences and Walls: Any partition, structure, wall or gate erected as a divider, marker, barrier or enclosures and located along the boundary, or within the required yard setback.

Filter Strip: A linear strip of land along a lake, wetland, river, creek, or storm water ponding area where vegetation is established and maintained as a means to slow the velocity of storm water drainage and to filter sediment and pollutants from the storm water.

Financial Guarantee: A financial security posted with the County with the approval of a plat, guaranteeing compliance with the approved plat, construction plans, and conditions of approval set forth by the County and/or other political subdivisions.

Flood: A temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

Floodplain: The beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.

Freshwater: refer to "waters of the state" in the North Dakota Century Code, includes both surface and ground water supplies.

Frontage: That boundary of a lot which abuts a publicly maintained road.

General Farm Operations: Operations that range widely in size and include commercial production of livestock, grains and grasses, and various other crops.

General Retail and Services: Businesses involved in the sale, lease, or rental of new or used products to the general public, or that provide personal services or entertainment.

Golf Course: A public or private tract of land dedicated for playing the game of golf. May include a driving range.

Governmental Unit: The State of North Dakota or a participating political subdivision thereof, including cities, counties, and townships. Also includes tribal government and federal agencies with property interest in the County.

Home Occupation: Any occupation (1) which is carried on solely by members of the family residing on the premise, (2) is clearly secondary to the use of the dwelling for residential purposes, and (3) does not create excess noise, traffic or other disturbances.

Immediate Family Member: A member of the immediate family is limited to any person who is a natural or adopted child, stepchild, spouse, sibling, grandchild, grandparent or parent of the landowner.

Improved Lot: Any structure or other object or improvement of the land on which they are situated constituting a physical betterment of real property, or any part of such betterment. Certain lot improvements may require financial guarantees under the provisions of this Ordinance.

Improvement, Public: Any drainage facility, street, parkway, park, lot improvement or other facility for which a governmental unit may ultimately assume the responsibility for maintenance and operation, or where governmental unit responsibility is established.

In-Home Day Care, Family: A detached single-family dwelling, which also serves as the primary residence of the operator of the day care, offering care, maintenance, and supervision for hire or compensation, for less than twenty-four (24) hours per day, for at least one (1) but not more than seven (7) children under the age of twelve (12) years, having a fenced outdoor recreation area, and licensed by the North Dakota Department of Human Services as required by law. Adults are not allowed in a family in-home day care facility.

In-Home Day Care, Group: A detached single-family dwelling, which also serves as the primary residence of the operator of the day care, offering care, maintenance, and supervision for hire or compensation, for less than twenty-four (24) hours per day, for at least eight (8) but not more than twelve (12) children under the age of twelve (12) years, having a fenced and outdoor recreation area, and licensed by the North Dakota Department of Human Services as required by law. Adults are not allowed in a group in-home day care facility.

In-Home Day Care, Group (Adult): A detached single-family dwelling, which also serves as the primary residence of the operator of the day care, offering care, maintenance, and supervision for hire or compensation, for less than twenty-four (24) hours per day, for up to nine (9) adults and licensed by the North Dakota Department of Human Services as required by law.

Junk Yard: Any land or structure used for the storage, sale or dismantling of personal property. Includes automobile salvage.

Land Development Code: The Mountrail County Land Development Code, as may be amended.

Land Disturbance: Any area in which movement of earth, alteration in topography, soil compaction, disruption of vegetation, change in soil chemistry, or any other change in the natural character of the land occurs as a result of the site preparation, grading, structure construction or any other construction activity.

Landfill (Commercial): Specially selected, designed, and operated sites for disposal of solid waste in accordance with NDCC 23.1-08 and the provisions of this Code. Includes privately owned landfills for commercial use.

See Section 5.5, Landfills, for use regulations.

Landfill (Private): Specially selected, designed, and operated sites for disposal of solid waste in accordance with NDCC 23.1-08 and the provisions of this Code. Includes privately owned landfills not for commercial or public use.

See Section 5.5, Landfills, for use regulations.

Landfill (Public): Specially selected, designed, and operated public sites for disposal of solid waste in accordance with NDCC 23.1-08 and the provisions of this Code.

See Section 5.5, Landfills, for use regulations.

Liquor, Off-sale: An establishment primarily devoted to sale or provision of alcoholic beverages for consumption off site. The establishment must have an off-sale liquor license through the applicable local jurisdiction. An example of such a use includes a liquor store.

Liquor, On-sale: An establishment primarily devoted to sale or provision of alcoholic beverages for consumption on site, and in which the service of food is only incidental to the consumption of alcoholic beverages. The establishment must have an on-sale liquor license through the applicable local jurisdiction. An example of such a use includes a bar.

Liquor, On and off-sale: An establishment that involves the sale of alcoholic beverages for on and off-site consumption. The establishment must have both an on-sale and off-sale liquor license through the applicable local jurisdiction. Examples of such uses include a brewery or winery with onsite tasting, consumption, and off-sale.

Livestock: Any animal raised for food, raw materials or pleasure, including, but not limited to, beef and dairy cattle, bison, sheep, swine, poultry and horses. Livestock also includes fur animals raised for pelts.

Lot: A parcel of land occupied or intended to be occupied by one (1) main structure together with its accessory structures, including the open space required by this Code and having access to public right of way. Any parcel of land created pursuant to NDCC Section 57-02-39, commonly known as an "Auditor's lot" shall not be considered a lot for the purposes of the administration and enforcement of this Code. Outlots are also considered lots for the purposes of the administration and enforcement of this Code.

Lot Area: The gross area, exclusive of streets or other public rights-of-way, within the boundary lines of a lot.

Lot, Corner: A lot abutting on two (2) or more intersecting streets. On a corner lot, both streets shall be deemed front lines for the application of this Code.

Lot Depth: The mean horizontal distance between the front lot line and the rear lot line of a lot.

Lot Line: A property line bounding a lot except that where any portion of a lot extends into the public right-of-way, the lot line shall be deemed to be the boundary of said public right-of-way.

Lot, Through: A lot which has a pair of opposite lot lines abutting two (2) substantially parallel streets, and which is not a corner lot. On a through lot, both streets shall be deemed front lines for the application of this Code.

Lot Width: The horizontal distance between the side lot lines of a lot measured at the structure setback line, location of the principal structure and, if applicable, ordinary high-water level. For corner lots, lot width shall be determined by measuring the horizontal distance between a side lot line and the applicable opposite front lot line.

Manufactured Home: A single dwelling unit which is prefabricated in factories and transported to site, pursuant to federal housing regulations enacted in 1976.

Manufactured homes may be composed of a single section or multiple sections which are assembled on site. Recreational travel trailers, park models, and skid units are not to be considered a manufactured home.

Manufactured Home Park: Any park, court, camp, parcel, or tract of ground upon which manufactured home sites are leased or used, whether for compensation or not, including all accessory uses.

Medical Marijuana Compassion Center: A manufacturing facility or dispensary, any facility engaged in the cultivation, manufacturing, acquiring, possession, storage, delivery, transfer, transport, sale, supply, or dispensing of Medical Marijuana or related products to a Medical Marijuana Qualifying Patient or Medical Marijuana Registered Designated Caregiver, including but not limited to a Medical Marijuana Cultivation and/or Manufacturing Facility and a Medical Marijuana Dispensary.

See Section 5.8, Medical Marijuana Facilities, for use regulations and additional definitions.

Metes and Bounds: A method of property description by means of their direction and distance from an identifiable point of beginning.

Mineral Exploration: Use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal, oil, potash, sand, gravel, scoria, clay and/or rock, or other subsurface minerals as defined in NDCC 38-12.

See Section 5.2, Mineral Exploration and Production, for use regulations.

Mineral Production: Any activity when applied to the surface of land will produce coal, oil, gas, potash, sand, gravel, scoria, clay and/or rock, or other subsurface minerals as defined in NDCC 38-12.

See Section 5.2, Mineral Exploration and Production, for use regulations.

Minimum Subdivision Design Standards: The guides, principles, and specifications for the preparation of subdivision plans indicating among other things, the minimum and maximum dimensions of the various elements set forth in the plat.

Nonconforming Lot: A lot that was legally created in accordance with zoning district minimum lot size and dimensional standards in effect at the time of their creation, but which, because of amendments to the zoning regulations, no longer complies with the minimum lot size or other dimensional standards of the zoning district.

See Section 6.11, Nonconforming Uses, for standards.

Nonconforming Structure: A structure that was legally established in accordance with all zoning regulations in effect at the time of its establishment, but which, because of amendments to the zoning regulations, no longer complies with zoning regulations.

See Section 6.11, Nonconforming Uses, for standards.

Nonconforming Use: A legal use of land that complied with applicable zoning regulations at the time of its establishment, but which, because of amendments to the zoning regulations, no longer complies with regulations for use.

See Section 6.11, Nonconforming Uses, for standards.

NDCC: The North Dakota Century Code.

Outlot: A legal lot as defined in this Code, allowed pursuant to Section 7.6, Exempt Subdivision. Outlots cannot be described with a legal description based from the Public Land Survey System.

See Section 7.6, Exempt Subdivision, for standards.

Owner: Any individual, firm, association, partnership, corporation, trust or any other legal entity having proprietary interest in the land.

Park Model: A recreational vehicle not to exceed forty (40) feet in length; is built on a single chassis; has a gross trailer area not exceeding four hundred (400) square feet of enclosed living space in the setup mode; and is certified by the manufacturer as complying with A119.5 Recreational Park Trailer Standard of the American National Standards Institute.

Planning and Zoning Commission: The Mountrail County Planning/Zoning Commission.

Plat: The final map or drawing on which the developer's plan or subdivision is presented to the Planning & Zoning Board for approval and which, if approved, will be submitted to the Office of the County Recorder for filing.

Protective Covenant: A restriction of the use placed upon the property by a present or former owner and recorded in the Office of the County Recorder. The County will not be responsible to enforce private protective covenants.

Public Structure: A structure that is accessible for public use, and/or that provides for governmental or quasi-governmental activities.

Recreational Vehicle (RV): A vehicular unit primarily designed as a temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by a vehicle. Common types of RVs include motorhomes, travel trailers, fifth wheels, pop-up tent campers, over-the-cab or on-board pickup campers. One (1) RV is considered an allowable accessory to any dwelling in Mountrail County.

Regional Flood: A flood which is representative of large floods known to have occurred generally in North Dakota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in the Flood Insurance Study.

Regulatory Flood Protection Elevation: The Regulatory Flood Protection Elevation shall be an elevation no lower than one (1) foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

Registered Land Survey: A survey map of registered land designed to simplify a complicated metes and bounds description, designating the same into a tract or tracts of Registered Land Survey Number.

Registered Land Surveyor: A land surveyor licensed and registered in the State of North Dakota.

Re-subdivision: A change in an approved or recorded subdivision plat if such change affects any street layout on such map or area reserved for public use, or any lot line or if

it affects any map, or plan legally recorded prior to the adoption of any regulations controlling subdivisions.

Right-of-Way: A strip of land occupied or intended to be occupied by a street, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or for another special use. The usage of the term right-of-way for land platting purposes shall mean that every right-of-way hereafter established and shown on a plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels. Right-of-way intended for streets, water main, sanitary sewers, storm drains, or any other use involving maintenance by a public agency shall be dedicated to public use by the recording of the plat on which such right-of-way is established.

Road Right-of-Way Width: The horizontal distance between the outside edges of a road right-of-way.

Saltwater: Considered an oilfield fluid that is regulated by the North Dakota Industrial Commission.

Setback: The required distance of separation between a structure and public right-of-way line, easement, or property line; or between two properties or uses. All measurements shall be made from the furthest extending point of the roofline. Projections such as oriel windows, sills, cornices, and other decorative works may not project beyond the point to which eaves may be projected.

Shelterbelt: A barrier of trees and shrubs that is used to protect crops, farmsteads and nonfarm dwellings from wind and storms.

Skid Unit: A structure or group of structures, either single or multi-sections, which is not built on a permanent chassis and is ordinarily designed for human living quarters on a temporary or permanent basis.

Small Business: Any specific commercial use otherwise defined shall be permitted by right as a small business provided it meets the requirements listed in Section 3.5.2.B.14.

Solar Energy Facilities, Utility-scale (Solar Farm): A utility-scale, ground-mounted solar energy system that produces and distributes electricity for wholesale. A large-scale solar energy system has a minimum project size of five (5) acres and is the principal use on the parcel(s) on which it is located.

See Section 5.7, Solar Energy Systems, for use regulations and related definitions.

Solar Energy Facility, Small: Devices such as rooftop solar panels or stand-alone panels, intended for a specific site. Small solar energy facilities generate power for a single business, residence, or a similar limited use. Small solar energy facilities are not designed and constructed to distribute electricity for wholesale. Stand-alone small solar energy

facilities are treated as accessory structures and must comply with all regulations pertaining to accessory structures.

Street: A right-of-way affording primary access by pedestrians and vehicles to abutting properties, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, court, way, trail or however otherwise designated. Private, ingress and egress easements shall not be considered streets.

- a. Principal Arterial: Streets which include all interstate freeways and other roadways which provides for the longest trips. The emphasis is on mobility rather than land access.
- b. Minor Arterial: A street system which serves medium to short trips and provides access to the principal arterial. They interconnect concentrations of commercial or industrial land uses and connect cities and towns of the region to each other and to similar places outside the region. The emphasis is still on mobility rather than land access.
- c. Collector: A street which provides connection between neighborhoods and from neighborhoods to minor business concentrations. Mobility and land access are equally important.
- d. Local: Those that remain, serving the shortest trips and providing access to adjacent property.
- e. Cul-de-sac: A local street having one end open to traffic and the other end permanently terminated by a vehicular turn-around.
- f. Service or Frontage: A local street which is parallel and adjacent to a highway or an arterial street and which provides access to abutting properties and protection from through traffic.

Street Width: The width of the improved surface of the street as measured at right angles or radially to the centerline of the street from curb face to curb face, or on a street without curbs from the outside edge of the improved shoulder to outside edge of improved shoulder.

Structural Alteration: Any change in the supporting members or any substantial change in the roof or exterior walls of a structure.

Structure: Any combination of materials fixed to give support or shelter or to provide for human habitation or use. Includes buildings, towers, advertising signs constructed or erected on the land, excluding fences. Structures require permanent location on or in the ground, via a floating slab or frost protected foundation. See also: Building.

Subdivision: The division of a lot, tract, or parcel of land, creating one or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale or of structure development.

Technologically-Enhanced Naturally-Occurring Radioactive Material (TENORM):

Waste produced as a byproduct of oil and gas extraction and processing that contains concentrated or exposed radioactive materials. TENORM may be found in drill cuttings, waste water, tank sludge, pipe scale, and other materials that are used or produced as byproducts in oil and gas extraction and processing activities.

Temporary Freshwater Industrial Use Point of Diversion: Storage, collection, or sale of fresh water for industrial or commercial use from surface or groundwater supplies for a temporary period as specified in this Code. Does not include permanent freshwater industrial use point of diversion, such as an earthen pond.

See Section 5.9, Temporary Freshwater Industrial Use Point of Diversion for use regulations.

Temporary Freshwater Industrial Use Water Lines: Means all above-ground pipelines, pumps, and water storage tanks in place for a temporary period as specified in this Code.

See Section 5.10, Temporary Freshwater Industrial Use Water Lines for use regulations.

Temporary/Workforce Housing: One or more lodging units or skid units used to house workers on a temporary basis, and for a specified period of time, which are not real property as defined in NDCC §57-02-04, and are not manufactured homes, as defined in NDCC§57-55-01.

See Sections 5.3 and 5.4, Minor and Major Temporary Housing/Workforce Housing for use regulations.

Temporary/Workforce Housing (Minor): A temporary/workforce housing development that houses 25 occupants or fewer.

See Section 5.3, Minor Temporary Housing/Workforce Housing for use regulations.

Temporary/Workforce Housing (Major): A conglomerate of temporary/workforce housing that is typically associated with a significant expansion of oil and gas activity (oil boom) or a similar economic circumstance. For the purposes of this Code, a major workforce housing operation shall be defined as temporary housing that houses more than 25 occupants.

See Section 5.4, Major Temporary Housing/Workforce Housing for use regulations.

Temporary Use: A use or activity permitted for a temporary and specific duration, as specified in this Code.

See Section 3.4, Temporary Uses.

Utilities: For the purposes of this Code, the definition of utilities shall be limited to electrical transmission lines, oil pipelines, natural gas pipelines and industrial water pipelines. This definition shall exclude electrical distribution lines as a utility.

Variance: The grant of relief from the requirements of the Code where it can be shown that due to unusual conditions of the property, strict application of the regulations would result in undue hardship.

Wind Energy Facility, Utility-Scale: An electric generating facility, the main mechanical or electrical purpose of which is to produce and distribute electricity for wholesale. It consists of one or more wind turbine and other accessory structures, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities. Utility scale wind energy facilities are not intended for personal use, but for commercial generation at the utility scale.

See Section 5.6, Wind Energy Facility, Utility Scale, for use regulations.

Wind Energy Facility, Small: A device such as a wind charger, windmill, or wind turbine and associated facilities that convert wind energy to electric energy, intended for a specific site. Small wind energy facilities generate power for a single business, residence, or a similar limited use. Small wind energy facilities are not designed and constructed to distribute electricity for wholesale. Stand-alone small wind energy facilities are treated as accessory structures and must comply with all regulations pertaining to accessory structures.

Yard: A space on the same lot with the principal structure; open, unoccupied and unobstructed by structures from the ground upward.

Yard, Front: A yard that extends across the full width of the lot. The depth is measured as the least distance between the front lot line and the front structure line.

Yard, Rear: A yard that extends across the full width of the lot. The depth is measured as the least distance between the rear lot line and the rear structure line.

Yard, Side: The yard between the front and rear yards. The depth is measured as the least distance from the side lot line and the side of the principal structure.

Zoning Administrator: Person or persons designated by the Board of County Commissioners to administer the Land Development Code.

Article 3. Zoning Districts

3.1 Establishment of Districts

For the purpose of this Code, Mountrail County is hereby divided into the following classes of districts: Agricultural (Ag); Commercial (Co); Industrial (In); Residential (Res); Rural Residential (R-Res); and Recreation (Rec).

3.2 Official Zoning Map

- A. Zoning district boundaries are established as shown on the map entitled the "Official Zoning Map of Mountrail County". This map and any attached map sections are made part of this Code; and it shall be on file with the county zoning administrator.
- B. Where the district boundary lines on the official zoning map are indicated to follow highway, road or railroad right-of-way, such boundary lines shall be construed to be the centerline of said right-of-way unless clearly shown to the contrary.
- C. Where any uncertainty exists as to the exact location of the zoning district boundary line, the Planning and Zoning Commission shall determine the location of such boundary line.

3.3 Table of Uses by Zoning District

3.3.1 Purpose and Usage

Tables 3.1 (Table of Uses by Zoning District) and 3.2 (Table of Temporary Uses by Zoning District) organize common existing and potential future land uses by zoning districts in Mountrail County. It is intended to help users of the Code easily identify whether a use is prohibited, permitted by right, permitted subject to additional regulations or procedures in each zoning district, or permitted on a temporary and restricted basis. When special regulations apply, the last column in the table refers the user to the applicable section of Article 5, Supplemental Use Regulations.

3.3.2 Unlisted Uses

If an application is submitted for a use that is not specified in Table 3.1, the Zoning Administrator is authorized to categorize the new or unlisted use according to listed uses or categories that are most similar. If no determination of similarity can be made, the proposed use will be considered prohibited. In this case, a Code amendment would need to be initiated to determine if, where, and how the use could be established in Mountrail County.

Table 3.1. Table of Uses by Zoning District

Key	
P	Permitted Use
C	Conditional Use
	Prohibited Use

Category/Use	AG	RES	R-RES	CO	IND	REC	Reference
Farming and Ranching							
Agriculture, ranching, and related structures	P						
Animal feeding operation	C						Section 5.1
Animal Production	P						
Single-family dwelling (farm)	P						
General farm operations	P	P	P	P	P	P	Section 3.5.4
Housing							
Manufactured home (7 years or newer)	P	P	P	C		P	
Manufactured home (8 years or older)	C	C	C	C		C	
Manufactured home park	C	C	C	C		C	
Multifamily dwellings		C					
Single-family dwelling (non-farm)	P	P	P			P	
Farmworker housing (one unit and no more than 4 occupants)	P						
Farmworker housing (more than 1 unit and 5 or more occupants)	C						
-Public and Institutional							

Category/Use	AG	RES	R-RES	CO	IND	REC	Reference
Cemetery	P	C	C			C	
Churches	P	P	P			P	
Hospitals and clinics		P		P			
Medical marijuana compassion center					C		<i>Section 5.8</i>
Public structures	P	C	C	P		P	
Schools	P	P	P				
Infrastructure							
Communication towers	C			C	C		
Solar energy facility, small	P		P	P	P		
Solar energy facility, utility-scale	C				C		<i>Section 5.7</i>
Substations	C		C	C	P		
Utilities	C		C	C	C		<i>Section 4.4</i>
Water well and/or storage (non-agricultural)					P		
Wind energy facility, small	P				P		
Wind energy facility, utility-scale	C						<i>Section 5.6</i>
Businesses and Services							
Animal services, small	C		C	C	P		
Animal services, large	C				P		
Bed and breakfast inn	C	C	C	P			
Day care center (child or adult)	C		C	C			<i>Subject to state licensing</i>
General retail and services				P	P		
Hotels and motels				P			

Category/Use	AG	RES	R-RES	CO	IND	REC	Reference
Liquor sales, on-sale				P	P		<i>Subject to state licensing</i>
Liquor sales, off-sale				P	P		<i>Subject to state licensing</i>
Liquor sales, on- and off-sale				P	P		<i>Subject to state licensing</i>
Professional offices				P	P		
Restaurants				P	P		
Small businesses, subject to IRS Schedule F	C			P	P		<i>Section 3.5.2 – B.14</i>
Truck stop				C	P		
Industrial							
Adult Entertainment					C		
Aggregate mining and storage (sand, gravel, scoria, clay etc.)	C			C	C		<i>Section 5.2</i>
BESS, minor/residential	P	P	P	P	P	P	<i>Section 5.12</i>
BESS, minor/commercial	P			C	C		<i>Section 5.12</i>
BESS, major	C				C		<i>Section 5.12</i>
Data centers					C		<i>Section 5.13</i>
Feed mills					P		
Fertilizer plants					P		
Freight terminal					P		
Gas holding, processing, and distribution facilities					C		
Grain elevators					P		

Category/Use	AG	RES	R-RES	CO	IND	REC	Reference
Industrial material storage, including trucks, trailers, and other equipment (non-hazardous)				C	P		Section 5.11
Junk yard/automobile salvage	C				C		
Landfill (Commercial and Public)					C		Section 5.5
Landfill (Private)	C						Section 5.5
Oil storage and loading facilities					C		
Retail, manufacturing, and distribution of anhydrous storage					C		
TENORM disposal					C		Section 5.5
Warehouses				C	P		
Recreation and Open Space							
Boat livery						C	
Commercial lake resort						C	
Golf course	C	C	C			P	
Parks, outdoor recreation, and related structures	P	P	P			P	
Seasonal Campgrounds (Permitted from April 1 through November 30)						C	
Accessory Uses							
Accessory dwelling unit		C		C			
Accessory recreational uses						P	
Accessory residential dwelling			P				
Customary accessory uses and structures located on the same tract with the principal use					P		Section 3.10.2 – A.2

Category/Use	AG	RES	R-RES	CO	IND	REC	Reference
Home occupation without customers	P	P	P				
Home occupation with customers	C	C	C				
In-home day care, family	P	P	P				<i>Subject to state licensing</i>
In-home day care, group (child or adult)	C	C	C				<i>Subject to state licensing</i>
Small businesses	C			C	P		

3.4 Temporary Uses

Table 3.2. Table of Temporary Uses by District

Key	
D	Discretionary review required by Planning and Zoning Commission
A	Administrative review required by the Zoning Administrative, Planning and Zoning Commission review not required
	Prohibited Use

Temporary Use	AG	RES	R-RES	CO	IND	REC	Reference (updated later)
Farmer's market (180 days)	A			A			
Fireworks sales (60 days)	A			A	A		
Public gatherings for a single-purpose commercial event (30 days)	A			A			
Sales stands for produce or Christmas trees (60 days)	A			A			
Temporary/workforce housing – Minor & Major (2 years)	D			D	D		<i>Sections 5.3 & 5.4</i>

Temporary Use	AG	RES	R-RES	CO	IND	REC	Reference (updated later)
Temporary uses incidental to construction, including but not limited to, a contractor's office, construction yard or staging area, and worker housing (2 years)	D			D	D		
Temporary operations and equipment for road improvement projects (2 years)	D			D	D		
Temporary freshwater industrial use point of diversion (1 year)	A	A	A	A	A	A	Section 5.9
Temporary freshwater industrial use water lines (1 year)	A	A	A	A	A	A	Section 5.10
Any other temporary use (180 days)	D			D	D		

3.5 Agriculture District

3.5.1 Purpose

To establish and preserve areas of agriculture and low intensity development which do not significantly change the existing character of the area.

3.5.2 Uses

Below is a list of uses that are permitted by right, conditional use permit, or temporary use permit in the Agriculture District. Table 3.1 (Table of Uses by Zoning District) includes a quick reference for these uses as well as uses that are prohibited in the Agriculture District.

A. Permitted Uses:

1. Agriculture, ranching, and related structures
2. Cemetery
3. Churches
4. Day care, family
5. Farmworker housing (one unit and no more than four occupants)
6. General farm operations

7. Home occupation without customers
8. Manufactured home (7 years or newer)
9. Parks, outdoor recreation, and related structures
10. Public structures
11. Schools
12. Single family dwelling (farm)
13. Single family dwelling (non-farm)
14. Solar energy facility, small
15. Wind energy facility, small

B. Conditional Uses:

1. Aggregate mining and storage (sand, gravel, scoria, clay etc.)
2. Animal feeding operation
3. Animal services, small and large
4. Bed and breakfast inn
5. Communication towers
6. Day care center (child or adult)
7. Day care, group (child or adult)
8. Farmworker housing (more than one unit and five or more occupants)
9. Golf course
10. Junk yard/automobile salvage
11. Landfill (Private)
12. Manufactured home (8 years or older)
13. Manufactured home park
14. Small businesses; any specific commercial use otherwise defined provided it meets the requirements listed in the following requirements and is not listed as a conditional use, temporary use, or prohibited use:
 - a. Is subject to IRS Schedule F
 - b. Employs less than 3 nonfarm workers, either directly employed or on a contractual basis
 - c. Not more than 5 customers are allowed onsite at one time
 - d. Operations may not include more than one nonfarm building

- e. Home occupation with customers
- 15. Solar energy facilities, utility-scale
- 16. Substations
- 17. Utilities
- 18. Wind energy facilities, utility-scale
- 19. Battery Energy Storage Systems (BESS) only in conjunction with an energy conversion facility.

C. Temporary Uses:

1. Temporary Uses Permitted by Administrative Review:

- a. Farmer's markets (maximum 180 days)
- b. Fireworks sales (maximum 60 days)
- c. Public gatherings for a single-purpose commercial event (maximum 30 days)
- d. Sales stands for produce or Christmas trees (maximum 60 days)
- e. Temporary freshwater industrial use point of diversion (maximum 1 year)
- f. Temporary freshwater industrial use water lines (maximum 1 year)

2. Temporary Uses Permitted by Discretionary Review:

- a. Temporary/workforce housing - minor and major (maximum 2 years)
- b. Temporary uses incidental to construction, including but not limited to, a contractor's office, construction yard or staging area, and housing for a construction project (maximum 2 years)
- c. Temporary operations and equipment for road improvement projects (maximum 2 years)
- d. Any other temporary use (maximum 180 days)

3. Prohibited Uses: Refer to Table 3.1.

3.5.3 Lot Development Standards

Development in the Agriculture District shall conform to the following standards:

A. Minimum Lot Size: 40 acres

1. Exemptions:

- a. Agricultural lots that were subdivided prior to adoption of this Code and that do not meet the minimum lot size requirement shall be designated as legally nonconforming lots are subject to County administrative procedures and requirements established in Section 6.11, Nonconformities.

- b. Up to three (3) lots to accommodate one (1) farm dwelling each shall be allowed for each square quarter-quarter section (approximately 40 acres) and shall be limited to members of the immediate family of the surface owner.
- B. **Minimum Density:** There shall be no more than one (1) nonfarm dwelling for each square quarter-quarter section (40 acres). No more than three (3) farm dwellings shall be allowed for each square quarter-quarter section (40 acres) and shall be limited to members of the immediate family of the surface owner.
- C. **Minimum Lot Width:** 1,000 feet
- D. **Maximum Building Height:** Thirty-five (35) feet, as measured from the lowest ground level of the structure.
- E. **Setback Requirements:**
 - 1. **Structure Setback from a State or Federal Highway:** 250 feet, as measured from structure edge to centerline of right of way or centerline of the nearest two-lane section, whichever is greater.
 - 2. **Structure Setback from Other Political Subdivision Roads or Section Line:** 150 feet, as measured from structure edge to centerline or section line.
 - 3. **Structure Setback from Property Lines Not Along a Road:** 25 feet
 - 4. **Shelterbelt Setback from Right-of-Way:** 115 feet, as measured from planting line to centerline or section line.
 - 5. **Property Setbacks from Mineral Development:** $\frac{1}{4}$ mile (See Section 4.1.1).
 - 6. **Structure Setbacks from Military Facilities:** $\frac{1}{2}$ mile (See Section 4.1.3).

3.5.4 Right to Farm Provision

The following easement is to be used for farm and non-farm residential development and applied during the platting process:

AGRICULTURAL EASEMENT

1. Purpose. This easement is required in the Agricultural District.
2. Easement.

("Grantors") are the owners of real property described as follows:

In accordance with the conditions set forth in the decision of Mountrail County, dated _____ 20____, approving a permit for a dwelling on the above-described property,

and in consideration of such approval, Grantors grant to the owners of all property adjacent to the above-described property, a perpetual nonexclusive easement as follows:

- a. The Grantors, their heirs, successors, and assigns acknowledge by the granting of this easement that the above-described property is situated in an agricultural area and may be subjected to conditions resulting from commercial agricultural operations on adjacent lands. Such operations include the cultivation, harvesting, and storage of crops and livestock raising and the application of chemicals, operation of machinery, application of irrigation water, and other accepted and customary agricultural activities conducted in accordance with Federal and State laws. These activities ordinarily and necessarily produce noise, dust, smoke, and other conditions that may conflict with Grantors' use of Grantors' property for residential purposes. Grantors hereby waive all common law rights to object to normal and necessary agricultural management activities legally conducted on adjacent lands which may conflict with Grantors' use of Grantors' property for residential purposes, and Grantors hereby grant an easement to adjacent property owners for such activities.
- b. Nothing in this easement shall grant a right to adjacent property owners for ingress or egress upon or across the described property. Nothing in this easement shall prohibit or otherwise restrict the Grantors from enforcing or seeking enforcement of statutes or regulations of governmental agencies for activities conducted on adjacent properties.

This easement is appurtenant to all property adjacent to the above described property and shall bind to the heirs, successors and assigns of Grantors and shall endure for the benefit of the adjoining landowners, their heirs, successors, and assigns. The adjacent landowners, their heirs, successors, and assigns are hereby expressly granted the right of third-party enforcement of this easement.

IN WITNESS WHEREOF, the Grantors have executed this easement on _____, 20____.

Signature, Grantor

STATE OF NORTH DAKOTA

SS:

COUNTY OF MOUNTRAIL

This instrument was acknowledged before me on _____, 20____ by

(Grantors).

Notary Public

My Commission Expires: _____

3.6 Re – Residential District

3.6.1 Purpose

To establish and preserve general residential neighborhoods which allow for varied types of residential development.

3.6.2 Uses

Below is a list of uses that are permitted by right, conditional use permit, or temporary use permit in the Residential District. Table 3.1 (Table of Uses by Zoning District) includes a quick reference for these uses as well as uses that are prohibited in the Residential District.

A. Permitted Uses:

1. Church
2. General farm operations for vacant lots, excluding animal units
3. Home occupation without customers
4. Hospitals and clinics
5. In-home day care, family
6. Manufactured Home (7 years or newer)
7. Parks, outdoor recreation, and related structures
8. Single-family dwelling (non-farm), excluding manufactured homes
9. School

B. Conditional Uses:

1. Accessory dwelling unit
2. Bed and breakfast inn
3. Cemetery
4. Home occupation with customers
5. In-home day care, group (child or adult)
6. Manufactured home (8 years or older)
7. Manufactured home park
8. Multifamily dwellings
9. Public structures

C. Temporary Uses Permitted by Administrative Review:

1. Temporary freshwater industrial use point of diversion (maximum 1 year)
2. Temporary freshwater industrial use water lines (maximum 1 year)

D. Prohibited Uses: Animal feeding operations, animal production, and livestock are prohibited. Other prohibited uses refer to Table 3.1.

3.6.3 Lot Development Standards

Development in the Residential District shall conform to the following standards:

A. Minimum Lot Size:

1. Single-family dwelling: 7,500 square feet
2. Multifamily dwellings: 3,000 square feet per dwelling unit, as an average inclusive of the entire lot area

B. Minimum Lot Width: Seventy-five (75) feet

C. Maximum Lot Coverage: 50 percent of total lot area; 10 percent of total lot area for each accessory structure.

D. Maximum Structure Height: 35 feet for the principal structure; 25 feet for each accessory structure, as measured from the lowest ground level of the structure.

E. Setback Requirements:

1. **Structure Setback from a State or Federal Highway:** 250 feet, as measured from structure edge to centerline of right of way or centerline of the nearest two-lane section, whichever is greater.

2. **Structure Setback from Other Political Subdivision Roads or Section Line:** 150 feet, as measured from structure edge to centerline or section line.

3. Structure Setback from Property Lines:

- a. Front: 25 feet
- b. Rear: 10 feet
- c. Side: 7 feet

4. **Property Setbacks from Mineral Development:** $\frac{1}{4}$ mile (See Section 4.1.1).

5. **Water Resource Setbacks:** 100 feet from perennial bodies of water (See Section 4.1.2)

6. **Structure Setbacks from Military Facilities:** $\frac{1}{2}$ mile (See Section 4.1.3).

3.6.4 Manufactured Home Regulations

- A. If a manufactured home has wind specification anchoring requirements, the anchoring system used must be within these standards. If a manufactured home does not have specific anchoring requirements, the manufactured home shall be anchored down by a system of over-the-top straps and straps connected to the I-beam substructure of the home. These straps shall be connected to anchoring devices, such as screw-type anchors which are embedded in the ground.
- B. The undercarriage wheels of the manufactured home shall be removed prior to occupancy of the manufactured home on the lot.

3.6.5 Parking Requirements

- A. **Residential Uses:** A minimum of two (2) parking spaces is required per single-family residence or multifamily unit.
- B. **Institutional Establishments/Places of Public Assembly:** A minimum of one (1) parking space is required for each four (4) seats or beds, plus one (1) space for each three (3) employees on the maximum shift.
- C. **Outdoor Parking and Storage Restrictions:** This section is not intended to prohibit vehicles and equipment engaged in contractual services for improvements to a given property.
 - 1. Automotive vehicles without current license plates shall not be parked or stored on any residentially zoned property other than in completely enclosed buildings.
 - 2. No lot in any residential district shall be used for the outdoor storage, keeping, or abandonment of junk, including scrap metals, or other scrap materials or goods, or used for the dismantling, demolition, or abandonment of automobiles or other vehicles or machinery or parts thereof.
 - 3. No more than one (1) vehicle used for construction, landscape services, snow removal services, and other commercial or agricultural equipment and trailers shall be stored on any residential zoned property or on any street within a residentially zoned district.

3.7 R-Res – Rural Residential District

3.7.1 Purpose

The intent of the Rural Residential District is to promote organized, low-density residential development that is compatible with rural and agricultural uses, rural water service areas, and the lack of public sanitary sewer that is found in large portions of Mountrail County. The Rural

Residential District matches the Rural Residential Future Land Use Category of the Mountrail County Comprehensive Plan. Land zoned Rural Residential must have reasonable access to a paved roadway.

3.7.2 *Uses*

Below is a list of uses that are permitted by right, conditional use permit, or temporary use permit in the Rural Residential District. Table 3.1 (Table of Uses by Zoning District) includes a quick reference for these uses as well as uses that are prohibited in the Rural Residential District.

A. **Permitted Uses:**

1. Accessory residential dwelling
2. Church
3. General farm operations, except for the keeping of animals as stipulated in Section 3.7.4.
4. Home occupation without customers
5. In-home day care, family
6. Manufactured home (7 years or newer)
7. Park, outdoor recreation, and related structures
8. School
9. Single-family dwelling (non-farm), excluding manufactured homes
10. Solar energy facility, small

B. **Conditional Uses:**

1. Animal services, small
2. Bed and breakfast inn
3. Cemetery
4. Day care center
5. Home occupation with customers
6. In-home day care, group
7. Manufactured home (8 years or older)
8. Manufactured home park
9. Public structure
10. Substation
11. Utilities

C. Temporary Uses Permitted by Administrative Review:

1. Temporary freshwater industrial use point of diversion (maximum 1 year)
2. Temporary freshwater industrial use water lines (maximum 1 year)

D. Prohibited Uses: Refer to Table 3.1.

E. Outdoor Parking and Storage Restrictions: This section is not intended to prohibit vehicles and equipment engaged in contractual services for improvements to a given property.

1. Automotive vehicles without current license plates shall not be parked or stored on any residentially zoned property other than in completely enclosed buildings.
2. No lot in any residential district shall be used for the outdoor storage, keeping, or abandonment of junk, including scrap metals, or other scrap materials or goods, or used for the dismantling, demolition, or abandonment of automobiles or other vehicles or machinery or parts thereof.
3. No more than one (1) vehicle or equipment used for construction, landscape services, snow removal services, and other commercial or agricultural equipment and trailers shall be stored on any residential zoned property or on any street within a residentially zoned district.

3.7.3 Lot Development Standards

Development in the Rural Residential District shall conform to the following standards:

A. Minimum Lot Size: Two (2) acres

B. Maximum Lot Size: Thirty-five (35) acres

C. Minimum Lot Width: 150 feet

D. Maximum Structure Height: 35 feet for the principal structure; 25 feet for each accessory structure, as measured from the lowest ground level of the structure.

E. Setback Requirements:

1. **Structure Setback from a State or Federal Highway:** 250 feet, as measured from structure edge to centerline of right of way or centerline of the nearest two-lane section, whichever is greater.

2. **Structure Setback from Other Political Subdivision Roads or Section Line:** 150 feet, as measured from structure edge to centerline or section line.

3. **Structure Setback from Property Lines Not Along a Road or Section Line:** 25 feet

4. **Property Setbacks from Mineral Development:** $\frac{1}{4}$ mile (See Section 4.1.1).

5. **Water Resource Setbacks:** 100 feet (See Section 4.1.2)
6. **Structure Setbacks from Military Facilities:** ½ mile (See Section 4.1.3).

3.7.4 Animal Provisions

The following allowances are established for the keeping of animals for domestic use in Rural Residential District (those specifically permitted are stated in parts B-D below):

A. General Provisions:

1. The keeping of livestock and other animals for commercial production, including but not limited to beef cattle, dairying, poultry raising, apiaries, and fur farming, shall be prohibited. Such activities shall be limited to the Agriculture District.
2. All permitted animals shall be kept in such a manner as to not constitute a nuisance with respect to neighboring property.
3. There shall be no killing or dressing of any animals or poultry for commercial purposes on the premises.
4. All livestock and other animals shall be kept in an enclosed area appropriate to the size and type of animal.

B. Poultry:

1. The hatching, raising, and fattening of poultry is permitted.
2. Poultry shall not be permitted free-range on the property but must be kept in an enclosed area.

C. Horses, cattle, llamas, and alpacas:

1. One (1) head is permitted for each 2 acres, not including unweaned colts and calves.

D. Sheep, goats, and swine:

1. No more than four (4) head are permitted for each 2 acres, not including unweaned lambs or piglets.

3.7.5 Protection of Adjacent Farmland

The following easement is to be used for new residential development and applied during the platting process:

AGRICULTURAL EASEMENT

1. Purpose. This easement is required in the Rural Residential District.
2. Easement.

("Grantors") are the owners of real property described as follows:

In accordance with the conditions set forth in the decision of Mountrail County, dated _____ 20____, approving a permit for a dwelling on the above-described property, and in consideration of such approval, Grantors grant to the owners of all property adjacent to the above-described property, a perpetual nonexclusive easement as follows:

- a. The Grantors, their heirs, successors, and assigns acknowledge by the granting of this easement that the above-described property is situated in an agricultural area and may be subjected to conditions resulting from commercial agricultural operations on adjacent lands. Such operations include the cultivation, harvesting, and storage of crops and livestock raising and the application of chemicals, operation of machinery, application of irrigation water, and other accepted and customary agricultural activities conducted in accordance with Federal and State laws. These activities ordinarily and necessarily produce noise, dust, smoke, and other conditions that may conflict with Grantors' use of Grantors' property for residential purposes. Grantors hereby waive all common law rights to object to normal and necessary agricultural management activities legally conducted on adjacent lands which may conflict with Grantors' use of Grantors' property for residential purposes, and Grantors hereby grant an easement to adjacent property owners for such activities.
- b. Nothing in this easement shall grant a right to adjacent property owners for ingress or egress upon or across the described property. Nothing in this easement shall prohibit or otherwise restrict the Grantors from enforcing or seeking enforcement of statutes or regulations of governmental agencies for activities conducted on adjacent properties.

This easement is appurtenant to all property adjacent to the above described property and shall bind to the heirs, successors and assigns of Grantors and shall endure for the benefit of the adjoining landowners, their heirs, successors, and assigns. The adjacent landowners, their heirs, successors, and assigns are hereby expressly granted the right of third-party enforcement of this easement.

IN WITNESS WHEREOF, the Grantors have executed this easement on _____, 20____.

Signature, Grantor

STATE OF NORTH DAKOTA

SS:

COUNTY OF MOUNTRAIL

This instrument was acknowledged before me on _____, 20____ by

(Grantors).

Notary Public

My Commission Expires: _____

3.8 Co – Commercial District

3.8.1 Purpose

It is the intent of this district to reserve an area for the grouping of businesses and personal services into a concentrated area serving the shopping needs of the community and surrounding trade area.

3.8.2 Uses

A. Permitted Uses:

1. Bed and breakfast inn
2. General farm operations, excluding animal units
3. General retail and services
4. Hotels and motels
5. Hospitals and clinics
6. Liquor, off-sale
7. Liquor, on-sale
8. Liquor, on- and off-sale
9. Professional offices
10. Public structures
11. Restaurants
12. Solar energy facility, small
13. Small businesses subject to IRS Schedule F

B. Conditional Uses:

1. Accessory dwelling unit; includes sleeping rooms, apartments, or owner-occupied residences housed within commercial businesses or service establishments provided that these uses are secondary to the main commercial use of the structure and occupy less than 50 percent of the total floor area.

2. Aggregate mining and storage (sand, gravel, scoria, clay, etc.)
3. Animal services, small
4. Communication towers
5. Day care center
6. General farm operations with animal units
7. Industrial material storage, including trucks, trailers, and other equipment (non-hazardous)
8. Manufactured home
9. Manufactured home park
10. Substations
11. Truck stop
12. Utilities
13. Warehouses

C. Temporary Uses:

1. Temporary Uses Permitted by Administrative Review:

- a. Public gatherings for a single-purpose commercial event (maximum 30 days)
- b. Sales stands for produce or Christmas trees (maximum 60 days)
- c. Fireworks sales (maximum 60 days)
- d. Farmer's markets (maximum 180 days)
- e. Temporary freshwater industrial use point of diversion (maximum 1 year)
- f. Temporary freshwater industrial use water lines (maximum 1 year)

2. Temporary Uses Permitted by Discretionary Review:

- a. Temporary/workforce housing – minor and major (maximum 2 years)
- b. Temporary uses incidental to construction, including but not limited to, a contractor's office, construction yard or staging area, and housing for a construction project (maximum 2 years)
- c. Temporary operations and equipment for road improvement projects (maximum 2 years)
- d. Any other temporary use (maximum 180 days)

D. Prohibited Uses: Refer to Table 3.1.

3.8.3 *Lot Development Standards*

Development in the Commercial District shall conform to the following standards:

- A. **Minimum Lot Size:** None
- B. **Maximum Lot Coverage:** 75 percent of lot area
- C. **Maximum Structure Height:** 45 feet, as measured from the lowest ground level of the structure.
- D. **Setback Requirements:**
 - 1. **Structure Setback from a State or Federal Highway:** 250 feet, as measured from structure edge to centerline of right of way or centerline of the nearest two-lane section, whichever is greater.
 - 2. **Structure Setback from Other Political Subdivision Roads or Section Line:** 150 feet, as measured from structure edge to centerline or section line.
 - 3. **Structure Setback from Property Lines Not Along a Road or Section Line:** 10 feet
 - 4. **Structure Setback from Property Line Adjoining Residential Zoning District:** 25 feet
 - 5. **Property Setbacks from Mineral Development:** $\frac{1}{4}$ mile (See Section 4.1.1).
 - 6. **Water Resource Setbacks:** 100 feet from perennial bodies of water (See Section 4.1.2).
 - 7. **Structure Setbacks from Military Facilities:** $\frac{1}{2}$ mile (See Section 4.1.3).

3.9 In – Industrial District

3.9.1 *Purpose*

It is the intent of this district to establish and preserve areas with public transportation facilities, such as paved roads and rail, for industrial development in locations not compatible with other zoning districts.

3.9.2 *Uses*

Table 3.1 (Table of Uses by Zoning District) summarizes all uses that are permitted by right, conditionally permitted, or prohibited in the Industrial District.

A. **Permitted Uses:**

- 1. Animal services, small and large
- 2. Feed mill

3. Fertilizer plant
4. Freight terminal
5. General farm operations
6. General retail and services
7. Grain elevator
8. Industrial material storage, including trucks, trailers, and other equipment (non-hazardous)
9. Liquor, off-sale
10. Liquor, on-sale
11. Liquor, on- and off-sale
12. Professional offices
13. Restaurants
14. Solar energy facility, small
15. Small businesses, subject to IRS Schedule F
16. Substations
17. Warehouse
18. Water well and/or storage (non-agricultural)
19. Wind energy facility, small

B. Conditional Uses:

1. Adult entertainment
2. Aggregate mining and storage (sand, gravel, scoria, clay, etc.)
3. Communication towers
4. Data centers
5. Gas holding, processing, and distribution facilities
6. Junkyard/automobile salvage
7. Landfill (Commercial and Public)
8. Medical marijuana compassion center
9. Oil storage and loading facilities
10. Retail, manufacturing, and distribution of anhydrous storage
11. Solar energy facility, utility-scale
12. TENORM disposal

13. Utilities
14. Battery Energy Storage Systems (BESS) only in conjunction with an energy conversion facility.

C. Temporary Uses:

1. Temporary Uses Permitted by Administrative Review:

- a. Fireworks sales (maximum 60 days)
- b. Temporary freshwater industrial use point of diversion (maximum 1 year)
- c. Temporary freshwater industrial use water lines (maximum 1 year)

2. Temporary Uses Permitted by Discretionary Review:

- a. Temporary/workforce housing – minor and major (maximum 2 years)
- b. Temporary uses incidental to construction, including but not limited to, a contractor's office, construction yard or staging area, and housing for a construction project (maximum 2 years)
- c. Temporary operations and equipment for road improvement projects (maximum 2 years)
- d. Any other temporary use (maximum 180 days)

D. Prohibited Uses: Refer to Table 3.1.

3.9.3 Lot Development Standards

Development in the Industrial District shall conform to the following standards:

A. Minimum Lot Size: None

B. Maximum Lot Coverage: 75 percent of lot area

C. Maximum Structure Height: 90 feet, as measured from the lowest ground level of the structure.

D. Setback Requirements:

1. **Structure Setback from a State or Federal Highway:** 250 feet, as measured from structure edge to centerline of right of way or centerline of the nearest two-lane section, whichever is greater.
2. **Structure Setback from Other Political Subdivision Roads or Section Line:** 150 feet, as measured from structure edge to centerline or section line.

3. **Structure Setback from Property Lines Not Along a Road or Section Line:** 45 feet front yard setback, no setback required for the rear and side yards unless stated otherwise.
4. **Structure Setback from Property Line Adjoining Residential Zoning District:** 25 feet
5. **Property Setbacks from Mineral Development:** $\frac{1}{4}$ mile (See Section 4.1.1).
6. **Water Resource Setbacks:** 100 feet from perennial bodies of water (See Section 4.1.2).
7. **Structure Setbacks from Military Facilities:** $\frac{1}{2}$ mile (See Section 4.1.3).

3.10Rec – Recreation District

3.10.1 Purpose

The Recreation District is established for the purpose of protecting general farm operations and permitting small rural vacation or seasonal residence developments, recreational vehicle parks for short term or seasonal parking and the uses that serve them by restricting and regulating density, land coverage, and land use.

3.10.2 Uses

Below is a list of uses that are permitted by right, conditional use permit, or temporary use permit in the Recreation District. Table 3.1 (Table of Uses by Zoning District) includes a quick reference for these uses as well as uses that are prohibited in the Recreation District.

A. Permitted Uses:

1. Churches
2. Customary accessory uses and structures located on the same tract with the principal use, including the following:
 - a. Sheds
 - b. One recreational vehicle on lots $\frac{1}{2}$ acre in size or less
 - c. Up to two recreational vehicles on lots greater than $\frac{1}{2}$ acre in size
 - d. Barbecue ovens
 - e. Fireplaces
 - f. Private boat docks (located on streams, rivers, lakes, reservoirs, or other water areas)
 - g. Similar uses accessory to the primary dwelling

3. General farm operations, except for the keeping of livestock and poultry for domestic or commercial use
4. Golf courses, miniature golf courses and driving tees operated for commercial purposes
5. Manufactured home (7 years or newer)
6. Parks, outdoor recreations, and related structures
7. Public structures
8. Single family dwelling (non-farm)

B. Conditional Uses:

1. Boat livery, including boat docks, sales, rental, construction and repair and sale of bait and fishing equipment, fuel, etc.
2. Cemetery
3. Commercial lake resort
4. Manufactured home (8 years or older)
5. Manufactured home park
6. Park models
7. Seasonal campgrounds (permitted from April 1 through November 30)

C. Temporary Uses:

1. Temporary Uses Permitted by Administrative Review:
 - a. Temporary freshwater industrial use point of diversion (maximum 1 year)
 - b. Temporary freshwater industrial use water lines (maximum 1 year)

D. Prohibited Uses: Refer to Table 3.1.

3.10.3 Lot Development Standards

Development in the Recreation District shall conform to the following standards:

- A. **Minimum Tract or Subdivision Size:** Five (5) acres
- B. **Maximum Lot Coverage:** 50 percent of lot area if lot width greater than 150 feet; no requirement if lot width less than 150 feet.
- C. **Maximum Structure Height:** 35 feet, as measured from the lowest ground level of the structure.

D. Setback Requirements:

1. **Structure Setback from a State or Federal Highway:** 250 feet, as measured from structure edge to centerline of right of way or centerline of the nearest two-lane section, whichever is greater.
2. **Lots less than 150 feet in width:**
 - a. Setback along right-of-way width 80 feet or wider: no minimum requirement
 - b. If the lot is abutting two rights-of-way 80 feet or wider, only one side is allowed no minimum setback.
 - c. All other setbacks: 7.5 feet
3. **Lots greater than 150 feet in width:**
 - a. Front Yard: 25 feet
 - b. Rear Yard: 10 feet
 - c. Side Yard: 7 feet
4. **Property Setback from Mineral Development:** $\frac{1}{4}$ mile (See Section 4.1.1).
5. **Water Resource Setbacks:** 100 feet from perennial bodies of water (See Section 4.1.2).
6. **Structure Setbacks from Military Facilities:** $\frac{1}{2}$ mile (See Section 4.1.3).

3.10.4 General Requirements

- A. **Conditional Use:** The applicant for a zoning change to permit a Recreation District shall follow procedures for conditional use permitting (Section 6.5) of the Mountrail County Land Development Code, and must satisfy the Planning and Zoning Commission that all development to occur within this District shall not extensively alter natural grade of land or permit extensive alteration, removal or destruction of natural vegetation in order to prevent erosion or pollution.
- B. **Liability:** Applicant shall assume, and be liable, for any and all damages resulting as a consequence of any changes from the original topography. Such changes may include, but not necessarily be limited to, damages resulting from any change in the rate of flow, or directing the flow of surface or subsurface waters.
- C. **Soil Tests:** The applicant for a Recreation District shall have a registered engineer make soil percolation tests to determine soil permeability to meet minimum State Health Department requirements for public health and safety. The results of the tests and recommendations of the engineer shall be the basis for Planning and Zoning Commission requirements for either a public approved sanitary sewer system, sanitary sewerage holding tanks or septic tanks

and lateral field to be allowed in this District. The applicants shall bear the expense of the tests made by the registered engineer.

D. Development Plan: The applicant for a Recreation District shall prepare or cause to be prepared an application for rezoning and a development plan and shall present three copies of the plan for review and approval by the Planning and Zoning Commission. The development plan shall show topography at two (2) foot intervals and the size of

1. Residential lots.
2. Recreational Vehicle Park, manufactured home parks, and sites, if applicable.
3. Recreational Vehicle Park and manufactured home park service structures, if applicable.
4. Water lines, if applicable to the development.
5. Water outlets, if applicable to the development (mandatory for Recreational Vehicle Park.)
6. Sewer lines, if applicable to the development.
7. Recreational vehicle holding tanks, if applicable.
8. Recreational areas.
9. Landscaped areas and walls or fences.
10. Roadways.
11. Storm shelter.

E. Road Width: Roadways shall not be less than 30 feet in width for two-way traffic systems.

F. Road Construction and Maintenance Responsibility: The applicant or property owner shall be responsible for the construction and maintenance of all access roads between the property and all public roads.

G. Permitting and Approval:

1. Upon approval of the preliminary development plan by the Planning and Zoning Commission, the applicant shall prepare or cause to be prepared a final development plan, which shall incorporate any changes or alterations requested. The final development plan and the Planning and Zoning Commission recommendation shall be forwarded to the County Commissioners for review and final action.
2. The approval of the application for rezoning and the development plan in no way obligates the County to the provision, development or maintenance of access, required or otherwise, to the property concerned.

3. Issuance of a building permit, if applicable, is subject to approval by the local park board.

3.10.5 Intensity of Use Regulations

- A. All lots, except recreational vehicle park spaces, shall have a minimum area of 15,000 square feet. Additional lot area may be required to meet the State Health Department minimum standards for public health and safety. Minimum lot width shall not be less than 100 feet and depth of not less than 150 feet. The principal and accessory structure shall not cover more than 30% of the lot area.
- B. Recreational vehicle park spaces shall have a maximum density of 12 spaces per gross acre with a minimum area of 2,500 square feet for each space where State approved public type sanitary sewers are available for each space.
- C. When state approved public type sanitary sewers are not available there shall be a maximum density of 12 spaces per gross acre with a minimum area of 2,500 square feet for each space, provided that toilet, shower and laundry facilities are included (for recreational vehicle occupants' exclusive use) for every thirty (30) campsites.
- D. Refuse disposal receptacles shall be provided within fifteen (15) to one hundred fifty (150) feet of every campsite. Said receptacle shall not be located near a water supply.
- E. The applicant shall provide the planning and zoning commission with an acceptable plan for garbage disposal.
- F. An approved water supply shall be provided within three hundred (300) feet of every campsite. Evidence of approval by the State Laboratory on the water supply shall be provided to the Planning and Zoning Commission.
- G. One (1) sanitary flushing station shall be provided for every one hundred (100) campsites.
- H. Each campsite shall be at least thirty five (35) feet wide and clearly defined. The principal and accessory structure shall cover, not more, than 30% of the lot area.

Article 4. Supplemental Development Standards

4.1 Supplemental Setback Requirements

4.1.1 Property Setbacks from Mineral Development

A. **Purpose:** Mountrail County lacks authority to site or regulate mineral development. Therefore, setbacks are established for other uses within the County's control to prevent incompatible development from encroaching on land used for mineral production purposes.

B. **Requirement:**

1. The following uses shall be set back a minimum distance of one-quarter (1/4) mile all existing mineral production activity, including oil and gas production and gravel mining:
 - a. Single-family dwellings and manufactured homes.
 - b. Occupied structures intended for public or institutional use, including but not limited to schools, religious institutions, hospitals and clinics, libraries and museums, day cares, and elderly care facilities.
 - c. Parks and playgrounds.
2. This setback shall be measured as the shortest straight-line distance from lot line to lot line. Where oil and gas development is located on leased property, the setback shall be measured to the edge of the graded area.

C. **Exemptions:**

1. A waiver exception shall be granted if the initial property purchaser provides written notice and informed consent.
2. The Planning and Zoning Commission may issue a variance to this requirement if it presents practical difficulties for development that are unnecessarily burdensome to the landowner.

4.1.2 Water Resource Setbacks

A. **Purpose:** To protect the quality of Mountrail County's water resources, water resource setbacks are designed to keep structures, decks, impervious surfaces, septic systems, and other development activity away from the shores of lakes and rivers.

- B. **Applicability:** Water resource setback standards defined herein shall not supersede requirements established elsewhere in this Code. Where more restrictive setbacks are established, those standards shall govern.
- C. **Required Setback:** Structures shall be set back a minimum of one hundred (100) feet from the shoreline of all waterbodies identified as perennial by the State Water Commission. Structures shall be set back a minimum of three hundred (300) feet from the 1,855-foot elevation of Lake Sakakawea.
- D. **Exemptions:**
 - 1. Structures that are integral to lake access or coastal management are exempt from this requirement. These structures include but are not limited to boathouses, ramps, docks, and retaining walls.
 - 2. Structures in the Agricultural District shall be exempt from this setback requirement.
 - 3. The Planning and Zoning Commission may issue a variance to this requirement if it presents practical difficulties for development that are unnecessarily burdensome to the landowner.

4.1.3 Setbacks from U.S. Military Facilities

- A. **Purpose:** The Department of Defense (DOD) maintains important military facilities in Mountrail County. Many of these sites are located within historical no-build easements. To support military operations and ensure public safety in the event of an emergency, habitable structures shall be located outside military safety zones.
- B. **County Policy:** Mountrail County's adopted Future Land Use Map identifies a half (1/2) mile buffer area around each military site. These areas are not intended for future development. The County adopts the following policy to ensure consistency with its Future Land Use Map:
 - 1. The Department of Defense will be notified of all planning and zoning applications within a half (1/2) mile from a military facility.
 - 2. Mountrail County will not grant a land use amendment or zoning change that would enable incompatible development within a military safety zone.
 - 3. Avoidance of military safety zones may be a condition for issuance of a building permit. Mountrail County will review building permit applications against the Future Land Use Map.
 - 4. For any proposed plat or replat within a military safety zone, Mountrail County will communicate development limitations to the applicant.
- C. **Exemptions:**

1. Non-habitable structures may be permitted within the military safety zone per military easement restrictions.
2. The Planning and Zoning Commission may issue a variance to this requirement with consent from US Department of Defense if the application presents practical difficulties for development that are unnecessarily burdensome to the landowner.

D. **Legal Nonconforming Use:** Habitable structures located within military safety zones that existed prior to adoption of this Code shall be designated as legally nonconforming uses and are subject to County administrative procedures and requirements established in Section 6.11, Nonconformities.

4.2 Signs

It is the intent of this Code to promote the health, safety and welfare of the residents and visitors of the county by regulating and controlling the size, location, type, quality of materials, height, maintenance and construction of all signs and sign structures and to prohibit signs of a commercial nature from districts in which commercial activities are not permitted in this Code; to limit signs in the more restricted commercial districts, except as otherwise permitted in this Code, to those of an on-site variety; and to control the number and area of signs in certain other districts.

4.2.1 *Signs in Residential and Recreation Districts*

The following listed signs will be permitted in Residential and Recreation Districts, except as otherwise provided in this Code.

- A. **Property Advertisements:** Unilluminated "For Sale" and "For Rent" single or double-faced business signs subject to the following regulations:
 1. Only one (1) sign shall be permitted per lot.
 2. No sign shall exceed four (4) square feet in area.
 3. Signs shall be located no closer than five (5) feet from any property line and shall not obstruct traffic.
 4. When said sign is affixed to a structure, it shall not project higher than ten (10) feet above ground level.
 5. Ground signs shall not project higher than three (3) feet above ground grade.
- B. **Bulletin Boards:** Bulletin boards and signs for churches and other public institutions subject to the following regulations:
 1. One (1) sign or bulletin board shall be permitted on each street side if located on the same site as the principal structure.

2. If sign or bulletin board is illuminated, the lights shall be directed away from adjoining residential uses.
3. No sign or bulletin board shall exceed twenty-four (24) square feet in area.
4. No sign shall be located closer than eight (8) feet from any side or rear property line.
5. A sign or bulletin board located in the front yard shall be no closer to the street line than one-half (1/2) the front yard.
6. A sign or bulletin board, affixed to a structure, shall not project higher than ten (10) feet above the ground level.
7. Ground signs shall be permanently anchored to the ground and shall not exceed a height of six (6) feet above normal grade.
8. Structures constructed on the property line prior to the effective date of this Code, as defined in the definitions of this Code, shall be allowed one (1) identification sign providing said sign is a flat wall sign and permanently attached to the structure.
9. On corner lots, no sign shall be constructed or located that will obstruct the view of traffic approaching the street intersection.

4.2.2 Signs in Agriculture, Commercial, and Industrial Districts

- A. In Agriculture, Commercial and Industrial Districts, single or double-faced business signs shall be permitted subject to regulations set forth in the Building Code and in this Code.
- B. **Flashing Signs:** Flashing signs shall be permitted after it is first determined by the Zoning Administrator that the location and colors will in no way create a traffic hazard or confusion with traffic lights and with lights on emergency vehicles and that the direct rays of the sign will not be directed into any residential district.
- C. **Non-flashing Signs:** Non-flashing signs shall be permitted providing said sign is illuminated only during business hours or until 11:00 p.m., whichever is later, when said sign is located adjacent a residential district; providing that where the sign is illuminated by a light or lights reflected upon it, direct rays of light shall not beam upon any residential structure, or into any residential district or into any street. Clocks and/or thermometers installed for public convenience and information are exempt from the time limitation.
- D. **Lighted Signs:** Lighted signs in direct vision of a traffic signal shall not be in red, green or amber illumination.
- E. **Sign Area:** The gross surface area, in square feet, on one (1) side of any business sign on a lot shall not exceed three (3) times the lineal feet of frontage of the structure; each side of a lot which abuts upon a street shall be considered as a separate frontage, and the gross surface area of all signs located on each side of a structure shall not exceed three (3) times

the lineal feet in the separate frontage. The total surface area shall not exceed four hundred (400) square feet for each face of the sign. Individual letters, with no background, shall be measured by the minimum rectangular area necessary to encompass such letters or by a combination of rectangles as are necessary to encompass letters of irregular dimensions.

- F. No sign shall project over any alley right-of-way line.
- G. Any sign located within three (3) feet of a driveway or parking area or within fifty (50) feet of the intersection of two (2) or more streets shall have its lowest elevation at least ten (10) feet above curb level.
- H. **Shopping/Business Centers:**
 - 1. **Shopping Center Identification Sign:** In a unified shopping center, one (1) additional sign may be erected to identify the center. The sign may be free standing or attached to the structure wall. Said sign shall display no more than the name of the shopping center and the business located on the lot. The sign shall not exceed thirty-five (35) feet in height and sixteen (16) feet in width and its bottom edge shall be at least eight (8) feet above ground level.
 - 2. **Directional Signs:** In a unified shopping/business center; directional signs shall be permitted for common parking lots. Signs shall be no more than six (6) square feet with maximum width of three (3) feet and maximum height of two (2) feet. Maximum height above grade shall be five (5) feet to top of sign. Sign shall display no more than the tenants that do business on said property. All signs shall be placed so as not to create a traffic hazard. Refer to 4.2.2(G.) for all other signs in regards to the height requirements.
- I. Signs within fifty (50) feet of a residential district shall be affixed to or be part of the structure.
- J. A maximum of two (2) signs (one (1) on a facade with road frontage) shall be allowed for a business or profession conducted on the premises.
- K. Sandwich board signs may be allowed provided they are removed at close of business.
- L. No sign shall be permitted in the road or highway right-of-way and no sign shall be located in a manner to constitute a traffic hazard, except as specified in 4.2.2(M.) below.
- M. Where structures are established or are hereafter established on the property line, advertising and business signs shall conform with the following requirements, providing they are constructed and maintained in accordance with the Building Code of the State of North Dakota.
 - 1. Signage conforms with all paragraphs of this section.

2. In Commercial and Industrial Districts, the advertising or business sign shall be affixed flat against the face of the structure or the front edge of a marquee. The front edge of the marquee shall be considered that portion of the marquee which is parallel to the street.

The sign can be mounted perpendicular to the structure and overhang the sidewalk provided the following conditions are met:

- a. The gross surface area in square feet does not exceed the linear feet of frontage of the lot occupied by the structure.
- b. The sign does not project any closer than three (3) feet from the front of the curb. The sign shall have a minimum setback of three (3) feet from the front face of the curb to the outside edge of the sign.
- c. The sign provides a minimum height clearance of seven and one-half (7.5) feet above the walking surface.
- d. The sign complies with all other provisions of this Code.

3. Where a sign is illuminated by light directed upon it, the direct rays of light shall not beam upon any part of any existing residential district.
4. Lighted signs in the direct vision of traffic shall not be in red, green or amber illumination.
5. Where signs are affixed to canopies and marquees, the canopy or marquee shall be constructed and maintained in accordance with the Building Code of the State of North Dakota.

N. Where structures have observed a setback of twenty-five (25) feet or more from the property line, signs may be erected in a required front yard but no sign shall overhang the public sidewalk, street or street right-of-way line and said sign shall conform with the following requirements:

1. All signs shall be permanently affixed to the ground, pole or structure or other permanent structure.
2. Only one (1) sign shall be allowed for each street frontage.

O. Signs hereafter erected, constructed or reconstructed, which are supported by the ground, shall have all posts or supporting structure embedded in concrete.

P. Free-standing signs shall be constructed to withstand a pressure of thirty (30) pounds per square foot of sign area.

4.3 Fences and Walls

4.3.1 Purpose

The purpose of this Chapter is to establish standards for the installation of fencing and walls as may be required by other chapters of this Code and to protect the safety, and welfare of the County.

4.3.2 Requirements

Walls and fences are permitted as an accessory use in all zoning districts and shall meet the following criteria:

- A. **Fences and Walls:** Any partition, structure, wall or gate erected as a divider, marker, barrier or enclosures and located along the boundary, or within the required yard setback of 1.5 feet from the property line.
- B. **Fence Placement:** All fences shall be placed completely outside of all acquired public road right-of-way (all political subdivisions) and railroad right-of-way. Placement deviations must be reviewed by the impacted political subdivision(s) and approved by the Board of County Commissioners.
- C. **Fence on Corner Lot:**
 - 1. No wall or fence shall extend more than three feet above the top of the curb within the areas identified herein in order to provide for a clear sight triangle for drivers entering an intersection.
 - 2. For each leg of an intersection that is uncontrolled, the clear sight triangle shall begin 25 feet back from the property line.
 - 3. For each leg of an intersection that is stop controlled, the clear sight triangle shall begin at a point ten (10) feet behind the stop sign or 20 feet from the adjoining street curb line, whichever is less, as measured from each edge of the travel lane.
 - 4. For each leg of a traffic light controlled intersection, the clear sight triangle shall begin at a point ten (10) feet behind the stop bar or fifteen (15) feet from the intersecting street curb line, whichever is less, as measured from each edge of the travel lane.
- D. **Retaining Walls:**
 - 1. Retaining walls greater than four (4) feet in height may not be placed closer than three (3) feet to a property line unless there is a recorded joint use and maintenance agreement for the properties on each side of the retaining wall.

2. Retaining walls greater than four (4) feet in height, whether monolithic or terraced, must be designed by a registered engineer.

E. **Fence Height:** Unless specified otherwise elsewhere in this Code, fences in residential or recreation districts shall not exceed six (6) feet in height and fences in other districts shall not exceed eight (8) feet in height.

F. **Fence Materials:**

1. Corrugated or sheet metal shall not be used for fencing in residential or recreation districts.
2. Any fence in a residential or recreation district shall be made of solid wood, composite/vinyl material with the appearance of solid wood, masonry, chain link, or a combination thereof.
3. All wooden fences shall be constructed with treated lumber or painted.
4. The use of barbed wire or razor wire is limited to security fencing around commercial, industrial, governmental or utility facilities. The use of barbed wire and/or an electrified fence are allowed in agriculturally zoned district, and shall not be allowed in residential or recreation districts.

G. **Fences in Agricultural Zones:**

1. There shall be no requirement for a permit for the structure of a fence.
2. Every fence shall be constructed in a substantial, workmanlike manner and of substantial material reasonable suited for the purpose for which the fence is proposed to be used. Every fence shall be maintained in a condition of reasonable repair and shall not be allowed to become and remain in a condition of disrepair or danger, or constitute a nuisance, public or private. Any such fence which is, or has become dangerous to the public safety, health or welfare, is a public nuisance, and the Zoning Administrator shall commence proper proceeding for the abatement thereof.

4.4 Utilities

All new utilities shall be considered as a conditional use and, as such, shall conform to all requirements required by the Planning and Zoning Commission. Utilities subject to conditional use permit include electrical transmission lines, oil pipelines, natural gas pipelines, and industrial water pipelines as much as allowed by state law. Utilities related to oil and gas production regulated by the State Industrial Commission, electrical distribution lines, and fiber communication lines do not require a conditional use permit but must comply with this section.

A. **Placement:**

1. Utilities shall be placed completely outside of statutory section line right-of-way (33 feet on each side of the section line), 75 feet from centerline of all County road right-of-way, outside of all other political subdivisions acquired right of way, and outside of railroad right-of-way.
2. Utilities shall be placed in a manner which will not place undue hardship on normal farming operations.
3. The maximum amount of useable agricultural land shall be preserved.
4. "Stranded acres" of limited size or irregular shape that may remain from utility placement shall be avoided to the maximum extent possible.
5. All encroachments into public right of way (all political subdivisions) will require an encroachment permit from the Road and Bridge Department for County roads and review by other impacted political subdivisions for public right of way under other political control.

B. **Underground Utility Depth:** Shall be placed at a minimum depth of four (4) feet so as not to constitute a hazard to normal farming or general county maintenance.

C. The activities will not result in undue damage or injury to roads, bridges, rights-of-way in the county or to any county, public, or private property.

D. Excavation costs for purposes of construction or maintenance of a utility shall be borne by the contractor or owner of said utility.

E. The following shall be provided if not required by the State Public Service Commission:

1. A Road Haul Agreement shall be entered into between the applicant and the political subdivision whose roads will be impacted by the operation detailing road maintenance responsibility and dust control measures which must accompany the application. The agreement shall be in place during construction activities. The agreement shall follow the requirements of Section 6.13.
2. Letter of credit with financial guarantee in compliance with Section 6.12. The letter of credit shall be in place to ensure site restoration following construction. The letter of credit shall be the sum equal to the total cost of reclamation as estimated by a North Dakota licensed engineer. The estimate provided by a North Dakota licensed engineer shall be verified by the Board of County Commissioners or its designee.

4.5 Buffering and Screening Standards

4.5.1 Purpose

Buffering and screening standards are established to soften the visual, noise, and lighting impacts of intensive industrial development from highly traveled public rights-of-way and residential uses.

4.5.2 Applicability

Buffering and screening standards apply in the following circumstances:

- A. The establishment of any use on an industrial-zoned property that abuts any property with Agriculture, Residential, Rural Residential, or Recreation districts.
- B. The establishment of any use on an industrial-zoned property that abuts any State or Federal highway rights-of-way.

4.5.3 Exemptions and Alternatives

- A. Planting shall not interfere with utility corridors.
- B. The Planning and Zoning Commission may waive the requirements of Section 4.5.5 based on unique site factors, including but not limited to the following:
 1. Presence of natural screening via existing vegetation or topography
 2. Presence of soil types that do not support the prescribed landscaping
 3. Site security factors
 4. Site safety factors
 5. Absence of water on site
 6. Other conditions as determined by the Zoning Administrator
- C. Where landscaping is impractical due to site or use constraints, the Zoning Administrator may request an alternative screening method to achieve the purposes of this section.

4.5.4 Site Mitigation Plan Details

A site mitigation plan shall be required for all development that requires buffering and screening. The plan shall include the following:

- A. North arrow and scale
- B. Location of existing and proposed structures, storage areas, and parking areas

- C. Drainage patterns
- D. Location of easements
- E. Location of retaining walls and fences
- F. The location, size, number, and types of trees to be used
- G. The location and design of lighting to be used.

4.5.5 Site Mitigation Plan Requirements

- A. **Buffer and Screening Strip:** A buffering and screening strip of vegetation appropriate to the climate of Mountrail County shall be provided. Solid fencing and/or an earthen berm may also be proposed as an alternative or in addition to vegetation, subject to review by the Planning and Zoning Commission. The strip shall effectively block the view of onsite improvements, except for tall structures generally above one story.
- B. **Fully Shielded Lighting:** All outdoor lighting shall be fully shielded, eliminating light trespass upwards and to the sides. Light shall be directed downward.
- C. **Noise Reduction:** Uses adjacent to a residence or residences shall describe onsite activities and associated noise generation. Efforts shall be made to minimize noise impacts. Where necessary, efforts to minimize noise impacts shall be documented and are subject to review by the Planning and Zoning Commission.
- D. **Installation:** All required improvements shall be installed following completion of construction. For construction completions that occur after June 30, all plants shall be installed prior to June 30 of the following year.
- E. **Plan Review:** Site mitigation plans shall be submitted to the Zoning Administrator for review. The Planning and Zoning Commission shall review and approve all site mitigation plans upon a recommendation from the Zoning Administrator.

4.6 Weed Management

All Conditional Use Permits shall comply with the following requirements.

- A. Maintain weed control as approved by the Mountrail County Weed Control Officer.
- B. Annual inspections will be conducted to ensure compliance.

- C. If any Conditional Use Permit holder is not in compliance with weed management requirements during the annual inspection, the holder must comply by the next annual inspection.

DRAFT

Article 5. Supplemental Use Regulations

5.1 Animal Feeding Operations

5.1.1 *State Authority*

The State of North Dakota has the authority to regulate animal feeding operations.

5.1.2 *Definitions*

Terms used in this Code have the same meaning as given by the laws and rules of the state of North Dakota, specifically chapter 11-33-02.1 (or as amended) of the North Dakota Century Code. The definitions for these terms and for additional terms are:

Animal feeding operation: A place where livestock have been, are, or will be confined, concentrated and fed for 45 or more days in any 12 month period; pasture, crops, or other vegetation are not normally managed or sustained for grazing during the normal growing season; and, animal waste or manure accumulates. This term does not include an animal wintering operation. Adjoining animal feeding operations under common ownership are considered to be one animal feeding operation, if they use common areas or systems for manure handling.

Animal wintering operation: The confinement of cattle or sheep used or kept for breeding purposes in a feedlot or sheltered area at any time between October 15 and May 15 of each production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing. The term includes the weaned offspring of cattle and sheep, but it does not include (1) breeding operations of more than 1,000 animal units or (2) weaned offspring which are kept longer than 120 days and that are not retained for breeding purposes.

Batch process: A process that generates wastewater in an intermittent time period where the facility can be operating normally and not generate wastewater for extended periods of time. A batch process means that the facility can continue to operate without generating wastewater, except for contaminated storm water. For example, a dry manure system that only generates wastewater as a result of contaminated storm water runoff can be considered a "batch process" because the wastewater is only generated during a storm event.

Bedding material: An absorbent substance applied to dirt or concrete flooring systems, including wood shavings, wood chips, sawdust, shredded paper, cardboard, hay, straw, hulls, sand, and other similar, locally available materials.

Class I (Waste classification): Wastes and wastewaters, including storm water, contained or suspecting to contain pollutants at concentrations and volumes which could be deleterious to humans, aquatic life, wildlife, or the beneficial use of the environment if discharged to ground and/or surface water and are generated by a batch or continuous process. Examples include but

are not limited to, mobile metals, dissolved salts (>2000ppm), soluble hydrocarbons, nitrogen compounds (>500 ppm), biochemical oxygen demand (BOD) (>1000 ppm), or pH (<4 or >9) or most wet manure systems.

Class II (Waste classification): Wastes and wastewater, including storm water, containing pollutants listed in Class I but at either significantly less concentration or significantly less volume and/or containing wastes not listed in Class I, in concentrations that may, if discharged to ground and/or surface water may cause degradation of the beneficial use of the water or harm the environment. Examples include but are not limited to, nitrogen compounds (<500 ppm), total dissolved salts (<2000 ppm), temperature, biological and chemical oxygen demands (<1000 ppm), phosphorus, and suspended solids or most dry manure systems.

Concentrated animal feeding operation (CAFO): An animal feeding operation that is defined as a large concentrated animal feeding operation or as a medium concentrated animal feeding operation, or is a small or other type of animal feeding operation designated as a concentrated animal feeding operation in accordance with North Dakota Administrative Code Chapter 33-16-03.1-04 (Designation of concentrated animal feeding operations). For purposes of determining animal numbers, two or more feeding operations under common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

Continuous process: A process that generates wastewater on a regular basis where the facility can be operating normally and expect to generate wastewater either daily or weekly regardless of the generation of contaminated storm water. A continuous process means the facility would have to shut down partially or totally in order to prevent the generation of wastewater. For example, a wet manure system at a swine facility generates wastewater on a daily basis and must discharge to the treatment system on a regular basis.

Dry manure systems: Waste management that utilizes the dry manure system includes those CAFOs that provide areas for generation and collection of feces and urine on open ground, partially covered area, concrete floors, or other surfaces that does not utilize or otherwise allow liquid to transport the waste from the generation site to the treatment site, except as storm water runoff (e.g., dairy or beef cattle raised on dirt or concrete feedlot, poultry dry litter systems, other animals corralled on dirt or concrete feedlot).

Due process: A process that involves two essential elements – (1) notice and (2) an opportunity for a hearing. The notice must adequately describe the potential action that might affect the person(s) being notified and it must provide the person(s) a reasonable time to respond. If the person(s) request(s) a hearing, the hearing must be fair and allow the person(s) to present relevant evidence and arguments.

Earthen storage pond or pond: An earthen pond used to store manure, process wastewater and runoff from the production area of a livestock facility.

Existing: In place and operating on the date this Code is effective.

Facility or livestock facility: Has the same meaning as animal feeding operation or concentrated animal feeding operation.

Ground water: Waters beneath the earth's surface between saturated soil and rock that supplies wells and springs.

High risk environment:

1. Surface water with sandy soil, high risk environment based on close proximity (less than one (1) mile) to alluvial terrace deposits, sand dunes, and other highly permeable subsurface environments.
2. **Large watershed:** High risk environment based on high volume storm water runoff potential based on surface topography, proximity to streams and creeks, erosion potential, and size of watershed up gradient from disposal area, especially if downstream users of surface water for private and/or public drinking water supply and agricultural water supply.
3. Unconfined aquifer, shallow, private/public water supply, high risk environment based on shallow depth to ground water that is or could be locally used for private and/or public drinking water.
4. **Health/Property:** High risk environment based on less than one (1) mile proximity to existing neighboring business, residences, agricultural work areas, or other highly used structure, public or private, that would be adversely impacted by air or water pollutants generated by the facility, including but not limited to chemicals, sulfur compounds, nitrogen compounds, dusts, pollens, airborne disease, and malodorous odors.

Large concentrated animal feeding operation: Any animal feeding operation that stables or confines an animal unit capacity of 1,000 or more animal units. For livestock numbers see Section 5.1.3 Equivalent Animal Units.

Livestock: Any animal raised for food, raw materials or pleasure, including, but not limited to, beef and dairy cattle, bison, sheep, swine, poultry and horses. Livestock also includes fur animals raised for pelts.

Manure: Fecal material and urine from livestock, as well as animal-housing wash water, bedding material, rainwater or snow melt that comes in contact with fecal material or urine.

Medium animal feeding operation: Any animal feeding operation that stables or confines an animal unit capacity between 300 and 999 animal units. For livestock numbers see equivalent animal numbers.

Medium concentrated animal feeding operation: A medium animal feeding operation that meets either one of the following conditions:

1. Pollutants are discharged into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or

2. Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Open lot: Livestock pens, feeding or holding areas at the production area of an animal feeding operation which are outside and not under roof, and where rain can fall directly on the lot area.

Operator: An individual or group of individuals, a partnership, a corporation, a joint venture, or any other entity owning or controlling one or more animal feeding operations or animal wintering operations.

Pollutants: "Wastes" as defined in subsection 2 of North Dakota Century Code Section 61-28-02, including dredged soil, solid waste, incinerator residue, garbage, sewage, sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharge into water.

Production area: Those areas of an animal feeding operation used for animal confinement, manure storage, raw materials storage, and waste containment. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milking rooms, milking centers, cattle yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment area includes, but is not limited to, settling basins, area within berms, and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of mortalities.

Runoff: Rainwater or snow melt that comes in contact with manure at an open lot or open manure storage area and, therefore, is defined as manure.

Runoff pond: An earthen storage pond that is used to collect and store runoff from an open lot or from a manure storage area.

Small animal feeding operation: Any animal feeding operation that stables or confines less than the numbers of animals specified for a medium animal feeding operation (Definition s).

Small concentrated animal feeding operation: Any animal feeding operation that stables or confines less than the number of animals specified for a medium animal feeding operation (Definition s) and is designated as a CAFO in accordance with North Dakota Administrative Code 33-16-03.1-04.

Surface water: Waters of the state located on the ground surface such as lakes, reservoirs, rivers and creeks.

Waters of the state: All waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on or under the surface of the earth, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, except those private waters that do not combine or effect a junction with natural surface or underground waters just defined.

Wet manure systems: Waste management systems utilizing wet manure system includes those CAFOs that provide areas for generation and collection of manure (i.e., feces and urine) and that rely on a liquid transport system to collect and remove the waste from the confinement area to the treatment areas a liquid slurry.

5.1.3 *Equivalent Animal Numbers*

An "animal unit equivalent" is a unit less number developed from the nutrient and volume characteristics of manure for a specific livestock type. The term "animal units" is used to normalize the number of animals (e.g., head) for each specific livestock type which produce comparable bulk quantities of manure. The animal unit equivalents for types of livestock and the numbers of livestock for facility size thresholds of 300 animal units (a.u.), and so forth, are listed in the following table.

Table 5.1. Equivalent Animal Units

Livestock Type	Animal Unit Equivalent	Equivalent Numbers of the Livestock (hd) for Four Sizes (a.u.) of Animal Feeding Operations			
		300 a.u.	1,000 a.u.	2,000 a.u.	5,000 a.u.
1 horse	2.0	150 hd	500 hd	1,000 hd	2,500 hd
1 dairy cow	1.33	225	750	1,500	3,750
1 mature beef cow	1.0	300	1,000	2,000	5,000
1 beef feeder-finishing	1.0	300	1,000	2,000	5,000
1 beef feeder-backgrounding	0.75	400	1,333	2,667	6,667
1 mature bison	1.0	300	1,000	2,000	5,000
1 bison feeder	1.0	300	1,000	2,000	5,000
1 swine >55 lbs	0.4	750	2,500	5,000	12,500

Livestock Type	Animal Unit Equivalent	Equivalent Numbers of the Livestock (hd) for Four Sizes (a.u.) of Animal Feeding Operations			
		300 a.u.	1,000 a.u.	2,000 a.u.	5,000 a.u.
1 goose or duck	0.2	1,500	5,000	10,000	25,000
1 sheep	0.1	3,000	10,000	20,000	50,000
1 swine, nursery < 55 lbs	0.1	3,000	10,000	20,000	50,000
1 turkey	0.0182	16,500	55,000	110,000	275,000
1 chicken	0.01	30,000	100,000	200,000	500,000

5.1.4 Environmental Protection

- A. **Pollution Abatement:** The operator of a new facility for animal feeding is expected to locate, construct, operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. The operator of an existing facility is expected to operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. Each operator shall comply with applicable state laws and rules, including the laws and rules administered by the North Dakota Department of Health and with any permits granted by that department.
- B. **Enforcement:** In the event of a violation of this Code or a judgment on a civil action by the North Dakota Department of Health, the local unit of government, after due process, can order cessation of a facility for animal feeding within a reasonable period of time and until such time as the operator corrects or abates the cause(s) of the violation. If the cause(s) of the violation are not remedied within a reasonable period of time as set by the local unit of government, the permit may be revoked.
- C. **Severability:** If any paragraph, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Code.

5.1.5 Setback Requirements

- A. **Water Resources Setbacks:** The operator of a new animal feeding operation that has more than 1,000 animal units shall not locate or establish that operation:
 - 1. Within a delineated source water protection area for a public water system. The source water protection areas for water supply wells include the entire wellhead

protection area. For the surface-water intakes of public water systems, source water protection areas include all or portions of the surface water that supplies the water for the public water system, including all or portions of the surface-water's shoreline.

2. Within 1,200 feet (365.6 meters) of a private ground water well which is not owned by the operator or within 1,500 feet (457.1 meters) of a public ground water well which does not have a delineated source water protection area.
3. Within 1,000 feet (304.7 meters) of surface water which is not included in a source water protection area.

B. Odor Setbacks:

1. The operator of a new facility for an animal feeding operation shall not locate that operation within the extra territorial zoning jurisdiction of an incorporated city.
2. An owner of property shall locate and establish a residence, business, church, school, public park or zone for residential use so as to provide a separation distance from any existing animal feeding operation. The separation distances, or setbacks, are listed in the following table. An owner of property who is an operator may locate the owner's residence or business within the setbacks. The Planning & Zoning Commission, upon approval of the County Commissioners may vary the setback distance after review of the permitting process.

Table 5.2. Setback Distances for Animals Feeding Operations

Setback Category	Number of Animal Units	Hog Operations	Other Animal Operations
Established Residences	5-50	0.50 miles	Not Applicable
	51-299	2.00 miles	0.50 miles
	300 – 1000	2.00 miles	0.50 miles
	1,001 or more	2.00 miles	0.50 miles
	2,001 or more	2.00 miles	0.75 miles
	5,001 or more	2.00 miles	1.00 miles
Churches, Businesses, Commercially Zoned Areas, Recreational Areas, Schools	5-50	0.50 miles	Not Applicable
	51-299	2.00 miles	0.50 miles
	300 – 1000	2.00 miles	0.50 miles
	1,001 or more	2.00 miles	0.50 miles

Setback Category	Number of Animal Units	Hog Operations	Other Animal Operations
	2,001 or more	2.00 miles	0.75 mi
	5,001 or more	2.00 miles	1.00 miles
Incorporated City Limits, Unincorporated Platted Limits, and Exterior Boundary of City Zoning Limits	5-50	0.50 miles	Not Applicable
	51-299	2.00 miles	0.50 miles
	300 – 1000	2.00 miles	0.50 miles
	1,001 or more	2.00 miles	0.50 miles
	2,001 or more	2.00 miles	0.75 miles
	5,001 or more	2.00 miles	1.00 miles
Federal or State Highway ROW	Fewer than 300	0.25 miles	0.25 miles
	300 – 1000	0.25 miles	0.25 miles
	1,001 or more	0.25 miles	0.25 miles
	2,001 or more	0.25 miles	0.25 miles
	5,001 or more	0.25 miles	0.25 miles
County, Township, and BIA Road ROW and Adjacent Property Lines	Fewer than 300	150 feet	150 feet
	300 – 1000	150 feet	150 feet
	1,001 or more	150 feet	150 feet
	2,001 or more	150 Feet	150 Feet
	5,001 or more	150 Feet	150 Feet

3. The operator of a new animal feeding operation shall locate the site of that operation from existing residences, businesses, churches, schools, public parks and areas of property that are zoned residential so as to exceed the corresponding listed setback from these places.
4. If notified in writing by an operator of a planned future expansion of an animal feeding operation, the local unit of government may implement the corresponding

odor setback for a temporary time period not to exceed two years, after which time the setback will remain in effect only if the expansion was completed.

5. A local unit of government may, upon recommendation of the zoning commission or land use administrator, increase or decrease a setback distance for a new animal feeding operation after consideration of the proposed operation's plans, if it determines that a greater or lesser setback distance is necessary or acceptable, respectively, based upon site conditions or demonstrable safety, health, environmental or public welfare concerns.

5.1.6 *Conditional Uses*

A. **Permit Procedures:**

1. **Applicability:** The operator of a new livestock facility or an existing livestock facility, which meets the definition of an animal feeding operation and which is a conditional use of land as listed below, shall apply for and obtain a conditional use permit.
 - a. A new animal feeding operation that would be capable of handling, or that expands to handle, more than 50 animal units is a conditional use of land.
 - b. An existing animal feeding operation that expands to handle more than 50 animal units is a conditional use of land.
 - c. Whenever the capacity of an animal feeding operation is expanded to handle more than 2,000 or 5,000 animal units, the operator shall apply for a new conditional use permit.
2. **Procedure:** The local unit of government may practice any or all of the provisions in the following subparagraphs in harmony with the permitting process of its general zoning regulations.
 - a. Application for a conditional use permit shall be submitted to the local unit of government for tentative approval. The local unit of government shall notify the Department of Health that it has received such application.
 - b. A non-refundable fee approved by the County Commission shall be paid by the applicant upon filing an application for a conditional use permit for an animal feeding operation.
 - c. The Applicant/Operator shall notify by certified mail all property owners having property within the corresponding odor setback distance of a proposed new animal feeding operation. This notification must occur within 21 days of receiving the application. The approval process utilized by the local unit of government may include at least one advertised public hearing.
 - d. Following tentative approval or denial of the application by the local unit of government, the applicant shall be notified by letter of the decision, including conditions imposed, if any.

- e. The applicant shall then forward its application for a conditional use permit, together with the tentative approval by the local government, to the North Dakota Department of Health.
- f. Following a review by the Department of Health of the operator's application for a state permit, the Department of Health will notify the local unit of government of its decision.
- g. The conditional use permit will become final following the granting of a permit by the Department of Health.
- h. A conditional use permit granted to the operator of a new animal feeding operation shall be put into use within twenty-four (24) months, or the permit shall lapse and the operator may re-apply.

3. **Application Requirements:** The application for a conditional use (or special use) permits to operate a facility for an animal feeding operation shall include a scaled site plan. If the facility will handle more than 1,000 animal units, the scaled site plan shall be prepared by a registered land surveyor, a civil engineer or other person having comparable experience or qualifications. The local unit of government may require any or all of the following elements, or require additional elements, in its site plan review process when needed to determine the nature and scope of the animal feeding operation.

- a. Proposed number of animal units.
- b. Total acreage of the site of the facility.
- c. Existing and proposed roads and access ways within and adjacent to the site of the facility.
- d. Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.
- e. A copy of the permit application submitted by the applicant to the Department of Health.

4. **Ownership Change:** An operator of a facility that includes an animal feeding operation having a permit granted by this Code shall notify the local unit of government of the sale, or the transfer of the ownership of that operation.

5. **Operating Change:** An operator of a facility that includes an animal feeding operation having a permit granted by this Code shall notify the local unit of government of intent to include an alternate livestock type. The notice shall be given at least 120 days prior to the anticipated date of the change.

5.1.7 Closure and Financial Assurance Instruments

A. The Mountrail County Commissioners shall establish by rule the conditions and standards for proper closure of a concentrated animal feeding operation upon cessation of operations.

These shall address at a minimum lagoon draining, cleaning and filling, removal of waste handling facilities and equipment, and other conditions to assure public health and safety.

- B. A letter of credit shall be posted in an amount sufficient to ensure proper closure. The exact amount shall be site-specific and shall be determined by a study conducted by a professional engineer or consultant licensed by the state. The cost of the engineer's or consultant's study will be paid for by the developers (posting entity). Refer to Section 6.12 for letter of credit detail.
- C. Upon proper closure, as determined by an inspection by the Health Department and/or County Representative the letter of credit shall be returned to the posting entity.
- D. If upon inspection by the Health Department and/or County Representative it is determined that conditions exist that do not comply with the closure rules, funds shall be acquired from the letter of credit to achieve such compliance. Any unspent portion of the letter of credit shall be returned to the posting entity.
- E. If the County Commissioners determine that an emergency situation requiring immediate corrective action exists, they can utilize the letter of credit to correct the emergency situation. The letter of credit will be reimbursed to the original amount by the duly signed person(s) on the permit or registration application within ninety (90) days of the emergency or as agreed upon by the County Commissioners. If there is any change in the letter of credit, the County must be immediately notified in writing.

5.1.8 Closure Requirements

The following closure requirements are intended for all new CAFOs located in Mountrail County that have an animal unit capacity of 1,000 animal units or more. Existing facilities may use these closure regulations voluntarily as a part of their environmental program. The county reserves the right to require closure of any impoundment using these requirements that is shown to pose imminent and substantial harm to human health or the environment.

A. Notice of Termination:

1. Name, address, and title of person(s) who is in charge or will remain in charge of or otherwise have continuing management responsibility of the facility or site and who will retain an ownership interest in personal or real property affected by the permitted action.
2. A detailed schedule of proposed closure activities of the operation and/or any part of the abandoned wastewater treatment system.
3. Forwarding addresses and names of each present owner and/or operator and the forwarding addresses and names of any other person listed in a County Permit for the facility, in the case of closure of the operation.

- B. **Requirements are Mandatory:** It shall be a violation of these rules to permanently cease the use or abandon any facility or site or any part of the wastewater treatment system, including but not limited to pits, lagoons, impoundments, piping, disposal areas, storage areas, and land application sites without complying with notice and closure requirements.
- C. **Correction of Environmental Damage:** The county may require such continuing monitoring, sampling, reporting, or other remedial measures as deemed appropriate and necessary to correct environmental damage resulting from the activities subject to the requirements of these rules. Appropriate and necessary remediation measures shall be reviewed and approved and/or determined by the county on a case-by-case basis as allowed by this regulation and other applicable rules and laws. The county may require that the permittee or person(s) responsible for proper closure of the facility to provide such information to the county as is necessary to determine what remedial measures are appropriate and necessary.
- D. **Conditions Requiring Closure and Time for Closure:** When any part of a wastewater treatment system, including but not limited to concrete pits, surface impoundments, sludge disposal areas, carcass disposal areas, and land application sites, is to be permanently taken out of the intended service or if the contents of the system or use of the system poses an direct, imminent, or substantial risk to the health and environment or irreparable harm to waters of the state, the owner or operator or permittee (whichever is applicable) shall be required to properly close the part of the wastewater treatment system within six (6) months, unless a longer amount of time is granted by the county.
- E. **Imminent Harm:** The county may order or otherwise require closure within a shorter period of time as allowed by law in appropriate circumstances, such as in cases where it is necessary to protect human health and welfare or to protect wildlife or beneficial uses of waters of the state.
- F. **Waiver of Closure Requirements:** The county may waive some or all closure requirements if the surface impoundments or other aspects of the wastewater treatment system must be closed under federal (e.g., Resource Conservation & Recovery Act (RCRA) regulations) or state regulations (e.g. N.D. regulations), if such regulations provide equivalent protection of the health and environment as provided by these county regulations.
- G. **Prevention of Formation of Nitrates:** The closure of surface impoundments that contained wastes and wastewaters generated by a wet manure system shall be considered a priority in order to prevent the formation of nitrates by any accumulation of ammonium-saturated soils that when environmentally conditions change may be biologically changed to nitrates.
- H. **Empty Surface Impoundments:** At no time shall a surface impoundment be placed into operation if allowed to dry to the point of erosion and cracking of the soil liner system

without physical improvement to the liner system, a new assessment of the liner permeability and seepage, and approval by the county to utilize the lagoon as part of the wastewater treatment system for a wet manure system.

- I. **Liner Integrity:** The partial or total closure of surface impoundments shall be required if the liner integrity has been jeopardized beyond reasonable repair, including but not limited to the following situations:
 1. **Flexible Membrane Liner Bubbles:** If the flexible membrane liner develops bubbles that push the liner material from the sub grade material. A partial closure may be required to remove the liquid in the lined lagoon prior to remedying the problem area. A total closure may be required, if the integrity of the liner has been jeopardized beyond reasonable repair.
 2. **Soil or Clay Liner Erosion:** If the soil or clay liner has eroded beyond reasonable repair causing the potential for leakage into the subsurface, a partial or total closure may be required.

5.1.9 Closure Procedure

The following closure requirements apply to any animal feeding operation wastewater treatment system which is permitted by the county or contains or has contained wastes regulated by the county:

- A. **Pre-closure Site Investigation:** Prior to submitting a closure plan to the county, the owner or operator or permittee, whichever is appropriate, shall perform a pre-closure site investigation after the county has approved the pre-closure site investigation and sampling plan.
- B. **Plan Submittal:** A pre-closure site investigation and sampling plan shall be prepared and submitted to the county for approval at least thirty (30) days prior to any pre-closure sampling, monitoring, or other site investigation. The plan shall including the following:
 1. Narrative description of the proposed pre-closure site investigation including a list of all systems, impoundments, appurtenances, structures, disposal areas, and other areas of environmental concern will be evaluated for potential sites for sampling, monitoring, or other names of investigation used to determine closure activities.
 2. A detailed description of any ground water, surface water, and/or soil sampling including a facility map showing intended sites for sampling; description of sampling methods, list of analytical parameters including EPA method, detection limit, and units of reporting; and intended purpose for each type of sampling and analysis.
- C. **Monitoring Plan:** Any monitoring plan shall include the applicable requirements as listed by the state and this Code.

- D. **Approval of Plan:** The county will review the pre-closure site investigation and sampling plan within thirty (30) days of submittal to the county and respond to the submitter with either a list of deficiencies or an approval of the plan. If deficiencies are identified by the county, the submitter shall promptly correct such deficiencies and submit a revised plan.
- E. **Site Investigation and Reporting:** The owner or operator or permittee, whichever is applicable, shall perform the site investigation and report to the county the results of all ground water, surface water, and soil analyses, as well as prepare a brief summary of all critical environmental problems that will be addressed in the closure plan.
- F. **Closure Plan:** A written closure plan shall be submitted to the county at least ninety (90) days prior to commencing closure, unless a lesser amount of time is granted by the county.
- G. **Closure Action:** Closure activities shall occur as specified in the closure plan.
 - 1. The county shall be notified at least five (5) working days prior to the commencement of closure in order to facilitate on-site inspection or other site visit.
 - 2. If the wastewater treatment system contained Class I or Class II wastewater or is located in a high risk environment, the closure activities shall be overseen by a professional engineer registered in the State of North Dakota or if approved by the county, by an environmental specialist with formal training in wastewater treatment and ground water pollution controls.
- H. **Amendments:** Any amendments to the closure plan shall be submitted in writing to the county for review and approval before any closure activity is altered, replaced, or deleted. Arrangements may be made with county for verbal approval of changes during closure activities, when necessary for safe and effective closure, providing that the changes are immediately submitted in writing for inclusion in the public file.
- I. **Commence Activities:** Closure activities shall not commence until the closure plan and all amendments thereto have been evaluated by the county and the county has issued a written determination that, based upon information provided to the county, the closure plan or the amended closure plan meets the requirements of the county and these regulations.
- J. **Certification of Closure:** A closure shall not be considered complete until the county has received written certification of closure, which shall include the following:
 - 1. A statement that all activities listed in the county-approved closure plan was performed.
 - 2. A list of all closure activities that were performed (e.g., field notes from the attending engineer) and a narrative discussion of all inspections, sampling and analysis, and other pertinent information as may be required by the county.

3. If the wastewater treatment system contained a Class I or Class II wastewater, the certification shall be prepared and signed by a professional engineer registered in the state of North Dakota, or if approved by the county, by an environmental specialist with formal training in wastewater treatment and ground water pollution controls.

K. Closure Plan Requirements: At a minimum, the written closure plan shall include the following information, as well as information as requested by the county:

1. **General Information:** The following general information shall be provided in all closure plans:
 - a. **Purpose of Closure:** State the purpose of closure indicating the reason why the waste management system, in part or in whole, is or is proposed to be no longer in use.
 - b. **Permit Number:** Provide the federal, state and county permit numbers for the facility. If the facility has not been permitted, the county may require information usually submitted with a permit application.
 - c. **Owner/operator Information:** Provide the name, address, and telephone number for the owner of the facility and the operator of the facility.
 - d. **Consent:** If the operator is not the sole record owner of the land, surface property interests and all water rights, then the operator shall provide a written document from such owner(s) indicating that the owner(s) have read the proposed written closure plan and consent to any specified on-site or off-site disposal of wastes, wastewaters, contaminated soils, construction debris, and other potential wastes identified during closure.
 - e. **Schedule:** Provide a schedule indicating the major closure activities, the approximate time to complete each activity, and the estimated time required to achieve completion of all closure activities.
 - f. **Certification:** If the waste management system, in part or in whole, that is proposed to be closed contained Class I or Class II waste or wastewaters, the closure plan shall be reviewed and signed by a licensed professional engineer registered in the State of ND with a certification statement that the closure plan activities will be protective of human health and the environment, including water of the state.
2. **Site Assessment:** The following minimum information about the site shall be provided in the closure plan:
 - a. **Soils:** Identify the type of soil(s) by soil series name impacted and include a description of the soil profile and the depth to bedrock and/or to the producing aquifer. List chemicals and physical properties of the soil, and their average values for the site, that predict the transport and fate of the pollutants of concern in the waste contained in the waste management

system to be closed. Photocopies of soil maps from the Soil Conservation Service and/or recent aerial photographs shall be included.

- b. **Ground Water:** Identify major and minor ground water aquifers, recharge areas, depth to ground water for both shallow and drinking water sources, local and regional direction of flow, and estimated or actual background water quality of the shallow and drinking water source. Topographic, geologic, hydrologic, and other maps shall be used to indicate location and extent of ground water at the site, including local and regional direction of ground water flow.
- c. **Surface Water:** Identify surface water bodies that may be hydraulically connected to the ground water or are immediately down gradient of the drainage area around the waste management system, including the land application area to be closed. Trace the drainage to the nearest major watercourse on a topographic map of appropriate scale.
- d. **Plans and Specification:** Provide the engineering plans and specification that details the "as-built" conditions of the waste management system to be closed indicating the dimensions of the impoundments, location of and materials used for piping and appurtenances, location of inflow and outflow piping, location and thickness of sludge, and depth of wastewater in each impoundment.
- e. **Land Application Area:** Provide records that state the amount and type of wastewater applied to the land application area, the type of crops grown, number of crops grown using wastewater, annual volumes of wastewater applied, wastewater analysis(es), and soil tests.

3. **Waste Characterization:** The following minimum information about the wastes currently contained and historically contained in the waste management system shall be provided in the closure plan.
 - a. **Historically Contained Wastewater:** Provide an inventory of wastes and other records that indicate the types and concentration of wastes and wastewaters that are contained in the waste management system to be closed. Indicate the frequency and volume of each type of waste that was or may have been contained or otherwise placed in the system, including but not limited to pesticides, rat and fly bait, pharmaceuticals, manure and urine, disinfectants, feed additives (e.g., metals, nutrients, and other conservative materials) and any solid waste, such as dead animals, placentas, waste feed, and sharps. Include spill response data sheets.
 - b. **Currently Contained Wastewater:** Provide a wastewater analysis of the waste or wastewater currently contained in the waste management system using composite samples for overall characterization and grab samples that are representative of the most concentrated portions of the waste to determine areas of priority clean-up.

4. **Sampling, Analysis, and Monitoring Plans:** Sampling, analysis, and monitoring used before, during, and after closure shall be proposed to the county in a written plan as follows:
 - a. **Sampling and Analysis Plan:** All sampling and analysis of the currently contained wastewater shall be performed according to a pre-approved written sampling and analysis plan developed using regulations for "pre-closure sampling".
 - b. **Monitoring Plan:** All monitoring shall be performed according to a pre-approved written monitoring plan developed using regulations for "monitoring plan".
 - c. **Sampling and Monitoring Locations:** All sampling and monitoring locations shall be clearly indicated on a facility map accompanied with a description of the location of each site, purpose of each sampling and monitoring site, and duration of sampling and monitoring at each site.
5. **Treatment, Removal, and Disposal:** The closure plan shall include the following minimum discussion of treatment, removal, and disposal activities, as well as any additional information required by the county or deemed necessary for clarification:
 - a. **Treatment:** Describe all treatment methods to be used to treat or reduce any wastewater and/or sludge in the impoundment (e.g., chemical or physical treatment, phase separation, waste stabilization, or other method). Provide a written rationale for each treatment method to be used, the anticipated outcome of that treatment, and sufficient evidence of its effectiveness.
 - b. **Removal:** Describe all removal activities for all wastes, wastewaters, sludges, liner materials, and contaminated subsoils (e.g., volume to be removed, equipment used, dust control, spill response, containers, transport, and other activities).
 - c. **Backfill:** If the waste management system, part or in whole, is to be closed by backfilling with soil, estimate the volume of soil needed considering compaction and settling. Include discussion of the material used as backfill, its source, method of compaction, and other activities.
 - d. **Disposal:** Provide the name and location of all off-site facility(ies) to be used to dispose of materials removed from the site, including but not limited to piping and fittings, tanks, concrete, liner materials, appurtenances, construction debris, contaminated subsoils, wastes and wastewaters (both treated and raw waste), and provide the name of the issuing agency (if disposal permit is required), permit number or other information necessary to determine proper authorization can and will be obtained for such disposal.
6. **In-place Closure Requirements:** In addition to the other requirements listed in these closure regulations, the following additional requirements shall apply for "in-place closure":

- a. **Pollutants of Concern:** List the types and potential concentrations of the pollutants of concern that are or may be present in the wastes and wastewaters, sludges, and contaminated subsoils.
- b. **Alternatives:** If the pollutants cannot be physically removed in total or must otherwise be closed in place, the closure plan shall include a discussion or remediation alternatives evaluated prior to the decision to use "in-place closure" (ie., closing with some portion of the pollution in-place). Typical alternatives include: clean closure, waste reduction, or chemical, physical, or biological treatment and documentation as to the effectiveness of each alternative.
- c. **Containment:** Include a discussion of containment alternatives (e.g., waste stabilization, impervious cap, or other system of protecting waters of the state, public health and the environment) and documentation as to the effectiveness of the containment measure.
- d. **Partial Remediation:** Include a proposal of which remediation and/or containment alternative(s) will be implemented for each portion of the waste management system to be closed. Include sampling and analysis plan that will provide information about the type and concentration of pollutants left in the closed facility and portions thereof that are part of the waste management system closed.
- e. **Post-closure Activities:** Include discussion of all post-closure activities, such as ground water monitoring, surface water monitoring, water or land use restriction, or deed restrictions.

7. **Clean Closure Requirements:** In addition to other requirements listed in these closure regulations, the following additional requirements shall apply for "clean closure":

- a. **Pollutants of Concern:** List the types and potential concentrations of the pollutants of concern that are or may be present in the wastes and wastewaters, sludges, and contaminated subsoils.
- b. **Alternatives:** Provide an evaluation of the feasibility of "clean closure" (i.e., complete removal all wastes and wastewaters, contaminated subsoils, liner materials, equipment, piping, concrete, etc. and insuring contaminated subsoils are at a level similar to background concentration or at a level that will not adversely impact the environment, waters of the state, or public health). Include a discussion of available technology to be used, extent of contamination, effectiveness of technology, and other decision factors.
- c. **Full Remediation:** Include a proposal of which remediation and/or containment alternative(s) will be implemented for each portion of the waste management system to be closed. Include sampling and analysis plan that will provide information about the type and concentration of pollutants left in

the closed facility and portions thereof that are part of the waste management system closed.

- d. **Clean-up Target:** Discuss target clean-up level of pollutants of concern in the wastes and wastewaters, sludges, and contaminated subsoils, and the sampling and analytical methods to be used to determine that clean closure has been achieved for the pollutants of concern.
- e. **Post-closure Activities:** Include discussion of all post-closure activities, such as ground water monitoring, surface water monitoring, water or land use restrictions, or deed restrictions.

5.2 Mineral Exploration and Mineral Production

- A. All mineral exploration and mineral production or exploration, production of sand, gravel, scoria, clay activities shall be considered as a conditional use and, as such, shall conform to all requirements put on them by the Planning and Zoning Commission.
- B. Borrow activities related to public road construction are exempt from these standards, except when any aggregate mining is taking place. Borrow activities for private, non-commercial use are also exempt from these standards.
- C. No Conditional Use Permit shall be issued unless satisfactory provision for the following has been made:
 - 1. The activities will not result in undue damage or injury to roads, bridges, rights-of-way in the county or to any county, public, or private property.
 - 2. Evidence of a reclamation or non-reclamation agreement with the surface owner must accompany the conditional use permit application.
 - a. If reclamation is included, reclamation of project shall be finished within one (1) year of the conditional use permit associated with mining activities.
 - 3. A plan for stockpiling of material during and after cessation of mining activity must be included. If stockpiling is proposed to continue after mining activity, the Conditional Use Permit must be reviewed and renewed by the Zoning Administrator on an annual basis.
 - 4. Evidence of compliance with all county, state and federal regulations.
 - 5. Evidence that the activity is in compliance with distance requirements in relation to adjacent residents, property owners and water sources as set by the Planning and Zoning Commission.
 - 6. A Road Haul Agreement shall be entered into between the gravel/scoria/clay pit operator and/or gravel/scoria/pit owner and the political subdivisions whose roads will be impacted by the operation detailing road maintenance responsibility and dust control measures which must accompany the application. The agreement shall be in

place during mining and stockpiling activities. The agreement shall follow the requirements of Section 6.13.

7. All contractors performing mineral exploration and production shall be licensed with Mountrail County to ensure the contractor's financial credibility. A letter of credit is required in conjunction with the contractor's County mineral exploration and production license. The letter of credit amount shall be based on the number of pits the contractor is using. The letter of credit scale for pit contractors is set by resolution of the Board of County of Commissioners. Additional requirements for the letter of credit are provided in Section 6.12.
8. Limit of eighty (80) surface acres per application.
9. Federal and State lands are exempt from County letter of credit requirements.
10. North Dakota Contractor's License.
11. A sign in the dimensions of at least 2' x 2' shall be placed all points of entry and exit from the mineral exploration and mineral production or exploration area that lists the following information:
 - a. Emergency contact information
 - b. Legal owners(s) of the real property
 - c. Operator of the pit
 - d. Legal description of the real property upon which the development is occurring.
12. Written easement for ingress and egress to the property to be developed from the fee owner(s) of the real property.
13. Gravel mines require a 1/4 mile setback from existing dwellings.

5.3 Temporary Housing/Workforce Housing (Minor)

5.3.1 Purpose

This Code provides a framework for siting, construction, and operation of temporary housing/workforce housing designed for minor projects. The intent is to provide more flexible procedures for temporary housing that does not meet the definition of a major workforce housing operation. Examples of a temporary housing/workforce housing (minor) include housing required for minor construction projects or beekeeping that occur outside of the unique circumstances of oil and gas development. The ordinance is intended to preserve the safety and well-being of residents and facilitate equitable and orderly development of a temporary nature.

5.3.2 *Applicability*

The requirements of this Code apply to all temporary housing/workforce housing with 25 occupants or fewer constructed in this County after the effective date of this Code.

5.3.3 *Duties of the County Zoning Administrator*

Temporary/workforce housing zoning shall be administered by the Mountrail County Commission with supervisory assistance from the Mountrail County Zoning & Planning and Zoning Commission, the County Zoning Administrator, and supplemental assistance from other county departments.

The Zoning Administrator shall have the following duties:

- A. Conduct preliminary administrative review of each permit application and other information as required by this Code.
- B. Conduct an in-depth appraisal of each application.
- C. Maintain records and permits as required by this Code.
- D. Provide open records to requestors concerning this Code in accord with the open records law.
- E. Inspect temporary housing/workforce housing facilities to ensure compliance with the standards of this Code.

5.3.4 *Conditional Use Permit Availability by Zone*

- A. Table 3.1: Uses by Zoning District lists all permissive and prohibitive districts for temporary/workforce housing (minor).

5.3.5 *Standards*

- A. Off-street parking shall be provided on a one-to-one ratio, one parking space per bed.
- B. Housing units shall be spaced a minimum of (14) feet apart to ensure adequate space to accommodate emergency services.
- C. No animals are allowed on the premises of a temporary/workforce housing facility, except for service animals as defined by the Americans with Disabilities Act.
- D. The site is to remain free of garbage and refuse.

- E. At the end of the time period of the permit, the operation must cease and be reclaimed. A letter of credit in the amount specified in Section 6.12 must be provided to cover reclamation costs in the event the operator or owner is unable.

5.3.6 Application Requirements

- A. A copy of the deed and or lease to the real property on which the temporary/workforce facility will be located.
- B. Engineered/scaled site plan showing the location of housing units with unit numbers, additional structures, setbacks, utilities, drainage, ingress and egress, buffers, and fencing. The type of living units must be specified, along with the total number of planned units.
- C. A description of how the temporary/workforce housing units will be set or anchored to the ground.
- D. A letter from the Mountrail County Engineer's office stating they have reviewed the plans and the roads to be constructed within the facility will meet County Road Department specifications.
- E. A copy of the permit and/or correspondence from the North Dakota Department of Health stating that plans for septic, fresh water, and refuse disposal are under review or have been approved.
- F. A copy of the facility's security plan.
- G. A copy of the facility's emergency evacuation plan.
- H. Letter of comment from the Township Board of Supervisors and or Cities under the County's Zoning authority, stating they have reviewed the project, list any concerns they may have regarding the project and whether or not they support the project.
- I. Letter of comment from the ambulance service providing service to the proposed site stating they have reviewed the project, list any concerns they may have regarding the project and whether or not they support the project.
- J. Letter of comment from the fire department providing service to the proposed site stating they have reviewed the project, list any concerns they may have regarding the project and whether or not they support the project.
- K. Letter of comment from the Mountrail County Sheriff's Office stating they have reviewed the project, list any concerns they may have regarding the project and whether or not they support the project.

- L. Letter of comment from the school district in which the proposed facility is to be located. The written comment must state that they have reviewed the project, any concerns they may have regarding the project, and whether or not they support the project.
- M. Provide a letter of credit as stipulated in Section 6.12. The letter of credit shall be in place to ensure site restoration. The letter of credit shall be the sum equal to the total cost of reclamation as estimated by a North Dakota licensed engineer. The estimate provided by a North Dakota licensed engineer shall be verified by the Board of County Commissioners or designee.
- N. A non-refundable annual fee approved by resolution of the County Board of Commissioners.
- O. Any additional information which may be requested by the Planning & Zoning Board and/or County Commission.

5.4 Temporary Housing/Workforce Housing (Major)

5.4.1 Purpose

This Code provides a framework for siting, construction and operation of major temporary housing/workforce housing operations in the County that will preserve the safety and well-being of the residents and facilitate equitable and orderly development and be temporary in nature for a significant construction project, i.e. construction of a pipeline or large industrial facility.

5.4.2 Applicability

The requirements of this Code apply to all temporary housing/workforce housing with more than 25 occupants, constructed in this County after the effective date of this Code.

5.4.3 Duties of the County Zoning Administrator

Temporary/workforce housing zoning shall be administered by the Mountrail County Commission with supervisory assistance from the Mountrail County Zoning & Planning and Zoning Commission, the County Zoning Administrator, and supplemental assistance from other county departments.

The Zoning Administrator shall have the following duties:

- A. Conduct preliminary administrative review of each permit application and other information as required by this Code.
- B. Conduct an in-depth appraisal of each application.
- C. Maintain records and permits as required by this Code.

- D. Provide open records to requestors concerning this Code in accord with the open records law.
- E. Inspect temporary housing/workforce housing facilities to ensure compliance with the standards of this Code.

5.4.4 Conditional Use Permit Availability by Zone

Table 3.1: Uses by Zoning District lists all permissive and prohibitive districts for temporary/workforce housing.

5.4.5 Standards

- A. Off-street parking shall be provided on a one-to-one ratio, one parking space per bed.
- B. Housing units shall be spaced a minimum of (14) feet apart to ensure adequate space to accommodate emergency services.
- C. No animals are allowed on the premises of a temporary/workforce housing facility, except for service animals as defined by the Americans with Disabilities Act.
- D. The site is to remain free of garbage and refuse.
- E. At the end of the time period of the permit, the operation must cease and be reclaimed. A letter of credit in the amount specified in Section 6.12 must be provided to cover reclamation costs in the event the operator or owner is unable.

5.4.6 Application Requirements

- A. A copy of the deed and or lease to the real property on which the temporary/workforce facility will be located.
- B. Consent to background check on owner/developer of the housing facility.
- C. Applicant or affiliated business is in good standing with the North Dakota Secretary of State.
- D. Whether the applicant has ever engaged in the business of owning or operating a temporary/workforce housing facility; and if so, the date and locations of such ownership or operation.
- E. Whether the applicant has any agreement, understanding or intention to have any agreement or understanding with any person to obtain for any person or to transfer to any other person the conditional use permit obtained or use the conditional use permit for any

other person than the specific use of the applicant, and if so, the names and addresses of such persons and the conditions of such agreements.

- F. Engineered/scaled site plan showing the location of housing units with unit numbers which are legible 24 hours a day, additional structures, setbacks, utilities, roads, parking, dumpster locations, septic tanks, drain fields, storm water retention ponds, ingress, egress, screens, buffers, fencing, street lights and any plans for future development. The type of living units must be specified, along with the total number of planned units.
- G. A description of the housing units, with drawings if available, and a description of how these units are to be set and/or anchored to the ground.
- H. A letter from the Mountrail County Engineer's office stating they have reviewed the plans and the roads to be constructed within the facility will meet County Road Department specifications.
- I. A storm water drainage plan prepared by a North Dakota licensed engineer.
- J. Permit and/or correspondence from the North Dakota Department of Health stating the septic plan for the area is under review or has been approved and where the septic materials will be disposed.
- K. Permit and/or correspondence from the North Dakota Department of Health stating the water source providing fresh water to the site is under review or has been approved.
- L. Copy of contract or letter of commitment from solid waste hauler stating how many times the dumpsters will be emptied and where the solid waste will be disposed.
- M. Copy of the facility's written security plan to include but not limited to a criminal background check on all residents residing in the facility, weapons policy, and alcohol policy.
- N. Copy of the facility's emergency plan to include the contingencies for but not limited to fire, tornado, severe weather, and other natural disasters.
- O. Copy of the facility's closure plan.
- P. Provide a letter of credit as stipulated in Section 6.12. The letter of credit shall be in place to ensure site restoration. The letter of credit shall be the sum equal to the total cost of reclamation as estimated by a North Dakota licensed engineer. The estimate provided by a North Dakota licensed engineer shall be verified by the Board of County Commissioners or designee.

- Q. Letter of comment from the Township Board of Supervisors and or Cities under the County's Zoning authority, stating they have reviewed the project, list any concerns they may have regarding the project and whether or not they support the project.
- R. Traffic plan showing ingress and egress to the site, which roads will be used and a road maintenance agreement between the developer and the political subdivision whose roads will be impacted.
- S. Letter of comment from the ambulance service providing service to the proposed site stating they have reviewed the project, list any concerns they may have regarding the project and whether or not they support the project.
- T. Letter of comment from the fire department providing service to the proposed site stating they have reviewed the project, list any concerns they may have regarding the project and whether or not they support the project.
- U. Letter of comment from the Mountrail County Sheriff's Office stating they have reviewed the project, list any concerns they may have regarding the project and whether or not they support the project.
- V. Letter of comment from the school district in which the proposed facility is to be located. The written comment must state that they have reviewed the project, any concerns they may have regarding the project, and whether or not they support the project.
- W. A non-refundable annual fee approved by resolution of the County Board of Commissioners.
- X. Fees must be paid in full for all approved years prior to the building permit being issued and any improvements made to the site.
- Y. Any additional information which may be requested by the Planning & Zoning Board and/or County Commission.

5.5 Landfills

5.5.1 Requirements

A. General Standards:

- 1. Each waste disposal site described herein shall be considered a conditional use and shall be subject to general standards and procedures for approval of conditional uses (Article 6.4).

2. All waste disposal sites shall comply with the requirements of this section and any additional conditions set by the Planning and Zoning Commission that may be deemed necessary to protect public health, safety, and welfare.
3. All waste disposal sites shall be specially selected, designed, and operated for disposal of solid waste in accordance with NDCC 23.1-08, and shall conform to all applicable state and federal regulations.
4. The requirements of this section shall not supersede requirements for waste management pertaining to Animal Feeding Operations (Article 5.1).

B. Private Landfills:

1. Private landfills are allowed in accordance with state law.
2. Private landfills shall be limited to one per landowner and used only for refuse generated from personal farming operation.
3. Private landfills shall avoid low and steep areas and be set back a minimum of two hundred fifty (250) feet from perennial and intermittent waterways as defined by the North Dakota Department of Water Resources.

C. Commercial and Public Landfills:

1. Waste disposal at commercial and public landfills shall be limited to inert solid waste and municipal solid waste. Disposal of waste that is deemed hazardous in nature or that exerts hazardous characteristics, such as nuclear waste, sewage sludge, and incinerator ash, is not permitted, with the exception of waste containing TENORM (Section 5.5.1.D).
2. All areas for excavation and filling operations shall maintain a minimum setback of 150 feet from all property lines.
3. A buffer surrounding the landfill property of $\frac{1}{2}$ mile must be established by the applicant. The buffer must be created in the form of an easement that includes a no-build requirement and an acknowledgement of potential offsite landfill impacts.
4. No fires shall be permitted, except by permission of the Board of Mountrail County Commissioners. Any smoldering flame or spontaneous combustions at the site shall be immediately extinguished.
5. The premises shall be kept neat and clean at all times. No loose debris shall be allowed on the site, except in areas where active filling operations are taking place.
6. Entrance to the site shall be controlled at all times to prevent improper dumping on the site.
7. All facilities that manage solid waste shall be enclosed on all sides within a chain link fence not less than six (6) feet in height, with gated access and uniform appearance.
8. A sign measuring at least two feet by two feet (2' x 2') shall be placed at all points of entry and exit from the site. The sign shall lists the following information:

- a. Legal owner(s) of the real property
- b. Operator of the site
- c. Emergency contact information
- d. Legal description of the real property upon which the development is occurring

9. Provisions to manage surface and storm water impacting the site, during and after the completion of the operation, shall be approved by an independent professional engineer that is registered by the State of North Dakota.
10. Landfill excavation, construction, and operation shall not have any adverse effect on the supply or quality of ground water.
11. Operators of a commercial landfill may have an environmental inspector on site. Provisions shall be made for the cost to be paid by the operator to the North Dakota Department of Environmental Quality (DEQ) or to Mountrail County as may be negotiated with the DEQ.
12. Commercial landfills shall be required to have non-sudden and sudden liability insurance and closure and post-closure insurance payable to the DEQ.

D. TENORM Disposal:

1. TENORM disposal shall comply with State permitting requirements, Mountrail County's requirements for conditional use permitting and public hearings process (Section 6.5), general requirements for commercial solid waste disposal sites (Section 5.5.1.C), and the requirements of this section.
2. Disposal of TENORM shall be prohibited at public waste disposal sites.
3. Applications for permitting of TENORM disposal shall include the following:
 - a. Demonstrated completion of the pre-application process required by North Dakota Department of Environmental Quality (DEQ) to obtain a Radioactive Materials License and a Solid Waste Management Permit, including a statement from the DEQ that summarizes the proposal and any initial concerns they may have about the project.
 - b. A non-refundable application fee approved by the County Board of Commissioners.
 - c. A scaled site plan for the proposed landfill or landfill expansion, to include all elements described in Section 6.5.F and any additional elements requested by the Planning and Zoning Commission.

5.6 Wind Energy Facility, Utility Scale

5.6.1 Purpose

This Code provides a framework for siting, construction, and operation of a wind energy facility in the County that will preserve the safety and wellbeing of residents and facilitate equitable and orderly development.

5.6.2 Permitted Districts

A wind energy facility or part of one shall be conditionally permitted in the Agriculture (Ag) District and shall be prohibited in all other districts.

5.6.3 Definitions

Adjoining land: Real property that has a different owner than the host property and is either contiguous to the host property at any point or segment, or is separated from the host property by an intervening fee simple interest that is less than 5RD (5 times the turbine rotor diameter).

Airstrip: A takeoff and landing area for fixed wing aircraft, whether publicly or privately owned, that was given an FAA numerical designation sometime before March 1, 2009.

Applicant: A person who files an application for a conditional use permit.

Facility owner: A person or persons having an equity interest in the wind energy facility.

Feeder lines: Power lines between a wind energy facility's collector stations or substations and the region's high voltage transmission lines.

Gross weight: The weight of a vehicle without a load plus the weight of any load on it.

Host property: The lot on which a wind turbine is located. A wind energy facility may contain several host properties. The fact that adjoining properties having various respective owners are covered by related options, leases, or easements to a single facility owner does not cause the various land owners to be a single host property. Each parcel containing a turbine is a host property even if an abutting property belonging to another property contains a turbine belonging to the same facility owner.

Hub height: The distance measured from the surface of the tower foundation to the height of the axis of the wind turbine hub.

MET tower: A meteorological structure used to collect data on wind and/or weather conditions.

Military facility: Any Department of Defense (DOD) facility in the county, including, but not limited to, missile launch and missile alert facilities.

Occupied structure: A manmade shelter in which people either live, meet, conduct business, or gather, in addition it includes but is not limited to a residence, dwelling, apartment house, condominium, or residential setting; any structure open to the public for business that regularly

conducts business including but not limited to a hotel, motel, campground, stable, mall, school, hospital, church, public library, store, manufacturing facility, or sport venue; or other structure that is either legally inhabited, in use or under substantial construction (e.g. surface has been improved in preparation for construction) at the time the permit application is submitted for use as one of the above.

Operator: The person responsible for the day-to-day operation and maintenance of a wind energy facility. A facility owner may contract with or hire a person to operate it.

Participating residence: Any residence associated with property participating in the wind energy facility proposal, likely to include to include wind turbines and associated improvements on the property.

Permittee: The person holding the conditional use permit. Permittee may include the subsidiaries, agents, subcontractors, independent contractors, and employees of the person holding the permit; i.e. for purposes of liability for road damage caused in erection or maintenance.

Person: An individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Public road: Every way or place generally open to vehicle travel, even though it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair or maintenance (NDCC 57-43.1-01). A section line is a public road (NDCC 27-07-03).

Pure tone noise: A simple tone that has only one frequency, although its intensity may vary.

Non-participating residence: Any residence not associated with property participating in the wind energy facility proposal.

Rotor diameter: The distance of a line segment that bisects the center of the hub and terminates at the circle that encompasses the tips of each rotor blade that are farthest from the hub. For example "RD" means a distance equal to five times the rotor diameter or ten times the radius and on a turbine with rotor blades 70 meters long (measured from the center of the hub) the rotor diameter will be 140 meters.

Site: A contiguous tract or group of parcels for which one operator and/or facility owner or group acting in concert has option agreements, easements, and/or leases acquired to operate a turbine, wind energy facility or accessory thereto.

Site perimeter: The outside boundary of the contiguous parcels all having either an option, easement, and/or lease agreement for a wind energy facility accessory to the same facility owner.

Turbine height: The distance measured from the ground level surface of the tower foundation to the highest point of the turbine rotor plane.

Unoccupied structure: A structure not intended for permanent or temporary human or animal habitation.

Wind turbine: A device that captures kinetic energy from the wind to drive an electrical generator. Its typical components include blades, tower, accelerator platform, or nacelle body.

Wind energy facility, utility-scale: An electric generating facility, the main mechanical or electrical purpose of which is to produce and distribute electricity for wholesale. It consists of one or more wind turbine and other accessory structures, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities. Utility scale wind energy facilities are not intended for personal use, but for commercial generation at the utility scale.

Wind energy facility, small: A device such as a wind charger, windmill, or wind turbine and associated facilities that convert wind energy to electric energy, intended for a specific site. Small wind energy facilities generate power for a single business, residence, or a similar limited use. Small wind energy facilities are not designed and constructed to distribute electricity for wholesale. Stand-alone small wind energy facilities are treated as accessory structures and must comply with all regulations pertaining to accessory structures.

5.6.4 *Development and Operating Standards*

A. **Appearance Standards:**

1. Wind turbines shall be painted a non-obtrusive color with a non-reflective coating.
2. Wind turbines shall display no advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.
3. Wind turbines shall not be artificially lighted except to the extent required by the Federal Aviation Administration (FAA) or its successor.

B. **Setback Standards:**

1. Turbine placement shall comply with all setback requirements in Table 5.3.
2. Setbacks shall be measured as the horizontal distance between the base of the turbine and the nearest point of the object, easement, or property line.

Table 5.3 Wind Energy Facility Setback Standards

Setback Category	Setback Distance from Base of Turbine
Habitable structures, public facilities, and recreation areas	1 mile

Nonparticipating residences, habitable structures, public facilities, and recreation areas	1 mile
Participating residences	1/2 mile
All nonparticipating property lines and adjoining property lines (site perimeter)	1/2 mile
Airstrips	1 1/2 mile
Public rights of way, utility easements for above-ground utilities, and section lines	1/8 mile. 1/4 mile if tower is taller than 660' to blade tip.
Military Facility	2 miles

3. Variance to Setback:

- a. A separate variance application must be provided for each wind energy facility structure.
- b. A variance to a setback related to private property can only be granted if the permittee and the affected party sign a waiver agreement.
- c. The Planning and Zoning Commission can only issue a variance from a setback requirement regarding an occupied structure if that structure has not been used as an occupied structure in a year or more prior to submission of the request for variance.
- d. **Notice of Hearing:** It is the obligation of the party seeking the variance to the setback requirement to serve notice of the initial hearing on the application, in accord with the ND Rules of Civil Procedure, to all property owners having an occupied structure, boundary, unoccupied structure, road bridge, antenna, tower, or an improvement located inside the setback area sought to be diminished. Proof of service must be filed with the Zoning Commission prior to the hearing. The Zoning Commission can authorize notice by publication according to the Rules of Civil Procedure.

C. Visual Impact Assessment:

The permittee must prepare a visual impact assessment for the proposed facility. The visual impact assessment must include the following:

1. Define the visual character of the project study area. The study area must include a five (5) mile radius of the project area.

2. Inventory and evaluate existing visual resources, including all recreational areas with public access, State Wildlife Management Areas, Federal Waterfowl Production Areas, and National Wildlife Refuges.
3. Describe the appearance of the visible components of the proposed project, both at daytime and nighttime.
4. Identify key views for visual assessment from visual resources within the study area. Provide at least one visual simulation from each visual resource.
5. Evaluate potential project visibility within the study area.
6. Assess the visual impacts associated with the proposed project.
7. Identify mitigation measures to address any visual impacts.

D. Construction and Maintenance Standards:

1. **Access Roads:** Access roads shall, to the extent reasonably possible, be constructed parallel or perpendicular to existing roads in order to preserve the integrity of fields and capacity for efficient tilling, planting, and harvesting.
2. **Fences:** The permittee shall promptly replace or repair all fences or gates removed or damaged during all phases of the wind energy facility's life, unless otherwise negotiated with the affected landowner. When the permittee installs a gate where electric fences are present, the permittee shall provide for continuity in the electric fence circuit.
3. **Tree Removal:** The permittee shall minimize removal of trees and shall not remove groves of trees or shelter belts without the written approval of the affected landowner.
4. **Load Permitting:** The permittee is responsible for abiding by the state and local overweight load permitting process in accordance with NDCC Chapter 39-12. A conditional use permit issued under the Code to erect a wind energy facility does not negate a hauler's obligation to obtain an overweight load permit prior to hauling.
5. **Road Restoration:** Following completion of construction of the wind energy facility, the permittee shall ensure that any roads damaged by construction activities shall be promptly repaired or restored to a condition at least equal to the condition prior to construction, at the permittee's expense.

E. Collector System Standards:

1. The permittee shall place electrical lines, known as collectors, and communication cables underground to a depth of at least four (4) feet when located on private property. Use of the public right of way must be in compliance with the associated governing body's criteria for use. Collectors and cables shall also be placed within or adjacent to the land necessary for wind turbine access roads, unless otherwise

negotiated with the affected landowner. Feeder lines are excepted from the requirements in this paragraph.

2. The permittee shall place overhead feeder lines on public right-of-way, if a public right-of-way exists, or the permittee may place feeder lines on private property. A change of routes may be made as long as the feeder remains on public right of way and approval has been obtained from the government responsible for the affected right-of-way. When placing a feeder line on private property, the permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.

F. **Noise Standards:** A sound study which includes modeling of sound levels of wind turbines within 100-feet of every occupied residence within 1-mile of a wind turbine shall be submitted with the application. Sound levels of wind turbines within 100-feet of any non-participating residence shall not exceed 45dBA (leq). Construction noise or reasonable and necessary maintenance activities are allowed to exceed this sound limit except between the hours of 11 p.m. and 7 a.m. This sound standard does not apply to participating dwellings.

G. **Electromagnetic Interference Standards:**

1. The permittee shall be responsible for alleviating any signal disruption or interference caused by the wind energy facility to cell phone, television, radio, computer, satellite, or other electronic transmissions, receptions, or services.
2. The wind energy facility shall not cause interference contrary to Federal Communications Commission (FCC) regulations or federal, state, or local laws.
3. In the event the wind energy facility is identified as the source of interference as described in this section, the permittee shall take measures to correct the problem within thirty (30) calendar days.

H. **Minimum Ground Clearance:** The blade tip of any wind turbine shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet.

5.6.5 Permit Standards

A. **Permit Required:**

1. Work may commence to construct a wind energy facility only after a conditional use permit has been issued by the County Board. This does not preclude preconstruction activities such as wind monitoring, soil testing, or survey work prior to obtaining a permit.
2. The requirements of this Code apply to a wind facility, or any portion of one, erected in this County after the effective date of this Code if the facility contains any wind turbine rated at 50 kilowatts or more nameplate capacity.

B. Term of Permit:

1. A conditional use permit granted for operating a wind energy facility shall be effective for 25 years from the date of issue by Mountrail County, unless revoked or suspended.
2. The permittee may apply for renewal of the permit at any time in the 18 months prior to the expiration of the 25-year period.

C. Transfer of Permit:

1. In the event of a change in ownership or controlling interest in a wind energy facility and the transfer of the permit, any successors or assignees of the original permittee must agree to abide by and comply with the requirements and conditions of the permit for the duration of operation of a wind energy facility permitted in the County, or give notice of intent to not honor it and forfeit the permit and its rights.
2. Within thirty (30) days of such change in ownership or controlling interest of any entity owning a wind energy facility, the permittee shall notify the County Zoning Administrator. If the new entity has a different agent for service of process in the State, then the new agent's address and name need to be provided at the same time. A change of ownership that results in an inability, unwillingness, or failure to abide by the conditions of this Code can be a basis for revocation of the permit.

5.6.6 Application Requirements

- A. A permit application must be submitted to the County Zoning Administrator, at the County Zoning Administrator's office. Each application must be signed by a representative of the prospective permittee who is authorized to contractually bind the person.
- B. Each application shall include the following:
 1. **Permit Fee:** The applicant shall provide a non-refundable fee approved by resolution of the County Board of Commissioners.
 2. **Financial Commitment:** Refer to Section 5.6.7.
 3. **Applicant Information:**
 - a. The name, business address and phone number of the person in whose name the permit is to be issued and if the authorized agent for service of process is different than the permit holder, the name and North Dakota address of the agent of the person authorized to receive service of process on the person's behalf.
 - b. Evidence of the applicant's capacity to contractually bind the person seeking the permit and authority to make binding representations on the person's behalf to municipalities for purposes of zoning, siting, and construction of a wind-energy facility.

- c. A description of the applicant's wind rights within the boundaries of the proposed site.
- 4. **Schedule:** A schedule for the proposed start and completion of construction of the facility which includes the applicant's proposal for final repairs to public roads.
- 5. **Site Map:** A map of the wind energy facility and adjoining land within one-quarter (1/4) mile of the site, including non-participating land contiguous with any proposed host property. The following shall be clearly marked on the map:
 - a. The site boundary;
 - b. All existing turbines, structures, roads, utilities, and easements; all occupied structures shall be identified;
 - c. All proposed turbines, structures, roads, utilities, and easements;
 - d. All section lines and parcel lines;
 - e. Boundaries of any filed lease, easement, or option for wind energy facilities, whether they benefit the applicant, the applicant's probable operator, or an unrelated party;
 - f. Each public or private airstrip with FAA identification number;
 - g. Elevation features, such as contour lines marked at 5-foot intervals.
 - h. The names of the property owners within the site and for adjoining land.
- 6. **Engineer's Report:**
 - a. The applicant shall, at its own expense, supply to the County a pre-construction road condition report and a post-haul road condition inspection, which shall be approved by a civil engineer registered as a professional engineer under NDCC Chapter 43-19.1. The report shall utilize objectively verifiable, generally accepted means of no-destructive testing to catalogue the condition of any public road or bridge in Mountrail County that the permittee intends to traverse with a gross weight over 80,000 lbs.
 - b. Both the pre-haul road condition inspection and the post haul road condition inspection must address the following:
 - i. Video recording of the haul road(s) from start to finish taken from a vehicle driven 25 mph.
 - ii. Use straight edge to check for rutting every 0.10 miles.
 - iii. Use still photography with notation regarding location and length to record cracking.
 - iv. Record round (steel) and joint alignment (concrete) on major centerline culverts.

- v. Record width of traveled way and depth of pavement or gravel every 0.10 miles of completion of the construction of the wind energy facility, at its own expense, obtain and submit to the Zoning Administrator a post construction assessment of any Mountrail County or other political subdivision road the permittee traveled with greater than 80,000 lbs gross weight.
- vi. Any damage caused or thought to be exacerbated by the permittee's loads or work that has not been repaired or remedied at the time of the report will be identified and a timeline for repairing each will be identified along with an explanation of the repair or replacement proposed.
- c. The report will describe the gross weight the permittee anticipates running for certain classes of jobs; a rough estimate of the number of extreme (over 150,000 lbs) gross weight trips; and what damage or wear is anticipated. The report will supply the planned methods for addressing pavement failure and near pavement failure during the construction process that will ensure roads remain passable. Also, methods will be supplied for addressing road damage that obstructs vehicular travel on unpaved roads. The report will lay out the timeline for final repair or replacement of roads damaged or destroyed.
- d. The Engineer's Report shall be include in a Road Haul Agreement as stipulated in Section 6.13.

7. Archeological Resource Survey and Consultation:

- a. If the project is under the purview of the North Dakota Public Service Commission (PSC), the applicant shall prepare an archeological resource survey as part of that process.
- b. If the project is not under the purview of the PSC, the applicant shall consult with the State Historic Preservation Office (SHPO) at the State Historical Society of North Dakota prior to permitting to determine whether an archaeological survey is recommended for any part of the proposed site.
 - i. If an archeological survey is recommended, the applicant shall contract with a qualified archaeologist to complete the survey and shall submit the results to the Zoning Administrator and to the SHPO. The SHPO will make recommendations for the treatment of any significant archeological sites that are identified. Any issues in the implementation of these recommendations will be resolved by Mountrail County Board of Commissioners in consultation with the SHPO.
- c. If any archeological sites or human remains are found during construction, the applicant shall follow standard operating procedures as established by the SHPO and in accordance with NDCC Section 23-06-27 and North Dakota Administrative Code 40-02-03.

8. Electromagnetic Interference Assessment:

- a. Prior to commencement of construction, the applicant shall submit an assessment of microwave signal patterns in the project area. In the event of signal disruption or interference that arises after project completion, the assessment will provide data that can be used to determine whether the wind energy facility is the source of the issue.

5.6.7 Restoration of Property

- A. Within one hundred and eighty (180) days of termination or abandonment of leases or easements for a wind energy facility in the County, the permittee shall cause, at its expense, removal of all structures to a depth of four (4) feet below preconstruction grade.
- B. Provide a letter of credit as stipulated in Section 6.12. The letter of credit shall be in place to ensure site restoration. The letter of credit shall be the sum equal to the total cost of reclamation as estimated by a North Dakota licensed engineer. The estimate provided by a North Dakota licensed engineer shall be verified by the Board of County Commissioners or designee.

5.7 Solar Energy Systems, Utility-Scale

5.7.1 Purpose

This Code provides a framework for siting, construction, and operation of utility-scale solar energy systems (solar farms) that will preserve the safety and wellbeing of residents and facilitate equitable and orderly development.

5.7.2 Permitted Districts

Solar farms are permitted as a conditional use in the Agriculture (Ag) District and the Industrial (In) District where such systems present few land use conflicts with current and future land use patterns.

5.7.3 Definitions

Agrivoltaics: A solar energy system co-located on the same parcel of land as agricultural production, including crop production, grazing, apiaries, or other agricultural products or services.

Ground-Mounted System: A solar energy system mounted on a rack or pole that rests or is attached to the ground.

Solar Energy Facilities, Utility-scale (Solar Farm): A utility-scale, ground-mounted solar energy system that produces and distributes electricity for wholesale. A large-scale solar energy system has a minimum project size of five (5) acres and is the principal use on the parcel(s) on which it is located.

Solar Energy Facility, Small: Devices such as rooftop solar panels or stand-alone panels, intended for a specific site. Small solar energy facilities generate power for a single business, residence, or a similar limited use. Small solar energy facilities are not designed and constructed to distribute electricity for wholesale. Stand-alone small solar energy facilities are treated as accessory structures and must comply with all regulations pertaining to accessory structures.

Photovoltaic System: A solar energy system that converts solar energy directly into electricity.

Solar Collector: The panel or device in a solar energy system that collects solar radiant energy and transforms it into thermal, mechanical, chemical, or electrical energy. The collector does not include frames, supports, or mounting hardware.

Solar Energy System: A device, array of devices, or structural design feature that generates or stores electricity from sunlight or utilizes solar energy for space heating or cooling or water heating.

Solar Mounting Device: Racking, frames, or other devices that allow the mounting of a solar collector onto a roof surface or the ground.

5.7.4 Development and Operating Standards

A. **Height:** Ground-mounted solar energy systems shall not exceed fifteen (15) feet in height when oriented at maximum tilt.

B. **Setbacks:** Solar arrays shall comply with the following setback requirements.

1. Setbacks from State Highways and County Roads: 250 feet from roadway centerline
2. Setbacks from Other Roads: 150 feet from roadway centerline
3. Setbacks from Existing Dwellings: 1,000 feet
4. Minimum Yard Setbacks: Compliant with district setback requirements

C. **Screening:**

1. All solar farms shall be fully screened from existing dwellings.
2. Screening shall not be required along property lines within the same zoning district, except where the adjoining lot contains an existing dwelling.
3. Mountrail County may require perimeter screening if it determines that there is a clear community interest in maintaining a viewshed.
4. All solar energy systems using a reflector shall minimize glare affecting adjacent or nearby properties.

D. **Ground Cover:**

1. Appropriate ground cover shall be installed to mitigate stormwater impacts and facilitate site restoration following decommission of the use. Grassland/grazing vegetation is required ground cover.
2. Panels shall be placed at least three (3) feet off the ground to allow mowing and other maintenance.
3. Panels shall be spaced to allow for established vegetation to become self-sustaining.
4. The permittee shall minimize removal of trees and shall not remove groves of trees or shelter belts without the written approval of the affected landowner.
5. Must maintain weed management as referenced in section 4.6.

E. **Foundations:** A registered engineer shall certify that the design of solar panel foundations, racking, and supports are within accepted professional standards, given soil conditions of the site.

F. **Power and Communication Lines:**

1. Power and communication lines running between banks of solar panels and to nearby electric substations or interconnections with structures shall be buried to a minimum depth of four (4) feet.
2. Exemptions may be granted in instances where shallow bedrock, water courses, or other elements of the natural landscape interfere with the ability to bury lines, or where distance makes undergrounding infeasible, at the discretion of the Planning and Zoning Commission.

G. **Fencing:** Perimeter fencing shall conform with the fencing requirements of Section 4.3 of this Code.

H. **Compliance with Other Codes:** All solar farms shall comply with all applicable local, state, and federal regulatory codes, including the National Electrical Code and North Dakota building codes.

5.7.5 Permit Standards

A. **Term of Permit:**

1. A conditional use permit granted for operating a solar farm shall be effective for twenty-five (25) years from the date of issue by Mountrail County, unless revoked or suspended.
2. The permittee may apply for renewal of the permit at any time in the eighteen (18) months prior to the expiration of the twenty-five-year (25) period.

B. **Transfer of Permit:**

1. In the event of a change in ownership or controlling interest in a solar energy facility and the transfer of the permit, any successors or assignees of the original permittee must agree to abide by and comply with the requirements and conditions of the permit for the duration of operation of a solar energy facility permitted in the County, or give notice of intent to not honor it and forfeit the permit and its rights.
2. Within thirty (30) days of such change in ownership or controlling interest of any entity owning a solar energy facility, the permittee shall notify the County Zoning Administrator. If the new entity has a different agent for service of process in the State, then the new agent's address and name need to be provided at the same time. A change of ownership that results in an inability, unwillingness, or failure to abide by the conditions of this Code can be a basis for revocation of the permit.

C. Decommissioning:

1. A solar farm shall be decommissioned in the event it is not in use for 12 consecutive months.
2. Structures and foundations shall be disposed in compliance with state law.
3. The application shall include provisions for removal of all structures and foundations and restoration of soil and vegetative resources.
4. Provide a letter of credit as stipulated in Section 6.12. The letter of credit shall be in place to ensure site restoration. The letter of credit shall be the sum equal to the total cost of reclamation as estimated by a North Dakota licensed engineer. The estimate provided by a North Dakota licensed engineer shall be verified by the Board of County Commissioners or designee.

5.7.6 Application Requirements

A permit application must be submitted to the County Zoning Administrator, at the County Zoning Administrator's office. Each application must be signed by a representative of the prospective permittee who is authorized to contractually bind the person.

Each application shall include the following:

A. Project Information:

1. The applicant's name and contact information.
2. Legal description and property identification number (parcel ID) for all property within the project site.

B. Project Narrative: The applicant shall provide a full description of the project that includes, but may not be limited to, a description of:

1. The site's existing conditions, including all existing uses and structures, access points, topography, soils, and drainage characteristics.

2. The solar energy system to be installed, including the system's electrical capacity and the number, type, and dimension of panels.
3. The project's connection to the utility system.
4. All fencing, signage, and security systems to be installed.
5. Ground cover and plantings, including the location, type, and extent of required screening.
6. All construction activities, including all grading, drainage, and erosion control measures that are planned for the site.
7. Site maintenance, performance monitoring, and decommissioning plan with associated costs and financing.

C. **Site Plan:** The applicant shall submit a site plan that includes the following elements:

1. The location of all solar arrays, as well as all fencing, screening, access roads, and other project components described in the project narrative.
2. The site boundary and all property lines, easements, and rights-of-way within the required setback area. If the proposed project requires the establishment or modification of property lines, easements, or rights-of-way, the applicant shall also complete an application for subdivision.
3. An aerial image of the site with delineation of topographical features and wetlands.

C. **Application Fee:** The applicant shall provide a non-refundable fee approved by resolution of the County Board of Commissioners.

D. **Financial Guarantee:** The applicant shall provide assurance that financial resources will be available to fully construct the project, establish vegetation, and decommission the site. Provide a letter of credit as stipulated in Section 6.12. The letter of credit shall be in place to ensure site restoration. The letter of credit shall be the sum equal to the total cost of reclamation as estimated by a North Dakota licensed engineer. The estimate provided by a North Dakota licensed engineer shall be verified by the Board of County Commissioners or designee.

5.8 Medical Marijuana Facilities (Compassion Centers)

5.8.1 Purpose

The purpose of this chapter is to protect the public health, safety, and welfare of the residents and patients of the County by prescribing the manner in which medical marijuana businesses can be conducted in the County. Further, the purpose of this chapter is to:

- A. Provide for a means of cultivating, manufacturing and distribution of usable marijuana to patients who qualify to obtain, possess, and use marijuana for medical purposes as prescribed by state law.
- B. Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, neighborhood and patient safety, security for the business and its personnel, and other health and safety concerns.
- C. Impose fees to cover the cost to the County of licensing medical marijuana businesses in an amount sufficient for the County to cover the costs of the licensing program.
- D. Create regulations that address the particular needs of the facilities, patients and residents of the County and comply with laws that may be enacted by the state regarding medical marijuana.

5.8.2 Statutory Authority

- A. The 2017 North Dakota Legislature enacted Senate Bill 2344, relating to the implementation of the North Dakota Compassionate Care Act, N.D.C.C 19-24 for the regulation of medical marijuana dispensaries and the cultivations and propagation of medical marijuana in North Dakota. All persons, entities or organizations wishing to establish a Medical Marijuana Compassion Center within the County must apply for and be granted a conditional use permit for said use and have a license from the State of North Dakota for a Medical Marijuana Compassion Center.
- B. The use, cultivation, manufacturing, production, distribution, possession and transportation of marijuana remains illegal under federal law, and marijuana remains classified as a "controlled substance" by both North Dakota and federal law;
- C. The county commission does not have the authority to, and nothing in this chapter is intended to, authorize, promote, condone or aid the production, distribution or possession of medical marijuana in violation of any applicable law;

5.8.3 County Policy

- A. The County Commission intends to regulate the use, acquisition, cultivation, manufacturing, and distribution of usable medical marijuana in a manner that is consistent with the North Dakota Century Code. The regulations are intended to apply to all medical marijuana operations in the county by any medical marijuana business permitted under state law. Medical marijuana cultivation and production can have an impact on health, safety, and community resources, and this chapter is intended to permit state-licensed Medical Marijuana Compassion Centers where they will have a minimal negative impact;

- B. To the extent that Medical Marijuana Compassion Centers are registered and authorized by the State of North Dakota to operate in the county, this commission desires to provide for their licensing and regulation to protect the public health, safety and general welfare of the citizens of the County;
- C. This chapter is to be construed to protect the public over medical marijuana business interests. Operation of a medical marijuana business is a revocable privilege and not a right in the county. There is no property right for an individual or business to have medical marijuana in the County; and
- D. Medical marijuana is a heavily regulated industry in the state and County, and the County has a zero tolerance policy for violations of this chapter.

5.8.4 Definitions

Unless specified in this Code, all terms defined in NDCC § 19-24-02 or successors to that statute shall have the definitions provided therein.

Marijuana: Any species in the genus Cannabis, including but not limited to Cannabis sativa, Cannabis indica, and Cannabis ruderalis. Means all parts of the plant of the genus cannabis; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant.

Medical Marijuana: A product intended for human consumption or use which contains cannabinoid concentrate containing, derived from, or containing a derivative of Marijuana in any form, including but not limited to plants, seeds, and resins or any Medical Marijuana Product.

Medical Marijuana Cultivation and/or Manufacturing Facility: An entity registered with the North Dakota Department of Health to acquire, possess, cultivate, or transport Medical Marijuana for the purpose of manufacturing Medical Marijuana or for the delivery, supply, or sale of Medical Marijuana to a Medical Marijuana Dispensary.

Medical Marijuana Dispensary: An entity registered with the North Dakota Department of Health under this chapter to acquire, possess, store, deliver, transfer, transport, sell, supply, or dispense Medical Marijuana or related products and educational materials to a Medical Marijuana Qualifying Patient or Medical Marijuana Registered Designated Caregiver.

Medical Marijuana Compassion Center: A manufacturing facility or dispensary, any facility engaged in the cultivation, manufacturing, acquiring, possession, storage, delivery, transfer, transport, sale, supply, or dispensing of Medical Marijuana or related products to a Medical Marijuana Qualifying Patient or Medical Marijuana Registered Designated Caregiver, including but not limited to a Medical Marijuana Cultivation and/or Manufacturing Facility and a Medical Marijuana Dispensary.

Medical Marijuana Registered Designated Caregiver: An individual who is registered with the North Dakota Department of Health who agrees to manage the well-being of a Medical Marijuana Qualifying Patient with respect to the Medical Marijuana Qualifying Patient's medical use of Marijuana.

Medical Marijuana Qualifying Patient: A person who has been diagnosed with a debilitating medical condition by a physician licensed to practice medicine in the State of North Dakota and who has in that person's possession a current, valid photo identification issued by the State of North Dakota or the United States of America and a current, valid document issued by the North Dakota Department of Health to that person and authorizing that person to possess and use Medical Marijuana.

5.8.5 Annual Permit Fee

As authorized by the Board of County Commissioners the Zoning Administrator is to establish an annual permit fee to offset costs associated with policing, site inspections, monitoring, storage of media, and/or regulating medical marijuana facilities involved in the cultivation, propagation, manufacturing, processing, refining, distribution, delivery, supply, sale or handling of Medical Marijuana.

5.8.6 Conditional Use Permit Requirements

In addition to the requirements applicable to all Conditional Use Permit applications, an application for a Conditional Use Permit for a Medical Marijuana Compassion Center must include the following:

- A. Proof of Insurance
- B. List of all persons and entities with an ownership interest in the compassion center including all shareholders that hold any share in stock in the compassion center.
- C. A security plan depicting the location and configuration of security cameras and surveillance equipment.
- D. A complete description of the products and services to be produced or sold by the Medical Marijuana Compassion Center.
- E. A notarized statement acknowledging that the applicant understands applicable federal laws, any guidance or directives issued by the U.S. Department of Justice, the laws of the State of North Dakota and the laws and regulations of the county applicable thereto concerning the operation of a Medical Marijuana Compassion Center. The written statement shall also acknowledge that any violation of any laws or regulations of the State of North Dakota or of the county, or any activity in violation of any guidance or directives issued by the U.S. Department of Justice, in such place of business, or in connection therewith, or the

commencement of any legal proceeding relating to such Medical Marijuana Compassion Center by federal authorities, may render the license subject to immediate suspension or revocation.

- F. A notarized statement that the applicant will hold harmless, indemnify, and defend the county against all claims and litigation arising from the issuance of license and/or a Conditional Use Permit including any claims and litigation arising from the compassion center, operation or ownership of the Medical Marijuana Compassion Center.
- G. A notarized acknowledgement that the applicant is seeking a Medical Marijuana Compassion Center Conditional Use Permit and understands that each person and entity with an ownership interest must be found suitable to hold such license by the county commission prior to the issuance of the Conditional Use Permit; that the applicant understands and acknowledges that the burden of proving qualifications to receive such a Conditional Use Permit is at all times on the applicant; that the granting of a Conditional Use Permit for a Medical Marijuana Compassion Center is at the discretion of the county commission; and that the applicant agrees to abide by the decision of the county commission.
- E. The Planning Director may require additional plans, documents or other information prior to deeming the application complete.
- F. A Medical Marijuana Compassion Center Conditional Use Permit shall be reviewed annually by the county commission for renewal.
- G. If the State of North Dakota or its electorate repeals the Compassionate Care Act or the act is otherwise declared void, all Medical Marijuana Compassion Center Conditional Use Permits issued by the county commission will be deemed to have immediately expired.
- H. A Conditional Use Permit for a Medical Marijuana facility shall only be considered in an industrial zoning district. In all other zoning districts a medical marijuana facility will be considered a prohibited use.
- I. Provide a letter of credit as stipulated in Section 6.12. The letter of credit shall be in place to ensure site restoration. The letter of credit shall be the sum equal to the total cost of reclamation as estimated by a North Dakota licensed engineer. The estimate provided by a North Dakota licensed engineer shall be verified by the Board of County Commissioners or designee.

5.8.7 Insurance Requirements

- A. The minimum amount of third-person insurance coverage for a Medical Marijuana Compassion Center shall be one million dollars (\$1,000,000) per occurrence, two million

dollars (\$2,000,000) general aggregate for bodily injury and property damage arising out of licensed activities and one million dollars (\$1,000,000) products and completed operations aggregate, commercial automobile coverage in a minimum of one million dollars (\$1,000,000) and excess liability in a minimum of three million dollars (\$3,000,000).

B. **Additional insured:** The County shall be named as an additional insured on all general liability, umbrella, and excess insurance policies required under this section. All insurance policies required under this section shall be primary over any other valid and collectible insurance.

5.8.8 Development Standards

A. **General:** Each Medical Marijuana Compassion Center must be located in a separate, permanent, stand-alone structure and have a minimum six (6) foot height perimeter chain link fence encompassing the parcel boundary.

B. **Setbacks:**

1. Each Medical Marijuana Compassion Center must be located a minimum of 2,640 feet from a public or private preschool, kindergarten, elementary, secondary or high school, Public Park, public community center, dependent care facility, homeless shelter, youth center, or place of worship. The distance shall be measured from the exterior fence of the Medical Marijuana Compassion Center to the property line of the protected use.
2. Each Medical Marijuana Compassion Center(s) must be located a minimum of 2,640 feet from any residential district, or any residential dwelling, trailer, recreational vehicle or recreational district. The distance shall be measured from the exterior fence of the Medical Marijuana Compassion Center to the property line or dwelling of the protected use.

C. **Hours:** No Medical Marijuana Dispensary shall have operating hours earlier than 8:00 AM or later than 7:00 PM.

D. **Security:**

1. The entire perimeter of a Medical Marijuana Compassion Center structure must be well lit (minimum 1 candle foot) to prevent concealment in shadows around the structure for a minimum of 15 feet around each structure that is part of the Medical Marijuana Compassion Center. Further, everything within the fenced area shall have 24-hour surveillance cameras depicting the entire exterior of the Compassion Center as well as cameras at the property entrance depicting vehicles and license plates of each vehicle entering the parking lot.
2. All surveillance camera locations and surveillance recording equipment including specifications must be approved by the County Sheriff.

E. Parking:

1. Each Medical Marijuana Dispensary shall have at least 1 parking space per 250 square feet of structure.
2. Each Medical Marijuana Cultivation and/or Manufacturing Facility shall have at least 1 parking space for every 1,000 square of plant cultivation area and 1 parking space for each 250 square feet of all other areas of the structure.

F. With the exception of the specific Medical Marijuana Compassion Center approved as part of a Conditional Use Permit, no other activity may occur within the facility or land parcel.

G. No outdoor storage on-site shall be permitted.

H. No drive-through, drive-up, or walk-up facilities shall be permitted.

I. **Emissions:** Each Medical Marijuana Compassion Center must ensure there is no emission of dust, fumes, vapors, or odors into the environment.

J. **Windows:** Windows must remain unobstructed, allowing visibility into the facility. Window tint, decals or window signage of any kind shall be strictly prohibited.

K. **Annual Inspection:** Each permittee shall obtain an inspection of the property from the county Zoning Administrator or fire marshal prior to the annual renewal of the Conditional Use Permit.

L. **Subject to State Requirements:** All applicable state standards and requirements shall apply in the design and operations of any Compassion Center.

5.8.9 Other Requirements

- A. Once a Conditional Use Permit is obtained for a Medical Marijuana Compassion Center, any change in operation of the facility or in ownership shall require prior approval of the Board of County Commissioners.
- B. Any structure modifications or alterations must be approved by the Zoning Administrator.

5.8.10 Serviceability, Exclusions and Exceptions

- A. The provisions of this chapter do not waive or modify any other provision of this Code with which Medical Marijuana Compassion Center is required to comply. Nothing in this section is intended to authorize, legalize or permit the Compassion Center, operation or maintenance of any facility, structure or use which violates any County ordinance or statute of the State of North Dakota regarding public nuisances, Medical Marijuana, or any federal regulations or statutes relating to the use of controlled substances.

- B. This chapter shall be null and void if any determination is made, after the adoption of the Code enacting this chapter, by any court of competent jurisdiction, that Ch. 19-24, NDCC, is invalid, or shall be null and void to the extent any portion of such section is held invalid.
- C. Should any section, subsection, clause or provision of this chapter for any reason be held to be invalid or factually unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this chapter, it being hereby expressly declared that this chapter, and each and every section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, approved, adopted and/or ratified irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases of this chapter be declared invalid or unconstitutional.

5.9 Temporary Freshwater Industrial Use Point of Diversion

5.9.1 Purpose

It is the intent of this Code to promote the health, safety and welfare of the residents and visitors of the County by regulating and controlling the location and construction of all Temporary Freshwater Industrial Use Point of Diversion in the districts noted in this Code.

5.9.2 General Requirements

- A. Temporary Freshwater Industrial Use Point of Diversion is hereby designated as a Temporary Use that may be authorized in any Zoning District in accordance with the terms and conditions listed hereinafter.
- B. A temporary conditional use permit for a Temporary Freshwater Industrial Use Point of Diversion may only be authorized for a limited period by the Zoning Administrator, not to exceed one (1) year. A permit extension for a period up to (1) one year may be granted with Zoning Administrator approval, unless the original permit expires.
- C. No part of a Temporary Freshwater Industrial Use Point of Diversion may consist of or cause a permanent impact to land or property.
- D. A Temporary Freshwater Industrial Use Point of Diversion permit must include proof of a permit issued by the North Dakota State Water Commission, pursuant to Chapter 61-04 of the North Dakota Century Code.
- E. The application must also contain a written statement in which the applicant specifies the justification for the permit period requested by the applicant.
- F. The fee for a Temporary Freshwater Industrial Use Point of Diversion permit shall be set by resolution of the Board of County Commissioners and shall be non-refundable.

- G. The Zoning Administrator may require the applicant to submit additional items as deemed necessary.
- H. The application for a Temporary Freshwater Industrial Use Point of Diversion permit shall meet all requirements of the Conditional Use permit recited in Section 6.5.
- I. The decision by the Zoning Administrator will not become final until after a 15 day period to allow the applicant and or property owner, or any concerned persons to appeal the decision to the Planning and Zoning Commission.
- J. If the Zoning Administrator denies the application for a Temporary Freshwater Industrial Use Point of Diversion permit, the applicant may appeal the decision to the Planning and Zoning Commission.

5.9.3 Application Requirements

- A. **State Water Permit:** The applicant shall obtain a permit from the North Dakota State Water Commission, pursuant to Chapter 61-04 of the North Dakota Century Code.
- B. **Secretary of State Good Standing:** The applicant shall provide documentation of good standing with the State of North Dakota, certified by the Secretary of State, to demonstrate their record of compliance with all applicable North Dakota laws.
- C. **Map:** The application shall include a map or aerial photo showing the location of the water source, associated pipeline route(s), and any above-ground tanks or heaters.
- D. **Application Fee:** A non-refundable processing fee approved by resolution of the Board of County Commissioners.
- E. **Other Items:** The Zoning Administrator may require the applicant to submit additional items as deemed necessary.

5.9.4 Subsequent Temporary Freshwater Industrial Use Point of Diversion Application for Same Point of Diversion

- A. If an applicant has been issued, within the previous twelve (12) months, a Temporary Freshwater Industrial Use Point of Diversion permit for the same specific point of diversion, the applicant may request a new Temporary Freshwater Point of Diversion permit for that same point of diversion. The application must meet all requirements of the Conditional Use permit recited in Section 6.5, with the exception of the notification of adjacent property owners as provided within Section 6.5.

- B. The application must also contain a written statement in which the applicant specifies the justification for the permit period requested by the applicant.
- C. The fee for a subsequent Temporary Freshwater Industrial Use Point of Diversion permit shall be set by resolution of the Board of County Commissioners and shall be non-refundable.
- D. The Zoning Administrator may require the applicant to submit additional items as deemed necessary.
- E. Upon the submission and review of the application under Subsection C, the Zoning Administrator may issue a Temporary Freshwater Industrial Use Point of Diversion Permit for a period not to exceed twelve (12) months.
- F. The decision by the Zoning Administrator will not become final until after a 15 day period to allow the applicant and or property owner, or any concerned persons to appeal the decision to the Planning and Zoning Commission.
- G. If the Planning and Zoning Commission denies the application for the Temporary Freshwater Industrial Use Point of Diversion permit, the applicant may appeal the decision to the Board of County Commissioners.

5.10 Temporary Freshwater Industrial Use Water Lines

5.10.1 Definition

Temporary freshwater industrial use water lines means all above-ground pipelines, pumps, and water storage tanks in place for a temporary period not to exceed one (1) year.

5.10.2 Zoning

Temporary Freshwater Industrial Use Water Lines are hereby designated as a Temporary Use that may be authorized in any Zoning District in accordance with the terms and conditions of this section.

5.10.3 Application Requirements

- A. **State Water Permit:** The applicant shall obtain a permit from the North Dakota State Water Commission, pursuant to Chapter 61-04 of the North Dakota Century Code.
- B. **Secretary of State Good Standing:** The applicant shall provide documentation of good standing with the State of North Dakota, certified by the Secretary of State, to demonstrate their record of compliance with all applicable North Dakota laws.

- C. **Map:** The application shall include a map or aerial photo showing the location of the water source, pipeline route, and any above-ground tanks or heaters.
- D. **Easements:** The applicant shall provide documentation of all easements established for the purpose of installing temporary water lines on others' property. Names and contact information for participating landowners shall be provided.
- E. **Right-of-Way Access Agreements:** If any portion of the temporary water lines are placed within the right-of-way for a State or Federal highway, the applicant shall provide a copy of the access permit obtained from the North Dakota Department of Transportation (NDDOT).
 - 1. Temporary water lines may be placed within the right-of-way for County roads, pursuant to a road access agreement established by Mountrail County Road and Bridge. A written copy of this agreement shall be included in the application.
 - 2. If the project impacts another political subdivision's road, the application shall include written approval from the applicable political subdivision.
 - 3. Temporary water lines may be placed within section-line right of way as granted by the North Dakota Century Code, subject to approval by the County or whichever jurisdiction is applicable.
- F. **Application Fee:** A non-refundable processing fee approved by resolution of the Board of County Commissioners.
- G. **Other Items:** The Planning and Zoning Commission and/or the Zoning Administrator may require the applicant to submit additional items as deemed necessary.

5.10.4 Procedure

- A. **Temporary Use Process:** Application review, permitting, and appeal procedures shall follow the Temporary Use process established in Section 6.7 of this Code.
- B. **Appeal:** If the Planning and Zoning Commission denies the application for a Temporary Freshwater Industrial Use Point of Diversion permit, the applicant may appeal the decision to the Board of County Commissioners.

5.11 Storage of Construction Materials

Storage of construction materials such as lumber, steel, concrete blocks, or pipe, is permitted in the Commercial and Industrial Districts, provided that these materials are enclosed by a wall or fence not less than five (5) feet tall or stored in an enclosed structure.

5.12 Battery Energy Storage Systems (BESS)

5.12.1 Definitions

Battery. A single cell or an interconnected group of cells arranged electrically in series, parallel, or a combination of both, designed to charge, discharge, and store energy through electrochemical processes. Batteries used in consumer products are exempt from these requirements under this section.

Battery Energy Storage Facility. A facility containing one or more batteries designed to store electrical energy. These batteries are part of a system that includes monitoring and management to ensure safe operation.

Battery Energy Storage System (BESS). A system that houses batteries within a secure physical container. The container includes secondary containment for safety, as well as systems for cooling, ventilation, fire suppression, and electronic monitoring.

Electric Energy Conversion Facility. Means a plant, addition, or combination of plant and addition designed for or capable of generation by wind (exceeding one-half megawatt of electricity) or any other means exceeding fifty megawatts of electricity.

Minor BESS. A system with a total energy storage capacity of two hundred (200) kWh or less.

1. **Residential BESS.** A battery system below twenty (20) kWh; may be coupled with onsite solar or wind generation for household energy use.
2. **Commercial BESS.** A battery system below two hundred (200) kWh used in conjunction with on-site solar or wind generation for household, business, or farm/ranch use.

Major BESS. A system with a total energy storage capacity of greater than two hundred (200) kWh deployed within or subordinate to an electric energy conversion facility.

Battery Management System (BMS). A safety system that monitors and regulates the operation of a battery energy storage system. It tracks battery and container conditions such as voltage, temperature, humidity, and gas emissions and can automatically shut down the system if it becomes unsafe.

Battery Cell. A fundamental electrochemical unit, consisting of an anode and a cathode, designed to absorb, store, and release electrical energy.

National Fire Protection Association (NFPA). A global nonprofit organization that develops and publishes standards and codes to reduce the risk of fire, electrical, and other hazards, ensuring safety in design, construction, and operation of systems, including battery energy storage systems.

Underwriters Laboratory (UL). An independent safety science organization that develops standards and conducts testing and certification to ensure the safety, performance, and compliance of products, including battery energy storage systems and related components.

National Electrical Code (NEC). A set of safety standards and guidelines developed by the National Fire Protection Association (NFPA) for the safe installation and maintenance of electrical systems.

National Electrical Safety Code (NESC). This is a consensus-based standard that provides guidelines for the safe installation, operation, and maintenance of electric supply, communication lines, and associated equipment. It's published by the IEEE (Institute of Electrical and Electronics Engineers) Standards Association.

International Fire Code (IFC). A code that establishes minimum safety requirements for fire prevention, fire protection, and life safety systems in buildings, developed by the International Code Council (ICC).

Megawatt (MW). A unit of power equal to one million watts, commonly used to express the capacity of power plants and large-scale energy systems.

Decibel (dB). A logarithmic unit used to measure sound intensity or power level, often used in the context of noise levels associated with energy storage systems.

5.12.2 Purpose

This Code provides a framework for siting, construction, and operation of a Battery Energy Storage Systems in the County that will preserve the safety and wellbeing of residents and facilitate equitable and orderly development.

5.12.3 Regulations for Minor BESS/Residential

A. General Permitting Requirements

- 1. Permitted Use.** Minor/Residential BESSs are permitted as accessory uses in all districts.

B. General Technical Requirements

- 1. Setback Requirements.** No additional setback requirements are required beyond those applicable to primary structures.
- 2. Building and Electrical Code Compliance.** Minor BESSs must meet all applicable building, electrical, and fire codes. A building permit must be obtained.

5.12.4 Regulations for Minor BESS/Commercial

A. General Permitting Requirements

1. **Permitted Use.** Minor/Commercial BESSs are permitted as accessory uses in the Agricultural district.
2. **Conditional Use.** Minor/Commercial BESSs are permitted as conditional uses in the Commercial and Industrial Districts.

B. Submittal Requirements

1. Site information, including:
 - a. Name and address of the owner, applicant, planner, architect, engineer, or landscape architect.
 - b. Date, scale and north arrow.
 - c. Total acreage of the site.
 - d. Documentation verifying ownership.
2. Location and dimensions of all existing and proposed buildings and structures.
3. Identification of floodplains, floodways, wetlands, and existing vegetation.
4. Spacing and layout of yards and open areas between structures.
5. Location and measurements of all fences and walls.

C. General Technical Requirements

1. **Setback Requirements.** No additional setback requirements are required beyond those applicable to primary structures.
2. **Fire Safety Standards.** Systems must adhere to the National Fire Protection Association (NFPA) 855 standards.
3. **Building and Electrical Code Compliance.** Must meet all applicable building, electrical, and fire codes.
4. **Screening and Aesthetic Considerations.** Must be screened where possible to minimize visual impact.

5.12.5 Regulations for Major BESS

A. General Permitting Requirements

1. **Permitted Use.** Major BESSs require a conditional use permit and are only allowed in conjunction with an energy conversion facility in the Agricultural and Industrial Zoning Districts.
2. **General Permits.** The installation of a major BESS shall require both a building permit and an electrical permit, and an approved concept plan. The site plan shall be reviewed and approved by the Mountrail County Planning and Zoning Administrator.

B. Submittal Requirements

1. Site information, including:
 - a. Name and address of the owner, applicant, planner, architect, engineer, and/or landscape architect.
 - b. Date, scale and north arrow.
 - c. Total acreage of the site.
 - d. Title by which the property or project is to be referred.
 - e. Documentation verifying ownership.
2. A copy of a survey prepared by a registered land surveyor, including a legal description of the property.
3. Current and proposed zoning classifications for the property.
4. Zoning classifications of adjacent parcels.
5. List of property owners within a mile of the subject property.
6. Location of all water wells, public and private, within a mile of the subject property.
7. Details of adjacent developments, including buildings, driveways, fences, walls, parking areas, etc.
8. Location and dimensions of all existing and proposed buildings and structures.
9. Existing and proposed ground elevations for the property.
10. Identification of floodplains, floodways, wetlands, and existing vegetation.
11. Soil analysis.
12. Spacing and layout of yards and open areas between structures.
13. Location and measurements of all fences and walls.
14. A detailed landscape plan.
15. Identification and details of vehicular, pedestrian, and service access, including:
 - a. Distance from the driveway opening at the curb to the extended property line of the nearest intersecting street.
 - b. Width of proposed access drives and drive aisles.
 - c. Identification and location of the following elements:
 - i. Curb lines.
 - ii. Property lines.
 - iii. Sidewalks.
 - iv. Existing driveways, if applicable.

- v. Parking regulations and signage.
- vi. Traffic signals.
- vii. Utility poles.
- viii. Light standards.
- ix. Fire hydrants.

16. Off-street parking and loading facilities, including the number of spaces, as well as the dimensions of spaces, drive aisles, and loading zones.

17. Location, area, and height of all proposed buildings and freestanding signs, with complete elevations of the proposed structures or additions, including:

- a. Proposed materials and colors for all building elements.
- b. Cross-sectional views showing the relationship between roof-mounted mechanical equipment and the top of the screen wall.
- c. Locations of utility meters and ground-supported transformers, along with proposed screening methods if visible to the public.
- d. Location, area, and dimensions of all wall-mounted signs.

18. Waste disposal facilities, such as trash bins and compactors, including provisions for screening them from public view.

19. Preliminary engineering, drainage, and grading plans, if required by the County Engineer.

20. Noise Study (see section 5.12.6 below for study requirements).

21. State agency comments

- a. State Public Service Commission regarding potential impacts on other Electrical Customers in the County.
- b. State Transmission Authority regarding potential impacts on transmission capacity and grid resilience.
- c. State Historic Preservation Office regarding the presence of historic resources located within a mile of the proposed project.

C. General Technical Requirements

1. **Compliance.** BESS shall comply with the latest national industry standards, including the National Electrical Code, International Fire Code, and NFPA Fire Code. In case of conflict, national standards take precedence to allow for technological updates.
2. **Monitoring.** Battery cells must be housed within a BESS featuring a Battery Management System (BMS), a microprocessor-based system designed for monitoring and safety. Its primary function is real-time monitoring, where it continuously tracks voltage, current, and temperature across battery cells. This

ensures the batteries operate under optimal conditions, preventing overheating, overcharging, or excessive discharge. The BESS must include physical containment, cooling, ventilation, fire suppression, and 24/7 automated fire detection and extinguishing systems to prevent thermal runaway.

3. Separation from Sensitive Properties.

- a. BESSs shall be set back at least one (1) mile from all single-family and multi-family dwellings, schools, churches, synagogues, and other similar religious institution or structures, and public parks as measured from the nearest property line of any of these sensitive properties to the data center's exterior property lines.
- b. The setback requirement in Part A.1. above must include proof of property owner acknowledgement from those owning property within one mile of the subject property. This must be documented through a document that is recorded on the subject property and all properties within one (1) mile of the subject property.
- c. To ensure compliance with sensitive property setback/separation requirements and setbacks required under the "Environmental Protection" section, BESS applications must include a map of any sensitive or protected areas located within 1.5 miles the project area.

4. Access. Access to all batteries and electrical switchgear shall be from the exterior for normal operation and maintenance. Access to the container interior shall not be permitted while the system is in operation except for safety personnel and first responders.

5. Safety. In accordance with Section 70 of the NFPA, all large electrical installations, including energy storage systems, shall be enclosed by a perimeter fence with a minimum height of seven (7) to eight (8) feet to prevent unauthorized access and ensure site security.

6. Additional Requirements.

- a. Construction plan.
- b. Erosion and sediment control plan.
- c. Landscaping plan.
- d. Decommissioning and reclamation plan.
- e. Stormwater management plan.
- f. Water supply plan.
- g. Site security plan.

7. Visual Impacts.

- a. A BESS shall be designed using a containerized, modular approach, typically housed within shipping containers or developer-manufactured enclosures. The height of such systems shall not exceed twelve (12) feet.
 - b. To enhance screening and aesthetics, trees shall be planted along the facility's perimeter at least every fifty (50) feet.
8. **Inspection and Maintenance.** Third-party inspectors approved by the Planning and Zoning Administrator and paid for by the owner must conduct annual inspections to verify that fire suppression capabilities are fully operational and maintained according to relevant safety standards. These inspections will help ensure that all systems are functioning correctly and that any required maintenance or upgrades are identified and addressed in a timely manner.

D. Emergency

1. **Disclosure.** Qualifications and experience from selected developers shall be provided including disclosure of fires or other hazards at facilities. Safety testing and failure modes analysis data from selected developers and manufacturers shall be provided.
2. **Emergency Response Standards.**
 - a. All BESS installations must comply with NFPA 855, which provides safety requirements for stationary energy storage systems.
 - b. UL 9540A thermal runaway testing must be conducted to assess fire hazards and develop mitigation strategies.
 - c. Fire suppression systems must be installed, including automated extinguishing systems, fire-resistant enclosures, and emergency ventilation. They must include gas-based suppression (e.g., FM-200 or Novec 1230) or water mist systems where appropriate. Such systems must not rely on halon or other toxic fire suppression agents unless deemed necessary and are replaced with more environmentally friendly alternatives where possible.
 - d. Emergency lighting and signage must be installed for visibility during power failures.
 - e. Firefighter access and intervention points should be clearly marked and accessible.
 - f. Facility-specific emergency response plans must be developed and shared with local fire departments.
 - g. First responders must receive training from the operator on BESS-specific fire risks and suppression methods.
 - h. Adequate fire-resistant barriers must be installed to prevent fire spread to adjacent structures.

- i. A minimum clearance of ten (10) feet must be maintained between BESS installations and adjacent exposures, including property lines, public ways, buildings, and combustible materials.
- ii. The separation distance may be reduced to three (3) feet if a 1-hour fire-resistant barrier is installed. The barrier must be suitable for exterior use and extend at least five (5) feet above and beyond the BESS installation.
- i. BESS shall be designed and operated to minimize the risk of off-gassing. BESS must include provisions for emergency response, including the ability to evacuate or shelter in place in the event of a fire, to prevent exposure to hazardous gases.
- j. Manual and remote shutdown mechanisms must be available for rapid system deactivation.
- k. A formal response from the local fire department must be obtained, confirming their awareness of the BESS installation, including associated fire risks, emergency access points, and specific response strategies. This confirmation must be renewed annually, with 30-day notice provided before expiration. Additionally, the fire department should outline its emergency response mitigation measures, including training programs, equipment readiness, and procedural updates.
- l. The facility operator must be onsite for all emergency response operations.

3. Liquid Containment and Spill Control Standards.

- a. A Spill Prevention, Control, and Countermeasure (SPCC) plan must be implemented to prevent environmental contamination in the event of accidental spills or leaks.
- b. Secondary containment systems must be installed to prevent leaks or spills from contaminating the environment.
- c. No more than 1,000 gallons of fuel (diesel, gasoline, propane, or other) may be stored onsite.
- d. The containment system must have a minimum spill capacity of one hundred and ten (110) percent of the largest battery module and/or any other onsite fuel storage.
- e. Non-porous, chemical-resistant materials must be used for containment structures.
- f. A Hazard Mitigation Analysis (HMA) must be conducted to identify potential liquid hazards.
- g. Leak detection systems must be installed to monitor electrolyte spills or coolant leaks.

- h. Spill kits containing absorbents, neutralizers, and personal protective equipment (PPE) must be readily available on-site.
- i. Proper drainage systems must be in place to prevent contaminated water runoff.
- j. Regulated disposal procedures must be followed for spilled hazardous liquids, in compliance with EPA guidelines.
- k. An emergency spill response plan must be integrated into the overall site safety plan.

4. Battery Storage and Disposal.

- a. BESS using or storing hazardous chemicals, including fuel, coolants, refrigerants, and fire suppression agents, must store chemicals in compliance with Occupational Safety and Health Administration (OSHA) guidelines.
- b. Backup batteries (e.g., lithium-ion, lead-acid) must be stored in safe, properly ventilated areas.
- c. All batteries used on the premises must be regularly inspected for damage and replaced or recycled per Environmental Protection Agency (EPA) standards.
- d. Disposal of batteries must be done through certified e-waste recyclers, who are compliant with the Resource Conservation and Recovery Act (RCRA) guidelines and other state and federal regulations.
- e. In case of emergency, insurance is required to be scaled to the size of the facility, potential emergency extent, and the surrounding environment and land use.

E. Environmental Protection

1. Water and Soil Protection.

- a. During normal operations, battery systems must be designed to prevent chemical leakage. For lithium-ion batteries, leakage typically only occurs in the case of system failure, and operators must implement fail-safe monitoring to detect early indicators of failure to avoid leaks.
- b. For flow battery systems or other technologies that involve liquids, strict containment measures should be designed to ensure that no harmful chemicals can leak into the surrounding environment.

- 2. **Setbacks from perennial waterbodies.** All structures shall be set back a minimum of one hundred (100) feet from the shoreline of waterbodies designated as perennial by the State Water Commission.
- 3. **Exclusion from public water source areas.** All structures shall be set back a minimum of 1,200 feet from the wellhead for non-community water systems and

shall not be located. No minor/commercial or major BESS shall be located within source water protection areas for community water systems as identified by the State Department of Environmental Quality.

4. **Setback Requirements from Historic Sites.** A minimum setback of one (1) mile shall be required from any historic or cultural site designated by the State and/or Federal government. Additional setback distance may be set if provided by a recommendation in writing from the State Historic Preservation office.

5. **Utility Lines and Electrical Circuitry.**

- a. All on-site utility lines must be installed underground whenever feasible, minimizing environmental impact and reducing disturbances to the surrounding area.

6. **Vegetation and Tree Cutting.**

- a. Areas within twenty (20) feet on each side of the battery energy storage systems must be cleared of combustible vegetation and other combustible growth. However, certain vegetation like trees, shrubs, and ground covers such as grass, ivy, and succulents may be exempt as long as they do not form a readily available means of transmitting fire.

5.12.6 Noise Mitigation Requirements

A. Noise Study

1. A study must be prepared by an acoustical engineer and describe the anticipated noise level of the facility and any proposed mitigation efforts such as sound walls, baffles, ventilation silencers, etc. A study and its results must account for the existing noise environment.
2. The study must be prepared by a County-verified acoustical engineer.
3. The study will assess existing noise conditions and verify compliance with the applicable noise limit.
4. All noise studies must include information regarding noise mitigation measures incorporated in the design of the BESS.

B. Acoustical Engineer Verification

1. The applicant's acoustical engineer shall be verified and approved by the Zoning Administrator. Verification includes documentation of at least three (3) references of public agencies and officials where the engineer has performed noise studies.

C. Methods of Measurement

1. Noise must be measured using an integrating sound level meter (SLM) that meets or exceeds the American National Standards Institute (ANSI) S1.43-1997 specifications for Type 1 SLMs. The SLM response setting must be set to "fast", with a default time

period of fifteen (15) seconds. If a 15-second period is insufficient to accurately capture the A-weighted sound level, the operator may choose a time period between ten (10) seconds and one (1) minute.

2. Samples must be taken only when the subject sound is clearly identifiable by the operator without interference from extraneous noises such as passing traffic.
3. A minimum of three (3) samples must be taken to confirm the repeatability and consistency of the subject sound. When possible, at least one (1) sample should be taken when the subject sound is absent to allow for comparison.
4. For industrial uses, samples must be taken from the point on the receiving lot line closest to the source of the sound. The SLM microphone must be positioned at a standard height of five (5) feet above grade, aimed directly at the sound source.

D. Maximum Sound Levels

1. Sound Level Standards: Noise levels for ongoing operations shall not exceed the following levels at points in each property line closest to the proposed BESS.

Table 5.5 Data Center Maximum Sound Levels

Maximum Sound Levels	
Daytime	Nighttime
Fifty (50) dB(A)	Forty-five (45) dB(A)

E. Noise Mitigation and Monitoring

1. All BESSs must implement noise mitigation measures.
2. An approved acoustical engineer shall verify prior to the BESS is fully operational that it was constructed with all noise mitigation measures as included in the noise study. This shall be performed at the cost of the BESS owner.
3. The conditional use permit shall be conditioned to require annual inspections at the cost of the BESS owner, to verify that noise levels do not exceed those shown in the noise study. The inspections shall be provided by an approved acoustical engineer. Inspections shall take place under full load conditions (i.e. during the summer).
4. Systems exceeding noise thresholds must implement additional mitigation measures, at the cost of the BESS owner, within ninety (90) days.
5. Repeat violations may result in administrative fee(s) as established by the Board of County Commissioners. Mountrail County may institute any appropriate action or proceedings for the collection of said fees.
6. The Planning & Zoning department will investigate noise complaints within fourteen (14) days.

7. Corrective action will be required if violations are confirmed.

5.12.7 Construction and Maintenance Standards

- A. **Access Roads.** Access roads shall be constructed, to the extent feasible, parallel or perpendicular to existing roads to minimize disruption to surrounding land use. Roads shall be designed to accommodate the weight and frequency of equipment transport while ensuring proper drainage and dust control. The subject property must have direct access to a paved road.
- B. **Security Fencing.** The permittee shall install and maintain secure perimeter fencing around the BESS facility to protect infrastructure and prevent unauthorized access. If existing fences are removed or damaged during construction, they shall be promptly repaired or replaced unless otherwise negotiated with the landowner.
- C. **Load Permitting.** The permittee is responsible for complying with all state and local overweight load permitting requirements in accordance with applicable transportation laws. A conditional use permit for the Major BESS does not exempt haulers from obtaining necessary permits for transporting heavy equipment or materials.
- D. **Road Restoration.** Upon completion of construction, the permittee shall ensure that any roads, sidewalks, or other public infrastructure damaged by construction activities are promptly repaired or restored to at least their pre-construction condition at the permittee's expense.

5.12.8 End of Use/Site Restoration

- A. A Major BESS shall be decommissioned in the event it is not in use for 12 consecutive months.
- B. Structures and foundations shall be disposed in compliance with state law.
- C. The application shall include provisions for removal of all structures and foundations and restoration of soil and vegetative resources.
- D. Provide a letter of credit as stipulated in Section 6.12. The letter of credit shall be in place to ensure site restoration. The letter of credit shall be the sum equal to the total cost of reclamation as estimated by a North Dakota licensed engineer. The estimate provided by a North Dakota licensed engineer shall be verified by the Board of County Commissioners or designee.

5.12.9 Compliance and Enforcement

- A. Failure to adhere to these regulations will result in penalties, which may include fines, or performing corrective measures. Failure to adhere to perform corrective measures will result in suspension of operations by the County.

5.13 Data Centers

5.13.1 Definitions

Data Center. A building, complex of buildings, or dedicated space within a building that houses a computer system, servers, appliances, and other associated components used for the remote storage, processing, or transmission of digital data. Such facilities may also include air handlers, water cooling and storage facilities, utility substations, and other associated utility infrastructure to support operations. This definition may also include digital asset mining. Associated infrastructure, such as electrical substations, regardless of ownership, may be subject to separate review and permitting.

Digital Asset Mining Business. An individual or company operating a digital asset mining facility that cumulatively draws more than one megawatt of power in the County.

Digital Asset Mining. Involves the use of computer hardware and software specifically designed or used for the purpose of validating data and securing a blockchain network.

5.13.2 Purpose

- A. This Code provides a framework for siting, construction, and operation of a data center in the County that will preserve the safety and wellbeing of residents and facilitate equitable and orderly development.

5.13.3 Submittal Requirements

A. Site information, including:

1. Name and address of the owner, applicant, planner, architect, engineer, and landscape architect.
2. Date, scale and north arrow.
3. Total acreage of the site.
4. Title by which the property or project is to be referred.
5. Documentation verifying ownership.

- B. A copy of a survey prepared by a registered land surveyor, including a legal description of the property.

- C. Current and proposed zoning classifications for the property.
- D. Zoning classifications of adjacent parcels.
- E. List of property owners within a mile of the subject property.
- F. Location of all water wells, public and private, within a mile of the subject property.
- G. Details of adjacent developments, including buildings, driveways, fences, walls, parking areas, etc.
- H. Location and dimensions of all existing and proposed buildings and structures.
- I. Existing and proposed ground elevations for the property.
- J. Identification of floodplains, floodways, wetlands, and existing vegetation.
- K. Soil analysis.
- L. Spacing and layout of yards and open areas between structures.
- M. Location and measurements of all fences and walls.
- N. A detailed landscape plan.
- O. Identification and details of vehicular, pedestrian, and service access, including:
 - 1. Distance from the driveway opening at the curb to the extended property line of the nearest intersecting street.
 - 2. Width of proposed access drives and drive aisles.
 - 3. Identification and location of the following elements:
 - a. Curb lines.
 - b. Property lines.
 - c. Sidewalks.
 - d. Existing driveways, if applicable.
 - e. Parking regulations and signage.
 - f. Traffic signals.
 - g. Utility poles.
 - h. Light standards.
 - i. Fire hydrants.

- P. Off-street parking and loading facilities, including the number of spaces, as well as the dimensions of spaces, drive aisles, and loading zones.
- Q. Location, area, and height of all proposed buildings and freestanding signs, with complete elevations of the proposed structures or additions, including:
 - 1. Proposed materials and colors for all building elements.
 - 2. Cross-sectional views showing the relationship between roof-mounted mechanical equipment and the top of the screen wall.
 - 3. Locations of utility meters and ground-supported transformers, along with proposed screening methods if visible to the public.
 - 4. Location, area, and dimensions of all wall-mounted signs.
- R. Waste disposal facilities, such as trash bins and compactors, including provisions for screening them from public view.
- S. Preliminary engineering, drainage, and grading plans, if required by the County Engineer.
- T. Copy of the signed electrical power purchase agreement or a letter from the electrical provider with power levels of the proposed operation.
- U. Information on water consumption/use.
- V. Noise Study (see section below for study requirements).

W. State agency comments.

- 1. State Public Service Commission regarding potential impacts on other Electrical Customers in the County: The Public Service Commission will be solicited for comments as part of the application process. The County will specifically ask the Commission for input on the electrical grid's ability to accommodate the proposed data center, and any potential impacts that the additional power consumption may have in the region.
- 2. State Transmission Authority regarding potential impacts on transmission capacity and grid resilience.
- 3. State Historic Preservation Office regarding the presence of historic resources located within a mile of the proposed project.

5.13.4 Setback Requirements

A. Separation from Sensitive Properties.

- 1. Data centers shall be set back at least one (1) mile from all single-family and multi-family dwellings, schools, churches, synagogues, and other similar religious

institution or structures, and public parks as measured from the nearest property line of any of these sensitive properties to the data center's exterior property lines.

2. The setback requirement in Part A.1. above must include proof of property owner acknowledgement from those owning property within one mile of the subject property. This must be documented through a document that is recorded on the subject property and all properties within one (1) mile of the subject property.

B. **Setbacks from Perennial Waterbodies.** All structures shall be set back a minimum of one hundred (100) feet from the shoreline of waterbodies designated as perennial by the State Water Commission.

C. **Exclusion from Drinking Water Source Areas.** All structures shall be setback as follows to protect well source areas:

1. 1,200 feet from the wellhead of non-community water system.
2. 1,200 feet from a private wellhead used for drinking water.
3. No data center shall be located within source water protection areas for community water systems as identified by the State Department of Environmental Quality.

D. **Setback Requirements from Historic Sites.** A minimum setback of one (1) mile shall be required from any historic or cultural site designated by the State and/or Federal government. Additional setback distance may be set if provided by a recommendation in writing from the State Historic Preservation office.

E. **Setback Verification.** To ensure compliance with all setback requirements, data center applications must include a map of any sensitive or protected areas located within 1.5 miles the project area.

5.13.5 Radio Frequency Interference/Electromagnetic Interference (RFI/EMI).

- A. All new facilities with potential to generate RFI/EMI shall be designed, constructed, and operated to minimize interference with existing communications infrastructure, including but not limited to public safety communication systems, aviation communication, and military operations.
- B. Applicants must submit an RFI/EMI impact assessment as part of the permitting process, including a mapping of all existing facilities and infrastructure within a 1.5-mile radius of the proposed site.
- C. All facilities generating RFI/EMI shall be set back at least one and one-half (1.5) miles from the nearest airport or airstrip to prevent potential interference with aviation communication and navigation systems.

- D. Facilities generating RFI/EMI must maintain a minimum setback of two (2) miles from military installations to protect critical defense communication and radar operations. Any facility within this setback must coordinate with the appropriate military branch and demonstrate compliance with national security communication standards. The Planning and Zoning Commission may require additional mitigation measures if deemed necessary to prevent disruption of military operations.
- E. Facilities generating RFI/EMI must incorporate shielding, grounding, or filtering measures as necessary to minimize interference with existing communication networks. If a facility is found to cause harmful RFI/EMI post-installation, the operator must take corrective action within sixty (60) days of notification, including but not limited to adjusting frequencies, implementing additional shielding, or relocating equipment.

Table 5.7 RFI/EMI Facility Setback Standards

Setback Category	Distance from Source of RFI/EMI
Airports and Airstrips	One and one-half (1.5) miles
Military Facilities	Two (2) miles

5.13.6 Utility Lines and Electrical Circuitry

- A. All on-site utility lines must be placed underground to the extent feasible and as permitted by the utility company. This is done to reduce the environmental impact associated with overhead utility lines and to minimize disturbances to the surrounding environment. Exceptions are made for the main service connection at the utility company right-of-way and any new interconnection equipment, including poles and easements.

5.13.7 Foreign Ownership

- A. Developers must submit an affidavit affirming that the data center is owned and operated by U.S. citizens or entities. The affidavit must be updated annually to cover any change in ownership. It should include details on leasing arrangements and disclose to whom the facility is leased, including names and addresses. The applicant must provide evidence from the North Dakota Secretary of State confirming the business can lawfully operate in North Dakota. This provision aims to ensure national security concerns are addressed, promote local control over data infrastructure, and prevent any foreign entities from having undue influence or control over critical data resources within the county.

5.13.8 Emergency Management

A. Disclosure.

1. Qualifications and experience from selected developers shall be provided including disclosure of fires or other hazards at facilities. Safety testing and failure modes analysis data from selected developers and manufacturers shall be provided.

B. Liquid Containment and Spill Control Standards.

1. A Spill Prevention, Control, and Countermeasure (SPCC) plan must be implemented to prevent environmental contamination in the event of accidental spills or leaks.
2. No more than 1,000 gallons of fuel (diesel, gasoline, propane, or other) may be stored onsite.
3. Secondary containment systems must be installed to prevent leaks or spills from contaminating the environment.
4. The containment system must have a minimum spill capacity of one hundred and ten (110) percent of the largest battery module and/or any other onsite fuel storage.
5. Non-porous, chemical-resistant materials should be used for containment structures.
6. A Hazard Mitigation Analysis (HMA) must be conducted to identify potential liquid hazards.
7. Leak detection systems must be installed to monitor electrolyte spills or coolant leaks.
8. Spill kits containing absorbents, neutralizers, and personal protective equipment (PPE) must be readily available on-site.
9. Proper drainage systems must be in place to prevent contaminated water runoff.
10. Regulated disposal procedures must be followed for spilled hazardous liquids, in compliance with EPA guidelines.
11. An emergency spill response plan must be integrated into the overall site safety plan.

C. Emergency Response Standards.

1. All installations must comply with NFPA 75, which provides the minimum requirements for the protection of IT equipment and systems.
2. Fire suppression systems must be installed, including automated extinguishing systems, fire-resistant enclosures, and emergency ventilation. They must include gas-based suppression (e.g., FM-200 or Novec 1230) or water mist systems where appropriate. Such systems must not rely on halon or other toxic fire suppression agents unless deemed necessary and are replaced with more environmentally friendly alternatives where possible.
3. Emergency lighting and signage must be installed for visibility during power failures.
4. Firefighter access and intervention points should be clearly marked and accessible.

5. Facility-specific emergency response plans must be developed and shared with local fire departments.
6. First responders must receive training on data center-specific fire risks and suppression methods.
7. Manual and remote shutdown mechanisms must be available for rapid system deactivation.
8. A formal response from the local fire department must be obtained, confirming their awareness of installations, including associated fire risks, emergency access points, and specific response strategies. This confirmation must be renewed annually, with 30-day notice provided before expiration. Additionally, the fire department should outline its emergency response mitigation measures, including training programs, equipment readiness, and procedural updates.
9. The facility operator must be onsite for all emergency response operations.

D. Chemical, Battery and E-Waste Storage and Disposal.

1. Data centers using or storing hazardous chemicals, including fuel, coolants, refrigerants, and fire suppression agents, must store chemicals in compliance with Occupational Safety and Health Administration (OSHA) guidelines.
2. Backup batteries (e.g., lithium-ion, lead-acid) must be stored in safe, properly ventilated areas.
3. All batteries used on the premises must be regularly inspected for damage and replaced or recycled per Environmental Protection Agency (EPA) standards.
4. Disposal of batteries must be done through certified e-waste recyclers, who are compliant with the Resource Conservation and Recovery Act (RCRA) guidelines and other state and federal regulations.
5. E-waste must be tracked, recorded, and reported on an annual basis to local authorities.

E. Water Discharge.

1. Data centers with cooling systems that discharge water into local water bodies must implement thermal pollution mitigation measures to prevent the release of heated water into rivers, lakes, or streams, ensuring the water discharge does not exceed regulatory temperature limits; use water recycling systems to reduce consumption and minimize environmental impact. Discharge must comply with State Department of Environmental Quality requirements.

5.13.9 Emergency Response Needs

- A. The Data Processing Center Owner shall provide a copy of the project description, site plan, and any other pertinent documentation and/or information to the Mountrail County

Emergency Manager, local fire department(s), sheriff's office having jurisdiction, and any other local first responder organization(s). The Data Center Owner shall coordinate with such local entities in the development of an Emergency Response Plan.

- B. The Emergency Response Plan shall include a description of the numbers, locations, and training of personnel necessary to respond to a worst-case emergency in Mountrail County.
- C. The plan shall also include all Material Safety Data Sheets for all hazardous material and/or substances that are located within the Data Center.
- D. All necessary training and equipment for a worst-case emergency in Mountrail County for local fire departments, sheriff's office, first responder organizations, and the Mountrail County Emergency Manager shall be paid for by the Data Center Owner.
- E. The Emergency Response Plan shall be submitted to the Mountrail County Emergency Manager or not less than sixty (60) days before construction is to begin.
- F. The Emergency Response Plan shall include a list of all specialized response equipment showing the type and capability of said equipment, as well as the equipment's location. All response equipment shall be accessible by the Mountrail County Emergency Manager, local fire department(s), sheriff's office having jurisdiction, and any other local first responder organization(s).

5.13.10 Construction and Maintenance Standards

- A. **Access Roads.** Access roads shall be constructed, to the extent feasible, parallel or perpendicular to existing roads to minimize disruption to surrounding land use. Roads shall be designed to accommodate the weight and frequency of equipment transport while ensuring proper drainage and dust control. The subject property must have direct access to a paved road.
- B. **Security Fencing.** The permittee shall install and maintain secure perimeter fencing around the data center facility to protect infrastructure and prevent unauthorized access. If existing fences are removed or damaged during construction, they shall be promptly repaired or replaced unless otherwise negotiated with the landowner.
- C. **Vegetation Management.** The permittee shall minimize the removal of trees and vegetation to preserve the natural environment. No large tree stands, shelter belts, or critical green spaces shall be removed without the written approval of the affected landowner. Landscaping buffers may be required to mitigate visual impacts.
- D. **Load Permitting.** The permittee is responsible for complying with all state and local overweight load permitting requirements in accordance with applicable transportation laws.

A conditional use permit for the data center facility does not exempt haulers from obtaining necessary permits for transporting heavy equipment or materials.

- E. **Road Restoration.** Upon completion of construction, the permittee shall ensure that any roads, sidewalks, or other public infrastructure damaged by construction activities are promptly repaired or restored to at least their pre-construction condition at the permittee's expense.
- F. **Power Provision.** All power consumption needs for the data center must be generated onsite. Local utility connection is allowed, but only for single phase electrical power.
- G. **Water and Energy Efficiency.** The permittee shall incorporate water conservation and energy-efficient measures, including advanced cooling technologies, renewable energy integration, and sustainable design practices to minimize environmental impact.
- H. **Emergency Backup Systems.** The permittee shall ensure that all backup power systems comply with safety regulations and do not pose environmental risks. Fuel storage and emissions from backup generators must comply with local, state, and federal environmental standards.

5.13.11 Noise Mitigation Requirements

A. Noise Study.

- 1. A study must be prepared by an acoustical engineer and describe the anticipated noise level of the facility and any proposed mitigation efforts such as sound walls, baffles, ventilation silencers, etc. A study and its results must account for the existing noise environment.
- 2. The study must be prepared by a County-verified acoustical engineer.
- 3. The study will assess existing noise conditions and verify compliance with the applicable noise limit.
- 4. All noise studies must include information regarding noise mitigation measures incorporated in the design of the data center.

B. Acoustical Engineer Verification.

- 1. The applicant's acoustical engineer shall be verified and approved by the Zoning Administrator. Verification includes documentation, including:
 - a. One-page descriptions of at least three (3) noise studies performed for other data centers.
 - b. At least three (3) references of public agencies and officials where the engineer has performed noise studies.

C. Methods of Measurement.

1. Noise must be measured using an integrating sound level meter (SLM) that meets or exceeds the American National Standards Institute (ANSI) S1.43-1997 specifications for Type 1 SLMs. The SLM response setting must be set to "fast", with a default time period of fifteen (15) seconds. If a 15-second period is insufficient to accurately capture the A-weighted sound level, the operator may choose a time period between ten (10) seconds and one (1) minute.
2. Samples must be taken only when the subject sound is clearly identifiable by the operator without interference from extraneous noises such as passing traffic.
3. A minimum of three (3) samples must be taken to confirm the repeatability and consistency of the subject sound. When possible, at least one (1) sample should be taken when the subject sound is absent to allow for comparison.
4. For industrial uses, samples must be taken from the point on the receiving lot line closest to the source of the sound. The SLM microphone must be positioned at a standard height of five (5) feet above grade, aimed directly at the sound source.

D. Maximum Sound Levels.

1. Sound Level Standards: Noise levels for ongoing operations shall not exceed the following levels at points in each property line closest to the proposed data center.

Table 5.8 Data Center Maximum Sound Levels

Maximum Sound Levels	
Daytime	Nighttime
Fifty (50) dB(A)	Forty-five (45) dB(A)

E. Noise Mitigation and Monitoring.

1. All data centers must implement noise mitigation measures.
2. An approved acoustical engineer shall verify prior to the data center is fully operational that it was constructed with all noise mitigation measures as included in the noise study. This shall be performed at the cost of the data center owner.
3. The conditional use permit shall be conditioned to require annual inspections at the cost of the data center owner, to verify that noise levels do not exceed those shown in the noise study. The inspections shall be provided by an approved acoustical engineer. Inspections shall take place under full load conditions (i.e. during the summer).
4. Facilities exceeding noise thresholds must implement additional mitigation measures, at the cost of the data center owner, within ninety (90) days.

5. Repeat violations may result in administrative fee(s) as established by the Board of County Commissioners. Mountrail County may institute any appropriate action or proceedings for the collection of said fees.
6. The Planning & Zoning department will investigate noise complaints within fourteen (14) days.
7. Corrective action will be required if violations are confirmed.

5.13.12 *End of Use/Site Restoration*

- A. The data center shall be decommissioned in the event it is not in use for 12 consecutive months.
- B. Structures and foundations shall be disposed in compliance with state law.
- C. The application shall include provisions for removal of all structures and foundations and restoration of soil and vegetative resources.
- D. Provide a letter of credit as stipulated in Section 6.12. The letter of credit shall be in place to ensure site restoration. The letter of credit shall be the sum equal to the total cost of reclamation as estimated by a North Dakota licensed engineer. The estimate provided by a North Dakota licensed engineer shall be verified by the Board of County Commissioners or designee.

5.13.13 *Compliance and Enforcement*

- A. Failure to adhere to these regulations will result in penalties, which may include fines, or performing corrective measures. Failure to adhere to perform corrective measures will result in suspension of operations by the County.

Article 6. Administration and Enforcement

6.1 Duties

The administration and enforcement of this Code is hereby invested in the Planning and Zoning Commission and County Commissioners, Mountrail County, North Dakota.

6.1.1 *Planning and Zoning Commission*

B. **Authority and Duties:**

The Planning and Zoning Commission shall have the following duties:

1. Conduct inspections of structure for compliance with the Land Development Code and other applicable codes or ordinances.
2. Maintain records of the regulations and permits.
3. Interpret district boundaries on the zoning district map.
4. Establish rules, regulations and procedures for the purpose of administering this Code.
5. Upon request, report on the following to the county commissioners: All complaints stemming from this Land Development Code; zoning violations; applications for amendments; applications for conditional uses; and applications for variances.
6. The Planning and Zoning Commission may request the county commissioners to officially appoint a member of the Planning and Zoning Commission to act as Zoning Administrator and conduct the business of the Planning and Zoning Commission from the above-mentioned duties.
7. Conduct public hearings on conditional use permits, variance permits, ordinance amendments, and any other business pertaining to the Land Development Code which requires a public hearing
8. The chair of the Planning and Zoning Commission shall sign plats in conformance with the requirements of this Code.

6.1.2 *County Commissioners*

For the purpose of this Code, the county commissioners are hereby designated as the Board of Adjustment.

A. **Authority, Duties, and Appeals:**

1. Any person who feels they have been aggrieved by a decision of any official, department or board of the county may petition for a hearing to the county commissioners.

2. The appeal shall be presented in writing to the county commissioners and it shall specify the grounds for appeal.
3. The hearing shall be held within a reasonable time of the filing of the appeal.
4. Within fifteen (15) days after the hearing, the county commissioners shall take action and send their decision by registered mail to the petitioner.
5. It requires a concurring vote of three (3) to reverse any order, requirement or decision made by any official, department or board of the county.

6.2 Building Permit

- A. No land within the jurisdiction of this Code shall be built upon and no structure shall be structurally altered or moved until a permit has been obtained from the Planning and Zoning Commission.
 1. **Exemptions**
 - a. All unoccupied structures in the Agricultural District shall be exempt from the requirements of this section.
 - b. All structures that do not exceed 120 square feet.
 - c. Fences under 8.5 feet in height.
 - d. Retaining walls under 4 feet in height measured from the bottom of the footing to the top of the wall
- B. Any building permit issued must be in accordance with this Code.
- C. Structures exceeding 120 square feet, fences 8.5 feet in height or greater, and retaining walls 4 feet or greater shall obtain a building permit. Retaining wall height shall be measured from the bottom of the footing to the top of the wall.
- D. No permit is required for maintenance of any structure which does not structurally alter the structure.
- E. If no construction takes place in a year from the issuance of a building permit, the permit shall expire.
- F. When structural work is proposed, building permits for non-residential structures in the Commercial and Industrial Districts require that a North Dakota license engineer sign and seal the plans.
- G. The building permit process is outlined below:

1. All applicants who wish to build or alter any structure as defined in this Code must apply to the Planning and Zoning Commission for a permit.
2. If the applicant's plans meet district regulations as prescribed in this Code, the Planning and Zoning Commission or designated Zoning Administrator collects the fees and issues the building permit, if applicable.
3. If the applicant's plans do not comply with district regulations, the amendment, variance, conditional use or the appeals procedures shall be implemented.
4. The Zoning Administrator may recommend that the Planning and Zoning Commission consider any issues with respect to the building permit that may jeopardize the public health, safety, and general welfare of the public. The Planning and Zoning Commission may require additional materials from the applicant prior to issuance of the building permit.

6.3 Demolition Permit

- A. No person shall demolish any building or structure in the County without first obtaining a separate demolition permit for each such building or structure. All permits will be obtained the Planning and Zoning Commission.
- B. The application for demolition permit shall include the following:
 1. Location of material disposal.
 2. Information regarding hazardous materials and location of hazardous material disposal. Hazardous materials must be disposed of in State approved landfills.
 3. Information regarding water and sewer termination as needed, and documentation of coordination with appropriate utility agencies.
 4. Notification of gas and power companies as necessary.
 5. Documentation of inspection for pests and documentation of eradication plan as necessary.

6.4 Amendments

- A. Should the need arise for an amendment to the Land Development Code or zoning district map, the applicant submits a proposed zoning change for consideration by the Planning and Zoning Commission (the Planning and Zoning Commission itself may wish to change the Code text or map). A non-refundable application fee approved by the County Board of Commissioners shall be submitted with an application to the Zoning Administrator.

- B. The Planning and Zoning Commission will publish a notice for a public hearing in the official county newspaper once a week for two (2) successive weeks prior to the set time for said hearing. A notice shall also be posted in a conspicuous public structure.
- C. If the zoning map is proposed to be changed, the applicant must notify by certified mail, return receipt request adjoining property owners at least fifteen (15) days prior to the public hearing. Adjacent property owners are all property owners fronting or within one-half (1/2) mile of the property in question. Exceptions include the following:
 - 1. Where the subject site adjoins an incorporated area, the applicant shall mail written notification of the proposed development to property owners within the incorporated area located within three hundred (300) feet of the subject site.
 - 2. All zoning map proposals impacting the Recreation District (changing to Recreation or change from Recreation to another district) shall include notification of all adjoining property owners within three hundred (300) feet from the property in question.
- D. At the hearing, the applicant and/or a representative must be in attendance and present the proposal for amending the Land Development Code or zoning map. Also, at the hearing the public may comment and the adjacent property owners may state their opinions for the record.
- E. The Planning and Zoning Commission then presents its findings and recommendations to the County Commissioners. A second public hearing is held by the County Commissioners. The County Commission will publish a notice for a public hearing in the official county newspaper once a week for two (2) successive weeks prior to the set time for said hearing. The County Commissioners may either approve or disapprove the amendment to the Land Development Code or zoning map. If the county commissioners disapprove, the applicant may appeal to a court of law.
- F. If there is a protest to the amendment by more than twenty (20) percent of the adjacent property owners, a three-fifths vote of approval is required by the County Commissioners prior to passing the amendment.
- G. If an amendment that has been approved has not been filed of record with the Mountrail County Recorder within 120 days from the approval of the amendment by the Mountrail County Board of County Commissioners, the amendment granted in accordance with this section shall expire and be null and void.

6.5 Conditional Use

- A. A conditional use may be approved by the Planning and Zoning Commission only after finding that such conditional use would not be detrimental to the Comprehensive Plan, the

purposes of this Code, the surrounding property inhabited residences in the surrounding area. A conditional use permit shall state the terms and conditions of the permit which may include, but is not limited to, conditions that will further the Comprehensive Plan and the purposes of this regulation and will minimize any adverse impact upon the surrounding property and inhabited residences in the surrounding area.

- B. Applications for conditional use permits shall be submitted in writing in the same manner as for an amendment to the Land Development Code. Upon receipt of such application, a time and date shall be set for the hearing on such application before the Planning and Zoning Commission Board and notice of such hearing shall be published in the official newspaper of the County once a week for two (2) successive weeks prior to the set time for said hearing. The applicant is responsible for notifying the adjacent property owners by certified mail, return receipt request at least fifteen (15) days prior to the public hearing and providing proof of such notification to the Zoning Administrator before action can be taken by the Planning and Zoning Commission. In unincorporated areas, the property owners of record within one-half (1/2) mile of the subject property shall be notified in writing by the applicant of proposed development. Exceptions include the following:
 1. Where the subject site adjoins an incorporated area, the applicant shall mail written notification of the proposed development to property owners within the incorporated area located within three hundred (300) feet of the subject site.
 2. All conditional use permit proposals in the Recreation District shall include notification of all adjoining property owners within three hundred (300) feet from the property in question.
- C. At the hearing the applicant and/or a representative must be in attendance at the meeting and present the proposal for the conditional use permit.
- D. The application for a conditional use permit shall be in writing and shall be made by the owner of the property for which the conditional use permit is sought. The application shall be signed by the owner of the property and the applicant (if different) and shall be accompanied by a non-refundable fee approved by resolution of the Board of County Commissioners.
- E. An application for a conditional use permit shall be considered within one (1) year of the final action of the Planning and Zoning Commission upon a prior application of the same owner concerning the same use or the same structures on the same land.
- F. Every application for a conditional use shall include:
 1. Complete application with signature from the owner and applicant, if different.
 2. A scaled or engineered site plan showing:
 - a. Legal dimensions of the tract to be used.

- b. Location of all structures and all existing and proposed improvements.
 - c. Structure setback from all property lines.
 - d. Location and type of planting, screening, or walls.
 - e. A timing schedule indicating the anticipated starting and completion dates of the development.
 - f. Names and addresses of adjacent property owners.
 - g. Any additional information the Planning and Zoning Commission deems necessary to review the application.
- 3. An accurate legal description of the property and also a specific description including a drawing or diagram, if appropriate, of the proposed use for which the permit is sought.
- 4. Payment of any fee required under this Code.

G. Before the Planning and Zoning Commission may approve an application for a conditional use permit, it shall find that the use for which a conditional use permit is sought:

- 1. Has received all regulatory and statutory permits and approvals.
- 2. Meets any other conditions required by the Planning and Zoning Commission.
- 3. Will not affect the health or safety of persons residing or working in the county.
- 4. Will not have a significant impact on the transportation system and complies with Section 11-33-18 of state law or as amended.
- 5. Will not be detrimental to the public welfare or injurious to property or improvements in the county.
- 6. Will be in accordance with the purposes of this Code and the Rural Development Plan.
- 7. The Planning and Zoning Commission may issue the conditional use permit provided that all other provisions of law and ordinances shall be complied with. In granting such conditional use permit, the Planning and Zoning Commission may designate such conditions in connection therewith to assure that the use will conform to the foregoing requirements and that it will continue to do so.

H. The issuance of a conditional use permit shall not be deemed to be a change in zoning and the zoning of the property prior to the conditional use permit shall remain unchanged. In the event the use of any property, as permitted by a conditional use permit, is terminated for any reason, the conditional use permit shall expire.

I. Any conditional use permit granted in accordance with this section shall expire in one year unless the use authorized by said conditional use permit shall have commenced. The Planning and Zoning Commission may, upon issuance of a conditional use permit, establish

a specific termination date for such permit; the permit may be extended by the Planning and Zoning Commission upon written application of the owner of the property provided that such extension is for the same use as specified in the original permit.

J. If a conditional use permit that has been approved has not been filed of record with the Mountrail County Recorder within 120 days from the approval of the conditional use permit by the Mountrail County Board of Planning and Zoning, the conditional use permit granted in accordance with this section shall expire and be null and void.

K. Revocation

1. Any Permit granted hereunder shall be subject to revocation if it is determined that the conditions of approval have not been complied with, or any county, state, or federal requirements are not being maintained.
2. In order to consider revocation of a Conditional Use Permit, the Planning and Zoning Commission shall hold a public hearing as prescribed under part B of this chapter.
3. The holder of the Conditional Use Permit shall be provided notice of any reason or reasons that will be considered by the County as a basis for revoking the Conditional Use Permit, a Public Hearing shall be conducted by the Planning and Zoning Commission, and the holder of the Conditional Use Permit shall have an opportunity to appear before the Commission and present evidence and testimony opposing any recommendation to revoke the Conditional Use Permit.
4. The County Board of Commissioners shall review any recommendation of the Planning and Zoning Commission to revoke the Conditional Use Permit, and the County Board of Commissioners may, after reviewing that recommendation, revoke the Conditional Use Permit provided that there exists substantial evidence to support the revocation of the Permit.
5. Any decision of the County Board of Commissioners to revoke the Conditional Use Permit shall be reduced to writing and provided to the holder of the Conditional Use Permit. The revocation of the Conditional Use Permit shall likewise be recorded by the Mountrail County Recorder to be effective.

6.6 Variance

- A. The applicant applies to the Planning and Zoning Commission for a variance along with a non-refundable application fee approved by the County Board of Commissioners.
- B. The Planning and Zoning Commission will publish a notice for a public hearing in the official county newspaper once a week for two (2) successive weeks prior to the set time for said hearing.
- C. The Planning and Zoning Commission must find that the granting of a variance will not merely serve as a convenience to the applicant but will alleviate some demonstrable or

unusual hardship or difficulty that was not self-created. The following conditions must also exist:

1. The property has exceptional, unique or special characteristics different from the other property, particularly adjacent property.
2. Enforcement of the Code with regard to properties having said characteristics results in unnecessary and undue hardship.
3. Granting of a variance would have no adverse effect on the public interest, safety, health, and welfare.
4. Granting of a variance would have no adverse effect on adjacent property owners.
5. The owner cannot otherwise obtain a reasonable return on the property.

D. Every application for a variance shall include:

1. Complete application with signature from the owner and the applicant, if different.
2. A scaled or engineered site plan showing:
 - a. Legal dimensions of the tract to be used.
 - b. Location of all structures and all existing and proposed improvements.
 - c. Structure setback from all property lines.
 - d. Location and type of existing planting, screening or walls.
 - e. A timing schedule indicating the anticipated starting and completion dates of any development.
 - f. Names and addresses of adjacent property owners.
 - g. Explanation and/or description of reason(s) a variance is needed.
 - h. Any additional information the Planning and Zoning Commission deems necessary to review the application.

E. The applicant is responsible for notifying the adjacent property owners by certified mail, return receipt request at least fifteen (15) days prior to the public hearing and providing proof of such notification to the Zoning Administrator before action can be taken by the Planning and Zoning Commission. In unincorporated areas, the property owners of record within one-half (1/2) mile of the subject property shall be notified in writing by the applicant of the proposed variance application. Exceptions include the following:

1. Where the subject site adjoins an incorporated area, the applicant shall mail written notification of the proposed development to property owners within the incorporated area located within three hundred (300) feet of the subject site.
2. All variance proposals in the Recreation District shall include notification of all property owners within three hundred (300) feet from the property in question.

F. If a variance that has been approved has not been filed of record with the Mountrail County Recorder within 120 days from the approval of the variance by the Mountrail County Planning and Zoning Commissioner, the variance granted in accordance with this section shall expire and be null and void.

6.7 Temporary Uses

6.7.1 Purpose

Provisions authorizing temporary uses are intended to permit occasional, temporary uses and activities consistent with this Code and compatible with other nearby uses.

6.7.2 Temporary Use Permit

A. **Authority to Approve:** The County Zoning Administrator may authorize certain temporary uses of property as identified in Section 3.4, and other activities or uses shall be considered by the Planning and Zoning Commission as identified in Section 3.4 to warrant limitations on duration of use.

B. **Temporary Use Permits Subject to Zoning Administrator Review:** Applications shall be submitted to the Zoning Administrator on a form established by the Zoning Administrator along with a non-refundable fee approved by resolution of the Board of County Commissioners. Application checklists that detail requirements for a complete application are established and maintained by the Zoning Administrator. The application shall not be processed until the application is deemed complete by the Zoning Administrator and the required fee has been paid. If the Zoning Administrator determines that the application is incomplete, the application will be returned to the applicant along with an explanation of the application's deficiencies and/or missing information. The applicant shall provide documentation of landowner approval as part of the application. The Zoning Administrator shall not issue a temporary use permit unless the plans and specifications conform in all respects to the provisions of this Code.

1. Notice: The applicant is responsible for notifying the adjacent property owners by certified mail, return receipt request at least fifteen (15) days after the date the notices are mailed. In unincorporated areas, the property owners of record within one-half (1/2) mile of the subject property shall be notified in writing by the applicant of the proposed temporary use permit. Exceptions include the following:
 - a. Where the subject site adjoins an incorporated area, the applicant shall mail written notification of the proposed development to property owners within the incorporated area located within three hundred (300) feet of the subject site(s).

- b. All proposals in the Recreation District shall include notification of all adjoining property owners within three hundred (300) feet from the property/properties in question.
- 2. The Zoning Administrator cannot consider permit approval until the fifteen (15) day notice period has expired.

C. **Temporary Use Permits Subject to Planning and Zoning Commission Review:** The applicant shall follow the submittal and procedures stipulated in Section 6.5 pertaining to conditional use permits. Renewals of temporary use permits approved by the Planning and Zoning Commission may be authorized by the Zoning Administrator upon compliance with all permit conditions.

6.7.3 Approval Criteria

Temporary uses shall satisfy the following criteria:

- A. The uses are allowed in the zoning district of the proposed location.
- B. The proposed duration of the use complies with the maximum duration defined in Article 3.
- C. The use will not create a burden on public facilities, utilities, or emergency services which serve or are proposed to serve the area.
- D. The use will be sufficiently compatible with surrounding land uses that there will be no deterrence to the use of adjacent properties. Reasonable restrictions on the hours of operation, lighting, and noise levels may be defined where appropriate to maintain compatibility.
- E. Adequate measures have been taken to provide ingress and egress, access to public roads, and on-site parking.
- F. Adequate water supply, individual sewage treatment system facilities, erosion control, and stormwater management are provided in accordance with acceptable standards.
- G. All applicable permits, licenses, and/or certifications required for the operation of the temporary use have been acquired.
- H. There is a plan in place to return the land to its original condition. Remediation shall be complete by the date specified on the temporary use permit. Extensions to the remediation period may be granted by the Planning and Zoning Commission when completing remediation within the required time creates an extraordinary hardship for the applicant, but extensions may not be granted beyond ninety (90) days in total. Provide a letter of credit as stipulated in Section 6.12. The letter of credit shall be in place to ensure site restoration. The letter of credit shall be the sum equal to the total cost of reclamation as estimated by a

North Dakota licensed engineer. The estimate provided by a North Dakota licensed engineer shall be verified by the Board of County Commissioners or designee.

- I. **Exception:** Where use-specific standards are defined for a temporary use, those standards shall govern. Such uses include but are not limited to Temporary/Workforce Housing, Temporary Freshwater Industrial Use Point of Diversion, and Temporary Freshwater Industrial Use Water Lines (See Article 5, Supplemental Use Regulations).

6.7.4 Revocation

A temporary use permit may be revoked if the use is not in compliance with this Code and/or the conditions of the permit.

6.7.5 Expiration

The permit expires and is void at the end of the term provided on the permit. The Planning and Zoning Commission may grant permit extensions based on compliance with Section 6.7.3 (Approval Criteria).

6.7.6 Timeline to File

If a temporary use permit subject to Planning and Zoning Commission review has been approved but not filed with the Mountrail County Recorder within 120 days from the approval of the permit, the permit granted in accordance with this section shall expire and be null and void. This requirement does not apply to temporary freshwater industrial use point of diversion permits.

6.8 Schedule of Non-Refundable Fees

- A. **Development Permitting Fees:** A non-refundable fee approved by resolution of the County Commission shall be paid by the applicant upon filing an application for any of the following:

1. Amendment to the Land Development Code or zoning map
2. Subdivision of land/proposed plat subject to discretionary review by the Planning and Zoning Commission and County Commission
3. Subdivision of land/proposed plat subject to administrative review (Administrative Subdivision)
4. Exempt subdivision/outlot plat.
5. Request for variance from zoning or subdivision regulations
6. Conditional use permits
7. Conditional use permits unique to:

- a. Animal feeding operations
- b. Wind energy facilities, utility scale
- c. Solar energy facilities, utility scale
- d. Landfills with TENORM disposal
- e. Medical marijuana facilities
- f. Battery Energy Storage System
- g. Data Centers

8. Temporary use permits for uses subject to discretionary review by the Planning and Zoning Commission and County Commission

9. Temporary use permits unique to:

- a. Temporary housing/workforce housing (minor)
- b. Temporary housing/workforce housing (major)
- c. Temporary freshwater industrial use water lines

10. Temporary use permit for uses subject to administrative review by the Zoning Administrator

11. Annual permit fee for the following:

- a. Medical marijuana facilities
- b. Temporary housing/workforce housing (minor)
- c. Temporary housing/workforce housing (major)

12. Building permits

13. Demolition permits

B. **Building Permit Application Fee:** A non-refundable fee approved by resolution of the County Commission shall be paid prior to receiving the building permit. Fee amounts shall be determined by the estimated current market values of the property.

C. **Tipping Fee:** Owners of commercial landfills shall pay a non-refundable quarterly tipping fee, as approved by resolution of the Board of County Commissioners. The fee shall be paid to a waste disposal impact fund which shall be used to offset the costs attributable to the administration, enforcement, review, and monitoring of a commercial waste disposal site and to provide a source of funds for any other costs attributable to a commercial landfill incurred by the public or private entity.

D. **Gravel Pit Contractor Letter of Credit Scale:** All contractors performing mineral exploration and production shall be licensed with Mountrail County to ensure the

contractor's financial credibility. The letter of credit scale for pit contractors is set by resolution of the Board of County of Commissioners.

- E. **Administrative Appeal Fee:** A non-refundable fee approved by resolution of the County Commission shall be paid prior to processing and review of any appeal of an administrative decision.
- F. **Code Violation Fee:** An administrative fee established by the Board of County Commissioners charged to persons in violation with the provisions of this Code.

6.9 Appeal of Administrative Decisions

- A. **Intent:** This section describes the procedure for appeal of any order, requirement, decision, or determination made by an administrative official of the County, in the following instances:
 1. Relief from decisions made by administrative officials approving or denying development plans, building permits, temporary use applications, or any other application subject to administrative review.
 2. Relief from administrative interpretations involving the meaning and implementation of this Code.
- B. **Right to Appeal:** Appeals of administrative decisions may be filed by any aggrieved person or by any officer, department, board, or agency affected by an administrative decision.
- C. **Appeal Submittal:** A written appeal shall be submitted to the Planning and Zoning Commission within thirty (30) days of the date of the administrative decision. Appeal submittal shall include payment of a fee approved by resolution of the County Commission. The appeal shall not be processed until the appeal is submitted in writing and required fee has been paid.
- D. **Effect of Appeal Submittal:** The submission of an appeal stays all proceedings in furtherance of the action appealed, unless the official whose decision is being appealed certifies to the Planning and Zoning Commission, after the appeal is filed, that, because of facts stated in the certification, a stay would cause immediate peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Planning and Zoning Commission or by a court of record.
- E. **Appeal Review:** The Planning and Zoning Commission shall prepare a report that provides applicable documents relating to the appealed decision and a response to the appeal that describes the issue.
- F. **Hearing Notice:** Once the applicant has furnished all information as requested by the County, the Planning and Zoning Commission shall consider the appeal at its next meeting,

provided sufficient notice of the meeting has been given and there has been sufficient time for staff to review the appeal.

1. The Planning and Zoning Commission will publish a notice for a public hearing in the official county newspaper once a week for two (2) successive weeks prior to the set time for said hearing.
2. The applicant is responsible for notifying the adjacent property owners by certified mail, return receipt request at least fifteen (15) days prior to the public hearing and providing proof of such notification to the Zoning Administrator before action can be taken by the Planning and Zoning Commission. In unincorporated areas, the property owners of record within one-half (1/2) mile of the subject property shall be notified in writing by the applicant of the proposed appeal. Exceptions include the following:
 - a. Where the subject site adjoins an incorporated area, the applicant shall mail written notification of the proposed development to property owners within the incorporated area located within three hundred (300) feet of the subject site.
 - b. All appeals that may impact the Recreation District shall include notification of all adjoining property owners within three hundred (300) feet from the property in question.

G. **Public Hearing:** The Planning and Zoning Commission shall conduct a public hearing to affirm or amend the administrative decision. The public hearing may be continued at successive meetings, if necessary. Successive meetings shall be exempt from meeting notification requirements, provided the continuance is set for a specific date and time, which is announced at the public hearing.

H. **Review Criteria:** An appeal shall be sustained only if the Planning and Zoning Commission finds that the administrative official erred in their interpretation or application of the Land Development Code. Each decision of the Planning and Zoning Commission shall be accompanied by written findings of fact specifying the reasoning for the decision. These findings shall be filed in the office of the Zoning Administrator within fifteen (15) days of the final action.

I. **Further Appeal:** A decision of the Planning and Zoning Commission on an administrative appeal may be further appealed to the County Commission within thirty (30) days of the Planning and Zoning Commission's final action. A decision of the County Commission may be appealed to the District Court.

6.10 Penalties

- A. Mountrail County may institute any appropriate action:

1. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use.
2. To restrain, correct, or abate such violations.
3. To prevent the occupancy of the building, structure, or land.
4. To prevent any illegal act, conduct, business, or use in or about such premises.

B. Further, anyone who violates the provisions of this Code or fails to comply with any of its requirements shall be charged an administrative fee(s) as established by the Board of County Commissioners. Mountrail County may institute any appropriate action or proceedings for the collection of said fee.

C. All fees and penalties established by this Code shall be credited to the General Fund of Mountrail County, North Dakota.

6.11 Nonconforming Uses

- A. Lawful, nonconforming uses of land or structures existing at the date of adoption of these regulations may continue provided no structural alterations, except for normal maintenance, are made and such nonconforming uses shall be extended to occupy a greater area of land than occupied at the time of adoption.
- B. No structure where a nonconforming use has been discontinued for a period of two (2) years or has changed to a permitted use shall again be devoted to a nonconforming use.
- C. A nonconforming structure destroyed or damaged less than 50 percent of its fair market value may be reconstructed within one (1) year of such casualty. If damaged more than 50 percent of its fair market value, such structure shall be reconstructed in conformance with these regulations.
- D. The provisions of this section shall not be applicable to conditional uses.

6.12 Letter of Credit

- A. Letters of credit from financial institutions are the only acceptable instrument allowed by Mountrail County to provide financial assurance of project improvements and site restoration.
- B. The applicant must furnish the County with a letter of credit from a financial institution providing authorization and guarantee that the County may draw on the applicant's account, amounts not to exceed the required financial guarantee.
- C. Each letter of credit shall be provided in a form acceptable to the Zoning Administrator.

- D. The letter of credit shall extend at least six (6) months beyond the expiration date of the anticipated project completion date.
- E. The letter of credit shall be irrevocable and shall provide for sixty (60) days' notice to the County and approval of any change, amendment, or termination.
- F. The letter of credit shall be accepted as a financial guarantee only after Zoning Administrator and States Attorney review and make recommendation to Board of County Commissioners for approval.
- G. The financial institution issuing the letter of credit shall be insured by the Federal Depository Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

6.13 Road Haul Agreement

- A. **Purpose:** To complete some projects, it may be necessary for the contractor to utilize a portion of the Mountrail County roadway system (roads under the jurisdiction of any political subdivision) for the conveyance of construction equipment and materials to an extent that clearly exceeds normal roadway use. Excess loads may cause damage to County or other political subdivision roads. A road haul agreement insures County and other political subdivision roads against potential damage.
- B. **Authority:** For roads under the jurisdiction of the County, the Mountrail County Road & Bridge Department is hereby authorized to require a road haul agreement with the contractor when hauling operations are expected to generate damage to any roads under County jurisdiction that would clearly exceed damage resulting from normal roadway usage. Such damage may occur in the form of rutting, loss of gravel, damage to subgrade, damage to pavement, damage to drainage structures, etc. The agreement may also cover impacts related to dust generation caused by additional traffic generation from the subject operation. If roads are included in the agreement that are not under the jurisdiction of the County, consent from the applicable political subdivision must be included.
- C. **Agreement:** Each agreement shall specify the contractor and primary haul routes to be used on an annual basis, including the origin and destination of each haul route. The term of the agreement shall match the term of the corresponding conditional use permit and shall be amended to match any amendments to the conditional use permit.
- D. **County Duties:** Mountrail County Road & Bridge shall conduct a pre-haul inspection to record the existing quality of proposed haul roads under County jurisdiction. The pre-haul inspection will include photographs and description of objective criteria to document the condition of haul roads prior to hauling activity.

E. **Contractor Duties:** The contractor shall abide by all conditions agreed upon in the road haul agreement. The contractor shall take steps to ensure all roads are restored to a condition as good or better as recorded in the pre-haul inspection. This includes but is not limited to, condition of pavement, gravel, subgrade, shoulders, culverts, bridges, and other structures. Regular dust control activities may also be required.

6.14 Applicant and Property Owner(s) in Good Standing

A. **Requirement:** A property owner and an applicant for any application pursuant to this Code shall be in "good standing" where the property owner, the applicant, and any legal entity the applicant has a financial interest in or a business affiliation with, are:

1. Current in the payment of all monies owed to the political subdivision, including, but not limited to:
 - a. Property taxes.
 - b. Permit fees, including any planning and zoning permits, building permits, or building code and inspection fees.
 - c. Liens placed on properties.
2. Not in breach of any contractual obligation with all political subdivisions.
3. Not in violation of any County code requirement.
4. The applicant shall provide documentation of good standing with the State of North Dakota, certified by the Secretary of State, to demonstrate their record of compliance with all applicable North Dakota laws.

Article 7. Subdivision Regulations

7.1 General Provisions

7.1.1 Purpose

Subdivision Regulations are adopted for the following purposes:

- A. To protect and provide for the public health, safety, and general welfare of the County.
- B. To preserve land in tracts large enough for viable agricultural operations.
- C. To protect and conserve the value of land throughout the County, the value of structures and improvements upon the land, and to minimize the conflicts among the uses of land and structures.
- D. To provide the most beneficial relationship between the uses of land and structures and the circulation of traffic throughout the County.
- E. To establish reasonable standards of design and procedures for subdivisions and re-subdivisions, in order to further the orderly layout and use of land and to ensure proper legal descriptions and monumenting of subdivided land.
- F. To prevent the pollution of air, streams, and wetlands; to ensure the adequacy of drainage facilities; to protect underground water resources and to encourage the wise use and management of natural resources in order to preserve the integrity, stability, and beauty of the County.
- G. To promote cooperation between the County and other political subdivisions in the administration of this Resolution.
- H. To require new subdivisions to provide financial support for infrastructure improvements that are necessary to support new growth.

7.1.2 Platting Authority

The Planning and Zoning Commission shall serve as the platting authority for the County's area of jurisdiction in accordance with North Dakota State Century Code Chapters 11-33 and 11-33.2, as may be amended. No plat or replat shall be filed or accepted for filing by the Office of the County Recorder unless adopted by a majority vote of voting members present of the Planning and Zoning Commission approving such plat or replat or their authorized representative.

7.1.3 Policy

- A. It is hereby declared to be the policy of the County to consider the subdivision of land and the subsequent development of the plat as subject to the control of the County pursuant to the Mountrail County Comprehensive Plan for the orderly, planned, efficient and economical development of the County.
- B. Land to be subdivided shall be of such character that it can be used safely for structure purposes without danger to health from fire, flood, or other menace. Land shall not be subdivided unless proper provisions have been made for drainage, storm water management, wetland protection, potable water, domestic waste water, streets, and capital improvements such as schools, parks, recreation facilities, transportation facilities, storm water improvements, and any other necessary improvements.
- C. Each lot created under the provisions of this Resolution must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the County.
- D. The existing and proposed public improvements shall conform to and be properly related to the Mountrail County Comprehensive Plan. It is intended that these regulations shall supplement and facilitate the enforcement of the provisions and standards contained in the Building Code, the Land Development Code, and the Mountrail County Comprehensive Plan.

7.1.4 Restrictions on Recording and Building Permits

No subdivision shall be entitled to be recorded in the Office of the County Recorder, nor shall it have any validity unless approved under the provisions of this Code. The County shall not issue building permits for any structure on any lot in a subdivision that has not received final approval pursuant to this Code.

7.1.5 Compliance with Mountrail County Comprehensive Plan, Land Development Code, and Official Map

No subdivision of land shall conflict with the provisions of the Mountrail County Comprehensive Plan, Land Development Code, or Official Maps.

7.1.6 Fees

The fees for all applications and for all permits shall be established by the County Commission by resolution. The acceptance of all applications, issuance of permits, or recording of any plat

shall not occur until a complete application has been filed and the appropriate fees have been paid.

7.2 General Provisions for the Subdivision of Land

7.2.1 *Platting Required*

- A. All subdivisions of land shall be platted unless the land falls under the exempt division of land as defined in Section 7.6. All subdivisions of land which are not an exempt division of land shall be regulated by this Code and shall be platted in accordance with the procedures of Sections 7.3 and 7.4.
- B. Whenever any subdivision of land is proposed, regardless of whether the land has been previously subdivided; before any contract is made for the sale of any part thereof; and before any permit for the erection of a structure on such proposed subdivision shall be granted; the subdividing owner or his authorized agent shall receive final approval and meet the requirements of this Section.

7.2.2 *Board of Adjustment/Variances*

- A. The Planning and Zoning Commission shall serve as the County Board of Adjustment since the North Dakota Century Code does not specifically address the Board of Adjustment as it pertains to County Government. Therefore the structure and duties are spelled out in the Administration section of the County Land Development Code.
- B. A plat or subdivision shall not be approved where a variance will subsequently be required in order to use the lots for their intended use. But, where the Planning and Zoning Commission finds that extraordinary hardships or practical difficulties may result from strict compliance with these regulations and/or the purposes of these regulations may be serviced to a greater extent by an alternative proposal, the Planning and Zoning Board may approve variances from these subdivision regulations, provided that such variances shall not have the effect of nullifying the intent and purpose of this Section, the Land Development Code, or the Mountrail County Comprehensive Plan, and further provided the Planning and Zoning Commission shall not approve or disapprove variances unless it shall make findings based upon the evidence presented in each specific case that:
 1. The granting of the variance will not be detrimental to the public safety, health, or welfare or injurious to other property.
- C. The conditions upon which the request for variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.

D. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of this Section is carried out.

E. Procedure:

1. **Pre-Application Meeting:** Prior to submittal of a variance application, the property owner may submit a sketch plan and meet with the Zoning Administrator to discuss the variance application. Through the pre-application, the Zoning Administrator will summarize the information requirements and issues related to the specific variance request.

F. The property owner applying for a variance shall submit to the Zoning Administrator a completed variance application stating the hardship present, and provide all other information required by the Zoning Administrator. The application shall be completed when the applicant has complied with the following requirements:

1. A written and/or graphic description of the variance request including an explanation of the reason the variance is required, the hardship involved, why it is unique to this property, potential impact on development and surrounding property and compliance with the Rural Development Plan / Use Plan and the Land Development Code.
2. Supporting information described by the Zoning Administrator during the pre-application meeting and required by other sections of this Section including, but not limited to, covenants, deed restrictions, or other legal provisions necessary to guarantee the full achievement of the plan.
3. Applications must be accompanied by a fee established by the County Commission.

G. Upon receipt of a complete application, the Zoning Administrator shall prepare a report and refer the application to the Planning and Zoning Commission and the appropriate political subdivision for consideration.

H. The application shall be reviewed by the Board of the political subdivision. A written recommendation for application approval or denial from the Board may be forwarded to the Zoning Administrator. Recommendations received by the Zoning Administrator will be forwarded to the Planning and Zoning Commission for their consideration of the application.

I. The Planning and Zoning Commission and Zoning Administrator shall have the authority to request additional information from the applicant concerning a variance. Failure of the applicant to supply all necessary supportive information may be grounds for denial of the request.

J. The applicant or his representative shall appear before the Planning and Zoning Commission in order to answer questions concerning the proposed variance.

- K. A public hearing on the application shall be held by the Planning and Zoning Commission. Notice of the time, place, and purpose of the hearing shall be published once each week for two consecutive weeks in the official newspaper of the county. In unincorporated areas, the property owners of record within one-half (1/2) mile of the subject property shall be notified in writing by the applicant of the proposed variance application. Where the subject site adjoins an incorporated area, the applicant shall mail written notification of the proposed variance to property owners within the incorporated area located within two hundred (200) feet of the subject site. The failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply has been made.
- L. The applicant or his representative shall appear before the Planning and Zoning Commission in order to answer questions concerning the proposed variance.
- M. The Planning and Zoning Commission must take action on a completed application within a reasonable timeframe.
- N. A copy of any order issued by the Planning and Zoning Commission acting upon an appeal from an order, requirement, or decision or determination by an administrative official, or a request for a variance, shall be filed with the Office of the County Auditor. The order issued by the Planning and Zoning Commission shall include the legal description of the property involved. The Zoning Administrator shall be responsible for the document recording requirements of this Section and shall maintain records of the variance request.
- O. A copy of any order issued by the County Commission acting upon an appeal from an order, requirement, or decision or determination by an administrative official, or a request for a variance, shall be filed with the Office of the County Planning and Zoning Department. The order issued by the County Commission shall include the legal description of the property involved. The Zoning Administrator shall maintain records of the variance request.
- P. A variance shall expire one (1) year from the date of issuance if the variance is not utilized. No application for a variance shall be resubmitted for a period of one year from the date of an order of denial.
- Q. If necessary, an extension of a variance shall be requested in writing and filed with the Zoning Administrator at least thirty (30) days before the expiration date of the original variance. The request for extension shall state facts showing a good faith attempt to utilize the variance in the allowed one (1) year. Upon receipt of a request for variance extension, Zoning Administrator shall review the request and make a decision to grant or deny the extension based on the information submitted. At staff's discretion, the request may be referred to the Planning and Zoning Commission. No extension shall be for more than one

(1) year, after which if the variance is not utilized the variance would become void. In no case shall more than one variance extension be approved for an individual variance request.

7.2.3 *Premature Subdivisions*

Any plat and/or development deemed premature pursuant to the criteria listed below shall be denied by the Planning and Zoning Commission.

A. **Establishing Premature Subdivisions:** A subdivision may be deemed premature should any of the provisions which follow exist:

1. **Lack of Adequate Drainage:** A condition of inadequate drainage shall be deemed to exist if:
 - a. Surface or subsurface water retention and runoff is such that it constitutes a hazard resulting in flooding, loss of life, property damage, or other losses.
 - b. The proposed subdivision will cause pollution of water bodies or damage to other natural resources.
 - c. The proposed site grading and development will cause damage from erosion, sedimentation, or slope instability.
 - d. The proposed subdivision fails to comply with the storm water management requirements of the Mountrail County Land Development Code as may be amended
 - e. Factors to be considered in making these determinations may include: average rainfall for the area; area drainage patterns; the relationship of the land to floodplains; the nature of soils and sub-soils and their ability to adequately support surface water runoff and waste disposal systems; and the slope and stability of the land.

B. **Lack of Adequate Potable Water Supply:** A proposed subdivision shall be deemed to lack an adequate potable water supply if the proposed subdivision does not have adequate sources of water to serve the proposed subdivision if developed to its maximum permissible density without causing an unreasonable depreciation of existing water supplies for surrounding areas.

C. **Lack of Adequate Roads or Highways to Serve the Subdivision:** A proposed subdivision shall be deemed to lack adequate roads or highways to serve the subdivision when:

- a. County or local roads which serve the proposed subdivision are of such a width, grade, stability, vertical and horizontal alignment, site distance and paved surface condition that an increase in traffic volume generated by the proposed subdivision would create a hazard to public safety and general welfare, or seriously aggravate an already hazardous condition, and when said roads are inadequate for the intended use.

- b. The traffic generated by the proposed subdivision would create or contribute to unsafe conditions on highways existing at the time of the application.
- D. **Lack of Adequate Waste Disposal Systems:** A proposed subdivision shall be deemed to lack adequate waste disposal systems if there is inadequate on-site sewer capacity potential to support the subdivision if developed to the maximum permissible density indicated in the Mountrail County Comprehensive Plan.
- E. **Inconsistency with Mountrail County Comprehensive Plan:** A proposed subdivision shall be deemed inconsistent with the Mountrail County Comprehensive Plan when the subdivision is inconsistent with the purposes, objectives and/or recommendations of the adopted Mountrail County Comprehensive Plan, as may be amended.
- F. **Public Service Capacity:** The County or other political subdivisions lack necessary public service capacity when services such as recreational facilities, schools, police and fire protection and other public facilities, which must be provided at public expense, cannot reasonably be provided for within the next two (2) years.
- G. **Burden of Evidence:** The burden shall be upon the applicant to show evidence that the proposed subdivision or development is not premature.

7.3 Sketch Plan

Applicants must prepare a sketch plan depicting a subdivision proposal. The sketch plan, and accompanying information, shall serve as the basis for discussions between the applicant and the Zoning Administrator. It is intended to provide the applicant with an advisory review of the subdivision without incurring major costs.

7.3.1 *Information Required for Sketch Plan*

- A. **Sketch Plan Information:** Applicants must present a sketch plan to the Zoning Administrator prior to formulation of a plat and filing a formal application. The Zoning Administrator maintains a checklist of items to include with the sketch plan.
- B. The Zoning Administrator shall advise the applicant as to the conformance of the subdivision with the Mountrail County Comprehensive Plan, the Subdivision Section, Land Development Code, and other applicable official controls.
- C. If the applicant decides to proceed with the subdivision as proposed or revised, he or she shall proceed with the preparation of the plat as provided in Section 1.4.

7.4 Platting

7.4.1 Information Required for Platting

A. Submittal of Official Application:

Subdivision applications shall be submitted to the Zoning Administrator on a form established by the Planning and Zoning Commission along with a non-refundable fee that has been established by resolution of the County Board of Commissioners. Application checklists that detail requirements for a complete application are maintained by the Zoning Administrator. The application shall not be processed until the application is deemed complete by the Zoning Administrator and the required fee has been paid. If the Zoning Administrator determines that the application is incomplete, the application will be returned to the applicant along with an explanation of the application's deficiencies and/or missing information.

B. Additional Information:

Additional information or modifications may be required during the review process by County staff, Township Board and Cities under the jurisdiction of the County, the Planning and Zoning Commission. In certain cases, some information required by this Code may not be appropriate or may need to be modified in order to provide an adequate basis for making a decision.

7.4.2 Subdivision Procedures

- A. **Pre-application Meeting/Sketch Plan:** Prior to submittal of a plat application, the property owner must submit a sketch plan and meet with the Zoning Administrator to discuss the subdivision application in accordance with Chapter 3 of this Section.
- B. The person applying for plat approval shall submit to the Zoning Administrator a complete application and all other information required by the Zoning Administrator. The application shall address the informational requirements and issues identified through the sketch plan review procedure.
- C. A complete plat application shall include:
 1. A graphic and written description of the information requirements outlined in Section 7.4.
 2. Supporting information described by the Zoning Administrator during the sketch plan review and pre-application meeting. The Zoning Administrator may request the applicant to provide documentation that describes the subdivision's potential effects or impacts on public facilities, utilities and services including, but not limited, to:
 - a. Streets.
 - b. Law enforcement.

- c. Ambulance/emergency services.
- d. Fire protection.
- e. All political subdivisions.
- f. Schools.
- g. Utilities.
- h. Applications must be accompanied by a fee established by the Board of County Commissioners.

D. The Zoning Administrator shall refer copies of the plat to the Township Board, Cities under the jurisdiction of the County and other staff, committees, consultants, or agencies as appropriate.

E. The application shall be reviewed by Township Board and/or Cities under the jurisdiction of the County. A written recommendation for application approval or denial from the Township Board or Cities under the jurisdiction of the County may be forwarded to the Zoning Administrator. The Township and/or Cities recommendations received by the Zoning Administrator will be forwarded to the Planning and Zoning Commission for their consideration of the application at a public hearing.

F. The Zoning Administrator shall prepare a report and refer the application to the Mountrail County Planning and Zoning Commission for consideration.

G. A public hearing on the application shall be held by the Planning and Zoning Commission. Notice of the time, place, and purpose of the hearing shall be published once each week for two consecutive weeks in the official newspaper of the county. In unincorporated areas, the property owners of record within one-half (1/2) mile of the subject property shall be notified in writing by the applicant of the proposed subdivision. Where the subject site adjoins an incorporated area, the applicant shall mail written notification of the proposed subdivision to property owners within the incorporated area located within two hundred (200) feet of the subject site. The failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply has been made.

H. The applicant, or his agent, shall appear before the Planning and Zoning Commission in order to answer questions concerning the proposed plat.

I. The Planning and Zoning Commission and Zoning Administrator shall have the authority to request additional information from the applicant concerning a plat. Said information is to be declared necessary to establish performance conditions in relation to all pertinent sections of this Section. Failure of the applicant to supply all necessary supportive information may be grounds for denial of the request.

- J. The Planning and Zoning Commission shall take action on the application with a motion of approval or denial in a reasonable timeframe, but in no case prior to receipt of approval from the perspective Board of Township Supervisors, the City or the passage of 60 days from the date of notification to the township and or city, whichever occurs first, pursuant to North Dakota Century Code 11-33.2-12(2).
- K. The applicant or his agent shall be notified by mail of the decision of the Mountrail County Planning and Zoning Board.
- L. After a plat suitable for recording, including any and all covenants, has been approved by the Planning and Zoning Commission, or its authorized representative, it shall be filed for recording with the Office of the Mountrail County Recorder within ninety (90) days after approval. One (1) copy shall be filed with the Zoning Administrator.
- M. No Building Permit shall be issued until the plat is recorded at the Recorder's Office.

7.4.3 Form and Content

The plat shall conform to the form and content requirements of this Section as well as the provisions of Chapters 11-33.2 and 40-50.1 of the North Dakota Century Code.

7.4.4 Recording

If the plat is approved by the Planning and Zoning Commission and/or authorized representative, the applicant shall record the plat within the Office of the County Recorder within ninety (90) days after the date of approval, otherwise the approval of the plat shall be considered void.

7.4.5 Security/Fees

Prior to recording of any plat, all fees and charges shall be paid in full covering the costs of the County related to the approved plat.

7.4.6 Record Plans

The applicant shall submit for review and approval all proposals to change the original plans regarding road construction, drainage, and storm water management. The applicant must obtain written approval by the Township Board or City and the County prior to changes to the plans. The applicant shall submit one (1) set of record plans indicating all changes in the work, including accurate as-built locations, dimensions, elevations, grades, slopes and all other pertinent information concerning the completed work.

7.5 Administrative Subdivision

7.5.1 *Application of Provisions*

Notwithstanding the requirements of Section 7.6, the provisions of this Chapter shall apply only to those subdivisions classified as administrative subdivisions.

7.5.2 *Definition of Administrative Subdivisions*

The following shall be considered administrative subdivisions:

- A. The exchange of abutting land between owners, the addition of land to an existing lot or the relocation of the boundary line between two abutting, existing parcels of property, provided such exchange, addition or relocation shall not cause the creation of an additional parcel or parcels and the resulting parcel(s) comply with the requirements of the Land Development Code.
- B. The platting of County road rights-of-way.

7.5.3 *Filing and Review of Application*

- A. Whenever any subdivision of land as outlined in Section 7.5 is proposed, before any contract is made for the sale of any part thereof, and before any permit for the erection of a structure on such proposed subdivision shall be granted, the subdividing owner or his authorized agent, shall file an application and secure approval of an administrative subdivision.
- B. The administrative subdivision application shall be considered to be officially filed when the Zoning Administrator has received the application and has determined that the application is complete. A non-refundable application fee approved by the County Board of Commissioners shall be included with the application.

7.5.4 *Information Required for Administrative Subdivision*

A map or sketch, drawn to scale or survey, is required for submittal to the Zoning Administrator on a form established by the Planning and Zoning Commission along with a non-refundable fee that has been established by resolution of the County Board of Commissioners. Application checklists that detail requirements for a complete application are maintained by the Zoning Administrator. The application shall not be processed until the application is deemed complete by the Zoning Administrator and the required fee has been paid. If the Zoning Administrator determines that the application is incomplete, the application will be returned to the applicant along with an explanation of the application's deficiencies and/or missing information.

7.5.5 *Procedure*

- A. The Zoning Administrator shall review the documents and may approve the administrative subdivision when said application complies with the Land Development Code and other official controls of the County.
- B. The land exchanged, added to, or relocated and combined to a property as indicated may be combined under one (1) Tax Parcel Identification Number (P.I.D.) and one (1) deed.
- C. Two (2) or more parcels required to be considered one parcel for zoning purposes by the Zoning Administrator shall be consolidated or combined to form a single parcel. The combination or consolidation shall be accomplished through the filing of the appropriate deed or contract for deed transferring interest in all of the parcels to be merged, i.e., a deed by the property owner(s) [the grantor(s)] deeding to herself or himself [the grantee(s)] setting forth the legal descriptions of all said parcels required to be consolidated. The resulting single parcel may be consolidated under one (1) tax parcel identification number if permitted by the County Director of Tax Equalization. A written request by the property owners to combine the parcels under one (1) parcel identification number may be required by the County Director of Tax Equalization at the time the consolidating deed is to be recorded. A note shall be placed on the deed as follows: "this is one parcel for zoning purposes."

7.6 **Exempt Subdivision**

7.6.1 *Definitions*

Outlot: A tract of land, allowed pursuant to Section 7.6, Exempt Subdivision, which is one that cannot be described with a legal description derived from the Public Land Survey System.

Sublot: A lot subdivided from an outlot, which otherwise meets the definition of an outlot and must comply with Section 7.6 of this Code.

7.6.2 *Land Zoned Agricultural*

- A. An Agricultural District exempt outlot of land shall meet all of the following criteria:
 1. The land is entirely within an Agricultural District.
 2. A maximum of four (4) outlots or sublots may be created within each square quarter section of land (approximately 160 acres). Irregular lots that must be platted pursuant to NDCC 57-02-39 are exempt from this limit.
 3. No more than two (2) outlots or sublots may be adjoining.
 4. Lot being created is thirty-five (35) acres or less.

5. No new street, whether public or private, will be dedicated or constructed to provide access to more than one lot or tract.
6. Each lot has access to a public right-of-way through one of the following:
 - a. By abutting a county roadway,
 - b. by abutting a township or other political subdivision roadway,
 - c. by acquiring a private easement to a county or another publicly maintained roadway, or
 - d. by constructing a section line roadway on a section line which meets the county standards for section line roads.
7. All above- and below-ground utilities shall be set back at least twenty (20) feet but no more than forty (40) feet from the public right-of-way and/or road access easement for each lot created.

B. County staff may present any concerns with the proposed outlot to the Planning and Zoning Commission. The Planning and Zoning Commission may require that the outlot be processed as a subdivision based on concerns with the public safety, health, and welfare that may result from the creation of the outlot.

7.6.3 Exempt Subdivision Procedure

- A. If an applicant requests that the subdivision of land be classified as an exempt division of land, the request shall follow the following procedure:
- B. The applicant may consult informally with the Zoning Administrator to determine eligibility of the proposed division of land;
- C. The applicant shall submit a completed Subdivision Application, including:
 1. the legal description of the lot to be created, only if it can be described as an aliquot of a section, or,
 2. A Plat of Irregular Description signed by a North Dakota certified land surveyor for the lot to be created.
 3. A non-refundable application fee approved by the County Board of Commissioners.
- D. The County Engineer shall review the submitted materials for compliance with the criteria of this section, the compliance with all County road and approach specifications, and other technical specifications of the plat,
- E. The Zoning Administrator shall prepare a written report that confirms that this subdivision of land conforms to the exempt subdivision of land, as defined herein, and,

- F. The Chairman of the Planning and Zoning Commission shall sign all approved plats of irregular tracts, and return the same to the applicant for recording with the Mountrail County Recorder.
- G. All subdivisions approved through these exempt division of land procedures shall be named as an "Outlot", followed by a number that shall be given by the Mountrail County Auditor's Office.

7.7 Design Standards

7.7.1 *Conformity with the Mountrail County Comprehensive Plan and Zoning District Requirements*

A proposed subdivision shall conform to the Mountrail County Comprehensive Plan, to related policies adopted by the County, and to the Mountrail County Land Development Code.

7.7.2 *Land Requirements*

- A. Land shall be suited to the purpose for which it is to be subdivided. No plan shall be approved if the site is not suitable for the purposes proposed by reason of potential flooding, topography, adverse soil conditions, rock formations, or wetlands.
- B. Proposed subdivisions shall be coordinated with surrounding properties and/or neighborhoods, so that the County and other political subdivisions as a whole may develop efficiently and harmoniously.

7.7.3 *Lots*

- A. **Area:** The minimum lot area, width and depth shall not be less than that established by the Mountrail County Land Development Code in effect at the time of adoption of the plat.
- B. **Corner Lots:** Corner lots for residential use shall have additional width to permit appropriate structure setback from both streets as required by the applicable zoning district(s).
- C. **Side Lot Lines:** Side lines of lots shall be approximately at right angles to street lines or radial to curved street lines.
- D. **Width:** Every lot must have the minimum width measured at the front yard setback extending to the location of the principal structure.
- E. **Existing Structure Setback Lines:** Setback or structure lines shall be shown on all lots for existing structures.

- F. **Lot Remnants:** All remnants of lots below minimum lot size left over after subdividing of a larger tract must be added to adjacent lots.
- G. **Political Boundaries:** No singular plat shall extend over a political boundary or school district line without document notification to the affected units of government.
- H. **Frontage on Two Streets:** Double frontage, or lots with frontage on two (2) parallel streets shall not be permitted except where lots back on major collector or arterial streets, County or State highways, or where topographic or other conditions render subdividing otherwise unreasonable.
- I. **Irregular Shaped Lots:** On single family residential lots determined to be irregular in shape (e.g., triangular), the applicant shall demonstrate to the County an ability to properly place principal structures and accessory structures upon the site which are compatible in size and character to the surrounding area.
- J. **Common Lots:** Common lots may be platted within a subdivision to delineate commonly owned open spaces. The lot shall be sized in a manner to accommodate its intended use. No building permits shall be issued for a common lot.
- K. **Streets, Continuous:** Except for cul-de-sacs, streets shall connect with streets already dedicated in adjoining or adjacent subdivisions or provide for future connections to adjoining un-subdivided tracts, or shall be a reasonable projection of streets in the nearest subdivided tracts. The arrangement of thoroughfares and collector streets shall be considered in their relation to the reasonable circulation of traffic, to topographic conditions, to runoff of storm water, to public convenience and safety, and in their appropriate relation to the proposed uses of the area to be served.
- L. **Temporary cul-de-sac:** In those instances where a street is terminated pending future extension in conjunction with future subdivision and more than four hundred (400) feet between the dead-end and the nearest intersection, a temporary turn around facility shall be provided at the closed end, in conformance with cul-de-sac requirements. This temporary cul-de-sac must be placed inside a temporary roadway easement if it is located outside street right-of-way. Financial guarantee will be required for removal or restoration as determined by the County Engineer.
- M. **Provisions for Re-subdivision of Large Lots and Parcels:** When a tract is subdivided into larger than normal building lots or parcels, such lots or parcels shall be so arranged as to permit the logical location and openings of future streets and appropriate re-subdivision, with provision for adequate utility connections for such re-subdivision.
- N. **Street Intersections:** Under normal conditions, streets shall be laid out so as to intersect as nearly as possible at right angles, except where topography or other conditions justify

variations. Under normal conditions, the minimum angle of intersection of streets shall be eighty (80) degrees. Street intersection jogs with an offset of less than three hundred (300) feet shall be avoided.

O. **Subdivisions Abutting Major Rights-of-Way:** Wherever the proposed subdivision contains or is adjacent to the right-of-way of a paved road, provisions may be made for a local street. The design shall include proper circulation, setbacks from an intersection on the major rights-of-way, minimum distance required for approach connections to future grade separations, and for lot depths.

P. **Cul-de-sacs/Dead-End Streets:**

1. Dead-end streets (temporary or permanent) without cul-de-sac turn arounds shall be prohibited.
2. Permanent cul-de-sacs shall only be allowed in cases where proper interconnectivity of local streets will be provided or where topography or environmental constraints preclude interconnection of local streets.
3. Minimum outside roadway diameter of any cul-de-sac or turn-around shall be sixty (60) feet with a right-of-way diameter of one hundred forty (140) feet.

Q. All roads within the subdivision shall be centered on the roadway right-of-way and the driving surface and shoulders shall be a minimum of twenty four (24) feet wide. Minimum top of roadway elevation shall be three (3) feet above original ground line with side slopes of 4:1 unless otherwise approved by the County Engineer. Roadbed shall be excavated to clay and road constructed from clay packed with a pneumatic roller and topped with a minimum of five (5) inches of Class 13 gravel. Ditch bottoms shall be three (3) feet in width and have positive drainage to an adequate outlet.

R. The plat shall show all accesses off public roads or highways including the size of culverts to be used. Where access is off a State Highway, written approval for the access, including culvert size, from the State Highway Department shall be submitted with the plat. Where access is off a County or other political subdivision road, written approval from the County Water Resource Board and/or County Road Department as to culvert size for all private drives as well as the public access shall be submitted with the plat. Access spacing from a County or other political subdivision road shall be consistent with the standards set forth in the Mountrail County Land Development Code and Mountrail County Comprehensive Plan.

7.7.4 *Easements*

A. Drainage and utility easements shall be required for any storm water management facility, natural drainage way, and wetland. The size and location of the necessary easements shall be reviewed and approved by the Zoning Administrator.

- B. In all Zoning Districts, except Agricultural Districts, any subdivision shall provide easements for utilities and drainage at least ten (10) feet wide along the roadway frontage of all new lots. If necessary for the extension of utilities, easements of greater width may be required along lot lines or across lots.
- C. Minimum width for a private or public roadway within the subdivision shall be sixty-six (66) feet.
- D. Easements and right-of-way, when approved, shall not hereafter be changed without the approval of the Planning and Zoning Commission

7.7.5 Storm Water Management and Erosion and Sediment Control

All subdivisions shall comply with storm water management standards of the Mountrail County Land Development Code, as may be amended.

7.7.6 County Road Access Management

- A. The County Road and Bridge Department is responsible for reviewing all requests to access County Roads and unorganized township roads. On organized township roads, access must be reviewed by the County or township board. New subdivisions may result in the need for additional access points onto County Roads or township roads. The need for County and township road access must be considered when reviewing the design of subdivision proposals.
- B. Limits to access points onto County Roads:
 1. Subdivisions that result in additional access points onto County roads are limited to five (5) approaches per mile.
 2. All access to individual lots shall be provided from an internal road system or be spaced at least 350 feet apart. Greater spacing may be required by the County Road and Bridge Department for safety purposes, such as proximity to an intersection.
- C. Deviations from these access management standards may be permitted by the County Road and Bridge Department given unique conditions in the area of the proposed subdivision.

7.8 Improvements

7.8.1 Responsibility

- A. All required improvements shall be installed and furnished by the applicant, including all costs of inspection by the County, at the sole expense of the applicant and at no expense to the County. If any improvement installed within the boundaries of the subdivision is

determined to be of substantial benefit to lands beyond the boundaries of the subdivision, the County may make provisions for causing a portion of the cost of the improvement, representing the benefit to such lands, to be assessed against the same and, in such case, the applicant will be required to pay only for such portion of the whole cost of said improvements that represents the benefit to the property within the subdivision.

- B. Ongoing maintenance of any shared private improvements shall be the responsibility of an association of the property owners (homeowner's association). The County shall verify the establishment of a homeowner's association when shared private improvements are involved.

7.8.2 Standards and Requirements

Engineering requirements, standards for plans, the required improvements, and the standards for design and installation shall conform to such standards and specifications as adopted by the County and any additional or more restrictive standards adopted by the County in which the subdivision is located.

7.8.3 Street Improvements

- A. Roads within the subdivision shall be constructed prior to development and inspected during construction and approved by the Zoning Administrator. Building Permits shall not be issued until such roads are approved.
- B. All roads within the subdivision shall have either Yield or Stop signs that comply with the "Manual on Uniform Traffic Control Devices" at their intersection with a state, county, township, or other political subdivision road.
- C. Culverts shall be installed under all roads within the subdivision. Culvert size shall match the larger of upstream or downstream culvert with a minimum diameter of twenty-four (24) inches. Culverts under driveways shall be a minimum diameter of twenty-four (24) inches. All culverts shall be constructed of new riveted corrugated metal pipe with aprons.

7.8.4 Sanitary and Water Distribution Improvements

- A. All sewage and water systems shall conform to the provisions of this Land Development Code and the State Health Department. Soil analysis and percolation tests shall be performed to determine the type of septic system to be used. No building permit shall be issued until percolation tests have been performed.
- B. All unsafe wells and/or abandoned wells within and in the immediate vicinity of the subdivision shall be closed and capped.

7.8.5 Developer's Agreement

Prior to installation of any required improvements and prior to the plat being recorded, the applicant shall enter into an agreement in writing with the County requiring the applicant to furnish and construct said improvements at his sole cost and in accordance with plans and specifications and usual agreement conditions and/or pay appropriate costs for improvements or other costs associated with the plat. Further, the agreement shall provide for the development of any restrictions, covenants, easements, signage, park, or other conditions of the approved plat and provide for the proper execution, recording or other action required.

Approval of the applicant's agreement shall be part of plat approval by the Planning and Zoning Commission.

- A. The developer's agreement shall include provisions for the supervision of construction by the Zoning Administrator or his agent.
- B. The developer's agreement shall require the applicant to provide a letter of credit to ensure completion of all improvements as provided in Sections 7.8.6 and 7.8.7.
- C. The time for completion of the work, and the several parts thereof, shall be determined by the County upon recommendation of the Zoning Administrator after consultation with the applicant and shall be reasonable in relation to the work to be done, the seasons of the year, and proper coordination with construction activity in the subdivision.
- D. One (1) copy of the developer's agreement which was signed by the owner and applicant (if different) and the Planning and Zoning Commission shall be submitted to the Zoning Administrator at the time the plat is recorded.

7.8.6 Completion of Improvements

- A. **Governmental Units:** Governmental units to which these guarantee and agreement provisions apply may file, in lieu of said agreement or financial guarantee, a certified resolution or resolution from officers or agencies authorized to act in their behalf, agreeing to comply with the provisions of this section.
- B. **Failure to Complete Improvement:** For a subdivision for which no letter of credit has been posted, if the improvements are not completed within the period specified by the Planning and Zoning Commission in the approval process, the approval shall be deemed to have expired. In those cases where a letter of credit has been posted and required improvements have not been installed within the terms of such letter of credit, the County may declare the letter of credit to be in default and require that all the improvements be installed regardless of the extent completion of the development at the time the letter of credit is declared to be in default.

C. **Release of Financial Guarantee:** The County shall not release the letter of credit for those improvements required until the Zoning Administrator has certified that all required improvements have been satisfactorily completed.

7.8.7 Maintenance of Improvements

The applicant shall be required to maintain all improvements in the subdivision or on the individual subdivided lots and provide for snow removal and maintenance of streets until a homeowner association is set up to maintain the improvements. The County, Township, City, or other political subdivision is not liable for maintenance of improvements or snow removal. In addition, the County, Township, City, or other political subdivision will not be responsible to enforce private protective covenants.

7.8.8 Deferral or Waiver of Required Improvements

- A. The Planning and Zoning Commission may defer or waive at the time of plat approval, subject to appropriate conditions, the provision of any or all such improvements that, in its judgment, are not requisite to the interests of the public health, safety, and general welfare, or which are inappropriate because of inadequacy or lack of connecting facilities.
- B. Whenever it is deemed necessary by the Planning and Zoning Commission to defer the construction of any required improvement because of incompatible grades, future planning, inadequate or lack of connecting facilities, or for other reasons, the applicant may post a financial guarantee ensuring completion of said improvements upon demand of the County.

7.9 Financial Guarantee

The developer's agreement provided in Section 7.8.5 requires the applicant to provide a letter of credit. The letter of credit shall be the sum equal to the total cost as estimated by a North Dakota licensed engineer, of all of the improvements to be furnished and installed by the applicant pursuant to the agreement and which have not been completed prior to the approval of the plat. The estimate provided by a North Dakota licensed engineer shall be verified by the Board of County Commissioners or designee. Refer to Section 6.12 for additional letter of credit stipulations.