

**BROOKINGS
COUNTY
ZONING
ORDINANCE**

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Of Brookings County, South Dakota

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ARTICLE I
GENERAL PROVISIONS

CHAPTER 1.01. TITLE AND APPLICATION.

Section 1.01.01. Title.

This Ordinance may be known and may be cited and referred to as the “Brookings County Zoning Ordinance” to the same effect as if the full title were stated.

Section 1.01.02. Jurisdiction.

Pursuant to SDCL 11-2, 1967, as amended, the provisions of this Ordinance shall apply within the unincorporated areas of Brookings County, South Dakota, as established on the map entitled “The Official Zoning Map of Brookings County, South Dakota.”

Section 1.01.03. Purpose.

The Zoning Ordinance is adopted to protect and to promote the public health, safety, peace, comfort, convenience, prosperity and general welfare. More specifically, the Zoning Ordinance is adopted in order to achieve the following objectives:

1. To assist in the implementation of Brookings County’s Comprehensive Land Use Plan which in its entirety represents the foundation upon which this Ordinance is based.
2. To foster a harmonious, convenient, workable relationship among land uses.
3. To promote the stability of existing land uses that conform with the Comprehensive Land Use Plan and to protect them from inharmonious influences and harmful intrusions.
4. To insure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the “county community” as a whole.
5. To prevent excessive population densities and overcrowding of the land with structures.
6. To protect and enhance real estate values.
7. To facilitate the adequate provision of transportation, water and sewerage, schools, parks, and other public requirements.
8. To regulate and restrict the height, number of stories, and bulk of building and other structures; the percentage of lots that may be occupied; the size of yards, courts, and other open spaces; and the location and use of other purposes;
9. To regulate and restrict the erection, construction, reconstruction, alteration, repair, and use of building, structures, and land.
10. To place the power and responsibility of the use of land in the hands of the property owner contingent upon the compatibility of surrounding uses and the Comprehensive Land Use Plan.

CHAPTER 1.02. ORDINANCE PROVISIONS.

Section 1.02.01. Provisions of Ordinance Declared to be Minimum Requirements.

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Wherever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, ordinances, or Board of Adjustment decisions, the most restrictive or that imposing the higher standards, shall govern.

Section 1.02.02. Purpose of Catch Heads.

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

Section 1.02.03. Violation and Penalty.

1. In addition to penalties in 6.05.05, violations of the ordinance shall be treated in the manner specified below.

a. Any person who starts work for which a permit (building, conditional use, variance, rezoning) is required by this Zoning Ordinance, without first securing such permit and paying the prescribed fee, shall be charged according to the provisions of this section. All administrative fees assessed there under shall be rounded to the nearest whole dollar.

i. Whenever any work or activity for which a permit is required has been commenced without first obtaining the required permit the following fee schedule shall apply in recognition of the increased administrative time to inspect and process such applications:

1. Building Permits:

a. If an applicant applies for a building permit after beginning or finishing a building, but prior to being contacted by the Brookings County Zoning Director, the building permit fee shall be 1.5 times the regular fee provided in Section 1.

b. If an application for a building permit is made after beginning or finishing a building and after being contacted by the Brookings County Zoning Director, the building permit fee shall be 2 times the regular fee provided in Section 1.

2. Conditional Use Permits, Variances and Meeting Fees: In all cases where Conditional Use Permits and Variances are applied for after construction is begun or the activity is commenced then the fees for such permits, together with the required meeting fees, shall be 2 times the regular required fees.

3. The payment of any such late fees shall not exempt any person from compliance with all other provisions of the zoning ordinance nor from any penalty prescribed by law.

Section 1.02.04. Separability Clause.

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

Section 1.02.05. Effective Date.

This Ordinance shall take effect and be in force from and after its passage and publication according to law.

CHAPTER 1.03. OFFICIAL ZONING MAP.

Section 1.03.01. Official Zoning Map.

1. The unincorporated area of the County is hereby divided into zones, or districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the Chairperson of the Board of County Commissioners attested by the County Finance Officer and bearing the seal of the County under the following words: "This is to certify that this is the Official Zoning Map referred to in Chapter 1.03 of Ordinance 2024-01 of Brookings County, State of South Dakota," together with the date of the adoption of this Ordinance. The Official Zoning Map shall be on file at the office of the County Development Department.
2. Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map, which shall be located in the office of the County Development Department, shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the County.

Section 1.03.02. Amendment of the Official Zoning Map.

1. If, in accordance with the provisions of this Ordinance, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Board of County Commissioners, with an entry on the Official Zoning Map as follows: "On (date of adoption) by official action of the Board of County Commissioners, the following change(s) were made on the Official Zoning Map:" (brief description of nature of change), which entry shall be signed by the Chairman of the Board of County Commissioners and attested by the County Finance Officer.
2. No amendment of this Ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on the Official Zoning Map.

No changes of any nature shall be made on the Official Zoning Map or matter shown thereon except with conformity with the procedure set forth in this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance.

Section 1.03.03. Interpretation of District Boundaries.

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

1. A district name or letter symbol shown on the district map indicates that the regulations pertaining to the district designated by that name or symbol extend throughout the whole area in the un-incorporated portions of the County bounded by the district boundary lines.
2. In cases where the boundary line is given a position within a street, road, or non-navigable stream, it shall be deemed to be in the center of the street, road, or stream, and if the actual location of such street, road, or stream varies slightly from the location as shown on the district map, then the actual location shall control.
3. In cases where a boundary line is shown as being located a specific distance from a street line or other physical feature, this distance shall control.
4. In cases where a boundary line is shown adjoining or coincident with a railroad, it shall be deemed to be in the center of the railroad right-of-way and distances measured from the railroad shall be measured from the center of the designated mainline track.
5. Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be the lot lines and where the districts designated on the Official Zoning Map accompanying and made a part of this regulation are bounded approximately by lot lines, said lot lines shall be construed to be boundary of such districts unless said boundaries are otherwise indicated on the map or by resolution.
6. In us-subdivided property, unless otherwise indicated, the district boundary line on the official Zoning Map accompanying and made a part of this regulation shall be determined by the use of the scale contained on such map.

Section 1.03.04. Changes and/or Replacement of Official Zoning Map.

In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the Board of County Commissioners may by resolution, adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map. The new Official Zoning Map shall be identified by the signature of the Chairperson of the Board of County Commissioners, attested by the Brookings County Finance Officer, and bearing the seal of the County under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) for Brookings County, South Dakota." Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved together with all available records pertaining to its adoption or amendment.

**ARTICLE I
GENERAL PROVISIONS**

Amendments to the Official Zoning Map shall require amendment of this regulation by ordinance, as provided for in Article VI of these regulations.

Section 1.03.05 Disincorporation

All territory which hereafter becomes a part of the unincorporated area of the County by the disincorporation of any village, town or city, or for some other reason shall fall within the zoning jurisdiction of the County, shall automatically be classified in the "A" Agricultural District until within a reasonable time following disincorporation, or acquisition of zoning jurisdiction, the territory shall be appropriately classified by Ordinance.

ARTICLE II
DEFINITIONS

For the purpose of this Ordinance, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural and the plural the singular; the word "building" shall include the word "structure", the word "shall" is mandatory and not discretionary; the word "may" is permissive; the word person includes a firm, association, organization, partnership, trust, company or corporation, as well as, an individual; the word lot includes the word plat or parcel; and the words used or occupied include the words intended, designed, or arranged to be used or occupied. Any word not herein defined shall be as defined in any recognized Standard English dictionary.

Abandoned Well. A non-water producing well which still acts as a direct conduit for surface contaminants to enter the aquifer/ground water source but is in such disrepair that groundwater can no longer be obtained from it.

Accessory Buildings and Uses. A subordinate building or portion of the principal building, the use of which is incidental to and customary in connection with the principal building or the main use of the premises and which is located on the same lot with such principal building or use. An accessory use is a use which is incidental to the main use of the premises.

Actual Construction. means in general, initiation of physical on-site construction activities which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and erection of permanent structures.

Adjoining Landowner. The owner of property contiguous to property for which an action by the Administrative Official, Board of Adjustment or Planning Commission is being considered. For the purposes of this Ordinance, contiguous shall mean touching along a boundary or at a point. Property shall be considered as adjoining even though it may be separated from the property of the petitioner by a public road or highway or touches only a corner of the property.

Administrative Official. The individual(s) appointed by the Board of County Commissioners and designated to administer and enforce the zoning ordinance.

Adult. A person, one who has reached the age of eighteen (18).

Adult Amusement or Entertainment. Amusement or entertainment which is distinguished or characterized by an emphasis on material depicting, describing, or relating to 'specified sexual activities' or 'specified anatomical areas' or which features topless dancers, exotic dancers, strippers, or similar entertainment.

Adult Bookstores. An establishment having, as a substantial portion of its stock in trade, books, magazines, films or videotapes for sale or rental and other periodicals which are distinguished by their emphasis on matter depicting, describing or relating to specified Sexual Activities or Specified Anatomical Areas as such terms are defined in this section, or an establishment with a segment or section devoted to the sale or display of such material. Adult bookstores may alternatively or in conjunction with the above stock in trade sell undergarments and other clothing designed for the display of Specified Anatomical Areas or for the enhancement of Specified Sexual Activities. Further, an adult bookstore may alternatively or in conjunction with the above stock in trade sell prosthetic devices, dolls, candles, vibrators and other objects for sexual

gratification which take the form of Specified Anatomical Areas and for the purpose of enhancing Specified Sexual Activities.

Adult Entertainment Cabaret. Means an establishment offering to its patrons, as entertainment, any exhibition or display or any theatrical or other live performances which include topless or go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers, or any persons singing, reading, posing, modeling, or serving food or beverages, where the exhibition, performance, display or dance is intended to sexually arouse the entertainer or the patrons, or where the attire of persons involved is such as to expose specified anatomical areas, as herein defined.

Adult Motion Picture Theater. An enclosed building, regardless of its seating capacity, which is used to present for public view on the premises, films, movies, previews, trailers or advertisements which are distinguished by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined in this section.

Adult Photo Studio. An establishment which, on payment of a fee, provides photographic equipment and/or models for the purpose of photographing “specified anatomical areas”, as herein defined.

Adult Use. The term “adult use” shall include adult entertainment cabaret, adult bookstores, adult motion picture theaters, and adult photo studios as herein defined.

Adjoining Landowner. The owner of property contiguous to property for which an action by the Administrative Official, Board of Adjustment or Planning Commission is being considered. For the purposes of this Ordinance, contiguous shall mean touching along a boundary or at a point. Property shall be considered as adjoining even though it may be separated from the property of the petitioner by a public road or highway or touches only a corner of the property.

Agriculture. The use of land for agricultural purposes including farming, dairying, raising, breeding, or management of livestock, poultry, or honey bees, truck gardening, forestry, horticulture, floriculture, viticulture, and the necessary accessory uses for packaging, treating or storing the produce providing that the operation of any such accessory use shall be secondary to the normal agricultural activities. This definition includes intensive agricultural activities such as concentrated animal feeding operations but not commercially based agribusiness activities.

Aggrieved person. A person aggrieved is any person directly interested in the outcome of and aggrieved by a decision or action or failure to act pursuant to this Ordinance who:

1. Establishes that the person suffered an injury, an invasion of a legally protected interest that is both concrete and particularized, and actual or imminent, not conjectural or hypothetical;
2. Shows that a causal connection exists between the person's injury and the conduct of which the person complains. The causal connection is satisfied if the injury is fairly traceable to the challenged action, and not the result of the independent action of any third party not before the court;
3. Shows it is likely, and not merely speculative, that the injury will be redressed by a favorable decision, and;

4. Shows that the injury is unique or different from those injuries suffered by the public in general.

Airport. A place where aircraft can land and takeoff, usually equipped with hangers, facilities for refueling and repair, and various accommodations for passengers, including heliports.

Air Transportation Facility. A transportation facility consisting of the means and equipment for the movement of passengers or goods by air.

Alley. A narrow service way providing a secondary means of access to abutting property.

Alter or Alteration. Any change, addition or modification in construction.

Animal Feeding Operation Structure. An anaerobic lagoon, formed manure storage structure, egg wash water storage structure, earthen manure storage basin or confinement building.

Animal Husbandry. The dairying, raising of livestock, breeding or keeping of animals, fowl or birds as a business for gainful occupation.

Animal Manure. Poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding or other materials.

Animal Manure Management Facilities. Any structure or facility utilized for the storage of manure associated with a concentrated animal feeding operation.

Animal Unit. (See Article V, Section 5.22).

Animal Manure, Incorporated. Animal manure applied to the land surface and mechanically mixed into the soil within twenty-four (24) hours.

Animal Manure, Injected. Animal manure injected or tilled into the soil at the time of application.

Animal Manure, Surface Applied. Animal manure applied to the land surface without benefit of incorporation or injection. This shall not include the use of animal manure in irrigation waters.

Antenna Support Structure. Any building or structure other than a tower which can be used for the location of telecommunications facilities.

Antique Car. An antique car must be at least twenty-five (25) years of age or older.

Applicant. An individual, a corporation, a group of individuals, partnership, joint venture, owners, or a business who request or seeks application approval under the terms of this ordinance.

Application. The process by which the owner of a parcel of land within Brookings County submits a request to use, develop, construct, build, modify upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to Brookings County concerning such a request.

Aquaculture. Land devoted to the hatching, raising, and breeding of fish or other aquatic plants or animals for sale or personal use.

Aquifer. A geologic formation, group of formations or part of a formation capable of storing and yielding groundwater to wells or springs.

Area of Special Flood Hazard. The land in the flood plain within a community subject to a one (1) percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V. For purposes of these regulations, the term “special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard”.

Array/Solar Array. Is the collection of two or more connected solar modules or panels.

Auction House/Auction Sales. A place and/or building, or portion thereof that is operated for compensation or profit as a private or public market where items of a personal or business nature are offered for sale through competitive bidding. The term “Auction House/Auction Sales” shall not include flea market, yard sale, livestock sale/livestock sale barn, vehicle auction, estate sale, sheriffs or bank repossession sale.

Automotive Tow Business. A business engaged in removing or delivering to public or private property a motor vehicle by towing, carrying, hauling, or pushing, including automotive service stations or an auto repair shop that has a tow truck and repairs vehicles on-site.

Bar/Tavern. An establishment that is licensed to sell alcoholic beverages by the drink.

Base Flood. Base Flood means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE). Is the water surface elevation of the one (1) percent annual chance flood. The height in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.

Basement. A basement has more than one-half (½) of its height below grade. A basement is counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes. Also, in reference to Chapter 4.05, a basement is any area of the building having its floor subgrade (below ground level) on all sides.

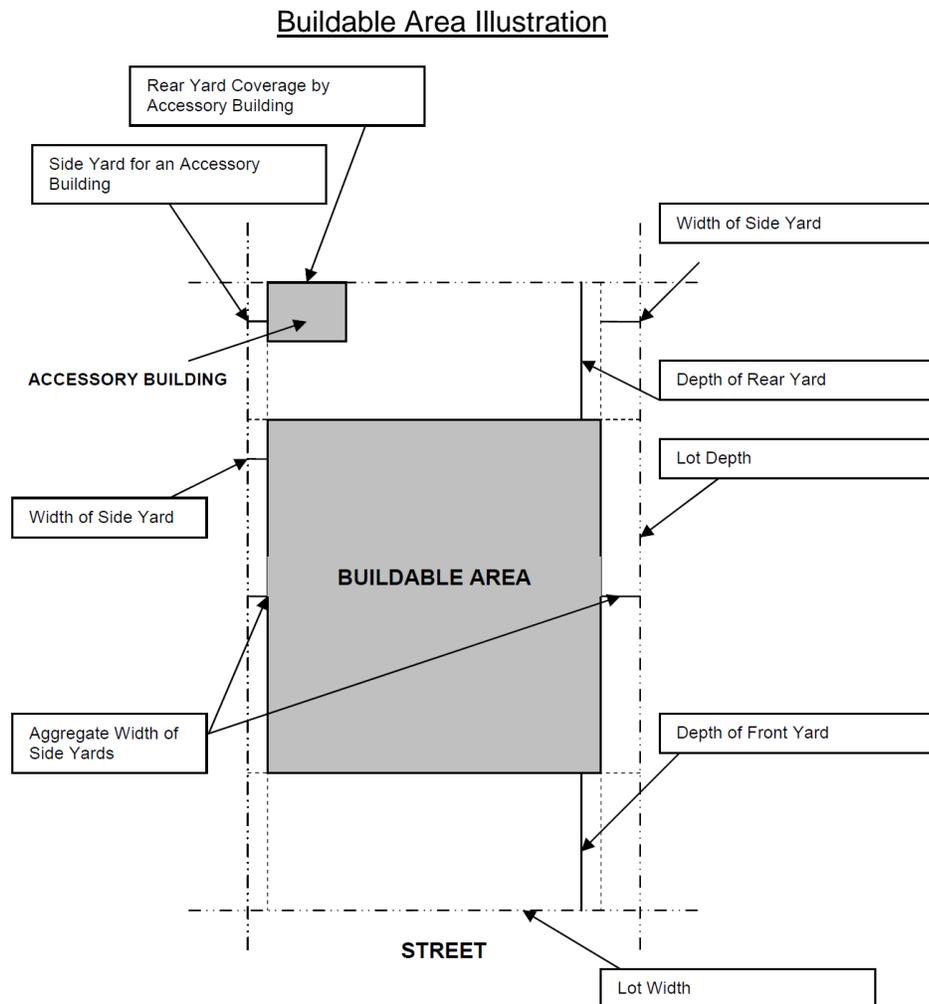
Bed and Breakfast (B & B's). A private single-family dwelling, which is used to provide limited meals and temporary accommodations for a charge to the public. Such establishments should be located where there will be minimal impact on surrounding properties and shall comply with Chapter 5.21.

Best Management Practices. Measures contained in Soil Conservation Service South Dakota Technical Guide, either managerial or structural, that are determined to be the most effective, practical means of preventing or reducing pollution inputs from non-point sources to water bodies.

Board of County Commissioners. The governing body of Brookings County.

Breakaway Wall. A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Buildable Area. The buildable area of a lot is the space remaining after the minimum setback requirements of this Ordinance have been complied with. The diagram below illustrates the buildable area of a hypothetical lot. This diagram is for reference only. Setbacks and other requirements vary from district to district. (See illustration below).



Building. The word building includes the word structure (permanent or temporary) and is a structure which is entirely separated from any other structure by space or by walls in which there are no communicating doors or windows or similar openings and is designed for the support, shelter and protection of persons, animals, or property.

Buildings, Height of. The vertical distance from the grade to the peak (highest point of the structure).

Calamity. A disastrous event marked by great loss and lasting distress and suffering.

Camping Unit. Any tent, trailer, lean-to, recreational vehicle, or similar structure established or maintained and operated in a campground as temporary living quarters for recreation, education, or vacation purposes.

Campground. A commercial recreation facility open to the public, for a fee, upon which two (2) or more campsites are located, established, maintained, advertised, or held out to the public, to be a place where camping units can be located and occupied as temporary living quarters.

Cannabis. Related terms which are defined by SDCL 34-20G-1:

- Cannabis (or Marijuana)
- Cannabis Cultivation Facility
- Cannabis Product Manufacturing Facility
- Cannabis Products
- Cannabis Testing Facility
- Department
- Medical Cannabis Dispensary
- Medical Cannabis Establishment

Certified Crop Advisor. Means any crop advisor/agronomist certified by the American Society of Agronomy.

Change in Operation. Change in operation means a cumulative increase of more than three hundred (300) animal units, or change in animal species, after October 14, 1997, which are confined at an unpermitted concentrated animal feeding operation.

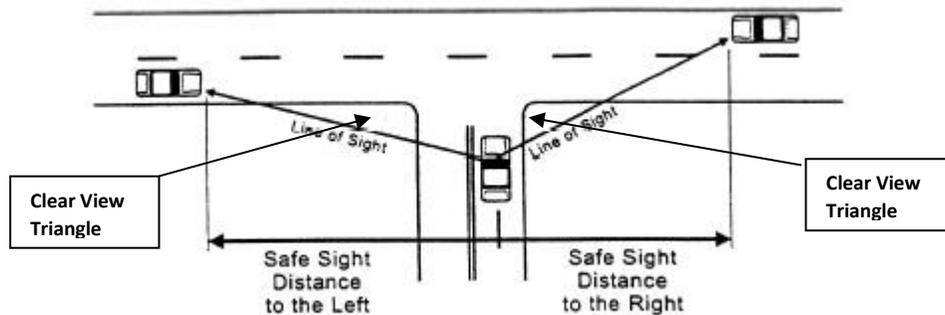
Chemigation. The process of applying agricultural chemicals (fertilizer or pesticides) through an irrigation system by injecting the chemicals into the water.

Church. A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such place for worship and religious activities.

Class V Injection Well. A conduit through which potentially contaminated but generally non-hazardous fluids can move below land surface into or above an aquifer. The types of primary concern in Brookings County are 5W20-industrial process water and waste disposal wells and 5X28-automobile service station disposal wells. Typically, 5W20 types are commercial/ industrial facility septic tanks used to dispose of more than domestic wastewater. 5X28 types are dry wells for wastes from repair bay drains at facilities servicing internal combustion vehicles and equipment.

Clear View Triangle. A triangular-shaped portion of land established at street intersections and ingress/egress points in which there are restrictions on things erected, placed or planted which would limit or obstruct the sight distance of motorists entering or leaving the intersection. (See illustration below).

Clear View Triangle Illustration



Club, Private. Building and facilities owned or operated by a corporation, association, person, or persons for a social, educational, or recreational purpose, but not primarily for profit and not primarily to render a service which is customarily carried on as a business. The structure is not available for public use or participation.

Commercial Vehicles. Any motor vehicle licensed by the state as a commercial vehicle.

Common Ownership. A single, corporate, cooperative, joint tenancy, tenancy in common or other joint operation venture.

Composting. The controlled biological decomposition of the organic portion of solid waste in a manner resulting in an innocuous final product that may be applied to land for the purposes of soil conditionings; as defined by the South Dakota Department of Agriculture and Natural Resources and South Dakota Administrative Rule 74:27:01(14)

Comprehensive Land Use Plan. The adopted long-range plan intended to guide the growth and development of Brookings County.

Concentrated Animal Feeding Operation. A Concentrated Animal Feeding Operation is defined as a lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of forty-five (45) days or more during any twelve (12)-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained over any portion of the lot or facility. Two (2) or more animal feeding operations under common ownership are a single animal operation if they adjoin each other, or if they use a common area, or if they use a common area or system for land application of manure.

Conditional Use. A conditional use is a use that, would not be appropriate generally or without restriction throughout the zoning division or district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning division or district as conditional uses, as specific provisions for such uses are made in this zoning Ordinance. Conditional uses are subject to evaluation and approval by the Board of Adjustment and are administrative in nature.

Contamination. The process of making impure, unclean, inferior or unfit for use by introduction of undesirable elements.

Contamination, Air. A concentration of any radioactive or toxic material which is a product, by-product, or otherwise associated with any exploration, mining or milling operation that increases ambient air radiation levels by fifty (50) mrems from the background levels at the perimeter of the mining and milling site or at the top of an exploration hole.

Contamination, Water. A concentration of any radioactive or toxic material which is a product, by-product, or otherwise associated with any exploration levels established by the Federal Safe Drinking Water Act and regulations promulgated there under.

Contingency Plans. Detailed plans for control, containment, recovery and clean-up of hazardous materials released during floods, fires, equipment failures, leaks and spills.

Contractor Shops and Yards. Those facilities to include structures and land areas where the outdoor storage of equipment and supplies used for various types of construction are stored. Examples of equipment and supplies include but are not limited to the following – road construction, building construction, gravel operations, and general contracting services.

Convenience Store. Any retail establishment offering for sale pre-packaged food products, household items, and other goods commonly associated with the same, at which a customer typically purchases only a few items during a short visit.

Decommissioning. To return the property to its pre-installation state or better as approved in the decommissioning plan.

Density. The number of families, individuals, dwelling units, or housing structures per unit of land.

Development. (in reference to **Chapter 4.05**) means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

District, Zoning. A section or sections of the County for which regulations governing the use of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform.

Domestic Sanitary Sewage Treatment Facility. Shall mean the structures equipment and processes required to collect, carry away, and treat and dispose of wastewater, industrial wastes, and or sludge.

Dredging. Any of various practices utilizing machines equipped with scooping or suction devices that are used to deepen harbors, lakes, and waterways and in underwater mining.

Dwelling. Any building, including seasonal housing structures, or a portion thereof, which contains one (1) or more rooms, with sleeping quarters and is further designed and used exclusively for residential purposes. This definition does not include manufactured homes.

Dwelling, Farm. Any dwelling farmer owned or occupied by the farm owners, operators, tenants, or seasonal or year-around hired workers.

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

Dwelling, Non-Farm. Any occupied dwelling which is not a farm dwelling.

Dwelling, Single-Family. A building occupied exclusively by one (1) family.

Dwelling Unit. One (1) room, or rooms, connected together, constituting a separate, independent housekeeping establishment by a single-family for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.

Electrical Substation. A premises which may or may not contain buildings, where the interconnection and usual transformation of electrical service takes place between systems. An electrical substation shall be secondary, supplementary, subordinate, and auxiliary to the main system.

Electric Utility. Any person operating, maintaining, or controlling in this state, equipment, or facilities for providing electric service to or for the public including facilities owned by a municipality.

Eligible Building Site (Building Eligibility). A site which fulfills the requirements for the construction or placement of a building.

Engineer. Any engineer licensed by the State of South Dakota.

Erosion. The process of the gradual wearing away of land masses.

Essential Public Services. Overhead or underground electrical, gas, petroleum products (i.e. gas, natural gas, oil), steam or water transmission or distribution systems and structures, or collection, communication, supply or disposal systems and structures used by public for protection of the public health, safety or general welfare, including towers, poles, wires, mains drains, sewers, pipes, conduits, cables satellite dishes, and accessories in connection therewith.

Established Private Wells (in reference to Chapter 5.22). A private well which is established and presently in use prior to the siting of a new concentrated animal feeding operation or the expansion of an existing animal feeding operation of which requires a conditional use permit.

Established Residence (in reference to Chapter 5.22). A non-seasonal dwelling established before the siting of new concentrated animal feeding operation or the expansion of an existing animal feeding operation which requires a conditional use permit.

Existing Construction (in reference to Chapter 4.05). For the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures.”

Existing Farmstead. An existing farmstead shall include a livable house occupied by the owner or tenant within the last three (3) years and shall have been existing on the site for at least five (5) years and the site shall have been used in the past as a farmstead for normal farming operation. The Board of Adjustment may consider defining an identifiable parcel as an existing farmstead if the proposed site meets the following criterion:

1. Evidence that the proposed site was once used for human habitation within the last fifty (50) years. This may be determined by existence of buildings/foundations, tax records, or sworn affidavit; and
2. Evidence that the proposed site was used as a farmstead supporting normal farming operations prior to Brookings County Zoning and Sub-Division Regulations dated May 14, 1976 adoption of 35 acre rule in Brookings County).

Existing Manufactured Home Park or Subdivision. (In reference to Chapter 4.05). A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an Existing Manufactured Home Park or Subdivision. (In reference to Chapter 4.05). The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Exploration. The act of searching for or investigating a mineral deposit. It includes, but is not limited to, sinking shafts, tunneling, drilling core and bore holes and digging pits or cuts and other works for the purpose of extracting samples prior to commencement of development of extraction operations, and the building of roads, access ways, and other facilities related to such work. The term does not include those activities which cause no or very little surface disturbance, such as airborne surveys and photographs, use of instruments or devices which are hand-carried or otherwise transported over the surface or make magnetic, radioactive, or other work which causes no greater land disturbance than is caused by ordinary lawful use of the land by persons not involved in exploration.

Extended Home Occupation. A home occupation conducted outside of the residence and/or in an accessory building and shall comply with Chapter 5.24.

Facility. Something built, installed or established for a particular purpose.

Family. One (1) or more persons related by blood, marriage, or adoption occupying a dwelling unit as an individual housekeeping organization. A family may include two (2), but not more than two (2) persons not related by blood, marriage, or adoption. This definition shall not include foster families as regulated by the State of South Dakota.

Farm. An area with or without family dwelling which is used for the growing of the usual farm products, such as vegetables, fruit, trees and grain, and their storage on the area, as well as for the raising, feeding, or breeding thereon of the usual farm poultry and farm animals, such as

horses, cattle, sheep, and swine. The term “farming includes the operating of such an area for one or more of the above uses, including dairy farms with the necessary accessory uses for treating or storing the produce; provided, however, that the operation of such accessory uses shall be secondary to that of the normal farming activities.

Feedlot. Feedlot means pens or similar areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Feedlot is synonymous with other industry terms such as open lot pasture lot, dirt lot, or dry lot.

Fence. A structure used as a boundary, screen, separation, means of privacy, protection or confinement, and is constructed of wood, plastic, metal, wire mesh, masonry or other similar material and is used as a barrier of some sort.

Filling. To reclaim land by filling in low-lying ground with soil.

Findings of Facts. A concise statement of the conclusions upon each contested issue of fact that is supported by reliable, probative, and substantial evidence.

Firearm. A gun that discharges shot, bullet or other projectile by means of an explosive, gas, compressed air, or other propellant.

Flood or Flooding. Means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters and/or
2. The unusual and rapid accumulation of runoff of surface waters from any source.
3. Mudslides (i.e., mudflows) which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current; Or the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

Flood Elevation Determination. A determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one (1) percent or greater chance of occurrence in any given year.

Flood Insurance Rate Map (FIRM). An official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study or Flood Elevation Study. An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood Plain or Flood-Prone Area. Any land area susceptible to being inundated by water from any source (see definition of “flooding”).

Flood Proofing. Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Frontage. All the property on one (1) side of a street or road.

Functionally Dependent Use. (In reference to Chapter 4.05). A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Game Lodge. A building or group of buildings occupied or used as a temporary abiding place of sportsmen, hunters and fishermen, who are lodged with or without meals, and in which there are sleeping quarters.

Garage, Private. An accessory building used for the storage of vehicles owned and used by the occupant of the building to which it is necessary. Vehicles include cars, pickups, trailers, and boats.

General Compatibility with Adjacent Properties. All uses listed as permitted or as conditional uses are generally compatible with other property in a specified zoning district. If such uses are not generally compatible, they should be prohibited within the specified district. Conditional uses may only be denied in accordance with definable criteria in order that an applicant may know under which circumstances a permit may be granted in this location. In Brookings County, general compatibility refers to the manner of operation of a use. The Board of Adjustment may consider compatibility when prescribing conditions for approval of a permit, but those conditions should be uniformly required of similar uses under similar circumstances throughout the county.

Golf Course. A tract of land for playing golf, improved with tees, greens, fairways, hazards, and which may include clubhouses and shelters.

Grade. The finished grade of premises improved by a building or structure is the average natural elevation or slope of the surface of the ground within fifty (50) feet of the building or structure.

Grading. The act or method of moving soil to reshape the surface of land or a road to a desired level or grade.

Grandfather”ed” Clause. A clause in a law that allows for the continuation of an activity that was legal prior to passage of the law but would otherwise be illegal under the new law.

Greenhouse. A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of delicate or out-of-season plants for subsequent sale or for personal enjoyment.

Grey Water. All domestic wastewater except toilet discharge water.

Ground Water. Subsurface water that fills available openings in rock or soil materials such that it may be considered water saturated.

Group Home. A supervised living or counseling arrangement in a family home context providing for the twenty-four (24) hour care of children or adults.

Hazardous Materials. A material which is defined in one or more of the following categories:

1. Ignitable: A gas, liquid or solid which may cause fire through friction, absorption of moisture, or which has low flash points. Examples: white phosphorous and gasoline.
2. Carcinogenic: A gas, liquid or solid which is normally considered to be cancer causing or mutagenic. Examples: PCBs in some waste oils.
3. Explosive: A reactive gas, liquid or solid which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.
4. Highly Toxic: A gas, liquid or solid so dangerous to man as to afford an unusual hazard to life. Examples: parathion and chlorine gas.
5. Moderately Toxic: A gas, liquid or solid which through repeated exposure or in a single large dose can be hazardous to man. Example: atrazine.
6. Corrosive: Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.

High Water Mark. The elevation established by the South Dakota Water Management Board pursuant to SDCL 43-17. In those instances where the South Dakota Water Management Board has not established a high water mark the Board of Adjustment may consider the elevation line of permanent terrestrial vegetation to be used as the estimated high water mark (elevation) solely for the purpose of the administration of this ordinance. When fill is required to meet this elevation, the fill shall be required to stabilize before construction is begun.

Highest Adjacent Grade. (In reference to Chapter 4.05). The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure. (In reference to Chapter 4.05). Any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic reservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Home Occupation. An occupation engaged in by the occupants of a dwelling subject to Chapter 5.16.

Horticultural Services. Commercial services which are oriented to support the science or practical application of the cultivation of fruits, vegetables, flowers, and plants.

Impound Lot. A lot for the temporary storage of automobiles, trucks, buses, recreational vehicles, and similar vehicles. This use excludes vehicle repair, Junkyard/salvage Yard or dismantling and shall comply with Chapter 5.26.

Incorporation. A soil tillage operation following the surface application of manure which mixes the manure into the upper four (4) inches or more of soil.

Injection. The application of manure into the soil surface using equipment that discharges it beneath the surface.

Institutional Farm. Agricultural land wholly owned by a government agency, federal, state, county, or municipality, and used to grow an agricultural commodity.

Junk Yard. The use of more than one thousand (1,000) square feet of any land, building, or structure, for commercial purposes, where waste, discarded materials such as scrap metals, used building materials, used lumber, used glass, discarded or inoperable vehicles, paper, rags, rubber, discarded appliances, cordage, barrels, and other similar materials are stored with or without the dismantling, processing, salvage, sale or other use or disposition of the same (See Chapter 5.26).

Kennel. Any premise or portion thereon where more than five (5) dogs, cats, or other household pets are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

Lagooning. The process of creating a shallow body of water, separated from a larger body of water.

Leaks and Spills. Any unplanned or improper discharge of a potential containment including any discharge of a hazardous material.

Letter of Assurances. A list of conditions signed by the applicant for a permit acknowledging agreement to follow the conditions of the permit.

Levee. A man-made structure usually an earthen embankment designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee System. A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Light Manufacturing. Those manufacturing processes which are not obnoxious due to dust, odor, noise, vibration, pollution, smoke, heat or glare. These commercial and industrial uses are characterized by generally having all aspects of the process carried on within the building itself.

Livestock Sale /Livestock Sales Barn. A place or building where the normal activity is to sell or exchange livestock.

Lodging House. A building or place where lodging is provided (or which is equipped to provide lodging regularly) by prearrangement for definite periods, for compensation, for three (3) or more persons in contradistinction to hotels open to transients.

Lot Area. The lot area is the land in square feet, within the lot line.

Lot, Buildable.

1. A parcel of land occupied or intended for occupancy by a use permitted in this Ordinance, including one (1) main building together with its accessory buildings, the open spaces and parking spaces required by this Ordinance.
2. A lot which is a part of a subdivision, the plat of which has been recorded in the office of the County Register of Deeds at the time of the adoption of this Ordinance, or an irregular tract lot described by a deed recorded in the office of the County Register of Deeds at the time of the passage of this Ordinance; provided that if a lot has less width or area as required by this Ordinance, the lot is not a buildable lot.

Lot, Corner. A corner lot will have two front yards. In the case of a lot abutting more than one street, the owner may choose any street lot line as the front lot line with consent of the Zoning Official, based on the effects of such choice on development of the lot itself or on adjacent properties. The rear lot line is opposite and most distant the from front lot line the two front yards.

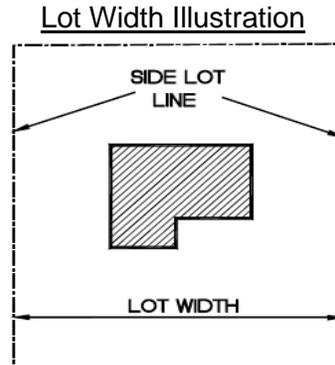
Lot Depth of. The average horizontal distance between the front and rear lot lines.

Lot, Double Frontage. A lot having a frontage of two (2) streets as distinguished from a corner lot.

Lot Line. A line marking the legal limits of the property of a person. The term property line and lot line shall have the same meaning.

Lot of Record. A subdivision, the plat of which has been recorded in the office of the Register of Deeds, or a parcel of land the deed or agreement to convey to which was recorded in the office of the Register of Deeds prior to April 19, 1974.

Lot Width. The width of a lot is the mean distance between straight side lot lines measured at a point fifty (50) feet back from the front yard lot line thereof. (see below).



Manmade Surface Drainage. A manmade path, ditch or channel which has the specific function of transmitting natural surface stream water or stormwater from a point of higher elevation to a point of lower elevation. This definition does not include the use of subsurface drainage tile.

Manufactured Home. See Chapter 5.09.

Manufactured Home in Floodplain. (in reference to Chapter 4.05) means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. This term also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured Home Park. Any manufactured home court, camp, park, site, lot, parcel or tract of land intended for the purpose of supplying a location, or accommodations, for manufactured homes and upon which manufactured homes are parked and shall include all buildings used or intended for use as part of the equipment thereof whether a charge is made for the use of the manufactured home park and its facilities or not. "Manufactured Home Park" shall not include automobile or manufactured home sales lots on which unoccupied manufactured homes are parked for the purposes of inspection and sale.

Manure. Poultry, livestock, or other animal excreta, bedding, compost and raw materials or other materials commingled with poultry, livestock, or other animal excreta set aside for land application.

Manure, Liquid. A suspension of livestock manure in water in which the concentration of manure solids is low enough to maintain a free flowing fluid. Liquid manure also includes slurry which is a mixture of livestock manure, bedding and waste feed in water. Liquid manure and slurry are typically applied to fields by pumping through irrigation equipment or by hauling and spreading with a tank wagon. The solids content of liquid manure or slurry is less than ten (10) percent. A

practical definition of liquid manure includes any livestock manure mixture that can be pumped through conventional liquid manure handling equipment.

Manure Storage Area. An area for the containment of animal manure. Said area is separate from pens or buildings where animal manure is stored for more than one (1) year.

Manure, Surface Applied. Animal manure applied to the land surface without benefit of incorporation or injection.

Milling. The processing or enhancing of a mineral.

Mineral. An inanimate constituent of the earth in a solid, liquid or gaseous state which, when extracted from the earth, is useable in its natural form as a metal, metallic compound, a chemical, an energy source, or a raw material for manufacturing or construction material. For the purpose of these regulations, this definition does not include surface or subsurface water, geothermal resources, or sand, gravel, and quarry rock.

Mineral Extraction. The removal of a mineral from its natural occurrence on affected land. The term includes, but is not limited to, underground and surface mining.

Modular Home. Modular homes shall meet the following regulations: 1) Modular homes shall meet or exceed Uniform Building Codes. 2) Modular homes will include all off-site constructed homes, which may be transported to the site in one or more sections. 3) Modular homes shall be placed on a permanent foundation. 4) Modular homes shall not have attached running gear and a trailer hitch or the capacity to have attached running gear and trailer hitch. 5) Modular homes shall have a minimum of a 4/12-roof pitch. 6) Have siding material of a type customarily used on site-constructed residences. 7) Have roofing material of a type customarily used on site-constructed residences.

Motel/Hotel. A series of attached, semi-attached, or detached sleeping or living units, for the accommodation of transient guests and not customarily including individual cooking or kitchen facilities, said units having convenient access to off-street parking spaces for the exclusive use of guests or occupants.

New Construction. (In reference to Chapter 4.05.) For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision. (In reference to Chapter 4.05.) means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

Nonconforming Building or Structure or Use. Any building or use of land, land lawfully occupied by a use at the time of passage of this regulation or amendment thereto, which does not conform after the passage of this regulation or amendment.

Nonstandard Concentrated Animal Feeding Operation. A concentrated animal feeding operation existing which is classified as a nonstandard use in accordance with Chapter 5.22.

Nonstandard Use. The category of nonconformance consisting of lots occupied by buildings or structures or uses which existed immediately prior to the effective date of this ordinance which fail to comply with any of the following: minimum lot requirements for the area, density, width, front yard, side yard, rear yard, height, unobstructed open space, or parking for the district in which they are located, even though the use of the premises conforms to the permitted uses within the district as set out in the provisions of this ordinance.

Nursery. A place where trees, shrubs, vines and/or flower and vegetable plants are grown and/or are offered for sale, to be transplanted onto the lands of the purchaser by the purchaser or by the nursery establishment itself.

Object. Anything constructed, erected, or placed, the use of which does not require permanent location on the ground or attached to something having a permanent location on the ground.

Open Lot. Pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Synonymous with pasture lot, dirt lot, dry lot.

Outdoor Storage. The keeping, in an unroofed area, of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four (24) hours.

Owner. Any Person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within Brookings County who desires to develop, or construct, build, modify, or erect a structure upon such parcel of land.

Parking Space. An area enclosed or unenclosed, sufficient in size to store one (1) automobile, together with a driveway connecting the parking space with a street or alley.

Parks and Recreation Areas. Public, non-commercial recreation facilities open to the general public and requiring minimal structural development, including, but not limited to playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, public campgrounds swimming pools, and wildlife and nature preserves, along with any necessary accessory facilities, rest rooms, bath houses, and the maintenance of such land and facilities, but not including private, commercial campgrounds, commercial recreation and/or amusement centers.

Pasture. A field providing continuous forage to animals and where the concentration of animals is such that a vegetative cover is maintained during the growing season.

Permit. A permit required by these regulations unless stated otherwise.

Permitted Use. Any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

Person. Is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

Photovoltaic System. An active solar energy system that converts solar energy directly into electricity.

Planning Commission. The board appointed by the Brookings County Board of County Commissioners to serve as the Planning Commission.

Plat. The map, drawing or chart on which the subdivider's plan of subdivision is legally recorded.

Primary Containment Facility. A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.

Principal Structure. The structure in which the principal use of the lot is conducted. For example, a dwelling on a residential lot.

Principal Use. The primary use to which the premises are devoted.

Private Campground. A commercial recreation facility open to the public, for a fee, upon which two (2) or more campsites are located, established, maintained, advertised, or held out to the public, to be a place where camping units can be located and occupied as temporary living quarters. Campgrounds for tent trailers and recreational vehicles should be sited with consideration for access to the property. The campground should be designed to minimize the impact from adjacent major thoroughfares.

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

Private Wind Energy Conversion System (PWECS). Any mechanism or device, not owned by a public or private utility company, designed for the purpose of converting wind energy into electrical or mechanical power to be used on the site where said power is generated.

Process Generated Wastewater. Water directly or indirectly used in the operation of an animal feeding operation. The term includes spillage or overflow from watering systems; water and manure collected while washing, cleaning or flushing pens, barns, manure pits or other areas; water and manure collected during direct contact swimming, washing or spray cooling of animals; and water used in dust control.

Process Wastewater. Any process generated wastewater and any precipitation (rain or snow) that comes into contact with the animals, manure, litter or bedding, or other portions of the animal feeding operation.

Quarter-Quarter Section. The Northeast, Northwest, Southwest, or Southeast quarter (1/4) of a quarter section delineated by the United States Public Land Survey or a government lot per such survey, if such lot contains a minimum of thirty-five (35) acres.

Range (Target/Shooting). Shall be defined as an area for the discharge of weapons for sport under controlled conditions where the object of the shooting is an inanimate object such as, but not limited to, paper, metal or wooden targets. The term range includes archery ranges. This term only applies to commercial ranges or ranges open to the public.

Range Officer. Means the person designated to be responsible at a Range at any given time during any activity. A Range Officer shall be present on site at any Range when the range is in use.

Recreational Vehicle. A motor home, travel trailer, truck camper, or camping trailer, with or without motor power, designed for human habitation for recreational or emergency occupancy. A recreational vehicle does not include manufactured homes.

Religious Farming Community. A corporation formed primarily for religious purposes whose principle income is derived from agriculture and/or a farm which may or may not be held in collective ownership, in which multiple families reside on-site and use or conduct activities upon the property which are participated in, shared, or used in common by the members of the group residing thereon.

REM (Roentgen Equivalent Man). A measurement of the biological effects resulting from ionizing radiant energy where roentgen is the amount of radiation leading to the absorption of eighty-eight (88) ergs of energy per gram of air.

Repair. Reconstruction or renewal of any part of an existing building for the purpose of maintenance. The word "repair" or "repairs" shall not apply to any change of construction.

Resort. This category provides commercial hospitality lodgings in settings that are principally intended for vacationing, relaxation, and conference activities for visitors to the county.

Retail Sales and Trade. Establishments engaged in selling products, goods or merchandise to the general public for personal or household consumption (not to include Auction Sales); and establishments engaged in providing services or entertainment to the general public including eating and drinking establishments, hotels, motels, repair shops, indoor amusement, copying services, health, professional, educational, and social services, and other miscellaneous services.

Rubble Site. A site for the disposition of refuse; as defined by the South Dakota Department of Agricultural and Natural Resources and South Dakota Administrative Rule 74:27:07:01 (54) "Rubble," stone, brick, concrete, or similar inorganic material, excluding ash, waste tires, trees, yard waste, and regulated asbestos-containing waste materials.

Runoff Control Basin. A structure which collects and stores only precipitation-induced runoff from an animal feeding operation in which animals are confined to area which are unroofed or partial roofed and in which no crop, vegetation, or forage growth or residue cover is maintained during the period in which animals are confined in the operation.

Sand, Gravel, or Quarry Operation. An operation which uses surface excavation techniques in order to extract sand and/or gravel. If the operation is not used for commercial purposes or owned by a governmental entity, the operation is deemed to be a private sand, gravel or quarry operation.

Sanitary Landfill. A government-owned site for the disposal of garbage and other refuse material as defined by the South Dakota Department of Agriculture and Natural Resources and South Dakota Administrative Rule 74:27:07:01- (36) "Landfill unit," a discrete area of land used for the disposal of solid waste.

Seasonal Camp Trailers or Recreational Vehicles. A vehicle designed for temporary seasonal living quarters.

Secondary Containment Facility. A second tank, catchment pit, pipe or vessel that limits and contains a liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery systems are required.

Section Line. A dividing line between two (2) sections of land as identified delineated by the United States Public Land Survey or a government lot per such survey.

Service Station. Any building or premise which provides for the retail sale of gasoline, oil, tires, batteries, and accessories for motor vehicles and for certain motor vehicle services, including washings, tire changing, repair service, battery service, radiator service, lubrication, brake service, wheel service, and testing or adjusting of automotive parts. Automobile repair work may be done at a service station provided that no rebuilding of engines, spray paint operations, or body or fender repair is permitted. Gasoline pumps and gasoline pump islands shall be located more than twelve (12) feet from the nearest property line.

Setback. The setback of a building is the minimum horizontal distance between the street line and the front line of the building or any projection thereof, except cornices unenclosed porches, and entrance vestibules and window bays projecting not more than three and one-half (3 1/2) feet from the building and having no more than fifty (50) square feet area and not extending above the first story of the building.

Setback Between Uses. Unless specifically mentioned within this ordinance, the setback or separation distance between uses is the minimum horizontal distance measured from the wall line of a neighboring principal building to the wall line of the proposed building/structure/use. In regard to Concentrated Animal Feeding Operations the separation distance shall be measured from the wall line of the neighboring principal building to the wall line of the feedlot or structure housing animals and/or manure management facility.

Shallow Aquifer. An aquifer zero (0) to fifty (50) feet in depth in which the permeable media (sand and gravel) starts near the land surface, immediately below the soil profile. A shallow aquifer is vulnerable to contamination because the permeable material making up the aquifer (1) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (2) extends to near the land surface and lacks a sufficiently thick layer of impermeable material on the land or near the land surface to limit percolation water from transporting contaminants from the land surface to the aquifer.

Shallow Well. A well which is located in a shallow aquifer.

Shelterbelt. A strip or belt of trees or shrubs established to reduce soil erosion and to protect yards, lots, buildings, livestock and residences, recreation, and wildlife from wind. For the purposes of this ordinance a shelterbelt shall include ten (10) or more trees planted in a line, with each tree separated by a distance of forty (40) feet or less. Ornamental trees, generally used in front yards and spaced further than thirteen (13) feet apart and further do extend lineally for a distance of over seventy-five (75) feet, are not considered shelterbelts. Shelterbelts shall comply with Chapter 5.14.

Shorelands. All land within one thousand (1,000) feet of a lake or pond and lands within three hundred (300) feet of a river or stream or to the landward side of the flood plain, whichever distance is greater.

Should. Means that the condition is a recommendation. If violations of this regulation occur, the County will evaluate whether the party implemented the recommendations contained in this regulation that may have helped the party to avoid the violation.

Sign. Any device or structure, permanent or temporary, which directs attention to business, commodity, service or entertainment but excluding any flag, badge, or insignia of any government agency, or any civic, charitable, religious, patriotic or similar organizations.

Sign, Abandoned. A sign or sign structure which contains no sign copy, contains obliterated or obsolete sign copy, or is maintained in an unsafe or unsightly condition for a period of three (3) months shall be considered an abandoned sign.

Sign, Off-premises. Any sign identifying or advertising a business, person, activity, goods, products or services at a location other than where such sign has been erected.

Sign, On-premises. Any sign identifying or advertising a business, person, activity, goods, products or services located on the premises where the sign has been erected.

Sign Structure. Any structure which supports, has supported, or is capable of supporting a sign, including decorative cover.

Significant Contributor of Pollution. To determine if a concentrated animal feeding operation meets this definition, the following factors are considered and/or may be prescribed as conditions of granting a permit:

1. Whether the site has or will obtain a General Water Pollution Control Permit for Concentrated Animal Feeding Operations from the South Dakota Department of Environment and Natural Resources; or
2. Whether the site will obtain a Certificate of Compliance from the South Dakota Department of Environment and Natural Resources; or
3. Whether engineered plans have been prepared/reviewed by an engineer licensed in the State of South Dakota to determine runoff and infiltration of solid waste will not exceed volumes allowed by the State of South Dakota Department of Environment and Natural Resources if a General Water Pollution Control Permit for Concentrated Animal Feeding Operations was applicable; or

4. Whether the changes to the existing manure management system is considered an improvement from existing practices at a site with no substantiated complaints prior to an application being made.

Sleeping Quarters. A room or an area contained within a dwelling unit utilized for the purpose of sleep.

Solar Collector. A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

Solar Energy. Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

Solar Energy System (SES). A commercial facility that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CST), or other conversion technology, for the primary purpose of wholesale sales of generated electricity. A SES is the principal land use for the parcel on which it is located. A SES site may include an array of devices, or structural design features, the purpose of which is to provide for generation of electricity, the collection, storage, and distribution of solar energy. See Chapter 5.35.

Solution mining. The mining of an ore body with circulation of chemicals through injection and recovery wells. Solution Mining for minerals is prohibited.

Special Flood Hazard Area. See “area of special flood hazard”.

Special Hazard Area. An area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M, or E.

Special Permitted Use. Any land use listed as a special permitted use within a zoning district that meets the specified criteria for certification.

Specified Anatomical Areas. Means (1) Less than completely and opaquely covered human or animal genitals, pubic region, or pubic hair, buttocks; and female breasts below a point immediately above the top of the areola; and (2) Genitals of humans or animals in a discernible turgid state, even if completely or opaquely covered.

Specified Sexual Activities. Means (1) Human genitals in a state of sexual stimulation or arousal; (2) Acts or representations of acts of human or animal masturbation, sexual intercourse or sodomy, bestiality, oral copulation or flagellation; (3) Fondling or erotic touching of human or animal genitals, pubic region, buttock or female breast; and (4) Excretory functions as part of or in connection with any activities set forth in an Adult Bookstore or “Adult Entertainment Cabaret”.

Stable. A building for the shelter and feeding of domestic animals, especially horses and cattle.

Stable, Commercial. A building for the shelter and feeding of domestic animals, especially horses and cattle where such domestic animals are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

Start of Construction. (In reference to Chapter 4.05). For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Stealth. Means any Tower or Telecommunications Facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and Towers designed to look other than like a Tower such as light poles, power poles, and trees. The term Stealth does not necessarily exclude the use of uncamouflaged lattice, guyed, or monopole Tower designs.

Street, Highway or Road. All property acquired or dedicated to the public and accepted by the appropriate governmental agency for street, highway or road purposes.

Street, Arterial. A street designated as such on the Major Street Plan of the Comprehensive Land Use Plan of Brookings County, South Dakota.

Street, Collector. A street designated as such upon the Major Street Plan of the Comprehensive Land Use Plan of Brookings County, South Dakota.

Street, Highway or Road Right-of-Way (ROW) Line. A dividing line between a lot or parcel of land and a contiguous street, highway, or road.

Street, Local. Any street which is not designated as an arterial street or collector street on the Major Street Plan of the Comprehensive Land Use Plan of Brookings County, South Dakota.

Structurally Altered. Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, or girders, or any complete rebuilding of a roof or the exterior walls.

Structure. Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground. Among other things, structures include, but are not limited to, buildings, manufactured homes, walls, fences, billboards, and poster panels.

Structure, Temporary. Anything constructed or erected, or placed, the use of which requires temporary location on or below the ground or attached to something having a temporary location on or below the ground.

Substantial Damage. Means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure either:

1. Before the improvement or repair is started, or
2. If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this designation, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- a. Any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
- b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Telecommunications Facilities. Means any cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications which a person seeks to locate or has installed upon or near a tower or antenna support structure. However, telecommunications facilities shall not include:

- a. Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial; or
- b. Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category.

Temporary Fireworks Sales Stand. A structure utilized for the licensed resale of fireworks during the time period allowed by South Dakota State Law.

Ten Year Time of Travel Distance. The distance that ground water will travel in ten years. This distance is a function of aquifer permeability and water table slope.

Tower. A self-supporting lattice, guyed, or monopole structure constructed from grade which supports telecommunications facilities. The term tower shall not include amateur radio operators' equipment, as licensed by the FCC.

Townhouse. A townhouse is an attached, privately owned single-family dwelling unit which is a part of and adjacent to other similarly owned single-family dwelling units that are connected to but separated from one another by a common party wall having no doors, windows, or other provisions for human passage or visibility. Differing from condominiums, townhouse ownership does include individual ownership of the land. There can also be common elements, such as a central courtyard, that would have shared ownership.

Tree, Ornamental. A deciduous tree which is typically grown because of its shape, flowering characteristics, or other attractive features, and which grows to a mature height of about twenty-five (25) feet or less. Ornamental trees maybe placed within fifty (50) feet of the public road right-of-way subject to Chapter 5.14.

Tree, Shade. For the purposes of this Ordinance, a shade tree is a deciduous tree which has a mature crown spread of fifteen (15) feet or greater, and having a trunk with at least five (5) feet of clear stem at maturity.

Truck Garden. A farm where vegetables are grown for market.

Turbine. The parts of the Wind Energy System including the blades, generator, and tail.

Twin Homes. A two-family dwelling which has a common wall and is platted into two (2) separate lots.

Utility (in reference to Wind Energy Systems). Any entity engaged in this state in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, cooperatively owned utility, and a public or municipal utility.

Variance. A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of **non-conforming** in the zoning district or uses in an adjoining zoning district.

Vehicle. A motorized or unmotorized means of carrying or transporting something.

Veterinary Clinic. Any premises to which animals are brought, or where they are temporarily kept, solely for the purpose of diagnosis or treatment of any illness or injury, which may or may not have outdoor runs.

Violation. The failure of a structure/use or other development to be fully compliant with this ordinance.

Waters of the State. All waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

Water Surface Elevation. The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

Well. An artificial excavation or opening in the ground, made by means of digging, boring, drilling, jetting, or by any other artificial method, for the purpose of obtaining groundwater. Any series of openings, borings, or drillings developed and pumped collectively by a single pump unit shall be considered as one well. (SDCL 46-1-6)

Well, Abandoned. A well which is in either such a state disrepair that its original purpose cannot be reasonably achieved, or which has not been used for water production in the past two (2) years.

Well, Established. A water producing well that is either registered with the State of South Dakota or has well logs on file with the South Dakota Department of Environment and Natural Resources or has been used for human consumption for more than one week within one (1) prior to the application date for a proposed CAFO.

Wetlands. Any area where ground water is at or near the surface a substantial part of the year; the boundary of which shall be defined as that area where the emergent aquatic vegetation ceases and the surrounding upland vegetation begins.

Wind Energy System (WES). A commonly owned and/or managed integrated system that converts wind movement into electricity. All of the following are encompassed in this definition of system:

1. Tower or multiple towers,
2. Generator(s),
3. Blades,
4. Power collection systems, and
5. Electric interconnection systems.

Windward Row. Of or on the side exposed to prevailing winds. Regarding shelterbelts, on the north and west side of a public right-of-way, the windward row of the shelterbelt is northernmost or westernmost row of trees. On the south and west side of a public right-of-way, the windward row of the shelterbelt is southernmost and easternmost row of trees.

Yard. An open space on the same lot with a building, unoccupied and unobstructed. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and bearing wall of the main building shall be used.

Yard, Front. A yard extending across the front of a lot between the side yard lines and being the minimum horizontal distance between the road right-of-way line and the main bearing wall of the main building or any projections thereof other than the projections of the usual steps, unenclosed balconies or open porch. (See Front, Side, and Rear Yard Illustration Below)

ARTICLE III
DISTRICT REGULATIONS

CHAPTER 3.01. APPLICATION OF DISTRICT REGULATIONS.

Section 3.01.01. Application of District Regulations.

Except as hereafter provided:

1. No structure, permanent or temporary, or any parts thereof shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used except for a purpose listed as a permitted use, special permitted use, conditional use, or accessory use in the district in which the structure or land is located.
2. No building shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height limit established for the district in which the building is located.
3. No building shall be erected, converted, enlarged, reconstructed, or structurally altered except in conformity with the area and parking regulations of the district in which the building is located.
4. The minimum yards and other open spaces, including lot area, required by this Ordinance for each and every building at the time of passage of this Ordinance or for any building hereafter erected shall not be encroached upon or considered as yard or open space requirements for any other buildings, nor shall any lot area be reduced beyond the district requirements of this Ordinance.
5. Every building hereafter erected or structurally altered shall be located on a buildable lot as herein defined and in no case shall there be more than one (1) main building on one (1) buildable lot.
6. All sign sizes, lighting, and locations shall, at a minimum, meet all State and Federal laws and regulations.

CHAPTER 3.02. NONCONFORMING USES.

Section 3.02.01. Purpose and Intent. Within the districts established by this Ordinance or amendments that may later be adopted, there exist lots, structures, uses of land and structures, and characteristics of use, which were lawful before this regulation was passed or amended but which would be prohibited, regulated, or restricted under the terms of this regulation or future amendments. It is the intent of this regulation to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this regulation that non-conformities shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Section 3.02.02. Continuation of Nonconforming Uses. If no structural alterations are made, any non-conforming use of a structure or structure and premises, may, as a special exception, be changed to another non-conforming use provided that the County Zoning Commission, either by general rule or by making findings in the specific case, shall find that the proposed use is more appropriate to the district than the existing non-conforming use. In determining such a change, the County Zoning Commission may require appropriate conditions and safeguards in accord with the provisions of this Ordinance. When a non-conforming use has been changed to a conforming use, it shall not be changed subsequently to any non-conforming use.

Section 3.02.03. Use Becoming Nonconforming by Change in Law or Boundaries. Whenever the use of premises becomes a nonconforming use through a change in zoning ordinance or district boundaries, such use may be continued, although the use does not conform to the provisions thereof.

Section 3.02.04. Extension or Enlargement. No existing building devoted to a use not permitted by this Ordinance, in the district in which such building is located, except when required to do so by law, shall be enlarged, extended, converted, reconstructed, or structurally altered, unless such use is changed to a use permitted in the district in which the building is located.

Section 3.02.05. Restoration After Damage. When a building, the use of which does not conform to the provisions of this Ordinance, is damaged by fire, explosion, or the public enemy, to the extent of more than sixty percent (60%) of its fair market value, it shall not be restored except in conformity with the regulations of the district in which the building is situated.

Section 3.02.06. Repairs and Maintenance. On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done on ordinary repairs, or on repairs or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the nonconformity of the structure shall not be increased.

Section 3.02.07. Unsafe Nonconforming Use. If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to the lack of repairs and maintenance and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the Ordinance of the district in which it is located.

Section 3.02.08. Discontinuance of Nonconforming Use. In the event that a non-conforming use of any building or premises is, in fact, discontinued or its normal operation stopped for a period of one (1) year, the Board may adopt, after notice by registered or certified mail to the property owners, an amortization schedule to bring about the gradual elimination of such non-conforming use or occupancy.

Section 3.02.09. Effect on Use Which is Illegal Under Prior Law. Nothing in this Ordinance shall be interpreted as authorization for, or approval of, the continuance of the use of a building or premises in violation of zoning Ordinances in effect at the time of the effective date of this Ordinance.

Section 3.02.10. Nonconforming Lots of Record.

1. Non-conforming lots of record which were zoned for small lot development prior to the adoption of amendments in 1988 may be developed if other minimum requirements of this ordinance are met.
2. If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendments of this Ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this regulation, nor shall any division of any parcel be made which creates a lot width or area below the requirements stated in this Ordinance.

CHAPTER 3.03. ZONING DISTRICTS.

Section 3.03.01. Districts.

1. For the purpose of this Ordinance, the un-incorporated areas of the County may be divided into any of the following zoning districts: A-Agricultural; CI-Commercial/Industrial; LP-Lake Park; NR-Natural Resources; Flood Plain Overlay District; Aquifer Protection Overlay District; "TPRROD" Transmission Pipeline Risk Reduction Overlay District.
2. The requirements as set forth below for each of the use districts listed as part of this Ordinance shall govern the development within the said districts as outlined on the map entitled "Official Zoning Map, Brookings County, South Dakota."
3. "A" AGRICULTURAL LAND DISTRICT – The Agricultural Land District is established to maintain and promote farming and related activities within an environment which is generally free of other land use activities. Residential development will be discouraged to minimize conflicts with farming activities and reduce the demand for expanded public services and facilities.
4. "AP" AQUIFER PROTECTION OVERLAY DISTRICT – The purpose of the Aquifer Protection Overlay District is to protect public health and safety by minimizing contamination of the shallow/surficial aquifers of Brookings County.
5. "CI" COMMERCIAL/INDUSTRIAL DISTRICT - The Commercial/Industrial District is intended for commercial and industrial uses which due to their size and nature require highway access to a county, state, or federal road.
6. "FP" FLOOD PROTECTION OVERLAY DISTRICT – The Flood Protection Overlay District is established to protect the natural environment and resources from destructive land uses and to protect lives and property along and adjacent to streams and rivers.
7. "LP" LAKE-PARK DISTRICT – Lake Park District was established to provide for orderly residential and recreational development together with certain public facilities, customary home occupations, and certain recreation oriented commercial establishments along lake shores and preserve the natural environment, including shorelines and lakes, from destructive land use.

**ARTICLE III
DISTRICT REGULATIONS**

8. “NR” NATURAL RESOURCE DISTRICT - The purpose of the Natural Resource District is to provide for the retaining of natural vegetation of a particular area, to preserve the natural environment and resources from destructive land uses and to protect wildlife habitat. Such an area may include but is not limited to, flood plains of rivers, streams, and lakes, abandoned quarries, certain wetlands, natural prairies, and historical sites.
9. “TPRROD” TRANSMISSION PIPELINE RISK REDUCTION OVERLAY DISTRICT – The purpose of the Transmission Pipeline Risk Reduction Overlay District is to protect public health and safety by reducing the likelihood of pipeline damage and reducing the adverse impact of pipeline failures through risk-based land management decisions.

Section 3.03.02. Prohibited Uses. (Ordinance 2021-08)

All uses and structures not specifically listed as a permitted use, special permitted use, accessory use or as a conditional use in a particular zoning district or overlay district shall be prohibited in said district.

ARTICLE IV
DISTRICT REQUIREMENTS

The requirements as set forth below for each of the use districts listed as part of this ordinance in Article III shall govern the development within the said districts as outlined on the Official Zoning Map for the unincorporated areas of Brookings County.

CHAPTER 4.01. "A" AGRICULTURAL LAND DISTRICT

Section 4.01.01 - Purpose

This district is established to maintain and promote farming and related activities within an environment which is generally free of other land use activities. Residential development will be discouraged to minimize conflicts with farming activities and reduce the demand for expanded public services and facilities.

Section 4.01.02. Permitted Uses

1. Agricultural activities and farm related buildings, including Class D but excluding Classes A, B, and C Concentrated Animal Feeding Operations;
2. Single family residences including manufactured, mobile and modular homes;
3. Fisheries services and game propagation areas;
4. Orchards, tree farms, truck gardening, nurseries and greenhouses;
5. Public parks and recreation areas;
6. Institution farms;
7. Agricultural research facility;
8. Signs;
9. Public and private utility transmission lines, pipelines, and reservoirs;
10. Accessory uses and structures.

Section 4.01.03. Special Permitted Uses.

The following uses and structures shall be permitted by "Permitted Special Permitted Use" provided the requirements set forth in Chapter 6.02.03 are satisfied.

1. Exception to shelterbelt setbacks. See Section 5.14.5;
2. Existing farmstead exemption A. See Section 5.15.02;
3. Existing farmstead exemption B. See Section 5.15.03;

4. Produce stand for the direct marketing of farm products, 100% of which are grown by the operator and at least 25% of which shall be grown on site. See Section 5.19.03.1;
5. Seasonal U-pick fruits and vegetables operations, orchards. See Section 5.19.03.2;
6. Seasonal outdoor mazes of agricultural origin such as straw bales or corn. See Section 5.19.03.3;
7. Home occupation. See Chapter 5.16;
8. Exception to front yard setbacks for agricultural structures. See Section 5.18.02;

Section 4.01.04. Conditional Uses

1. Agricultural processing plants;
2. Aviation facilities;
3. Bed and breakfast. See Chapter 5.21;
4. Breweries and distilleries. See Section 5.19.03.7;
5. Church or cemetery;
6. Class A, B, and C concentrated animal feeding operations. See Chapter 5.22;
7. Commercial public entertainment enterprises not normally accommodated in commercial areas, including but not limited to, the following: music concerts, rodeos, tractor pulls, and animal and vehicle races. See Chapter 5.23;
8. Temporary Contractor's shops and yards. See Chapter 5.39;
9. Extended home occupation. See Chapter 5.24;
10. Farm experiences. See Section 5.19.03.6;
11. Fur farms;
12. Game lodge. See Chapter 5.25;
13. Golf course, golf driving range;
14. Group home;
15. Holiday tree farms. See Section 5.19.03.5;
16. Junk/salvage/recycling yards. See Chapter 5.26;
17. Large Wind Energy Systems (WES). See Chapter 5.27;

18. Livestock sale barns;
19. Meteorological towers. See Chapter 5.28;
20. Private campground; See Chapter 5.38;
21. Private Wind Energy Conversion System (PWECS) provided they meet the requirements of Chapter 5.29;
22. Public utility and public service structures including substations, gas regulator stations, community equipment buildings, and pumping stations;
23. Religious farming communities. See Chapter 5.30;
24. Sand, gravel or quarry operation; mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants. See Chapter 5.31;
25. Sanitary landfills, rubble sites, composting sites, waste tire sites, and restricted use sites. See Chapter 5.32;
26. Seasonal retail stands, excluding garden produce but including fireworks stands;
27. Sewage (domestic) treatment plants. See Chapter 5.33;
28. Shooting ranges. See Chapter 5.34;
29. Solar energy systems (SES). See Chapter 5.35;
30. Spreading of manure with irrigation system;
31. Stables, dog/cat kennels;
32. Veterinary clinics;
33. Wineries. See Section 5.19.03.4;
34. Wireless telecommunication towers. See Chapter 5.36;
35. Agricultural seed sales, seed treatment and storage. Herbicide and insecticide sales and storage with containers not to exceed 275 gallons;
36. Moved in buildings with absentee neighbor(s). See Section 5.13.1.c.1.

Section 4.01.05. Area Regulations/Easements

1. Minimum lot area, maximum building height, maximum lot coverage and minimum yard requirements shall be regulated in accordance with the following tables:

Table 4.01.05.1

	Minimum Lot Area	Maximum Lot Coverage*	Maximum Height (A)
Single Family Residences	35 Acres	25%	35' (A)
Other Permitted Uses	1 Acre	25%	35' (A)
Existing Farmstead Exemption A	35 Acres (B)	25%	35'
Existing Farmstead Exemptions B	5 Acres (B)	25%	35'
Other Conditional Uses	As determined by the Board of Adjustment		

- A. *[Exception to maximum height]* The administrative official may allow heights to exceed thirty-five (35) feet for the following:
- i. Agricultural buildings.
 - ii. Chimneys, smokestacks, cooling towers.
 - iii. Radio and TV towers.
 - iv. Water tanks.
 - v. Elevators
 - vi. Wind Energy Systems (WES).
 - vii. Wireless Telecommunications Towers and Facilities.
 - viii. Meteorological towers

- B. *[Existing Farmstead Exemptions A, B, or C]*

Minimum lot area applies to properties granted Permitted Special Use Permit by the Administrative Official or Conditional Use Permit by the Board of Adjustment.

Table 4.01.05.2

		Minimum Front Yard	Minimum Rear Yard	Minimum Side Yard
Single Family Residences (B)		100'	50'	25'
Agricultural Structures (C)		50'	50'	25'
Agricultural Research Facility		100'	50'	100'
Other Permitted Uses (B) (C) (D)		100'	50'	25'
Nonconforming Lots of Record		50'	50'	8'
Signs		1'	50'	25'
Shelterbelts (A)	Parallel to ROW	100'	100'	100'
	Perpendicular to ROW	50'		
Conditional Uses		To be determined by the Board of Adjustment		

A. *[Exception to Shelterbelt Setbacks]*

Shelterbelts may be planted within required setbacks if granted Permitted Special Use Permit. (See Section 5.08.05)

B. *[Exception to Setbacks for Nonconforming Structures]*

Existing nonconforming residential structures, constructed prior to ADOPTION OF ZONING ORDINANCE, on a lot of record or on a lot containing at least thirty-five (35) acres although considered nonconforming, are eligible to be expanded or added onto, without Board of Adjustment Approval, as long as the existing front, side or rear yard setback(s) is not further encroached upon.

C. *[Exception to Setbacks for Agricultural structures]*

Agricultural structures including but not limited to grain bins, equipment storage sheds (detached from a primary structure), feed storage areas, but not including any area for the confinement of animals may be constructed within required setbacks for Permitted Uses if granted Permitted Special Permitted Use. (See Section 5.18.02)

D. *[Exception to Setbacks for Public and Private Utilities listed as Permitted Uses]*

Transmission lines, pipelines, and similar structures for transmission of utilities and commodities are exempt from the setback requirements of this section provided they are

**ARTICLE IV
AGRICULTURAL DISTRICT**

constructed within right-of-way with permission of the road authority, or within an easement or some other agreed upon location with the property owner.

2. Right to Farm Covenant

All new residential development (farm and non-farm) shall be required to file an “Right to Farm Covenant” with the Register of Deeds before the issuance of a building permit. (See Chapter 5.44). Exception: This requirement does not apply to lots of record with existing residential development that are destroyed by an act of God (wind, fire, flood) and subsequently are rebuilt.

3. Access

A. The location of driveways accessing individual parcels shall be separated from adjacent driveways on the same side of the road by the following separation distances:

i. Roads identified on the Major Street plan as:

- a. Local road: 100 foot separation distance
- b. Collector road: 300 foot separation distance
- c. Arterial road: 500 foot separation distance

B. For all proposed uses and structures adjacent to a State highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the filing of a plat or the issuance of a building/use permit.

CHAPTER 4.02 – “CI” - COMMERCIAL/ INDUSTRIAL DISTRICTS

Purpose

The "CI" District is intended for commercial and industrial uses which due to their size and nature require highway access to a county, state, or federal road.

Section 4.02.01 - Permitted Use

1. Agricultural activities and farm related buildings, including Class D but excluding Classes A, B, and C Concentrated Animal Feeding Operations;
2. Fisheries services and game propagation areas;
3. Orchards, tree farms, truck gardening, nurseries and greenhouses;
4. Public parks and recreation areas;
5. Institution farms;
6. Agricultural research facility;
7. Signs;
8. Accessory uses and structures.

Section 4.02.02 - Conditional Uses

1. Implement sales and service;
2. Truck terminals and freight warehouses;
3. Seed sales and grain storage, fertilizer and chemical storage and sales;
4. Highway and street maintenance shops;
5. Welding and machine shops;
6. Gas stations, oil and liquid propane stations including bulk stations;
7. Public utility and public service structure including substations, gas regulator stations, community equipment buildings, pumping stations, and reservoirs;
8. Slaughterhouses.
9. Contractors' shops and yards;
10. Wholesale distributing companies;
11. Restaurants, bar/taverns;

12. Motels;
13. Wireless telecommunication towers and facilities provided they meet requirements of Chapter 5.36
14. Convenience store/service stations.
15. Freestanding sign area greater than one hundred sixty (160) square feet.
16. Light manufacturing.
17. Agricultural product processing facilities including but not be limited to ethanol Plants and corn/soybean processing.
18. Conditional Uses in the "A" Agricultural District except residential dwellings, and as listed below:
 - a. Commercial public entertainment enterprises not normally accommodated in commercial areas, including but not limited to, the following: music concerts, rodeos, tractor pulls, and animal and vehicle races. See Chapter 5.23;
 - b. Contractors' shops and yards. See Chapter 5.39;
 - c. Commercial Game lodge; non-residential use. See Chapter 5.25;
 - d. Golf course, golf driving range;
 - e. Holiday tree farms. See Section 5.19.03.5;
 - f. Junk/salvage/recycling yards. See Chapter 5.26;
 - g. Livestock sale barns. See Chapter 5.22
 - h. Private campground; See Chapter 5.38
 - i. Private Wind Energy Conversion System (PWECS) provided they meet the requirements of Chapter 5.29;
 - j. Rock crushers; and concrete and asphalt mixing plants. See Chapter 5.31;
 - k. Seasonal retail stands, including garden produce and fireworks stands;
 - l. Sewage (domestic) treatment plants. See Chapter 5.33;
 - m. Shooting ranges. See Chapter 5.34;
 - n. Stables, dog/cat kennels;
 - o. Veterinary clinics;
 - p. Wineries. See Section 5.19.03.4;

- q. Wireless telecommunication towers See Chapter 5.36.
- 19. Aviation facilities; including airstrips.
- 20. Commercial Storage units.
- 21. Medical Cannabis Dispensary. (Ordinance No. 2021-08)
- 22. Classes A, B, and C Concentrated Animal Feeding Operations in accordance with Chapter 5.22 Concentrated Animal Feeding Operation (CAFO Chapter) when accessory to another listed Conditional Use.

Section 4.02.03 - Highway Access

All property in the "CI" District must have access to a County, State, or Federal Road.

Section 4.02.04 - Area Regulations

Minimum lot area, maximum building height, and minimum yard requirements shall be regulated in accordance with the following tables:

1.

	Minimum Lot Area	Maximum Height (A)	Maximum Lot Coverage
Permitted Uses	3 Acres	50'	25%
Other Conditional Uses	To be determined by the Board of Adjustment		

- A. *[Exception to maximum height]* The Zoning Official may allow heights to exceed fifty (50) feet for the following:
 - i. Agricultural bulk storage structures and associated loading/unloading equipment.
 - ii. Chimneys, smokestacks, and cooling towers.
 - iii. Wireless Telecommunications Towers and Facilities.
 - iv. Wind Energy Systems, Private Wind Energy Systems.
 - v. Others as determined by the Board of Adjustment.

**ARTICLE IV
COMMERCIAL/ INDUSTRIAL DISTRICTS**

2.

	Minimum Front Yard (A)	Minimum Rear Yard	Minimum Side Yard	Minimum Side or Rear Yard Adjacent to Residential Use or "A" – Agricultural Zoning District
Permitted Uses	100'	50'	50'	100'
Signs	1'	10'	10'	10'
Conditional Uses	To be determined by the Board of Adjustment			

A. In no case shall an accessory building be located or extend into the front yard.

3. Access. For all proposed uses and structures adjacent to a State highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the filing of a plat or the issuance of a building/use permit.

4. Lot Area. Lot area shall be determined by need, setback, side yards, rear yards, parking requirements, freight handling requirements, building site and future expansion; however, in no case shall a lot have less than three (3) acres.

An applicant for a Conditional Use shall provide a proposed site plan which can be reviewed by the County Zoning Commission. For commercial and industrial uses, buildings shall occupy no more than twenty-five (25) percent of the lot.

5. Storage. All outdoor storage within five hundred (500) feet of a residential dwelling must be completely enclosed in a building or by a solid walled fence at least two (2) feet above the highest point of the stockpile which fence shall be maintained in safe and good repair. The County may require asphalt or concrete surfacing of parking lots.

6. Parking. Each lot shall provide off-street parking. Number of parking spaces shall be determined by the Board of Adjustment. Trees used for landscaping within a paved parking lot are exempt from minimum front, rear and side yard requirements for shelterbelts.

Section 4.02.05 - Performance Standards

1. Noise. All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.

2. Air Pollution. State emission standards shall be met by all possible sources of air pollution. In any case, there shall not be discharged from any sources whatsoever such quantities of air contaminants, smoke or detriment, nuisance or annoyance to any considerable number of persons or to the public in general to endanger the comfort, health or safety of any such considerable number of persons or have a natural tendency to cause injury or damage to business, vegetation or property.

**ARTICLE IV
COMMERCIAL/ INDUSTRIAL DISTRICTS**

3. Odor. The emission of odorous matter in such quantities as to be readily detectable at any point along lot lines or to produce a public nuisance or hazard beyond lot lines is prohibited.
4. Glare, Heat or Radiation. Every use shall be so operated that there is no emission of heat, glare or radiation visible or discernable beyond the property line.
5. Vibration. Every use shall be so operated that the ground vibration inherently and recurrently generated is not perceptible, without instruments, at any point on the property line.
6. Sewage and Liquid Wastes. No operation shall be carried on which involves the discharge into a sewer, watercourse, river or the ground of liquid wastes of any radioactive nature, or liquid wastes of chemical nature, which are detrimental to normal sewage plant operations or corrosive or damaging to sewer pipes and installations.
7. Fire Hazard. All flammable substances involved in any activity or use, shall be handled in conformance with the standard of the National Board of Fire Underwriters and any additional regulations that may from time to time be adopted by the County Commissioners
8. Physical Appearance. All operations shall be carried on within an enclosed building except that new or operable equipment may be displayed or stored in the open and waste materials stored in enclosed containers not readily visible from the street.

CHAPTER 4.03. "LP" LAKE/ PARK DISTRICTS.

Purpose

The Lake-Park District was established to provide for orderly residential and recreational development together with certain public facilities, customary home occupations, and certain recreation oriented commercial establishments along lake shores and to preserve the natural environment, including shorelines and lakes, from destructive land uses.

Area Contained in "LP" District

All land, unless otherwise zoned in the Brookings County Official Zoning Map adopted May 29, 2007, as amended October 1, 2013, and as amended thereafter, within one thousand (1,000) feet of the normal high water line of a designated lake shall be zoned Lake-Park District and usage shall conform to the regulations for this District.

Section 4.03.01. Permitted Uses.

1. New and used single-family residences, manufactured or modular homes **subject to the provisions of Chapter 5.09.**
2. Public parks and recreation areas;
3. Agriculture and horticulture uses excluding Concentrated Animal Feeding Operations (CAFO);
4. Accessory buildings of new construction, with a maximum of 14' side-walls and 2,000 square feet or less and which meet all required setbacks are a permitted use. New or used accessory buildings of 120 square feet or less are a permitted use and are not required to have a building permit. (Ord. 2006-02, 3-28-2006, Ord. 2015-03, 12-29-2015).

Section 4.03.02. Conditional Uses.

1. Twin homes;
2. Private parks and camp grounds;
3. Resorts; **subject to the provisions of Chapter 5.40;**
4. Restaurants;
5. Boat houses adjacent to lake shore;
6. Accessory buildings with a side-wall greater than fourteen (14) feet or more than 2,000 square feet and used accessory buildings greater than 120 square feet.
7. Golf courses/country clubs;
8. Marinas;
9. Boat Repair/shops;

10. Grocery, convenience and sporting goods stores;
11. Gas stations;
12. Riding Stables;
13. Skating Rinks;
14. Essential Public Services;
15. Public utility and public service structure including transmission lines, substations, gas regulator stations, pipelines, community equipment buildings, pumping stations, and reservoirs;
16. Laundromats;
17. Outdoor music events;
18. Commercial storage units;
19. Bars/Taverns;
20. Firework sales; subject to SDCL Chapter 37-32.
21. Home occupations; **subject to the provisions of Chapter 5.16;**
22. Bed and Breakfasts / Vacation Rental By Owner (VRBO);
23. Extended home occupations; **subject to the provisions of Chapter 5.24.**

Section 4.03.03. Density, Area and Yard Regulations.

1. **Minimum lot area, maximum lot coverage/density, minimum frontage, and minimum yard requirements for the Lake Park District shall be regulated in accordance with the Table 4.03.03.1:**

Table 4.03.03.1

Land Uses		Maximum Per Unit Density (Sq. Ft.)	Minimum Lot Area (Sq. Ft.)	Minimum Shoreline Frontage	Minimum Road Frontage	Minimum Front Yard	Minimum Rear Yard or Lake Front	Minimum Side Yard
Lots Adjacent to Lake	Single Family Dwelling	20,000'	20,000'	75'	75'	25' (A)	75' (B)	8'
	Other Allowable Uses	20,000'	20,000'	75'	75'	25' (A)	75' (B)	8'
Lots Not Adjacent to Lake	Single Family Dwelling	20,000'	20,000'	NA	75'	25' (A)	25'	8'
	Other Allowable Uses	20,000'	20,000'		75'	25' (A)	25'	8'

- (A) Side of lot facing road right-of-way or access easement.
(B) Measured from wall of the structure to the estimated high water elevation.
1. A corner lot will have two front yards. In the case of a lot abutting more than one street, the owner may choose any street lot line as the front lot line with consent of the Zoning Official, based on the effects of such choice on development of the lot itself or on adjacent properties. The rear lot line is opposite and most distant the front lot line.
 2. For lakes or ponds: No structure except piers and docks shall be placed at an elevation such that the lowest floor, including the basement, is less than three (3) feet above the highest known water level. In those instances where sufficient data on known high water level is not available, the elevation line of permanent terrestrial vegetation shall be used as the estimated high water elevation. When fill is required to meet this elevation, the fill shall be required to stabilize before construction begins.
 3. **All residential and commercial uses requiring sanitary sewer/septic services shall be connected to a wastewater treatment system in accordance with the following:**
 - a. **Residential and commercial uses on lots containing less than twenty thousand (20,000) square feet shall be connected to a sealed holding tank or an approved sanitary sewer district. Existing septic tanks and drain fields as of (date of the ordinance) on lots with an area of less than twenty thousand (20,000) square feet are considered nonconforming uses and may only be replaced by connection to an approved sanitary sewer district or a sealed holding tank.**
 - b. **Septic systems are required to be installed for cabins and homes on all lots containing twenty thousand (20,000) square feet or more, unless the property is connected to an approved sanitary sewer district.**

- c. **All septic systems are required to be installed by a South Dakota Department of Environment and Natural Resources (SD DENR) certified installer following South Dakota Administrative Rules Chapter 74:53.**
4. No residence shall exceed two and one-half (2 ½) stories or 35 feet from the peak of the residence to the highest ground next to the structure. Exceptions include the following:
 - a. Agricultural buildings.
 - b. Chimneys, smokestacks, cooling towers.
 - c. Radio and TV towers.
 - d. Water tanks.
5. Solar panels are allowed as an accessory use subject to the following conditions:
 - a. **Solar panels must meet height and setback requirements for the Lake Park District.**
 - b. **The energy generated shall be used exclusively on the site where the energy is generated.**
6. Landowners shall comply with South Dakota Codified Law 38-22 Weed and Pest Control and Brookings County Noxious Weed and Pest List for noxious weeds and vegetation.

Section 4.03.04. Shoreline and Bottomland Alterations.

These regulations are deemed necessary along the shores of natural waters to protect scenic beauty, control erosion and reduce effluent and nutrient flow from the shore land.

1. **Removal of Shore Cover:**
 - a. Natural shrubbery shall be preserved as far as practicable, and where removed it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.
 - b. The removal of natural shrubbery or trees and the replacement of such vegetation within 35 feet inland from all points from the high water mark shall require the granting of a permit by the Zoning Official. An application to alter lakeshore or bottom lands which contains a plan showing the work to be accomplished shall be filed at the Zoning Office. The plan shall be approved South Dakota Game, Fish and Parks and/or the Army Corps of Engineers as required by state or federal law prior to the Zoning Officer issuing the permit. The granting of the permit shall be conditioned upon the applicant providing the Zoning officer, within eighteen (18) months after the date of granting the permit, satisfactory evidence of compliance with the plan or pay for the cost incurred by the County in replacing the property in compliance. In the event the County pays the cost of putting the property in compliance, a civil lien shall be placed against the property in favor of the County for the amount expended by the County. Nothing in this provision shall prevent the County from pursuing all legal remedies available to enforce this provision. It is solely within the discretion of the County whether to pay the costs of placing the property in compliance.

Section 4.03.05. Filling, Grading, Lagooning and Dredging.

1. Filling, grading, lagooning or dredging are prohibited unless the applicant completes and files with the Zoning Office an application for filling, grading, lagooning or dredging which contains a plan showing the work to be accomplished. The plan shall be approved South Dakota Game, Fish and Parks and/or the Army Corps of Engineers as required by state or federal law prior to the Zoning Officer issuing the permit. The granting of such permit shall be conditioned upon the applicant providing the Zoning officer, within eighteen (18) months after the date of granting such permit, satisfactory evidence of compliance with the plan or pay for the cost incurred by the County in replacing the property in compliance. In the event the County pays the cost of putting the property in compliance, a civil lien shall be placed against the property in favor of the County for the amount expended by the County. Nothing in this provision shall prevent the County from pursuing all legal remedies available to enforce this provision. It is solely within the discretion of the County whether to pay the costs of placing the property in compliance.
2. A permit shall be required for any filling or grading.
3. Building permits are required for all retaining walls or structures.

CHAPTER 4.04 - NATURAL RESOURCE DISTRICTS

Section 4.04. “NR” Natural Resource District

Section 4.04.01 - Purpose

The purpose of the Natural Resource District is to provide for the retaining of natural vegetation of a particular area, to preserve the natural environment and resources from destructive land uses and to protect wildlife habitat. Such an area may include, but is not limited to, flood plains of rivers, streams, and lakes, abandoned quarries, certain wetlands, natural prairies, and historical sites.

Area Contained in “NR” District

1. All lands totally or partially owned by the state or federal governments as wildlife production or public shooting areas.
2. All land, unless otherwise zoned, within 300-feet from original government surveyed meandered line of water bodies, included in Appendix #/A.
3. Excludes all rivers and tributaries.
4. Any other areas specifically zoned natural resources by the County.

Section 4.04.02 - Permitted Uses

1. Wildlife production areas, wildlife habitat, wetlands, plant and pollinator protection areas and riparian or vegetated buffer zones.
2. Game refuges;
3. Historic sites and/or monuments;
4. Designated natural prairies;
5. Public hunting and fishing access areas;
6. Agriculture/Horticulture uses and livestock grazing.
7. Scientific observation, survey, or research to promote environmental integrity and that does not compromise the natural resource area.

Section 4.04.03 - Uses Permitted by Conditional Use if Deemed Not Detrimental to District

1. Transportation and utility easements and rights-of-way.
2. Utility substations;
3. Public parks and/or playgrounds;

CHAPTER 4.05 – FLOODPLAIN DISTRICT.

Section 4.05.01. - Statutory Authorization, Findings of Fact, Purpose and Methods of Reducing Flood Losses.

1. Statutory Authorization

The Legislature of the State of South Dakota has SDCL Chapter 11-2-13 and 11-4-1 delegated the responsibility to local governmental units to adopt land use regulations designed to promote the public health, safety, and general welfare of its citizenry through flood plain and land use regulations. Therefore, the Board of County Commissioners of Brookings County, South Dakota, ordains as follows:

Brookings County elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program (NFIP) is a voluntary program administered by the Federal Emergency Management Agency (FEMA), a component of the U.S. Department of Homeland Security, and Brookings County's community officials have elected to join the program, participate and enforce these flood damage prevention regulations to areas not identified as Special Flood Hazard Areas (SFHAs) by FEMA on the community's effective Flood Insurance Rate Map (FIRM), if the community has documentation to support that there is an inherent risk of flooding in such areas.

2. Findings of Fact

a. The flood hazard areas of Brookings County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare of the inhabitants of Brookings County.

b. These potential flood losses are caused by:

i) The cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities;

ii) The occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage; and

iii) Uses deemed unsuitable for floodplain areas or that do not account for the increased flood risk.

3. Statement of Purpose. It is the purpose of this Ordinance to promote the public health safety, and general welfare, and to minimize public and private losses due to flood conditions to specific areas by provisions designed:

a. To protect human life and health.

b. To minimize expenditure of public expenditures flood control projects.

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- c. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
 - d. To minimize prolonged business interruptions caused by flooding.
 - e. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard.
 - f. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.
 - g. To ensure that potential buyers are notified that property is in an area of special flood hazard.
4. Methods of Reducing Flood Losses. In order to accomplish its purpose, this Ordinance includes methods and provisions for:
- a. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in times of flooding, or cause excessive increases in flood heights or velocities;
 - b. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
 - c. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters.
 - d. Controlling filling, grading, dredging, and other development which may increase flood damage.
 - e. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters, or which increase flood hazards in other areas.

Section 4.05.02. Definitions.

In addition to the Definitions in Article II of this ordinance, unless specifically defined below, words or phrases used in Chapter 4.05 shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance its most reasonable application. The definitions contained in Section 4.05.02 shall supersede the definitions in Article II of this ordinance only in the interpretation of Chapter 4.05 of this ordinance. In all other cases where definitions conflict with the definitions in Article II, the definitions in Article II shall apply.

100-Year Flood means a flood having a recurrence interval that has a 1-percent chance of being equaled or exceeded during any given year (1-percent-annual-chance flood). The terms “100-hundred-year flood” and “1-percent-annual-chance flood” are synonymous. The term does not imply that the flood will necessarily happen once every 100 hundred years. Mandatory flood insurance requirements may apply.

100-Year Floodplain means the area of land susceptible to being inundated due to the occurrence of a 1-percent-annual-chance flood.

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500-Year Flood means a flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-annual-chance flood). The term does not imply that the flood will necessarily happen once every 500 years and mandatory flood insurance requirement generally does not apply.

500-Year Floodplain means the area of land susceptible to being inundated due to the occurrence of a 0.2-percent-annual-chance flood.

Accessory Structure is a structure that is on the same parcel of property as a principal structure. Its use is incidental to the use of the principal structure the ownership of the accessory structure is the same owner as of the principal structure. An accessory structure is a non-residential structure of low value that is used solely for the parking of vehicles and storage of tools, materials, or equipment. No human habitation is allowed within an accessory structure.

Addition is any improvement that expands the enclosed footprint or increases the square footage of an existing structure. This includes lateral additions added to the side, front, or rear of a structure; vertical additions added on top of a structure; and enclosures added underneath a structure.

Alluvial Fan Flooding means flooding occurring on the surface of an alluvial fan or similar landform that originates at the apex. It is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appurtenant Structure—see *Accessory Structure*.

Area of Future-Conditions Flood Hazard means the land area that would be inundated by the 1-percent-annual-chance (100-year) flood, based on future-conditions hydrology.

Area of Shallow Flooding means a designated AO, AH, AR/AO, or AR/AH zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood-Related Erosion Hazard is the land within a community that is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area, in preparation for publication of the FIRM, Zone E may be further refined.

Area of Special Flood Hazard is the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, or V1-30, VE, or V. For purposes of these regulations, the term “special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard”.

Base Flood means the flood having a 1-percent chance of being equaled or exceeded in any given year.

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Base Flood Elevation (BFE) is the water surface elevation of the 1-percent-annual-chance flood event. It is the height in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas. It is also the elevation shown on the FIRM and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1-percent chance of equaling or exceeding that level in any given year.

Basement means any area of the building having its floor subgrade (below ground level) on all sides. A walkout basement that does not require a step up to grade is not considered a basement.

Best Available Data is existing flood hazard information adopted by a community and reflected on an effective FIRM, FBFM, and/or within an FIS report; or draft or preliminary flood hazard information supplied by FEMA or from another source. Other sources may include, but are not limited to, state, other federal agencies, or local studies, the more restrictive of which would be reasonably used by the community.

Breakaway Wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system. Any walls below the lowest floor in a building in a V or VE Zone should give way under wind and water loads without causing collapse, displacement, or other damage to the elevated portion of the building or the supporting pilings or columns. Breakaway walls apply only to V or VE Zones.

Building—see *Structure*.

Channelization means the artificial creation, enlargement, realignment, or alteration of a stream channel's slope, shape, or alignment. Streambank restoration may be deemed as channelization.

Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.

Conditional Letter of Map Revision (CLOMR) is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic and/or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective BFEs, and/or the SFHA. The letter does not revise an effective map; it indicates whether the project, if built as proposed, would be recognized by FEMA.

Conditional Letter of Map Revision Based on Fill (CLOMR-F) is FEMA's comment on a proposed structure or property. The letter does not revise an effective map; it indicates whether the project, if built as proposed, would be removed from the floodplain.

Crawl space means an under-floor space that has its interior floor area (finished or not) no more than 4 feet from the bottom floor joist the next higher floor elevation, designed with proper openings that equalize hydrostatic pressures of flood water, and is not used for habitation.

Critical Facility means a facility or building where even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, fire stations, police stations, schools, storage of critical records, assisted living and similar facilities.

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Deed Restriction refers to a clause in a deed that limits the future use of the property in some respect. Deed restrictions may impose a vast variety of limitations and conditions. For example, they may limit the density of buildings, dictate the types of structures that can be erected, or prevent buildings from being used for specific purposes or from being used at all.

Detached Garage is a building that is used solely for storage of materials or vehicle parking for up to four housing occupants. If a detached garage is designed or used for habitation or conducting business, or has multiple stories, then the building is not considered a detached garage under the NFIP.

Development means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, demolition, excavation or drilling operations, or storage either temporary or permanent of equipment or materials.

Elevated Building is a non-basement building built, in the case of a building in Zone A1-30, AE, A, A99, AR, AO, AH, B, C, X and D, to have the top of the elevated floor above the ground level by means of pilings, columns (post and piers), or shear walls parallel to the flow of the water and adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of a building in Zone A1-30, AE, A, A99, AR, AO, AH, B, C, X and D, an “elevated building” also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

Enclosure refers to an enclosed walled-in area below the lowest floor of an elevated building. Enclosures below the BFE may only be used for building access, vehicle parking, and storage.

Erosion means the process of the gradual wearing away of land masses by wind, water, or other natural agents.

Existing Construction refers to structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. It may also be referred to as *Existing Structures*.

Existing Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Existing Structures—see *Existing Construction*.

Expansion to an Existing Manufactured Home Park or Subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA means the Federal Emergency Management Agency.

Fill refers to the placement of materials, such as dirt, sand, or rock to elevate a structure, property, or portion of a property above the natural elevation of the site, regardless of where the material was obtained from. The common practice of removing unsuitable material and replacing with

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engineered material is not considered fill if the elevations are returned to the existing conditions. Any fill placed or used prior to the area being mapped as a flood hazard area is not deemed as fill.

Flood or Flooding means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
2. Mudslides (i.e., mudflows) that are proximately caused by flooding as defined in this ordinance and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
3. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this ordinance.

Flood Insurance Manual is the document FEMA produces twice a year and is used to write flood insurance policies underwritten by the NFIP. The document contains definitions, policy rates, coverage and limitations, application, and insurance policy forms.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Administrator has delineated both the SFHAs, and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) or Flood elevation study means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Floodplain Development Permit is a community issued permit or document that is used for any development that occurs within an SFHA identified by FEMA or the community. It is used to address the proposed development to ensure compliance with the community's ordinance.

Floodplain or Flood-Prone Area means any land area susceptible to being inundated by water from any source whether or not identified by FEMA (see definition of *Flooding*).

Floodplain Management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, mitigation plans, and floodplain management regulations.

Floodplain Management Regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term

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describes such state or local regulations, in any combination thereof, which provide standards for flood damage prevention and reduction.

Flood Opening refers to an opening in the wall of an enclosed structure that allows floodwaters to automatically enter and exit the enclosure. Refer to FEMA Technical Bulletin 1.

Flood Protection System means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to an SFHA and to reduce the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees, or dikes. These specialized, flood modifying works are those constructed in conformance with sound engineering standards. FEMA only accredits levees, both private and public, that have been certified by a professional engineer or firm in which the certification shows that the levee have met and continue to meet the minimum regulatory standards cited in Title 44, Chapter 1, Section 65.10 of the Code of Federal Regulations (44 CFR 65.10).

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. Floodproofing can either be accomplished in the form of dry floodproofing in which the structure is watertight below the levels that need flood protection, or wet floodproofing in permanent or contingent measures applied to a structure that prevent or provide resistance to damage from flooding, while allowing floodwaters to enter the structure or area.

Floodway—see *Regulatory Floodway*.

Floodway encroachment lines mean the lines marking the limits of floodways on federal, state, and local flood plain maps.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Functionally Dependent Use means a development that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and repair facilities. It does not include long-term storage or related manufacturing facilities.

Highest Adjacent Grade (HAG) means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. In AO Zones, the highest adjacent grade is utilized by comparing the lowest floor elevation to that of the highest adjacent grade and the depth of the AO Zone.

Historic Structure means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the

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Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic reservation programs that have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior, or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Letter of Map Amendment (LOMA) means an official amendment, by letter, to an effective FIRM. A LOMA establishes a property's location in relation to the SFHA. It is usually issued because a property or structure has been inadvertently mapped as being in the floodplain when the property or structure is actually on natural high ground above the BFE.

Letter of Map Revision (LOMR) means FEMA's modification or revision to an entire or portion of the effective FIRM, or Flood Boundary and Floodway Map, or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective BFEs, or the SFHA.

Letter of Map Revision Based on Fill (LOMR-F) means FEMA's amendment, by letter, to an effective FIRM where fill was brought in or used to elevate a property, portion of property or structure above the BFE.

Levee means a man-made structure usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee System means a flood protection system that consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest Adjacent Grade (LAG) means the lowest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. For an existing structure, it means the lowest point where the structure and ground touch, including but not limited to attached garages, decks, stairs, and basement windows.

Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Section 60.3.

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Manufactured Home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle”; however, a manufactured home may be used for both residential and non-residential use.

Manufactured Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Map means the FHBM or the FIRM for a community issued by FEMA.

Mean Sea Level means, for purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which BFEs shown on a community's FIRM are referenced.

Mixed Use Structures are structures with both a business and a residential component, but where the area used for business is less than 50 percent of the total floor area of the structure.

New Construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

No-Rise Certifications are formal certifications signed and stamped by a professional engineer licensed to practice in the state, demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that a proposed development will not result in any increase (0.00 feet) in flood levels within the community during the occurrence of a base flood event.

Physical Map Revision (PMR) is FEMA's action whereby one or more map panels are physically revised and republished.

Recreational Vehicle means a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily, not for use as a permanent dwelling but, as temporary living quarters for recreational, camping, travel, or seasonal use.

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Regulatory Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, creek, etcetera, which can be intermittent or perennial.

Section 1316 refers to the section of the National Flood Insurance Act of 1968, as amended, which provides for the denial of flood insurance coverage for any property that the Administrator finds has been declared by a duly constituted State or local authority to be in violation of State or local floodplain management regulations. Section 1316 is issued for a property, not a property owner, and remains with the property even after a change of ownership.

Special Flood Hazard Area—see *Area of Special Flood Hazard*.

Start of Construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)) includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes in Chapter 4.05, a walled and roofed building, culvert, bridge, dam, or a gas or liquid storage tank that is principally above ground, as well as a manufactured home. *Structure*, for insurance purposes and Chapter 4.05, means:

1. A building with two or more outside rigid walls and a fully secured roof, which is affixed to a permanent site;
2. A manufactured home (“a manufactured home,” also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
3. A travel trailer without wheels built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For insurance purposes, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

Substantial Damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement means any reconstruction, rehabilitation, addition, or other improvement

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of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed.

The term does not, however, include:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and are the minimum necessary to assure safe living conditions; or
2. Any alteration of a “historic structure”, if the alteration will not preclude the structure's continued designation as a “historic structure.”

Variance means a grant of relief by a community from the terms of a flood plain management regulation. Reference: 4.05.05. VARIANCE PROCEDURES

Violation means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sections 44 CFR 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies, such as the 1-percent-annual-chance flood event, in the flood plains of coastal or riverine areas.

Watercourse means the channel and banks of an identifiable water in a creek, brook, stream, river, ditch, or other similar feature.

Section 4.05.03. General Provisions.

1. Lands to Which This Ordinance Applies.

This Ordinance shall apply to all areas of special flood hazard identified by FEMA within the jurisdiction of Brookings County.

2. Compliance.

No structure or land shall hereafter be constructed, located, extended, or altered without full compliance with the terms of this Ordinance and other applicable regulations.

3. Basis for Establishing the Areas of Special Flood Hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Brookings County, South Dakota and Incorporated Areas," dated April 23, 2025, with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this Ordinance.

4. Abrogation and Greater Restrictions.

This Ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance and another Ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

5. Interpretation - In the interpretation of this Ordinance, all provisions shall be:
 - a. Considered as minimum requirements;
 - b. Liberally construed in favor of the governing body; and
 - c. Deemed neither to limit nor repeal any other powers granted under State statute.
6. Warning and Disclaimer of Liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur and flood heights may be increased by human-made or natural causes.

This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance, or any administrative decision lawfully made thereunder.

7. Penalties for Noncompliance.

In accordance with Section 59.2(b) of CFR 44, Chapter 1, of the NFIP regulation, to qualify for the sale of federally subsidized flood insurance, a community must adopt floodplain management regulations that meet or exceed the minimum standards of Section 60. "These regulations must include effective enforcement provisions." In accordance with Section 60.1(b) of CFR 44, Chapter 1, of the NFIP regulations, "These regulations must be legally enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone (i.e., mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over less restrictive conflicting local laws, ordinances, or codes."

Section 4.05.04. Administration.

1. Designation of the Floodplain Administrator.

The Administrative Official of this Ordinance, see Section 6.02.01, is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of the NFIP Regulations and 44 CFR pertaining to floodplain management.

2. Duties and Responsibilities of the Floodplain Administrator.

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Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- a. Uphold the goals of the community and the NFIP to reduce risk when possible and increase the community's resistance to future disasters.
- b. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance, including the actual elevation of the lowest floor (including basement or crawlspace) of all new or substantially improved structures and any floodproofing certificates, including the data supporting such certificates.
- c. Maintain and hold open for public inspection maps that identify and locate the boundaries of the SFHAs to which this ordinance applies, including, but not limited to, the FIRM.
- d. Review development proposals to determine whether a proposed building site, including sites designed for the placement of manufactured homes, will be reasonably safe from flooding.
- e. Review, approve, or deny all applications for development permits required by adoption of this ordinance.
- f. Ensure that all necessary permits have been obtained from those federal, state, or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334 and the Endangered Species Act of 1973) from which prior approval is required.
- g. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- h. Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the South Dakota Office of Emergency Management, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
- i. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make the necessary interpretation.
- j. When BFE data has not been provided by FEMA, the Floodplain Administrator shall obtain, review, and reasonably utilize any BFE data and floodway data available from a federal, state, or other source including data provided by the applicant, in order to administer the provisions of this ordinance.
- k. When a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30, AE, and AH on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than 1.00 foot at any point within the community.

ordinance and the NFIP Regulations.

- vii) Description of the extent to which any watercourse or natural drainage will be altered or relocated because of proposed development, if applicable.
 - viii) At the community's discretion, the community may charge a fee for issuance of floodplain development permits.
 - ix) Copies of all floodplain development permits, and the associated documents shall become property of the community and a permanent record.
- b. Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:
- i) The danger to life and property due to flooding or erosion damage.
 - ii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - iii) The danger that materials may be swept onto other lands to the injury of others.
 - iv) The compatibility of the proposed use with existing and anticipated development.
 - v) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - vi) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical, and water systems.
 - vii) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.
 - viii) The necessity to the facility of a waterfront location, where applicable.
 - ix) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
 - x) The relationship of the proposed use to the comprehensive plan for that area.

Section 4.05.05. Variance Procedures.

1. The Board of Adjustment as established by the community shall hear and render judgment on requests for variances from the requirements of this Ordinance.
2. The Board of Adjustment shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Ordinance.
3. Any person or persons aggrieved by the decision of the Appeal Board may appeal such

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decision in the courts of competent jurisdiction.

4. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
5. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Ordinance.
6. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in 4.05.05.10 have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
7. Upon consideration of the factors noted above and the intent of this Ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Ordinance.
8. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
9. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
10. Prerequisites for granting variances:
 - a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - b. Variances shall only be issued upon:
 - i) showing a good and sufficient cause;
 - ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 - iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or Ordinances.
 - c. Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
11. Variances may be issued by a community for new construction and substantial improvements

and for other development necessary for the conduct of a functionally dependent use provided that:

- a. the criteria outlined in 4.05.05 are met, and
- b. the structure or other development is protected by methods that minimize flood; and
- c. damages during the base flood and create no additional threats to public safety.

Section 4.05.06. General Standards for Flood Hazard Reduction.

1. General Standards.

In all areas of special flood hazards, the following provisions are required for all new construction and substantial improvements:

- a. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- b. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- c. All new construction or substantial improvements shall be constructed with materials resistant to flood damage.
- d. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- e. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- f. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters.
- g. On-site waste disposal systems shall be designed or located to avoid impairment to them or contamination from them during flooding.

2. Substantial Improvement.

Any combination of repair, reconstruction, rehabilitation, addition, or improvement of a building or structure, if the cumulative cost of the entire project equals or exceeds 50 percent of the market value of the structure only (not of the structure and land value combined) before the improvement or repair is started then the work shall be considered as substantial improvement. If the structure has sustained substantial damage, any repairs are considered substantial improvements regardless of the actual repair work performed. For Substantial Damage, refer to 4.05.06.3 SUBSTANTIAL DAMAGE. The term does not, however, include

either:

- a. Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- b. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

3. Substantial Damage

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure only before the damage occurred. This term also applies to structures which have incurred any damage that equals or exceeds 50 percent of the structure's market value regardless of the actual repair work performed. When a structure or building has been determined as substantially damaged, any work or repair on said structure or building will be considered as substantial improvement and will be required to meet the development requirements set forth within this ordinance for substantial improvement.

4. Substantial Improvement and Substantial Damage Determination

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the applicable community officials and staff, shall:

- a. Estimate the market value or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure only, not of land and building, before the start of construction of the proposed work. In the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
- b. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure.
- c. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in Section 4.05.06.2 SUBSTANTIAL IMPROVEMENT.
- d. Utilize FEMA's Substantial Improvement/Substantial Desk Reference when making any determination on Substantial Improvement and/or Substantial Damage.
- e. The substantial improvement regulations apply to all of the work that is proposed as the improvement, even if multiple permits are issued. Therefore, the determination of the cost

of the improvement should consider all costs of all phases of the work before issuance of the first permit.

- f. Notify the applicant that if it is determined that the work constitutes substantial improvement or repair of substantial damage, that compliance with the floodplain management ordinance is required.

Section 4.05.07. Specific Standards for Flood Hazard Reduction.

In all SFHAs and areas of suspected flood risk areas, the following provisions are required:

1. Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to 1 foot above the BFE. A registered professional engineer, architect, or land surveyor shall submit certified elevations to the Floodplain Administrator that the standards of this ordinance are satisfied.

2. Nonresidential Construction

New construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement) elevated to 1 foot above the BFE, or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification that includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator. If the use or occupancy of the building changes in the future to residential, then the dry floodproofing of the structure cannot be used when determining compliance of the structure to the residential construction of this ordinance, Section 4.05.07.1 RESIDENTIAL CONSTRUCTION. As such, the building will not be grandfathered into compliance and will be required to be brought into compliance with the residential construction requirements of this ordinance.

3. Enclosures

New construction and substantial improvements, with fully enclosed areas below the lowest floor that are to be used solely for parking of vehicles, building access, or storage in an area other than a basement, and are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or must meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.
- b. The bottom of all openings shall be no higher than 1 foot above grade.

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- c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- d. The development and construction of the structure must conform with the provision in FEMA/Federal Insurance Administration (FIA)-Technical Bulletins 1 and 2. Certification and documentation from a professional, licensed engineer or architect is required if the structure's lowest floor is built below the BFE.

4. Crawlspace

New construction and substantial improvements built on a crawlspace or sub-grade (below grade) crawlspace may be permitted if the development is designed and meets or exceeds the standards found in FEMA's Technical Bulletins 1, 2, and 11, which include but are not limited to the following:

- a. The structure must be affixed to a permanent foundation, designed, and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than 5 feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer.
- b. The crawlspace is an enclosed area below the BFE and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than 1 foot above the lowest adjacent grade (LAG).
- c. The crawlspace enclosure must have proper openings that allow equalization of hydrostatic pressure by allowing automatic entry and exit of floodwaters. To achieve this, a minimum of 1 square inch of flood opening is required per 1 square foot of the enclosed area subject to flooding.
- d. Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, piers, or other materials that extend below the BFE. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.
- e. Any building utility systems within the crawlspace must be elevated above the BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions.
- f. The interior grade of a crawlspace below the BFE must not be more than 2 feet below the LAG.
- g. The height of the below-grade crawlspace, measured from the lowest interior grade of the crawlspace floor to the bottom of the floor joist of the next higher floor cannot exceed 4 feet at any point.
- h. There must be an adequate drainage system that removes floodwaters from the interior

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area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event.

- i. Buildings with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction, with the interior elevation at or above the LAG.

5. Manufactured Homes

- a. Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- b. Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites outside of a manufactured home park or subdivision;) in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated as high as the BFE, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- c. In A-1-30, AH, AO and AE Zones, require that manufactured homes to be placed or substantially improved in an existing manufactured home park to be elevated so that the lowest floor is at least as high as the BFE; or the chassis is supported by reinforced piers no less than 36 inches in height above grade and securely anchored.

6. Recreational Vehicles

Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:

- a. Be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use;
 - i) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.
- b. Or meet the permit requirements of 4.05.04.4, PERMIT PROCEDURES, and the elevation and anchoring requirements for "manufactured homes" of this section.

Section 4.05.08. Standards for Subdivision Proposals.

1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with the provisions of this ordinance.

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2. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
3. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of this ordinance.
4. BFE data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions, which is greater than 50 lots or 5 acres, or whichever is lesser.
5. All subdivision proposals including the placement of manufactured home parks and subdivisions shall minimize flood damage.

Section 4.05.09. Standards for Floodways.

Floodways located within SFHAs are extremely hazardous areas due to the velocity of flood waters that carry debris, potential projectiles, and erosion potential, the following provisions shall apply:

1. Designate a regulatory floodway that will not increase the base flood level more than 1 foot.
2. Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway *unless* it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase greater than 0.00 feet in flood levels within the community during the occurrence of the base flood discharge.
3. All new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 4.05.06 in this ordinance.
4. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the NFIP Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in BFEs, provided that the community first applies for a conditional LOMR and floodway revision through FEMA.

CHAPTER 4.06. AQUIFER PROTECTION.

Aquifer Protection Overlay District.

Section 4.06.01. Purpose:

1. The Brookings County Planning Commission and Board of County Commissioners recognize (1) that residents of Brookings County rely exclusively on ground water for a safe drinking water supply and (2) that certain land uses in Brookings County can contaminate ground water particularly in shallow/surficial aquifers.
2. The purpose of the Aquifer Protection Overlay District is to protect public health and safety by minimizing contamination of the shallow/surficial aquifers of Brookings County. It is the intent to accomplish this, as much as possible, by public education and securing public cooperation.
3. Appropriate land use regulations will be imposed, however, which are in addition to those imposed in the underlying zoning districts or in other county regulations. It is not the intent to grandfather in existing land uses which pose a serious threat to public health through potential contamination of public water supply well head areas.

Section 4.06.02. Definitions.

1. Aquifer. A geologic formation, group of formations or part of a formation capable of storing and yielding ground water to wells or springs.
2. Best Management Practices (BMP). Means schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMP's also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, manure disposal, manure application, waste or manure stockpiles, or drainage from raw material storage.
3. Buffer Zone. An area outside and adjacent to Zone A that has been delineated to account for possible changes in the boundaries of Zone A due to effects of irrigation pumping.
4. Chemigation. The process of applying agricultural chemicals (fertilizer or pesticides) using an irrigation system by injecting the chemicals into the water.
5. Class V Injection Well. A conduit through which potentially contaminated but generally non-hazardous fluids can move from the land surface to the subsurface; the types of primary concern are (1) commercial/industrial facility septic tanks when they are used to dispose of more than domestic wastewater and (2) dry wells for repair/service bay drains at facilities servicing motorized vehicles/ equipment.
6. Concentrated Animal Feeding Operation See Chapter 5.22
7. Contamination. The process of making impure, unclean, inferior, or unfit for use by introduction of undesirable elements.
8. Contingency Plans. Detailed plans for control, re-containment, recovery and clean up of hazardous materials released during fires, equipment failures, leaks and spills or other similar events.

9. Corner Lot is a lot with two front yards.
10. Development. The carrying out of any construction, reconstruction, alteration of surface or structure or change of land use or intensity of use.
11. Facility. Something that is built, installed or established for a particular purpose.
12. Grey Water. All domestic wastewater except toilet discharge water.
13. Hazardous Materials. A material which is defined in one or more of the following categories.
 - a. Ignitable: A gas, liquid or solid which may cause fires through friction, absorption of moisture or which has low flash points. Examples: white phosphorous and gasoline.
 - b. Carcinogenic: A gas, liquid or solid which is normally considered to be cancer causing or mutagenic. Examples: Polychlorinated Biphenyls (PCBs) in some waste oils.
 - c. Explosive: A reactive gas, liquid or solid which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.
 - d. Highly Toxic: A gas, liquid or solid so dangerous to man as to afford an unusual hazard to life. Examples: parathion and chlorine gas.
 - e. Moderately Toxic: A gas, liquid or solid, which through repeated exposure or in a single large dose can be hazardous to man. Example: atrazine.
 - f. Corrosive: Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.
14. Manure Storage Area. An area for the containment of animal manure in excess of 8,000 pounds or 1,000 gallons.
15. Leaks and Spills. Any unplanned or improper discharge of a potential contaminant including any discharge of a hazardous material.
16. Pasture. A field that provides continuous forage to animals without depletion of forage matter.
17. Primary Containment Facility. A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.
18. Secondary Containment Facility. A second tank, catchments pit, pipe or vessel that limits and contains liquid or chemical leaking or leaching from a primary containment area. Monitoring and recovery are required.
19. Shallow/Surficial Aquifer. An aquifer in which the permeable media (sand and gravel) starts at the land surface or immediately below the soil profile. The main shallow/ surficial aquifer in Brookings County is the Big Sioux Aquifer.

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20. Ten Year Time of Travel Distance. The distance that ground water will travel in ten years. This distance is a function of the permeability and slope of the aquifer.
21. Zone of Contribution. The entire area around a well or well field that is recharging or contributing water to the well or well field.
22. Zoning Complaints. All zoning complaints must be in writing and signed.

Section 4.06.03. Establishment and Delineation of Aquifer Protection Overlay Zones.

1. Boundaries for the aquifer protection zones for the Aquifer Protection Overlay District are shown on published maps entitled "Well head Protection Area Maps, Brookings County Shallow Aquifer Map" dated May, 1988, with pages 5 and 9 amended in January of 1999, as drawn by Banner Associates and adding Map page 11, dated April 2013, to the Well head Protection Area Maps as drawn by Liesch Companies, 13400 15th Ave North, Minneapolis, MN 55441 for Lincoln-Pipestone Rural Water 415 E Benton St, Lake Benton, MN 56149. Said maps are hereby adopted by reference as part of this ordinance as if the maps were fully described herein. In addition to the before mentioned maps the South Dakota Department of Agriculture and Natural Resources, Division of Financial and Technical Assistance, Geological Survey Aquifer Materials Map 19 dated 2004, for areas designated 0-50 feet on map, will be used to further identify aquifer boundaries. In the event of a conflict between such maps as to the area covered by the aquifer at a given location, then the map showing the larger aquifer area shall be followed. (Ord. 2006-02, 3-28-2006).
2. The shallow/surficial aquifer boundary was mapped using data from the South Dakota Geological Survey and United States Geological Survey. This map only serves as a general guide to the location of these aquifers. County studies and other information shall be used, where available, to better determine more precise aquifer locations. Aquifer boundaries are drawn at the discretion of geologists and hydrologists based on best available information. Therefore, actual site specific aquifer boundaries may differ from the attached map and other information. Hydrogeologic information is necessary to verify the location of a concentrated animal feeding operation in relation to an underlying shallow aquifer.

Section 4.06.04. Zone A - Aquifer Critical Impact Zone.

Zone A, the well head protection area, is the zone of contribution mapped around all public water supply wells or well fields and includes land upgradient to the ten year time of travel boundary plus contributing drainage areas, as delineated on the official copy of published maps representing sloping, adjacent lands not underlain by the aquifer from which surface water can flow directly onto Zone A.

Section 4.06.04.01. Permitted uses in Zone A:

The following uses are permitted provided they meet appropriate performance standards outlined for aquifer protection overlay zones:

1. Agriculture;
 - a. Application of manure is permitted with an approved nutrient management plan.
2. Horticulture.

3. Park, greenways or publicly owned recreational areas.
4. Necessary public utilities/facilities designed so as to prevent contamination of ground water.
5. Best Management Practices are encouraged, particularly in Zone A.

Section 4.06.04.02. Conditional Uses in Zone A:

The following uses are permitted only under the terms of a Conditional Use and must conform to provisions of the underlying zoning district and meet the Performance Standards outlined for the Aquifer Protection Overlay Zones.

1. Expansion of existing conforming and non-conforming uses to the extent allowed by the underlying district. The County Zoning Commission shall not grant approval unless it finds such expansion does not pose greater potential contamination to ground water than the existing use.
2. Sediment basins will be allowed on a case-by-case basis and must be constructed to current NRCS standards and specifications.
3. Expansion of existing Class “D” Concentrated Animal Feeding Operations (CAFOs) to 499 animal units, that were in continuous existence at the time of adoption of Brookings County Zoning Ordinance May 1976.

Section 4.06.04.03. Prohibited Uses in Zone A:

The following uses are expressly prohibited in Zone A:

1. New Class A, B, C and D Concentrated Animal Feeding Operations after adoption of this ordinance, May, 1976
2. Existing Concentrated Animal Feeding Operations in continuous operation since the adoption of the Brookings County Zoning Ordinance May, 1976 will not be able to expand beyond a total of 500 animal units (Class D).
3. Earthen storage basins and lagoons.
4. Disposal of or stockpiling of solid waste.
5. Post-harvest application of nitrogen fertilizer prior to October 15th except for the spreading of manure.
6. Storage of road salt or disposal of snow containing deicing chemicals.
7. Processing and storage of Polychlorinated Biphenyls (PCB) containing oils;
8. Car washes;
9. Auto service, repair or painting facilities and junk or salvage yards;

10. Disposal of radioactive waste;
11. Graveyards or animal burial sites;
12. Open burning and detonation sites;
13. All other facilities involving the collection, handling, manufacture, use storage, transfer or disposal of any solid or liquid material or waste having a potentially harmful impact on ground water quality;
14. Land spreading or dumping of petroleum-contaminated soil, waste oil or industrial wastes.
15. Class V injection wells.
16. All uses not permitted or not permitted as Conditional Uses in Zone A.
17. Transmission facilities designated to transport liquid hydrocarbons or liquid hydrocarbon products.

Section 4.06.05. Zone B - Aquifer Secondary Impact Zones.

Zone B is established as the remainder of the mapped shallow/ surficial aquifer not included in Zone A.

This portion of the aquifer is being protected because (1) it is a valuable natural resource for future development, (2) it provides drinking water supply for individual households, (3) contamination is not justified, even though this area is not a public water supply wellhead and (4) contaminants could eventually reach Zone A.

Section 4.06.05.01. Permitted Uses in Zone B:

1. All uses permitted in the underlying zoning districts provided that they can meet the Performance standards as outlined for the Aquifer Protection Overlay Zones.
2. Best Management Practices are encouraged, particularly in Zone B.

Section 4.06.05.02. Conditional Uses in Zone B:

1. New Class D and accumulative expansion of 250 animal units of existing Class C and D CAFO's in continuous operation since the adoption of Brookings County Zoning Ordinance on May 1976 not to exceed 750 total animal units. (Class C).
2. Sediment basins will be allowed on a case-by-case basis and must be constructed to current NRCS standards and specifications.
3. All Conditional Uses allowed in underlying districts may be approved by the County Zoning Commission provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones.

Section 4.06.05.03. Prohibited Use in Zone B:

The following use is expressly prohibited in Zone B:

1. New and expansion of Class A, B and C Concentrated Animal Feeding Operations.
2. Earthen storage basins and lagoons.
3. Post-harvest application of nitrogen fertilizer prior to October 15th except for the spreading of manure.
4. Land spreading or dumping of petroleum-contaminated soil, waste oil or industrial wastes.
5. Class V injection wells.
6. Transmission facilities designated to transport liquid hydrocarbons or liquid hydrocarbon products.

Section 4.06.06. Performance Standards:

The following standards shall apply to land uses in Zones A and B of the Aquifer Protection Overlay Districts:

1. New or replacement septic tanks and associated drain fields for containment of human or animal wastes must conform with regulations established by the South Dakota Department of Agriculture and Natural Resources.
2. Any facility involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or wastes, except for spreading of manure, in excess of 1000 pounds and/or 100 gallons which has the potential to contaminate ground water must have a secondary containment system which are easily inspected and whose purpose is to intercept any leak or discharge from the primary containment vessel or structure. Underground tanks or buried pipes carrying such materials must have double walls and inspectable sumps. Pipes installed to carry diluted chemicals for chemigation are exempted and storage of liquid fertilizer for chemigation is allowed as long as a secondary containment system is used. Secondary containment for tanks used for chemigation must be in place by April 1, 1991.
3. Open liquid waste ponds containing materials referred to in (2) above will not be permitted without a secondary containment system except for community wastewater lagoons. Agricultural waste storage ponds are permitted but must be constructed in conformance with Natural Resource Conservation Service Conservation Practice Standard Waste Storage Facility Code 313.
4. Storage of petroleum products in quantities exceeding fifty-five (55) gallons at one locality in one tank or series of tanks must be in elevated tanks; such tanks must have a secondary containment system noted in (2) above where it is deemed necessary by the County Zoning office.
5. Discharge of industrial process water on site is prohibited without County Zoning office approval. County approval contingent on state permit from South Dakota Department of Agriculture and Natural Resources.

**ARTICLE IV
AQUIFER PROTECTION**

6. Auto service, repair or painting facilities and junk or salvage yards in Zone B shall meet all State and Federal standards for storage, handling and disposal of petroleum products and shall properly dispose of all other potentially hazardous waste materials.
7. An acceptable contingency plan for all permitted facilities must be prepared and on file in the County Zoning Office for preventing hazardous materials from contaminating the shallow/surficial aquifer should floods, fire and other natural catastrophes or equipment failure occur:
 - a. For flood control, all underground facilities shall include but not be limited to a monitoring system and secondary standpipe above the 100-year flood control level, for monitoring and recovery. For above ground facilities, an impervious dike, above the 100 year flood level and capable of containing 100 percent of the largest volume of storage, will be provided with an overflow recovery catchments area (sump).
 - b. For fire control, plans shall include but not be limited to a safe firefighting procedure, a fire retardant system and provide for dealing safely with both health and technical hazards that may be encountered by disaster control personnel in combating fire. Hazards to be considered are overhead and buried electrical lines, pipes, other buried objects and other hazardous liquids, chemicals or open flames in the immediate vicinity.
 - c. For equipment failures, plans shall include but not be limited to:

Below ground level, removal and replacement of leaking parts, a leak detection system with monitoring and an overflow protection system. Above ground level, liquid and leaching monitoring of primary containment systems, their replacement or repair and cleanup and/or repair of the impervious surface.

- d. For any other natural or man-caused disasters occurring, the owner and/or operator shall report all incidents involving liquid or chemical material in an endangerment of the health and /or safety of either disaster personnel and/or the public in general.

Agricultural operations are exempted from this section unless they store chemicals that are on the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III) extremely hazardous substance list over the threshold planning quantity at any one time.

The County Zoning Office, South Dakota Department of Agriculture and Natural Resources and public water supply officials shall be informed within 24 hours of all leaks and spills of materials that might potentially contaminate ground water.

8. Since it is known that improperly abandoned wells can become a direct conduit for contamination of ground water by surface water, all abandoned wells should be plugged in conformance with South Dakota Well Construction Standards, Chapter 74:02:04:67-70.

Section 4.06.07. Grant of Permit, Alteration of Use.

A permit will be granted when the County Zoning officer has examined the application and determined that the proposed use, activity or development meets the performance standards.

In securing a use permit, the owner/developer must make future improvements which may become necessary to prevent contamination of shallow/surficial aquifers and the owner/developer must allow County personnel to inspect any improvements to verify they meet the performance standards.

Whenever any person has obtained a permit and thereafter desires alteration of the authorized use, such persons shall apply for a new permit. The owner may appeal a County Zoning officer's decision to modify or deny a requested permit to the County Planning Commission/County Zoning Commission.

Section 4.06.08. Exceptions.

1. Any lawful use in existence on the effective date of this ordinance shall be permitted to continue provided it can be shown such use does not threaten public health and safety by potential contamination of water in the shallow/surficial aquifers. Any proposed additions, changes or improvements will require a permit.
2. Storage of liquids and chemicals used in agricultural operations during spring/fall planting and crop cultivation are exempt from the requirements of this ordinance April 1 to October 1. Tanks used for chemigation are not exempt. Best Management Practices are encouraged, particularly in Zone A.
3. Storage of liquid or dry fertilizer in amounts equal to or less than 1,000 pounds or 100 gallons, stored indoors by each farm operator is exempt from the requirements of this ordinance.

Section 4.06.09. Limitation of County Liability.

Nothing in this ordinance shall be construed to imply that Brookings County, by issuing a permit, has accepted any of an owner/developer's liability if a permitted development contaminates water in shallow/surficial aquifers.

Section 4.06.10. Underlying Zones.

Underlying zoning restrictions apply along with restrictions set forth in the Aquifer Protection Overlay District.

Section 4.06.11. Saving Clause.

Should any section provision of this ordinance be declared invalid, such decision shall not affect the validity of the ordinance as a whole or any other part thereof.

CHAPTER 4.07. – TRANSMISSION PIPELINE RISK REDUCTION OVERLAY DISTRICT

Land Use in Transmission Pipeline Overlay District. (Ord. 2009-01, 11-14-2009.)

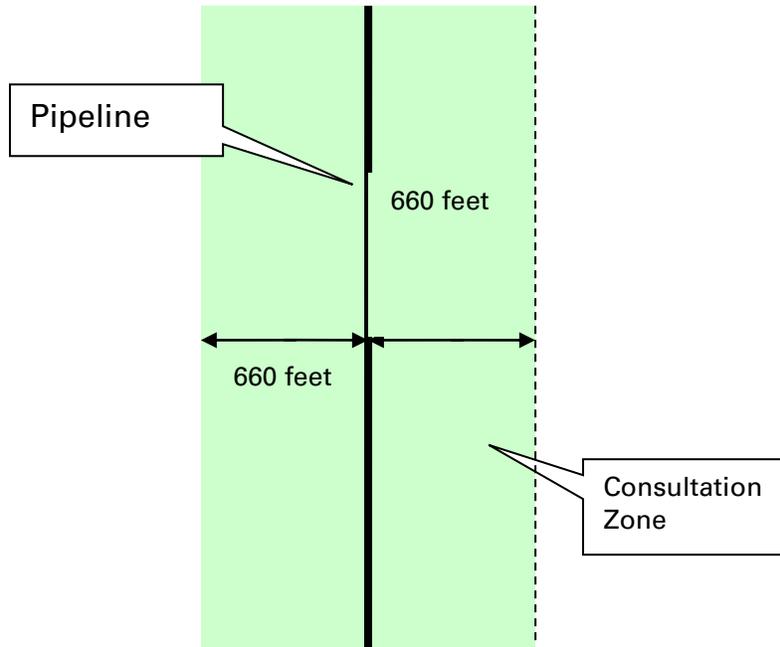
Section 4.07.01. - Purpose

1. The Brookings County Planning Commission and Board of County Commissioners recognize: (1) that oil and gas transmission pipelines are federally regulated, including 49 Code of Federal Regulations (CFR) 190 through 195, and that oil and gas transmission pipelines and pipelines which transport gas from methane digesters are state regulated, through South Dakota Codified Laws (SDCL) Chapter 49-34B and SDCL Chapter 49-41B and (2) that Brookings County can implement safety measures to protect citizens and sensitive environmental areas within the borders of Brookings County through SDCL Chapter 7-8-20.
2. The Brookings County Planning Commission and Board of County Commissioners recognize: (1) that third-party damage and pipeline right-of-way encroachment are significant threats to pipeline safety; (2) that transmission pipelines may pose a risk to public safety and/or the environment if ruptured or damaged; and (3) that certain land use practices can reduce the likelihood of accidental damage to gas and hazardous liquid pipelines and reduce adverse impacts of pipeline failures located within Brookings County.
3. The purpose of the Transmission Pipeline Risk Reduction Overlay District is to protect public health and safety by reducing the likelihood of pipeline damage and reducing the adverse impact of pipeline failures through risk-based land management decisions. It is the intent to accomplish this, as much as possible, by public education, early consultation among stakeholders and securing public cooperation.
4. The Transmission Pipeline Risk Reduction Overlay District will be incorporated into Brookings County Geographic Information Systems mapping and used primarily when issuing Zoning and Building permits to facilitate discussions among developers, landowners, and pipeline operators.
5. The Transmission Pipeline Risk Reduction Overlay District will enhance and not preclude the requirements of the South Dakota One Call System.
6. The Transmission Pipeline Risk Reduction Overlay District and the provisions of this article will be applied to federally and state regulated hazardous liquid and gas transmission pipelines, and pipelines which transport gas from methane digesters but will exclude gas gathering or distribution pipelines.
7. Brookings County reserves the right to implement the Transmission Pipeline Risk Reduction Overlay District on new direct service pipelines constructed for non-agricultural and non-residential facilities such as gas power plants and commercial methane digesters.
8. Appropriate land use regulations will be imposed, however, which are in addition to those imposed in the underlying zoning districts or in other county regulations.

**ARTICLE IV
TRANSMISSION PIPELINE RISK REDUCTION OVERLAY DISTRICT**

Section 4.07.02. – Definitions.

1. Consultation Zone: An area extending 660' from each side of a transmission pipeline, which defines when a property developer/owner, who is planning new development in the vicinity of an existing transmission pipeline, should initiate a dialogue with a transmission pipeline operator.



2. Development: The carrying out of any construction, reconstruction, alteration of surface or structure or change of land use or intensity of use.
3. Development Permit: for the purposes of the Consultation Zone requirements, means any permit for development activity that involves construction, grade modification, excavation, blasting, land clearing, or the deposit of earth, rocks or other materials that places an additional load upon the soil. Construction that involves work totally within an existing building footprint and does not involve excavation, such as residential remodeling projects, is specifically exempted from these Consultation Zone requirements.
4. Distribution Pipeline: A gas pipeline other than a gathering or transmission line (reference 49 CFR 192.3). A distribution line is generally used to supply natural gas to the consumer and is found in a network of piping located downstream of a natural gas transmission pipeline.
5. Easement: (1) A legal instrument giving a transmission pipeline operator a temporary or permanent right to use a right-of-way for the construction, operation, and maintenance of a pipeline. It may also include temporary permits, licenses, and other agreements allowing the use of one's property. (2) An easement is an acquired privilege or right, such as a right-of-way, afforded a person or company to make limited use of another person or company's real property. For example, the municipal water company may have an easement across your property for the purpose of installing and maintaining a water line. Similarly, oil and natural gas pipeline companies acquire easements from property owners to establish rights-of-way for construction, maintenance and operation of their pipelines. (3) A legal right, acquired

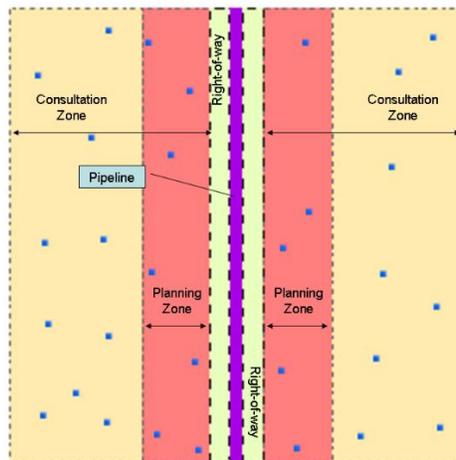
ARTICLE IV
TRANSMISSION PIPELINE RISK REDUCTION OVERLAY DISTRICT

from a property owner, to use a strip of land for installation, operation and maintenance of a transmission pipeline.

6. Encroachment: (1) A human activity, structure, facility, or other physical improvement that intrudes onto a transmission pipeline right-of-way. (2) Encroachment refers to the unauthorized use of a right-of-way in violation of the easement terms.
7. Excavation: Any operation in which earth, rock or other material [in or on the ground] [within 12" of grade level] is moved, removed or otherwise displaced by means of any tools, equipment or explosives and includes, without limitation, backfilling, grading, trenching, digging, ditching, drilling, pulverizing, rubblizing, well-drilling, augering, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, and demolition of structures, except that, the use of mechanized tools and equipment to break and remove pavement and masonry down only to the depth of such pavement or masonry, the use of high-velocity air to disintegrate and suction to remove earth, rock and other materials, and the tilling of soil for agricultural or seeding purposes shall not be deemed excavation. Backfilling or moving earth on the ground in connection with other excavation operations at the same site shall not be deemed separate instances of excavation.
8. Gas Transmission Pipeline: means a "transmission line" as defined by Title 49, Code of Federal Regulations, Section 192.3. A pipeline, other than a gathering line, that: (1) transports gas from a gathering line or storage facility to a distribution center, storage facility, or large-volume customer that is not downstream from a distribution center; (2) operates at a hoop stress of 20 percent or more of specified minimum yield strength; or (3) transports gas within a storage field. (Reference 49 CFR 192.3) A gas transmission pipeline includes all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.
9. Hazardous Liquid: Petroleum, petroleum products, or anhydrous ammonia and carbon dioxide (49 CFR 195.2); or liquid natural gas (LNG) or a liquid that is flammable or toxic (49 CFR 193.2007).
10. Hazardous Liquid Pipeline: means a pipeline designed for the transmission of a "hazardous liquid", as defined by Title 49, Code of Federal Regulations, Section 195.2. All parts of a pipeline facility through which a hazardous liquids move in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.
11. Maximum Allowable Operating Pressure (MAOP): means the maximum pressure at which a pipeline or segment of a gas transmission pipeline may be operated under Title 49, Code of Federal Regulations, Part 192.
12. Maximum Operating Pressure (MOP) means the maximum pressure at which a hazardous liquid pipeline or segment of a pipeline may normally be operated under 49 CFR Part 195.
13. Nonconforming Use or Structure: A use or structure that is impermissible under current zoning restrictions but that is allowed because the use or structure existed lawfully before the restrictions took effect.

ARTICLE IV
TRANSMISSION PIPELINE RISK REDUCTION OVERLAY DISTRICT

14. Person: Any individual, firm, joint venture, legal entity, partnership, corporation, association or cooperative, public, or private.
15. PIPA Report: A document scheduled to be available in early 2010 through the U. S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) that provides recommended practices for land use and planning in the vicinity of transmission pipelines. The document is intended to be available on the PHMSA Pipeline Safety Stakeholder Communications web site.
(<http://primis.phmsa.dot.gov/comm/LandUsePlanning.htm>)
16. Pipeline: means the same as is defined by Title 49, Code of Federal Regulations, Sections 195.2 and 192.3.
17. Pipeline Facility: means all parts of those physical facilities through which gas, hazardous liquids or carbon dioxide are moved in transportation as defined by 49 CFR Parts 192, 193 and 195.
18. Planning Zone: means an area around a transmission pipeline, based on characteristics of the pipeline and the surrounding area. The Planning Zone is a corridor in which risk-based land management decisions may have potential benefits in protecting pipelines, mitigating the immediate consequences of a pipeline incident, and facilitating emergency response to a potential transmission pipeline incident.



19. Potential impact radius (PIR) is defined as the radius of a circle within which the worst-case failure of a gas transmission pipeline could have significant instantaneous impact on people or property not protected by structures or other obstructions. The PIR is calculated by the formula:

$$r = 0.69 * (\text{square root of } (p * d^2))$$

'r' is the radius of a circular area in feet surrounding the point on the pipeline of a potential failure.

'p' is the pipeline's maximum allowable operating pressure (MAOP) in the pipeline segment in pounds per square inch.

'd' is the nominal diameter of the pipeline in inches.

**ARTICLE IV
TRANSMISSION PIPELINE RISK REDUCTION OVERLAY DISTRICT**

The 0.69 factor is appropriate for natural gas pipelines. Different factors apply for other gases, depending upon their heat of combustion (see ASME B31.8-2004, Managing System Integrity of Gas Pipelines, 2005). Continued on page 24.00-6.
Continued from page 24.00-5.

Pipeline MAOP (psig)	Pipeline Diameter (inches)								
	6	8	10	12	16	24	30	36	42
200	59	78	98	117	156	234	293	351	410
400	83	110	138	166	221	331	414	497	580
600	101	135	169	203	270	406	507	608	710
800	117	156	195	234	312	468	585	703	820
1000	131	175	218	262	349	524	655	786	916
1200	143	191	239	287	382	574	717	860	1004
1400	155	207	258	310	413	620	775	929	1084

This table gives Planning Zone distances (in feet) for natural gas transmission lines, based on the PIR calculation for different combinations of pipeline diameters and MAOP. For example, a 30-inch pipeline with MAOP of 1,000 psig has a PIR of 655 feet. In this case, a Planning Zone extending 655 feet on either side of the pipeline could be defined.

20. Right-of-way (ROW): (1) A piece of property, usually consisting of a narrow, unobstructed strip or corridor of land of a specific width, which a pipeline company and the fee simple landowner both have legal rights to use and occupy. (2) A defined strip of land on which an operator has the right to construct, operate and maintain a pipeline. The operator may own a right-of-way outright or an easement may be acquired for specific use of the right-of-way.
21. Right-of-way agreement: See “*Easement*”
22. Rural: An area outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, or community development. (Reference 49 CFR 195.2)
23. South Dakota One Call: The South Dakota One Call system provides for communication between excavators and underground facility operators so buried utilities can be marked in advance of any digging. Following the One Call procedure works to reduce damages to underground infrastructure, helps to ensure public and worker safety, and protects the integrity of utility services. South Dakota Codified Law (SDCL) Chapter 49-7A authorizes the use of South Dakota One Call in South Dakota.
24. Transmission Pipeline: A pipeline, other than a gathering line, that transports gas or hazardous liquids from producing areas to refineries and processing facilities and then to consumer areas and local distribution systems.

Section 4.07.03. - Establishment and Delineation of Transmission Risk Reduction Pipeline Overlay Zones.

1. Boundaries for the Transmission Pipeline Risk Reduction Overlay District are shown on published maps entitled "Brookings County Transmission Pipeline Risk Reduction Zone Map" dated November 2009, as produced by Brookings County Geographic Information

ARTICLE IV
TRANSMISSION PIPELINE RISK REDUCTION OVERLAY DISTRICT

Systems (GIS). This map will be updated as needed. Said map is hereby adopted by reference as part of this ordinance as if the map is fully described herein. The Transmission Pipeline Risk Reduction Overlay District will be a computerized mapping file maintained by the Brookings County Geographic Information Systems specialist. The Overlay District will be utilized by the Planning and Zoning Office for the purpose of issuing building permits, conditional use permits, variances and enforcement of the Brookings County Zoning Ordinance and Brookings County Subdivision Ordinance. The pipeline information will not be available online.

2. The mapping data was derived from the National Pipeline Mapping System (NPMS), a geographic information system (GIS) created by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS) in cooperation with other federal and state governmental agencies and the pipeline industry. Additional information was provided by local pipeline operator (s).

Section 4.07.04. - Consultation Zone.

1. The purpose of the consultation zone is to identify the need for communication between property developers/owners within Brookings County and pipeline operators when new development is planned within 660' of an existing transmission pipeline. The Transmission Pipeline Risk Reduction Overlay District is designed to be a tool to identify where new development triggers the need for such consultation. The implementation of the consultation zone does not imply a previous lack of communication. The consultation zone dialogue will serve to: (1) protect pipelines by promoting adequate consideration of the potential safety impacts of the development on the transmission pipeline; and (2) raise awareness of the potential safety impacts of the pipeline on the development.
2. When a building permit is requested within the boundaries of the Transmission Pipeline Risk Reduction Overlay District, the person requesting a permit will be verbally informed that the building is being constructed near a transmission pipeline. A pipeline safety brochure will be provided along with the building permit. The permit office will notify the pipeline operator of the building permit request, the type and size of building. The property developer/owner is to initiate a consultation with the transmission pipeline operator as early as possible in the development planning process.
3. The consultation zone will be applied to the existing Northern Natural Gas Company pipeline, new transmission pipelines and any pipeline that requires a Conditional Use Permit (CUP) from the Brookings County Planning Commission. Transportation of gas from a methane digester to a manufacturing plant or transportation of natural gas to a power production plant are two examples of pipelines that require CUPs.
4. The consultation zone distance used in Brookings County is 660 feet for existing transmission pipelines. Future pipelines will be evaluated on a case-by-case basis to determine the potential impact radius (PIR). If the PIR is greater than 660', the PIR will be annotated on the findings of fact on the applicants CUP.

Section 4.07.05. - Planning Zone

1. The purpose of the planning zone is to enforce the requirement for communication between property developers/owners within Brookings County and transmission pipeline operators when new development is planned within the planning zone distance of; (1) an existing

ARTICLE IV
TRANSMISSION PIPELINE RISK REDUCTION OVERLAY DISTRICT

natural gas transmission pipeline; or (2) a distance to be determined based on the site-specific and pipeline specific characteristics for future liquid pipelines. The Planning Zone is a tool to identify where new development requires a physical response. The Planning Zone is a corridor in which certain land management practices may have potential benefits in protecting pipelines, mitigating the immediate consequences of a pipeline incident, and facilitating emergency response to a potential transmission pipeline incident.

2. When an individual or organization requests a building permit, and the location is within the Planning Zone then the permit office staff will request a detailed site plan. A hand rendered drawing will suffice. The building permit requestor will be given a brochure with the point-of-contact for the appropriate gas company's personnel and the recommended land management practices for new development near existing transmission pipelines. They will also be notified to contact the South Dakota One Call to have the pipeline located and marked prior to the issuance of a building permit. The individual or organization requesting the building permit must confirm or correct the actual location of the pipeline on the site drawing.
3. If excavation will occur completely outside of the right-of-way, a building permit will be issued. The pipeline operator will be notified that a building permit has been issued and will be provided with the location of the construction by the permit office.
4. If the actual excavation will occur inside the right-of-way, the developer must obtain a written, signed encroachment agreement from the pipeline operator. The encroachment agreement must be submitted to the building permit issuing office before a building permit will be issued. The pipeline operator will be notified that a building permit has been issued and will be provided with the location of the construction by the permit office. A copy of the encroachment agreement will be kept on file in the permit office.

Section 4.07.05.01. - Planning Zone: Natural Gas

1. Planning Zone Distance. The Planning Zone is determined on a case-by-case basis, depending upon the specific characteristics of the pipeline, such as the type of product, size of the pipe and Maximum Allowable Operating Pressure (MAOP):
 - a. In Brookings County the following distances will be utilized for existing pipelines:
 - i. Northern Natural Gas Company gas transmission lines, the planning zone distance is defined as 117 feet on either side of the pipeline.
 - ii. Basin Electric gas transmission lines, the planning zone distance is defined as 262 feet on either side of the pipeline.
 - b. The Planning Zone distance for new facilities will be defined based on the potential impact radius (PIR) of the pipeline as these facilities are constructed.

Section 4.07.05.02. - Planning Zone: Liquid Pipelines

1. Currently Brookings County is not aware of any hazardous liquid pipelines within its boundaries. The following actions would occur if hazardous liquid pipelines would be located in Brookings County at any time.

ARTICLE IV
TRANSMISSION PIPELINE RISK REDUCTION OVERLAY DISTRICT

2. Determining the appropriate Planning Zone distance for a hazardous liquid pipeline is potentially much more complex because of the varying flow characteristics of released liquids and the effect of the terrain surrounding the pipeline on the path of the release. Assembling the information and analysis needed to define the planning zone should be a collaborative effort by the pipeline operator and local government.
3. As a starting point for HLP placement in Brookings County the following setbacks, which are in place for Confined Animal Feeding Operations (CAFOs) are in place for placement of HLP pipelines.

<u>Established Residences</u>	<u>2,640 feet</u>
<u>Adjoining Property Lines</u>	<u>330 feet</u>
<u>Churches, Businesses and Commercially Zoned Areas</u>	<u>2,640 feet</u>
<u>Incorporated Municipality Limits</u>	<u>5,280 feet</u>
<u>Established Private Water Well</u>	<u>250 feet</u>
<u>Existing Public Water Well</u>	<u>1,000 feet</u>
<u>Lakes and Streams classified as Fisheries as identified by the State</u>	<u>150 feet</u>

4. The fundamental factors to be considered in an analysis to establish the planning zone distance for liquid pipelines are listed below.

“How much liquid might be spilled?”

- Can be derived from pipeline flow rates, spill detection time, pipeline shutdown time, and drain down volume from various locations along the pipeline (this information can be obtained from the pipeline operator).

“Where would the spilled liquid go?”

- Overland flow:
- Soil cover type / vegetation (flow resistance)
- Soil absorption / permeability (seepage and retention)
- Topography / contour / digital elevation model (direction of flow, speed of flow, retention areas and volumes)
- Drainage systems such as culverts, streams, gullies, farm tiles, roadside ditches
- Flow barriers such as railroad and road embankments, curbs, dikes, bulkhead
- Fluid properties such as viscosity, density, vapor pressure
- Vapor cloud extent, if any – especially for highly volatile liquid pipelines
- Heavier than air vapors settling in low spot
- Vapor dispersion – dangerous for how far downwind?

“What locations would be impacted?”

- Thermal impact from fire
- Blast overpressure from explosion,
- Toxic, asphyxiation effects, etc.,
- Environmental effects from spill

5. Various models have been developed to support an analysis based on these elements. Each must consider a multitude of site-specific factors, which should be evaluated in their as

ARTICLE IV
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modified (i.e. post-development) condition. When using such models the model should be fit-for-purpose and the user should have expertise in hazard analysis. As noted, assembling the information and analysis needed to define the planning zone would be a collaborative effort by the pipeline operator and local government.

Section 4.07.06. Severability

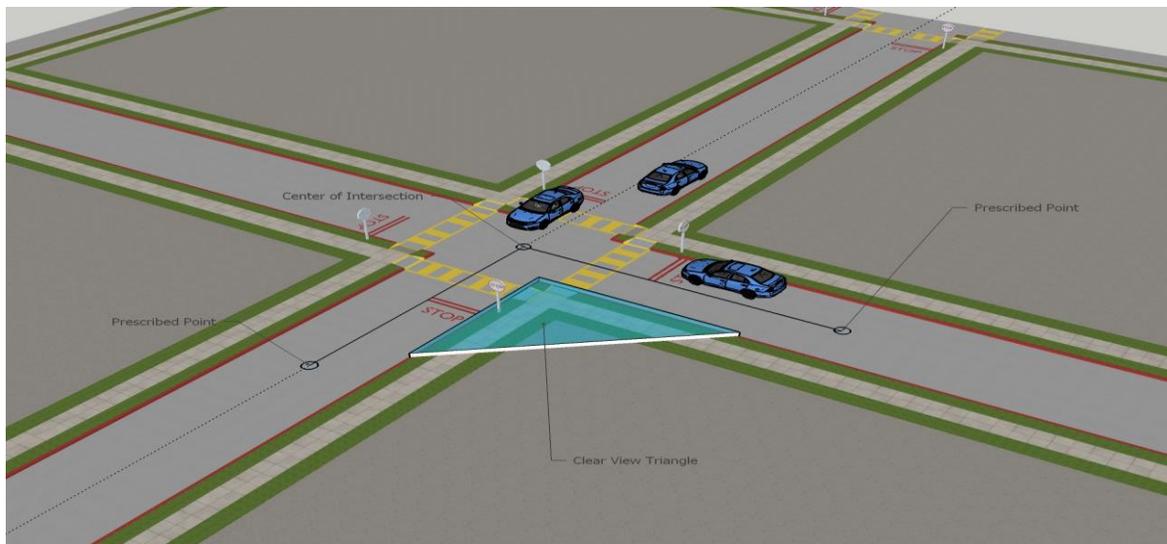
1. Should any article, section or provision of this ordinance be declared invalid, such decision shall not affect the validity of this ordinance as a whole or any other part thereof.

ARTICLE V
GENERAL REQUIREMENTS

CHAPTER 5.01. VISION CLEARANCE ON CORNER LOTS.

On any corner lot in any zoning district, no planting, structure, or obstruction to vision shall be placed or maintained within the triangular area formed by the intersection road right-of-way lines and straight-line connecting points on said road right-of-way line each of which is one hundred (100) feet distance from the point of intersection (Clear View Triangle). Exception: In the Lake Park District, the Clear View Triangle shall be formed by the intersection road right-of-way lines and straight-line connecting points on said road right-of-way line each of which is fifty (50) feet distance from the point of intersection.

Clear View Triangle Illustration



CHAPTER 5.02. PERMANENT FOUNDATIONS REQUIRED FOR DWELLINGS.

No dwelling shall be constructed, installed, or moved into the area under the jurisdiction of these regulations, unless said dwelling is constructed upon, installed on or moved onto a permanent foundation, as defined in these regulations. Exempted from this requirement are manufactured homes as defined herein.

CHAPTER 5.03. UTILITY EASEMENTS.

No building or addition thereto shall be erected over or across any existing public utility or upon any platted easement.

CHAPTER 5.04. ERECTION OF MORE THAN ONE PRINCIPAL STRUCTURE ON A LOT.

In any district, only one (1) structure housing a permitted or permissible principal use may be erected on a single lot, provided that yard and other requirements are met. Exception: Resorts and secondary residences in the Agricultural Zone, per 4.01.03.8, and commercial/industrial buildings in the Commercial/Industrial District may be allowed provided that yard and other requirements are met.

CHAPTER 5.05. STRUCTURES TO HAVE ACCESS.

Every building hereafter erected or moved shall be on a lot with access to a public street or with access to private streets approved by the Board of Adjustment and all structures shall be so located on lots as to provide safe and convenient access for services, fire protection and required off-street parking.

CHAPTER 5.06. MINIMUM WATER AND SEWER REQUIREMENTS.

A water and sewer system cannot be approved until it meets the following standards:

1. All public utilities and facilities shall be located, elevated and constructed to minimize or eliminate flood damage; and
2. All residential and commercial uses requiring sanitary sewer/septic services shall be connected to a wastewater treatment system in accordance with the following:
 - a. Residential and commercial uses on lots containing less than twenty thousand (20,000) square feet shall be connected to a sealed holding tank or an approved sanitary sewer district. Existing septic tanks and drain fields as of (date of the ordinance) on lots with an area of less than twenty thousand (20,000) square feet are considered nonconforming uses and may only be replaced by connection to an approved sanitary sewer district or a sealed holding tank.
 - b. Septic systems are required to be installed for cabins and homes on all lots containing twenty thousand (20,000) square feet or more, unless the property is connected to an approved sanitary sewer district.
 - c. All septic systems are required to be installed by a South Dakota Department of Agricultural and Natural Resources (SD DANR) certified installer following South Dakota Administrative Rules Chapter 74:53.

CHAPTER 5.07. REFUSE.

In all zoning districts, refuse (rubbish, garbage, trash, wastes, or debris) shall be kept within a complete enclosed building or specially designed closed container made for such purpose. Owners of vacant lot shall be responsible for keeping their property free of trash.

CHAPTER 5.08. RESERVED.

CHAPTER 5.09. - MANUFACTURED HOME REGULATIONS.

Section 5.09.01 – Manufactured/Mobile Homes.

1. A manufactured home is an industrialized building unit constructed on a chassis for towing to the point of use and designed to be used for continuous year-round occupancy as a single dwelling. Excludes motorhomes, campers, or other camping units. Any manufactured, mobile, or modular home must secure a building permit from the County Zoning Official.
2. Residences:
 - a. A new residence to be used for a first occupancy, constructed off the property and home moved to the location shall not require adjoining landowner's approval for the issuance of a building permit.
 - b. The County Zoning Officer may issue a building permit for a previously occupied residence to be moved into an appropriate district when the application is accompanied by the written consent of one hundred percent (100%) of the adjoining landowners and one hundred (100%) of the landowners within two hundred (200) feet.
 - c. In the absence of the consent of all neighbors above provided, the Board of Adjustment may, by conditional use permit in any district listed, allow a previous used manufactured/mobile home (a manufactured/mobile home which has been previously used on a different property) where the Board determines satisfactory attempts to contact a specific affected landowner (adjoining landowner or landowner within two hundred (200) feet) with no response, or where it is the policy of the affected landowner (such as the federal government, state offices, railroad, etc.) to abstain from neither oppose nor support such land use decisions.
3. All manufactured/mobile homes, regardless of location, shall be tied down as prescribed by the Protecting Manufactured homes from High Winds, TR75, issued July 1986, by the Federal Emergency Management Agency.
4. All manufactured/mobile homes shall have skirting around the perimeter of the home.
5. All manufactured/mobile homes must have been constructed after June 15, 1976 (2006-03, 9-26-2006).
6. Replacement of Nonconforming Homes.

Thereafter, upon application to the Zoning Official and subsequent approval thereof, a manufactured/mobile home, located upon any lot or lots of record at the time of the adoption of this ordinance, deemed a legal nonconforming use, may be replaced with a manufactured/mobile home, meeting the constructed date requirement in Section 5.09.01.5

7. Variance from Maximum Age Requirement

Manufactured/mobile homes may receive a variance from the maximum age requirement. The Board of Adjustment may grant a variance if the manufactured home meets the following requirements:

- a. The applicant shall provide a photograph of the manufactured/mobile home's exterior and interior.
- b. That it shall have been shown to the satisfaction of the Zoning Official that the said manufactured home complies with the gas, plumbing, electrical, and construction requirements of Brookings County.

CHAPTER 5.10. YARDS.

The minimum yards and other open spaces, including lot area per family, required by this regulation for each and every building at the time of passage of this regulation or for any building hereafter erected shall not be encroached upon or considered as yard or open space requirements for any other buildings, nor shall any lot area be reduced beyond the district requirements of this regulation.

Section 5.10.01. Yards, Reduction in Size.

No yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards and lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance.

Section 5.10.02. Additional Yard Requirements.

The following yard requirements must be observed in addition to the yard requirements of the various districts:

1. A corner lot will have two front yards. In the case of a lot abutting more than one street, the owner may choose any street lot line as the front lot line with consent of the County Zoning Official, based on the effects of such choice on development of the lot itself or on adjacent properties. The rear lot line is opposite and most distant the front lot line.
2. On developed property, in the LP-Lake Park District fronting on one side of the street between two streets where one or more residences already exist, no building shall hereafter be erected and no existing building shall be reconstructed or altered in such a way that any portion thereof shall be closer to the street line than the average improved building front on that street in that block, but in no case shall the set-back line be less than twelve (12) feet from the front lot line.
3. In the LP Districts, on through lots and reversed frontage lots, a front yard must be provided on both streets.
4. In the LP Districts, required front yards shall be devoted entirely too landscaped area except for the necessary paving or driveways and sidewalks to reach parking or loading areas in the side or rear yard.

Section 5.10.03. Exceptions to Yard Requirements.

The following exceptions may be made to the yard requirements in all Districts:

1. Air conditioning units, sills, chimneys, cornices, and ornamental features may project into a required yard a distance not to exceed twenty-four (24) inches.
2. In commercial / industrial districts, filling station pumps and pump islands may occupy required yards, provided, however, that they are not less than fifteen (15) feet from all lot lines.
3. An accessory building may be located in a rear yard but not occupy more than fifty (50) percent of a rear yard. (9-6-2017)

CHAPTER 5.11. ACCESSORY BUILDINGS.

1. Only specifically authorized accessory uses are allowed; accessory uses must be subordinate to principal use.
2. No accessory use shall be permitted in any district unless such principal use is specifically authorized by this Ordinance. No accessory use shall be deemed to be authorized by this Ordinance unless such use is in fact subordinate to and on the same zoning lot with the principal use in conjunction with which it is maintained.
3. No accessory building shall be erected in any setback yard and no separate accessory building shall be erected within ten (10) feet of any other building.

CHAPTER 5.12 SIGNS.

Section 5.12.01 Prohibited Signs.

1. No sign shall be erected or maintained which creates a hazard due to collapse, fire, collision, decay, or abandonment; or creates traffic hazards, by either:
 - a. Confusing or distracting motorists; or
 - b. Impairing the driver's ability to see pedestrians, obstacles or other vehicles; or
 - c. Impairing the driver's ability to see and interpret any official traffic sign, signal or device; or
 - d. Creates a nuisance to persons using a public right-of-way; or
 - e. Constitutes a nuisance to occupancy of adjacent and contiguous property by its brightness, size, height, or movement.

Section 5.12.02 Permitted Signs.

1. Signs shall be permitted in zoning districts subject to the following provisions:
 - a. Wall signs may be located anywhere on the wall of a building.
 - b. Signs shall not project over public property.
 - c. Signs shall not be erected adjacent to a corner of two (2) intersecting streets, unless such signs are constructed to not obstruct the view of said intersection. See Chapter 5.01.
 - d. Each sign – size, lighting, and location - in the County shall at least meet the standards established by the South Dakota Department of Transportation.
 - e. Other than utility fixtures or holiday decorations, no signs, awnings, or display shall be suspended, hanged, or placed so that the same shall hang over any part of a street or sidewalk, used for vehicular or pedestrian travel unless a written application for a permit is made to the Zoning Official and the said Official grants a permit therefore.
 - f. The Zoning Official shall take into consideration factors that would make the proposed sign likely to endanger the property or personal safety of passerby traveling the streets or sidewalks in question, and whether or not such sign complies with codes relating to outdoor advertising.
 - g. All signs are considered structures and require a building permit.
2. Signs in the Agricultural, Natural Resources and Lake Park Zoning Districts: Freestanding and wall signs erected in the Agricultural, Natural Resources, and Lake Park Zoning Districts shall be constructed in accordance with the building permit issued for the sign and, unless specified elsewhere in this ordinance, conform to Table 5.12.02.2
 - a. The sign structure or sign shall have a maximum height of thirty (30) feet. Height of sign is the vertical distance from the top of the sign or sign structure, whichever is greater, to the ground in a straight line directly below, measured from a point equidistant from the sides or edges of the sign.
 - b. Each sign shall be constructed in accordance with minimum setback requirements of the applicable district except that a sign may be constructed in any location in the front yard provided it shall not be closer than one (1) foot from any street right-of-way and shall comply with all other requirements of this Chapter.

Table 5.12.02.2

Sign Type	Area			Number signs allowed per lot.		
	<u>Adjacent to Township Right-of-way</u>	<u>Adjacent to County Right-of-Way</u>	<u>Adjacent to State or Federal Right-of-Way</u>	<u>Adjacent to Township Right-of-way</u>	<u>Adjacent to County Right-of-Way</u>	<u>Adjacent to State or Federal Right-of-Way</u>
Freestanding	32 Square Feet			1		
Wall						
Temporary	32 Square Feet			N/A		

3. Signs in the CI – Commercial/Industrial District: Freestanding and wall signs erected in the CI – Commercial/Industrial District shall be constructed in accordance with the building permit issued for the sign and, unless specified elsewhere in this ordinance, conform to Table 5.12.02.3
- a. The sign structure or sign shall have a maximum height of thirty (30) feet. Height of sign is the vertical distance from the top of the sign or sign structure, whichever is greater, to the ground in a straight line directly below, measured from a point equidistant from the sides or edges of the sign.
 - b. Each sign shall not be closer than three hundred (300) feet from any street intersection and five hundred (500) feet from another permitted freestanding sign on the same side of the street or road.
 - c. Each sign shall not be closer than one (1) foot from any street right-of-way.
 - d. Each sign shall not be closer than two hundred fifty (250) feet from adjoining property lines.

Table 5.12.02.3

Sign Type	Area		Number		
	<u>Adjacent to Township Right-of-way</u>	<u>Adjacent to County, State, or Federal Highway Right-of-Way (Including Interstate 29.)</u>	<u>Adjacent to Township Right-of-way</u>	<u>Adjacent to County, State, or Federal Highway Right-of-Way</u>	<u>Adjacent to Interstate 29</u>
Freestanding	Not Allowed	160 Square Feet (A)	Not Allowed	1	1 per 500' lineal Feet
Wall	80 Square Feet				
Temporary	32 Square Feet		N/A		

- A. The Board of Adjustment may, by Conditional Use, allow total freestanding sign area to exceed one hundred sixty (160) square feet provided the following conditions are met:
 - i. The requirements of Sections 5.12.01 and 5.12.02.01 are met;
 - ii. No residences other than that of the owner of the property where the sign is located are located less than five hundred (500) feet.

- iii. The Board of Adjustment shall consider the following factors when determining that a greater sign area would not adversely affect the public interest:
 - (1) Width of the right-of-way
 - (2) Speed limit of adjacent right-of-way
 - (3) Distance the sign is placed from the right-of-way
4. Temporary Signs: Any sign placed on a lot for less than one hundred eighty (180) days shall be considered a temporary sign. Temporary signs may be placed without obtaining a building permit and shall be regulated as follows:
 - a. Temporary signs may not be placed in any right-of-way
 - b. Temporary signs shall not be erected adjacent to a corner of two (2) intersecting streets, unless such signs are constructed to not obstruct the view of said intersection. See Chapter 5.01.
 - c. Temporary signs in the Agricultural District shall not exceed thirty-two (32) square feet of sign area.
5. Electronic Message Centers (EMC): Electronic message centers shall be subject to all applicable restrictions within this chapter, including, but not limited to, area, height and placement, as well as the following conditions:
 - a. Electronic message center (EMC) displays shall be limited to displays, which have gradual movements, including, but not limited to, dissolving, fading, scrolling, or traveling. However, sudden movement is prohibited, including, but not limited to, blinking and flashing.
 - b. Any permitted signs may be or may include as an individual component of the total sign area, electronic message signs.

CHAPTER 5.13. MOVED IN BUILDINGS.

1. Any building to be moved requires a building permit. The Zoning Official may attach conditions to the issuance of the moved in building permit. No permit shall be issued until the following requirements are met.
 - a. The applicable fee for a building permit shall have been paid.
 - b. That the work is to be completed within eighteen (18) months after the permit has been issued by the County Zoning Official.
 - c. The County Zoning Officer may issue a building permit for a previously occupied residence to be moved into an appropriate district when the application is accompanied by the written consent of one hundred percent (100%) of the adjoining landowners and one hundred percent (100%) of the landowners within two hundred (200) feet.
 - i. Moved In Building (absentee neighbor) - The Board of Adjustment may, by conditional use permit in any district listed, allow a used structure (a structure which has previously been used on a different property) where the Board determines satisfactory attempts to contact a specific affected landowner (adjoining landowner or

- landowner within two hundred (200) feet) with no response, or where it is the policy of the affected landowner (such as the federal government, state offices, railroad, etc.) to abstain from neither oppose nor support such land use decisions.
- d. The applicant will indemnify the County and any public utility for any damage done to any property, street, alley or public grounds. No building shall be moved other than during the period from daylight to sundown. Before any permit is granted under this section, the applicant must furnish proof that all taxes legally assessed against the property have been paid. If a building or structure is to be moved onto any lot within the county, the Zoning Official shall have the power to deny the granting of a moving permit on the grounds that the intended use of the structure or location thereof is contrary to the provisions of this chapter.

CHAPTER 5.14. SHELTERBELT SETBACK REQUIREMENTS.

1. Trees used for landscaping the area immediately adjacent to farmsteads and residences are exempt from the following regulations.
2. Unless otherwise permitted in accordance with the requirements of Chapter 5.14.05, shelterbelts, consisting of one (1) or more rows shall be placed as follows:
 - a. When planted parallel to a right-of-way or property line, shelterbelts shall be placed not less than one hundred (100) feet from the respective road right-of-way or property line.
 - b. When planted at right angles to right-of-way or property line, shelterbelts shall be placed not less than fifty (50) feet from the respective road right-of-way or property line.
 - c. Vision clearance on corner lots. On any corner lot in any zoning district, no planting, structure or obstruction to vision shall be placed or maintained within the triangular area formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line each of which is one hundred (100) feet distance from the point of intersection (Clear View Triangle). Exception: In the Lake Park District, the Clear View Triangle shall be formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line each of which is fifty (50) feet distance from the point of intersection.
3. The shelterbelts setback requirements (paragraph 2) also apply to volunteer trees that the landowner allows to grow.
4. A recommendation from the County Highway Superintendent, Township and/or State Department of Transportation is required prior to the issuance of any variance of the shelterbelt setback from any respective County, Township or State/Federal public right-of-way.
5. Exception to Shelterbelt Setbacks as permitted in the Agricultural District:
 - a. When planted parallel to an adjoining property line, shelterbelts may be planted less than one hundred (100') feet of adjacent property of adjoining property lines (side and rear yards) with written permission from one hundred percent (100%) of the affected adjacent property owner(s).

- b. When planted at a right angle to an adjoining property line, shelterbelts may be planted less than fifty (50') feet of adjacent property of adjoining property lines (side and rear yards) with written permission from one hundred percent (100%) of the affected adjacent property owner(s).
- c. Shelterbelts may be planted not less than fifty (50) feet from the affected right-of-way provided written consent of the applicable road authority specifying the location, type, spacing, and number of trees authorized. This requirement does not restrict the applicable road authority from requiring supplemental agreements for maintenance of the affected right-of-way or proposed trees.

CHAPTER 5.15. EXISTING FARMSTEAD EXEMPTIONS.

Section 5.15.01 Existing Farmsteads.

1. Existing Farmsteads shall include a livable house still in use or having been used in the past as a base for normal farming operations which has been occupied by the owner or tenant within the last three (3) years and shall have existed on the site for at least ten (10) years.
2. Existing Farmsteads shall include sites meeting the following criterion:
 - a. Evidence that the proposed site was once used for human habitation within the last fifty (50) years. This may be determined by existence of buildings/foundations, tax records, or sworn affidavit; and
 - b. Evidence that the proposed site was used as a farmstead supporting normal farming operations prior to Brookings County Zoning and Sub-Division Regulations dated May 14, 1976 adoption of 35 acre rule in Brookings County).
3. Lot Size: All lots for purposes of residential use unless otherwise provided for in this ordinance, shall be a minimum of thirty-five (35) acres, except as provided in Section 5.15.

Section 5.15.02 Existing Farmstead Exemption "A" as a Special Permitted Use.

The Zoning Official may in accordance with SDCL 11-2-17.5, SDCL 11-2-17.6 (as amended), and this ordinance, issue Special Permitted Use authorizing two single family dwellings on a single lot in the "A" Agricultural District under the following conditions:

1. Where a permit for an additional single-family farm dwelling is requested on an existing farmstead as defined herein, provided:
 - a. The dwelling is located on the same legal description as the existing farmstead consisting of at least thirty-five (35) acres.
 - b. The maximum number of dwelling units within the existing farmstead will not exceed two (2).
 - c. The additional single-family residence shall consist of a manufactured home.

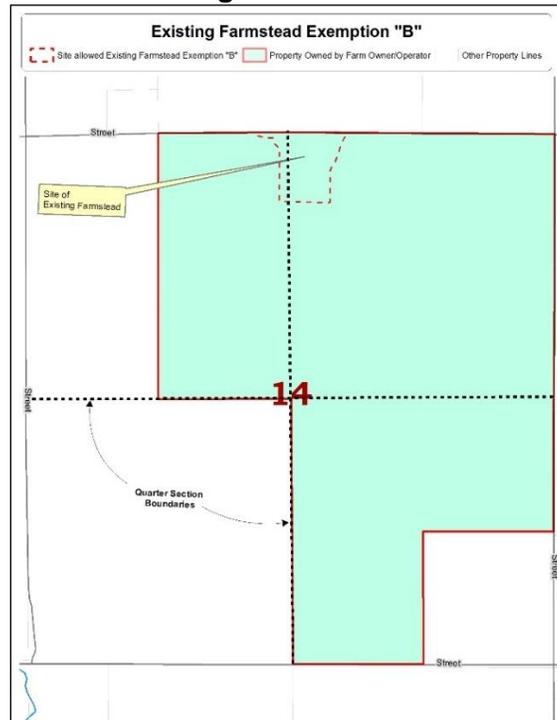
- d. The dwelling is occupied by employees or relatives of the farm owner.
- e. The applicant agrees the additional single-family farm dwelling shall be removed within ninety (90) days in the event the structure is no longer occupied by qualified occupants.

Section 5.15.03 Existing Farmstead Exemption “B” as a Special Permitted Use.

The Zoning Official may in accordance with SDCL 11-2-17.5, SDCL 11-2-17.6 (as amended), and this ordinance, issue Special Permitted Use authorizing the construction of one (1) single family residence on a lot containing less than thirty-five (35) acres in the "A" Agricultural District under the following conditions:

- 1. An existing farmstead, as defined herein, is to be divided from adjacent farmland into a single separate parcel. See Figure 5.15.01.
- 2. The proposed parcel shall consist of a lot of record, or a lot as defined herein containing five (5) acres or more.
- 3. Information regarding the location of flood plain, access to roads and utilities, and other appropriate site information may be considered by the Board of Adjustment in determining the suitability of the parcel for development.

Figure 5.15.01



Section 5.15.04 (Reserved).

CHAPTER 5.16. HOME OCCUPATIONS.

1. Home occupations shall be allowed as Conditional Use Permit in the Lake Park District; and as a Special Permitted Use in the Agricultural District.
2. Home occupations in all districts shall be subject to the following requirements:
 - a. Individuals engaged in such occupation shall consist of family members residing on the premises and up to one (1) non-family employee.
 - b. Such use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes and shall not change the residential character thereof.
 - c. The total area used for such purposes shall not exceed the equivalent of one-fourth (1/4) the floor area, in square feet, of the first floor of the user's dwelling unit, if any, otherwise of the main floor of such dwelling unit; but in any instance a maximum of three hundred (300) square feet shall be allowed. Exception: in-home day cares may utilize the entire house for the purposes of the home occupation.
 - d. There shall be no advertising, display or other indications of a home occupation on the premises except as follows: One (1) non-lighted and non-reflecting name plate not more than thirty-two (32) square feet in area, which name plate may designate the home occupation carried on within.
 - e. There shall be no offensive noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line.
 - f. There shall be no exterior storage on the premises of material used in the home occupation or of any highly explosive or combustible material.
 - g. A home occupation, including studios or rooms for instruction, shall provide an additional off-street parking area adequate to accommodate needs created by the home occupation.
 - h. No home occupation shall be conducted in any accessory building.

CHAPTER 5.17. CANNABIS DISPENSARIES. (Ord 2021-08 adopted 9-21-2021 effective 10-20-2021)

1. Maximum Number of Cannabis Dispensaries.
 - a. In the development and execution of these regulations, it is recognized that there are some uses which because of their nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a potential deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.

- b. The County shall allow up to five conditional use permits for medical cannabis dispensaries provided the time, place, and manner of said dispensaries comply with this ordinance.

2. Required Separation Distances

- a. A medical cannabis dispensary shall be located not less than 1,000 feet from a public or private school existing before the date of the cannabis dispensary application;
- b. Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the dispensary is proposed.

3. Other Locational Requirements

- a. Permanent or temporary medical cannabis dispensaries are prohibited in all other zoning districts, other than the commercial district, and are not eligible for a home occupation use.
- b. It shall be unlawful to operate a medical cannabis dispensary in a building which contains a residence or a mixed-use building with commercial and residential uses.

4. Controlled Access – No medical cannabis establishment shall share premises with or permit access directly from another medical cannabis establishment, a business that sells alcohol or tobacco, or, if allowed by law, another cannabis establishment.

5. Hours of operation

- a. Medical cannabis dispensaries are allowed to be open between the hours of 8:00 AM and 9:00 PM on Monday – Saturday and the hours of 12:00 PM and 5:00 PM on Sunday.

6. Documentation of State Licensure

- a. No medical cannabis dispensary shall acquire, possess, store, deliver, transfer, transport, supply or dispense cannabis, cannabis products, or paraphernalia without providing documentation of licensure from the State of South Dakota.

7. No medical cannabis dispensaries shall be established within Brookings County without first obtaining a conditional use permit.

8. Applications for conditional use permits for medical cannabis dispensaries shall contain the following:

- a. Any information required for an applicable building permit.
- b. Ingress and egress plan
- c. Parking plan

- d. Lighting plan (including security lighting)
 - e. Screening/security fencing plan. All entrances to the facility shall be secure and have appropriate security measures to deter and prevent theft of any medical marijuana.
 - f. Refuse plan. Waste and marijuana remnants and byproducts shall be located in a secure container located within a secure area in the facility and disposed of in a manner which is compliant with Department of Health regulations and permits.
 - g. Hours of Operation
 - h. Documentation of ability to meet setback/separation requirements.
 - i. Documentation of State Licensure.
 - j. Any other information as lawfully may be required by the Zoning official to determine compliance with this ordinance.
9. No other medical cannabis establishment, other than a medical cannabis dispensary, is allowed under the Brookings County zoning ordinances.
10. All medical cannabis dispensaries are required to be constructed in conformance with the 2021 Edition of the International Building Code.

CHAPTER 5.18. EXCEPTION TO FRONT YARD SETBACKS FOR AGRICULTURAL STRUCTURES.

Section 5.18.01. Intent.

This chapter is intended to allow for certain agricultural structures to be constructed less than one hundred (100) feet from public right-of-way in the agricultural district.

Section 5.18.02. Exception to Front Yard Setbacks for Agricultural Structures as a Permitted Use.

Applicants may be permitted to construct agricultural structures, but not including concentrated animal feeding operations, less than one hundred (100) feet from public right-of-way provided the following conditions are met:

- 1. Written consent of the applicable road authority specifying the size, location, and type of structure authorized, and any supplemental agreements required by the applicable road authority is submitted with building permit application.
- 2. No structure shall be situated in such a manner that traffic shall be inhibited or occupy public/section-line right of way.
- 3. Under no circumstances shall a front yard be decreased to below fifty (50) feet.

CHAPTER 5.19 AGRICULTURAL TOURISM.

Section 5.19.01 Intent.

The purpose of this Chapter is to provide for uses which help to promote and maintain local farming operations, are complimentary to agriculture, which help maintain an agricultural heritage and rural character, and help to sustain the local farming community.

Section 5.19.02 Application Requirements.

An application for an agricultural tourism use shall be filed with the Zoning Official. The application shall contain the following:

1. Name and address of the applicant.
2. Evidence that the applicant is the owner of the property involved or has written permission of the owner to make such application.
3. Site Plan.

A plot and development plan drawn in sufficient detail to clearly describe the following:

- a. Physical dimensions and locations of the property, existing structures, proposed structures.
- b. A detailed description of what activities will occur on the entire property.
- c. Any other information required to determine compliance with this section.
- d. Any event not described in the original application shall require a separate permit.

Section 5.19.03 Agricultural Tourism Uses.

Agricultural tourism uses include the following and shall be regulated in accordance with this Chapter:

1. Produce stands for the direct marketing of farm products.

- a. Retail.

The retail area may sell in-season fruits and vegetables grown on the farm or from local growers.

- b. No food concessions, special events or private events are allowed in conjunction with produce stands.
- c. The produce stand shall remain secondary to the principal use of the property as a residential site and a site for agricultural production. If the agricultural production on the site ceases, the produce stand shall cease.

2. Seasonal U-pick fruits and vegetables operations, orchards.

a. Description.

U-Pick means a fruit or vegetable-growing farm that provides the opportunity for customers to pick their own fruits or vegetables directly from the plant.

b. Retail.

The retail area may sell in-season fruits and vegetables grown on the farm or from local growers. Locally made products such as honey, jams, jellies, or related bakery items may also be sold.

c. Food Concessions.

Limited service for such items such as water, pop, coffee, snacks or baked goods.

d. The U-pick operation or orchard shall remain secondary to the principal use of the property as a residential site and a site for agricultural production. If the residential use or agricultural production on the site ceases, the U-pick or orchard operation shall cease.

3. Seasonal outdoor mazes of agricultural origin such as straw bales or corn.

a. Description.

An intricate network of interconnecting pathways, within a cornfield or made from straw bales.

b. Retail.

The retail area may sell in-season fruits and vegetables grown on the farm or from local growers. Locally made products such as honey, jams, jellies, or related bakery items may also be sold.

c. Food Concessions.

Limited service for such items such as water, pop, coffee, snacks or baked goods.

d. The operation must occur on a parcel of land that is not less than five (5) acres in size.

e. The outdoor maze shall remain secondary to the principal use of the property for agricultural production. If the agricultural production on the site ceases, the outdoor maze operation shall cease.

4. Wineries.

a. Description.

The retail and manufacturing premises of a winemaker operating pursuant to SDCL 35-12.

b. Retail.

Tasting room for sampling of wine and other beverages made by the winery. Bottles of wine, wine related items such as glasses, corkscrews, and coolers. Business related items such as t-shirts, bags, caps, wine books and non-prepared foods.

c. Food Concessions.

Wineries will be allowed limited food services on-site. This food service is not to include Restaurants, but may include the following:

- i. Deli-service of prepackaged food;
 - ii. Winemaker dinners;
 - iii. Tasting room events with food;
 - iv. On-site catering food service for events.
 - v. No interior seating will be dedicated solely to the purpose of meal service.
 - vi. No food will be cooked to order, although a list of prepackaged foods may be posted.
- d. Minimum 1 planted acre of crop or fruit used for the processing, preparation, and/or manufacturing of wine shall be derived from the agricultural use.
- e. The Operator of the winery must reside within one mile of the site.
- f. The winery shall remain secondary to the principal use of the property as a site for agricultural production. If the agricultural production on the site ceases, the winery operation shall cease.
- g. The winery must be on a parcel of land that is not less than five (5) acres in size.

5. Holiday Tree Farms.

a. Description.

One that grows trees on the site for landscape or holiday decoration, either pre-cut or for the consumer to cut.

b. Retail.

The retail area may sell pre-cut holiday trees, wreaths, garland, ornaments, and decorations.

c. Food Concessions.

Limited service for such items such as hot chocolate, coffee, snacks, or baked goods.

**ARTICLE V
GENERAL REQUIREMENT**

- d. The operation shall have 5 acres of holiday trees transplanted and growing for harvest prior to the start of retail operations on the site. A minimum of 10 acres shall be transplanted and growing within 5 years of approval as an Agricultural Tourism use. This shall not include shelter belts or old growth groves.
- e. If the agricultural production of trees on the site ceases, the retail, accessory uses and food concessions shall cease.

6. Farm Experiences.

- a. Description.
A working farm where agricultural animals and products are produced.
- b. Retail.
Limited products which may include items with the name of the farm or business, or items/products produced on site.
- c. Food Concessions.
Limited service for such items such as drinks, ice cream or other dairy products, snacks, or baked goods.
- d. The operator of the farm must reside on the site.
- e. The special and private events shall remain secondary to the principal use of the property as a residential site and a site for agricultural production. If the residential use or agricultural production on the site ceases, the events shall cease.
- f. The operation must occur on a parcel of land that is not less than thirty-five (35) acres in size.

7. Breweries and Distilleries.

- a. Description.

The retail and manufacturing premises of a brewery or distillery pursuant to SDCL 35.
- b. Retail.

Tasting room for sampling of beer or liquor, and other beverages made by the brewery or distillery. Bottles of beer or liquor, beer or liquor related items such as t-shirts, bags, caps, brew books, and non-prepared food.
- c. Food Concessions.

Breweries and Distilleries will be allowed limited food services on-site. No interior seating will be dedicated solely to the purpose of meal service. No food will be cooked to order, although a list of prepackaged foods may be posted. Food service is not to include restaurants, but may include the following:
 - i. Deli-service of prepackaged food;
 - ii. Tasting room events with food; or

- iii. On-site catering food service for events.
- d. Minimum 1 planted acre of crop used for the processing, preparation, and/or manufacturing of beer or liquor shall be derived from the agricultural use.
- e. The Operator of the brewery or distillery must reside within one mile of the site.
- f. The brewery or distillery shall remain secondary to the principal use of the property as a site for agricultural production. If the agricultural production on the site ceases, the brewery or distillery shall cease.
- g. The brewery or distillery must be on a parcel of land that is not less than five (5) acres in size.

Section 5.19.04. Parking.

- 1. A parking plan must be approved by the applicable approving authority according to this Chapter.
- 2. Parking facilities may be located on a grass or gravel area for seasonal uses such as produce stands, u-pick operations, and agricultural mazes. All parking areas shall be defined by either gravel, cut lawn, sand, or other visible markings.
- 3. All parking areas shall be located in such a manner to avoid traffic hazards associated with entering and exiting the public roadway.

Section 5.19.05. Signs.

- 1. Only one sign shall be allowed.
- 2. The sign shall not exceed 32 square feet in area.
- 3. A building permit is required for the sign.

CHAPTER 5.20 RESERVED.

CHAPTER 5.21. BED AND BREAKFAST ESTABLISHMENTS.

The regulations regarding Bed and Breakfast Establishments (hereafter referred to as B & B's) shall be as follows:

- 1. B & B's shall be limited to residential structures with an overall minimum of one thousand eight hundred (1,800) square feet of floor.
- 2. They shall be in compliance with applicable state laws including registration with the South Dakota Department of Health, maintaining a guest list, and providing a smoke detector in each sleeping room.

3. Accessory use signs shall be based on similar requirements for a home occupation permit and shall not be more than four (4) square foot in area.
4. Owner must occupy the principal dwelling structure.
5. No more than four (4) bedrooms in such dwelling structure shall be used for such purpose at one time.
6. Off-street parking requirements shall be one (1) space per guestroom and shall be in addition to parking requirements for the principal use. Off-street parking shall not be located in a required front or side yard and screening shall be required when adjacent to residentially used property not owned by the applicant.
7. The building shall meet all building codes and zoning requirements. A site plan showing the location of guest parking spaces and floor plan showing a location of the sleeping rooms, lavatories, and bathing facilities, and kitchen shall be submitted with application.
8. The length of stay per guest shall not exceed fourteen (14) overnights during any one hundred twenty (120) day period.
9. Meals shall be limited to breakfast, provided by the applicant. Meals may be served only to overnight registered guests and cooking is not permitted in the sleeping rooms.

CHAPTER 5.22. CONCENTRATED ANIMAL FEEDING OPERATIONS.

Section 5.22.01. Intent.

An adequate supply of healthy livestock, poultry and other animals is essential to the well-being of county citizens and the State of South Dakota. However, livestock, poultry, and other animals produce manure which may, where improperly stored, transported, or disposed, negatively affect the County's environment. Confined Animal Feeding Operations, also referred to herein as CAFO(s), and the manure generated from those facilities must be controlled where it may add to air, surface water, ground water, or land pollution. The following regulations have been adopted in order to provide standards for the location of animal feeding operations and to provide protection against pollution caused by manure from domesticated animals. All Concentrated Animal Feeding Operations shall comply with the regulations as outlined herein.

Section 5.22.02. Animal Units Equivalent to Animal Species.

Brookings County uses an animal unit equivalency ratio to determine the head count of a specific animal species for the purpose of defining the specific class of a CAFO by animal unit. The animal species equivalents are based upon a species' manure production. The standards for determining an animal unit to animal head count equivalency are derived from the Environmental Protection Agency and the State of South Dakota General Permit. Table 5.22.02 details the classes of Concentrated Animal Feeding Operations and the specific animal unit equivalency ratio. Note that the figures in Table 5.22.02 relate to inventory rather than annual production.

**Table 5.22.02
Number of Animals to Define Classes of Concentrated Animal Feeding Operations**

Animal Species	Class A CAFO (Over 2,000 Animal Units)	Class B CAFO (1,000-1,999 Animal Units)	Class C CAFO (100 to 799 Units ^{1,3} – Zone B Shallow Aquifer)	Class D CAFO (0 to 999 Units – No Water Pollution Hazard)	Animal Unit Equivalency Ratio
	Animal numbers equal to or more than:	Animal numbers equal to:	Animal numbers equal to:	Animal numbers equal to or less than:	
Cattle other than mature dairy cows or veal calves ²	2,000	1,000 to 1,999	100 to 499	999	1.0
Mature Dairy Cattle (milked or dry)	1,400	700 to 1,399	70 to 349	699	1.43
Swine (weighing over 55 lbs.)	5,000	2,500 to 4,999	250 to 1,249	2,499	0.4
Swine (weighing less than 55 lbs.)	20,000	10,000 to 19,999	1,000 to 4,999	9,999	0.1
Horses	1,000	500 to 999	50 to 249	499	2.0
Sheep or lambs	20,000	10,000 to 19,999	1,000 to 4,999	9,999	0.1
Turkeys	110,000	55,000 to 109,999	5,550 to 27,499	54,999	0.018
Chickens, other than laying hens using other than liquid manure handling system	250,000	125,000 to 249,999	12,500 to 62,499	124,999	.008
Laying hens using other than liquid manure handling system	164,000	82,000 to 163,999	8,200 to 40,999	81,999	.0122
Laying Hens & Broilers using liquid manure handling system	60,000	30,000 to 59,999	3,000 to 14,999	29,999	.0333
Ducks Using liquid manure Handling system	10,000	5,000 to 9,999	500 to 2,999	4,999	0.2
Ducks using other than liquid manure handling system)	60,000	30,000 to 59,999	3,000 to 14,999	29,999	.033
Geese	60,000	30,000 to 59,999	3,000 to 14,999	29,999	.033

1. Only in accordance with Chapter 4.06 Aquifer Protection District.
2. Cattle includes but is not limited to heifers, steers, bulls, cows and cow/calf pairs.
3. Existing Class C expand to 799 animal units in Water Pollution Hazard area.

Section 5.22.03. Classes of Concentrated Animal Feeding Operations.

For the purpose of these regulations, Concentrated Animal Feeding Operations are divided into the following classes:

ANIMAL UNITS

Class A	2,000 or more	
Class B	1,000 to 1,999	
Class C	100 to 799	(Zone B Shallow Aquifer)
Class D	100 to 999	(No pollution hazard)

Section 5.22.04. Concentrated Animal Feeding Operation Permit Requirements.

Owners of Class A, Class B, Class C, and Class D Concentrated Animal Feeding Operations are required to complete, where applicable, Section 4.01.04.7 a building permit, and/or conditional use permit application as follows:

1. A new Concentrated Animal Feeding Operation is proposed where one does not exist.
2. An expansion is proposed that exceeds the number of animal units allowed by an existing county-issued permit.
3. An expansion in the number of animal units of a Concentrated Animal Feeding Operation, without a county-issued permit that existed prior to May 13, 1997, would result in the creation of either a Class A, B, or C Concentrated Animal Feeding Operation.
4. In the event there is a change in ownership of a Class A, B, C, or D Concentrated Animal Feeding Operation, which has a previously issued county permit, the new owner(s) has sixty (60) days from the date of legal conveyance of ownership in which to apply for a transfer of a previously issued county CAFO permit in order to keep said current permit valid. The new owner will be required to abide by the permit requirements, findings of facts and any letter of assurances that were issued under the previously approved permit application(s). If no transfer is completed within sixty (60) days, the new owner will be required to submit a new application for approval.
5. An existing Concentrated Animal Feeding Operation is to be restocked after being idle for five (5) years.
6. A signed complaint has been received by the County Zoning Officer and/or the South Dakota Department of Agriculture and Natural Resources and after inspection reveals that the Concentrated Animal Feeding Operation is in violation of either County or State regulations. Violations of State regulations shall be inspected by State officials.

Section 5.22.05. Concentrated Animal Feeding Operation Control Requirements.

1. Compliance with South Dakota Department of Agriculture and Natural Resources.
 - a. All Concentrated Animal Feeding Operations shall be constructed, located, or operated in compliance with the rules and regulations of the South Dakota Department of Agriculture and Natural Resources.

- b. State General Permit.
- c. Class A and Class B Concentrated Animal Feeding Operations shall obtain a State General Permit pertaining to the animal species of the Concentrated Animal Feeding Operation. A County conditional use permit may be approved conditioned upon receiving a State General Permit. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan and manure management plan.
- d. It shall be at the discretion of the Zoning Officer and/or the Board of Adjustment to require an applicant to submit plans for a Class C or Class D Concentrated Animal Feeding Operations to be reviewed by the South Dakota Department of Agriculture and Natural Resources if the following occur:
 - i. The Zoning Officer and/or the Board of Adjustment decide conditions require review by the South Dakota Department of Agriculture and Natural Resources to determine general compliance with standards adopted for a State General Permit.

2. Nutrient Management Plan.

The applicant shall develop, maintain, and follow a nutrient management plan, per the requirements below, to ensure safe disposal of manure and process wastewater and protection of surface and ground water.

- a. New Class A, B, and C Concentrated Animal Feeding Operations are required to have a nutrient management plan.
- b. Nutrient management plan(s) for Class A and Class B Concentrated Animal Feeding Operations shall be reviewed and approved by the South Dakota Department of Agriculture and Natural Resources. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan.
- c. The nutrient management plan(s) for Class C Concentrated Animal Feeding Operations nutrient management plans shall be developed by a Certified Crop Advisor and meet the current Natural Resources Conservation Service (NRCS) South Dakota Technical Nutrient Management Standards and all other applicable South Dakota Department of Agriculture and Natural Resources and Brookings County regulations.
- d. The applicant must maintain records to show compliance with the approved nutrient management plan.
- e. Documentation of land spreading agreements shall be available upon request by the County.

3. Manure Management and Operation Plan.

- a. New Class A, B, and C Concentrated Animal Feeding Operations are required to have a Manure Management and Operation Plan.
- b. The manure management and operation plan for Class A and Class B Concentrated Animal Feeding Operations shall be reviewed and approved by the South Dakota

Department of Agriculture & Natural Resources. The issuance of a State General Permit satisfies the county's requirements for an approved manure management plan.

- c. Class C Concentrated Animal Feeding Operations' manure management and operation plans shall at a minimum meet the current Natural Resources Conservation Service (NRCS) Standards and all Applicable DANR and Brookings County Zoning Regulations.
- d. Manure Management and Operation Plan must include:
 - i. The location and specifics of proposed manure management facilities.
 - ii. The operation procedures and maintenance of manure management facilities.
 - iii. Plans and specifications must be prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer. Manure management treatment facilities will require inspection by an engineer.
 - iv. Manure shall not be stored longer than two (2) years.
 - v. Manure management containment structures shall provide for a minimum design volume of three hundred sixty-five (365) days of storage. In addition, open outdoor storage shall include minimum storage for direct precipitation and/or runoff from a 25-year, 24-hour storm.
 - vi. Manure management facilities utilizing methane digesters may receive on and off-site generated manure and/or organic wastes.
 - vii. The applicant will provide information regarding how manure from the CAFO site will be transported to fields identified in the nutrient management plan. This may require the need for a haul road agreement and/or the applicable agreement for pipes to cross the right-of-way or private property. Unless otherwise agreed to between the Road Authority and the applicant, Brookings County requires, at a minimum, the applicant to abide by minimum requirements of the adopted letter of assurance/findings of facts for the applicable size of operation.
- e. The applicant is responsible for the misapplication of the manure whether applied on the applicants own land or on land where there is a land spreading agreement or in transport. The complaint procedure will be the same as for any other zoning complaint.
- f. As a condition of the permit, the Zoning Officer and/or the Board of Adjustment may require the applicant to participate in environmental training programs.

4. Management Plan for Fly and Odor Control.

- a. New Class A, B, and C Concentrated Animal Feeding Operations shall dispose of dead animals, manure, and wastewater in such a manner as to control odors or flies. A management plan is required for the submission of a permit. The Zoning Officer and/or Board of Adjustment will review the need for control measures on a site-specific basis. The following procedures to control flies and odors shall be considered in a management control plan:
 - i. Operational plans for manure collection, storage treatment and how said plans will be updated and implemented.
 - ii. Methods to be utilized to dispose of dead animals shall be included.
 - iii. Location of existing and proposed tree/shrub plantings.

- b. The County recommends the following Best Management Practices in the development of a fly and odor management plan:
 - i. Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized.
 - ii. Store solid manure in containment areas having good drainage to minimize odor production.
 - iii. Remove manure from open pens as frequently as possible to minimize odor production.
 - iv. Avoid spreading manure on weekends, holidays and evenings during warm season when neighbors may be involved in outdoor recreation activities.
 - v. Avoid spreading during calm and humid days, since these conditions restrict the dispersion and dilution of odors.

- 5. Required Minimum Setbacks and Separation Distance for New Class A, B, C, and D Concentrated Animal Feeding Operations.

Setbacks for new Concentrated Animal Feeding Operations and those Existing, Non-permitted Concentrated Animal Feeding operations expanding into a Class A, B, C, or D Concentrated Animal Feeding Operations after May 13, 1997, shall be measured from the nearest point of any manure containment facility, earthen lagoon, confinement structure, or open lot to the nearest point of the primary structure for the use deriving the benefit from the structure if applicable. See Table 5.22.05.6.

Table 5.22.05.6
Minimum Setbacks

Number of Animal Units	Class D	Class C	Class B	Class A
Established Residences ^{2,3}	1,320 feet	1,320 feet	1,760 feet	2,640 feet
Adjoining Property Lines	200 feet	200 feet	200 feet	200 feet
Churches, Businesses and Commercially Zoned Areas ³	1,320 feet	1,320 feet	2,640 feet	2,640 feet
Incorporated Municipality Limits ³	1,320 feet	1,320 feet	5,280 feet	5,280 feet
Established Private Water Well ⁵	200 feet	200 feet	250 feet	250 feet
Existing Public Water Well	500 feet	500 feet	1,000 feet	1,000 feet

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Lakes and Streams classified as Fisheries as identified by the State	150 feet	150 feet	150 feet	150 feet
Federal, State & County Road ROW				
Confinement	200 feet	200 feet	200 feet	300 feet
Open Lot	50 feet	50 feet	50 feet	50 feet
Township Road ROW				
Confinement	150 feet	150 feet	150 feet	150 feet
Open Lot	50 feet	50 feet	50 feet	50 feet

- ¹ Two (2) or more CAFOs under common ownership are a single concentrated animal feeding operation if they adjoin each other (within one mile) or if they use a common area or system for disposal of manure. Required setbacks for the two (2) or more CAFOs treated as a single operation shall not be less than the minimum setback required for each operation if said operations were treated as individual operations.
- ² Established residences do not include any residence established after May 13, 1997 less than one-half (1/2) mile from any Concentrated Animal Feeding Operation which was active at the time of the residence's construction.
- ³ The Board of Adjustment may allow a setback of less than the minimum required provided a written waiver by the entity deriving the benefit of the setback is filed with the application.
- ⁴ The Board of Adjustment may utilize Section 5.22.05.7 to increase or decrease the required setback.
- ⁵ Private well – potable water – has been used for drinking water within the last month.
- ⁶ Public water well

6. Exceptions/Exemptions to Separation and/or Setback Distance Requirements.

- a. Except as identified in Section 5.22.05.7(e) through (h), below, All Concentrated Animal Feeding Operations in operation prior to May 13, 1997, which do not comply with the minimum setback requirements, but continue to operate, and are not expanded in a manner which will result in the one of the following examples are exempt from setback/separation distance requirements:
 - i. Example 1: A Class D CAFO expands to a Class A or B CAFO.
 - ii. Example 2: A Class B CAFO expands to a Class A CAFO.
 - iii. Example 3: A Class A CAFO expands by 10% of the number of animal units
- b. A Concentrated Animal Feeding Operation structure which is expanded or constructed, if the title holder of the land benefitting from the distance separation requirement executes a written waiver with the title holder of the land where the structure is located, under such terms and conditions which the parties may negotiate.
- c. A Concentrated Animal Feeding Operation structure which is constructed or expanded closer than the required setback/separation distance from the corporate limits of a city if the incorporated community approves a written waiver.

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- d. A Concentrated Animal Feeding Operation structure which existed prior to the creation of a residence, educational institution, commercial enterprise, religious institution, incorporated community, if the residence, educational institution, commercial enterprise or religious institution was constructed or expanded or the boundaries of the incorporated community were expanded, after the date that the concentrated animal feeding operation was established. The date that the Concentrated Animal feeding Operation was established is the date on which the Concentrated Animal Feeding Operation commenced operating. A change in ownership or expansion shall not change the date of operation.
- e. A non-standard Concentrated Animal Feeding Operation (Class D) without a county issued permit is exempt from setback/separation distance requirements. In the event of a calamity, the buildings and use areas associated with the non-standard Concentrated Animal Feeding Operation are allowed to be replaced. The non-standard Concentrated Animal Feeding Operation is allowed to expand to a maximum size of nine hundred ninety-nine (999) animal units. The replacement and/or expansion is allowed without having to obtain a variance from setback/separation requirements, provided the separation distance between the structure or use associated with the proposed Concentrated Animal Feeding Operation replacement/expansion is equal to or greater than the distance between the Concentrated Animal Feeding Operation and other existing uses requiring a separation distance on (the Adoption date of ordinance). The replacement and expansion provisions contained herein do not apply to non-standard Concentrated Animal Feeding Operations situated over the Aquifer Protection Overlay District.
- f. A non-standard Concentrated Animal Feeding Operation (Class C) is exempt from setback/separation distance requirements. The non-standard Concentrated Animal Feeding Operation is allowed to expand to a maximum size of four hundred ninety-nine (499) animal units in Zone B of the Aquifer Protection District or five hundred (500) animal units in Zone A of the Aquifer Protection District. The expansion also shall conform to Chapter 4.06 Aquifer Protection. The expansion is allowed, provided the separation distance between the structure or use associated with the proposed Concentrated Animal Feeding Operation replacement/expansion is equal to or greater than the distance between the Concentrated Animal Feeding Operation and other existing uses requiring a separation distance on May, 13, 1997. See Figure 5.22.05.7
- g. A non-standard Concentrated Animal Feeding Operation (Class B) with a county issued permit is exempt from setback/separation distance requirements. In the event of a calamity, the buildings and use areas associated with the non-standard Concentrated Animal Feeding Operation are allowed to be replaced. The replacement and/or expansion is allowed without having to obtain a variance from setback/separation requirements. The replacement and/or expansion is allowed without having to obtain a variance from setback/separation requirements, provided the separation distance between the structure or use associated with the proposed Concentrated Animal Feeding Operation replacement/expansion is equal to or greater than the distance between the Concentrated Animal Feeding Operation and other existing uses requiring a separation distance on May 13, 1997. The replacement and expansion provisions contained herein do not apply to non-standard Concentrated Animal Feeding Operations situated over the Aquifer Protection Overlay District. See Figure 5.22.05.7

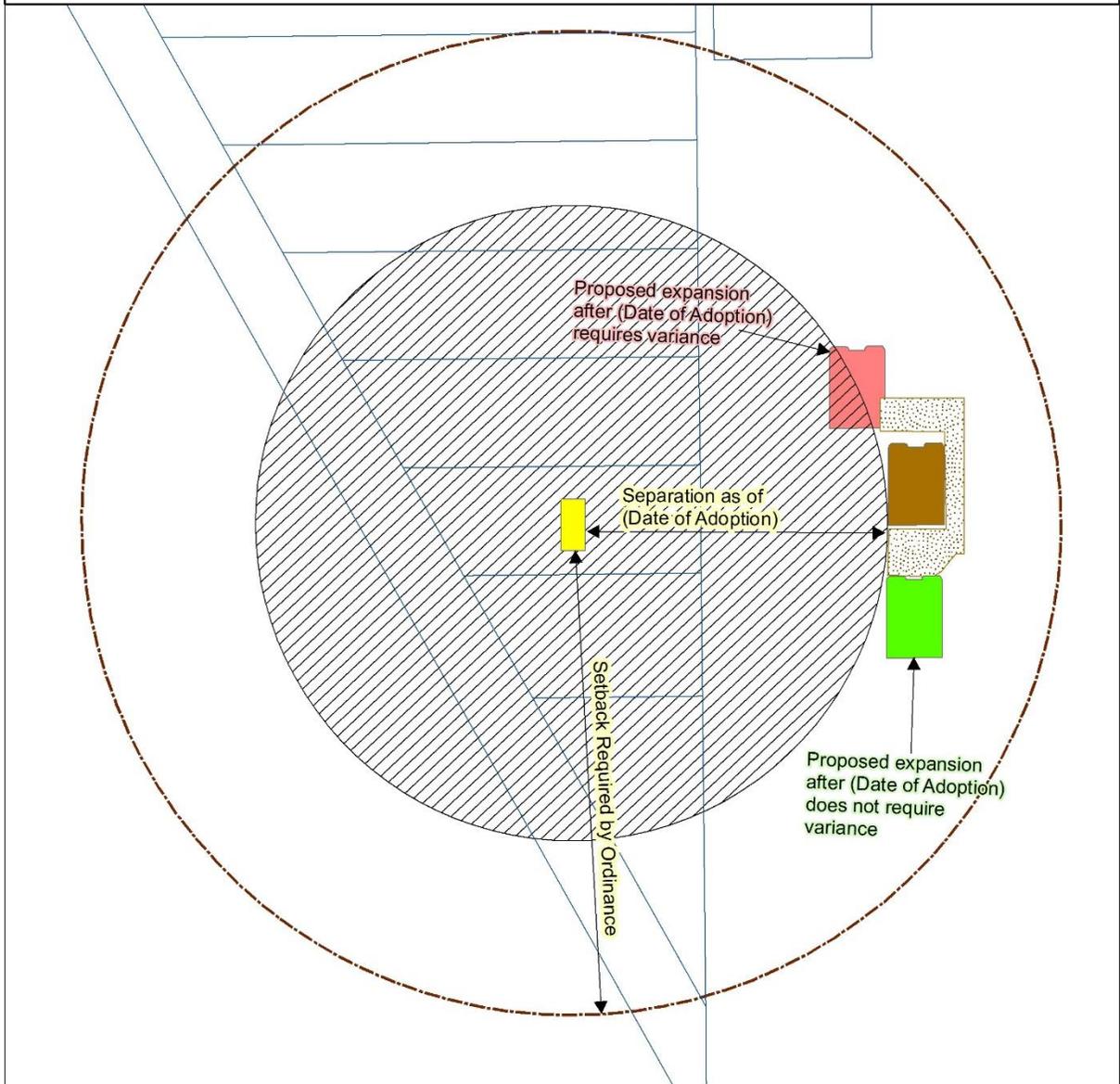
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- h. A non-standard Concentrated Animal Feeding Operation (Class A) with a county issued permit is exempt from setback/separation distance requirements. In the event of a calamity, the buildings and use areas associated with the non-standard Concentrated Animal Feeding Operation are allowed to be replaced. The replacement is allowed without having to obtain a variance from setback/separation requirements, provided the separation distance between the structure or use associated with the proposed Concentrated Animal Feeding Operation replacement/expansion is equal to or greater than the distance between the Concentrated Animal Feeding Operation and other existing uses requiring a separation distance on May 13, 1997. The replacement of said Concentrated Animal Feeding Operation cannot exceed the number of animal units identified in the existing County Permit, unless a variance is granted. The replacement and expansion provisions contained herein do not apply to non-standard Concentrated Animal Feeding Operations situated over the Aquifer Protection Overlay District. See Figure 5.22.05.7
- i. Exceptions Generally: Any “exception” listed may be granted by the administrative official with no action from the Board of Adjustment, unless otherwise noted.

Figure 5.22.05.7

Required Setback vs Existing Separation Distance

- | | |
|--|--|
|  Lots |  House Existing at time of expansion |
|  Required Setback |  Open Lot Existing as of (Date of Adoption) |
|  Separation as of (Date of Adoption) |  Proposed Expansion - ALLOWED |
|  Barn Existing as of (Date of Adoption) |  Proposed expansion - NOT ALLOWED |



7. Manure Application.

- a. In addition to the regulations set forth herein, any Class A or B Concentrated Animal Feeding Operation shall apply manure in accordance with the state general permit.
- b. The Board of Adjustment may require manure to be incorporated or injected in order to minimize air and water quality impacts.
- c. Requests for application of liquid manure by means of irrigation will be reviewed by the Board of Adjustment on a site-specific basis. Impact on air and water quality will be taken into consideration.

8. Haul Roads.

- a. Any applicant for a new Class A or B Concentrated Animal Feeding Operation shall identify the primary routes to be used for transporting feed and animals to the operation and transporting animals or raw products from the operation and the approximate average number of trucks.
- b. Unless documentation is provided indicating no such agreement is required, applicants for a new Class A or B Concentrated Animal Feeding Operation shall enter into a road agreement for identified haul roads, and such agreement shall be filed with the Zoning Officer. Class A or B are required to be situated upon roads adequately designed to carry the proposed number of fully or partially loaded trucks using said CAFO.

9. Standards for Conditional Uses.

- a. The Board of Adjustment may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.
- b. The Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations' additional conditions which the Board of Adjustment considers necessary to protect public health, safety and welfare.
- c. Conditional Use Permits for Concentrated Animal Feeding Operations shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are being adhered to.
- d. Conditional Use Permit applicants must comply with the Findings of Facts as required by the Board of Adjustment. The Findings of Facts will be prepared by the zoning officer and approved by the Board of Adjustment and signed by the Board of Adjustment's designee. The permit for the concentrated animal feeding operation is based upon compliance with the regulations herein, and associated letter of assurances. Any violation of these regulations or non-compliance with the letter of assurances shall be cause for revoking a permit. If a violation of these regulations or non-compliance with the letter of assurance occurs, permit holders will be notified by registered mail and a hearing before the Board of Adjustment will be held concerning the status of the permit. The Board of Adjustment shall either revoke the permit or set a timeline for compliance. If compliance is not met, the permit shall be revoked, and the permit holder ordered to cease operations.

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- e. The permit holder shall provide and at all times maintain General Liability insurance in the amount of at least \$1,000,000.00, with an Environmental Protection Insurance rider of at least \$100,000.00. Proof of such insurance must be received prior to the issuance of a permit and must be provided annually during the operation of such CAFO. The insurance carrier shall be required to provide Brookings County with notice of insurance and with a notice of cancellation or change in coverage. Failure to maintain such insurance shall be grounds for cancellation of the Conditional Use Permit.” (all other standards for conditional uses shall remain the same.) *(amended by BC Ord 2024-05 8/6/24)*

10. Suggested Minimum Application Information.

The following information may be requested and reviewed by the Board of Adjustment/Zoning Officer prior to the issuance or as a condition to the issuance of a conditional use permit for any class of CAFO.

- a. Owner(s)/Applicant(s) name address and telephone number.
- b. Legal descriptions of site and site plan.
- c. Number and type of animals.
- d. Preliminary nutrient management plan, if required.
- e. Preliminary manure management and operation plan, if required.
- f. Preliminary management plan for fly and odor control.
- g. Information on ability to meet suggested setbacks and separation distances.
- h. As a condition of approval of any Concentrated Animal Feeding Operation over 1,000 animal units or as determined by the Board of Adjustment, the documentation of an approved General Permit from the South Dakota Department of Agriculture & Natural Resources for animal species is required. The issuance of a State General Permit satisfies the county’s requirements for an approved nutrient management plan and manure management plan.
- i. Documentation of notice to public water supply officials.
- j. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- k. Documentation of notice to whomever maintains the access/haul road(s) (township, county, and state).
- l. Any other information as contained in the application and requested by the Zoning Officer.

CHAPTER 5.23 COMMERCIAL PUBLIC ENTERTAINMENT ENTERPRISE REQUIREMENTS.

Section 5.23.01 Qualification of Events.

1. Commercial public entertainment enterprises to include short term events (5 days or less) not normally accommodated in commercial areas due to potential generation of noise or the amount of open space required to perform the activity or event, including but not limited to, the following: music concerts, rodeos, tractor pulls and animal and vehicle races.
2. To qualify for a Conditional Use Permit in the Agricultural District, in accordance with this Chapter, commercial public entertainment enterprises shall not occur more than two times in any calendar year.

Section 5.23.02 Application.

1. Applicant shall provide a detailed site plan including:
 - a. A detailed description of what activities will occur on the entire property.
 - b. Manner of cleaning up during and after the event.
 - c. Location of restroom facilities.
 - d. Location of any commercial/retail activities (if any).
 - e. Duration or hours of operation of the event(s)
 - f. Any additional information may be requested to determine whether adequate parking, sanitary sewer provision, health care, emergency services and other services will be provided throughout the duration of the event.
2. Applicant shall provide documentation of liability insurance for the event.
3. Each event shall require a separate permit.

CHAPTER 5.24. EXTENDED HOME OCCUPATION.

There are significant differences between home occupations and extended home occupations. While each use is based on supplementing income, the location and type of business in which each is practiced has unique characteristics. Specifically, a home occupation is conducted within the primary structure (residence) while an extended home occupation is conducted in an accessory building. Extended home occupations require a conditional use permit in all districts where they are allowed.

1. For the purpose of this section, provided all requirements are met, the following shall be considered extended home occupations:
 - a. In the Agricultural District, those businesses that support agricultural needs to include but not limited to vehicle and implement repair, implement sales, auto sales, welding repair conducted in a safe manner; veterinarian's office; seed sales; professional

services and others, which in the opinion of the Board of Adjustment, would not conflict with adjoining land uses.

- b. In the Lake Park District, those businesses that support the intent of the Lake Park Zoning District including but not limited to any use which would be allowed as a Home Occupation in Section 5.16.

2. Performance Standards.

- a. An extended home occupation may not be changed to another home occupation except by the issuance of a separate conditional use permit.
- b. Individuals engaged in such occupation shall consist of family members residing on the premises and up to three (3) non-family employees.
- c. There shall be no change in the outside appearance of the buildings or premises, or other visible evidence of the conduct of such home occupation other than one on premise sign, not to exceed thirty-two (32) square feet in area, non-illuminated.
- d. The only retail sales allowed shall consist of the sale of commodities/products prepared on the premises in connection with such occupation or activity. Exception: Seed Sales, implement and auto sales.
- e. There shall be no outdoor storage of materials, etc. related to the extended home occupation unless the aforementioned storage is placed behind a fence approved by the Board of Adjustment.
- f. Extended home occupations should be agriculturally related and be conducted in an accessory building.
- g. No traffic shall be generated by such extended home occupation in greater volumes than would normally be expected in a residential neighborhood.
- h. Noise shall not exceed that generated by the listed permitted uses within the district.
- i. No equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuations in the voltage off the premises.
- j. The Board of Adjustment may assign appropriate conditions to mitigate any noise, vibration, glare, fumes, or electrical interference detectable to the normal senses off the lot.

CHAPTER 5.25. GAME LODGE REQUIREMENTS.

The regulations regarding Game Lodges shall be as follows:

- 1. All applications for a conditional use permit for a game lodge shall be accompanied by a site plan providing the following information:

- a. Identification of roads leading to the site.
 - b. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
 - c. Operation plans including whether meals or guide services will be provided, maximum duration of stay per patron.
 - d. Number of beds/maximum occupancy.
 - e. Detailed floor plan and exterior rendering of the proposed structure(s).
 - f. Potential traffic generated.
2. A Conditional Use Permit shall only be granted upon a finding of the Board of Adjustment that the condition of the road serving the site will not substantially deteriorate due to traffic generated by the use.
 3. Permittee shall provide proof of and maintain liability insurance.
 4. Game lodges are required to be constructed in accordance with applicable building codes and zoning requirements.
 5. Game lodges are required to be operated in accordance with South Dakota Codified Law regulating lodging facilities. If the game lodge does not require specific review from any department of the South Dakota Department of Health (SDDOH), the Board of Adjustment may require documentation from SDDOH stating such.
 6. The Board of Adjustment may impose other conditions to ensure that the use of property related to the game lodge is conducted in a manner to be compatible with the surrounding neighborhood.

CHAPTER 5.26. JUNKYARDS/SALVAGE YARDS REQUIREMENTS.

1. Storage for junkyards/salvage yards shall be set back a minimum of two hundred (200) feet from any adjoining property line or road right-of-way.
2. All applications for a conditional use permit for junkyards/salvage yard shall be accomplished by a site plan providing the following information:
 - a. Present topography, soil types, and depth to groundwater.
 - b. Location of existing water drainage, existing buildings, existing shelterbelts.
 - c. Identification of roads leading to the site.
 - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
 - e. Operation plans including hours of operation, nature of business, number and type of

equipment, potential traffic generated, and means of securing the site.

- f. Total area to be used for storage.
 - g. Potential traffic generated.
3. Junkyards/salvage yards shall be screened on all sides by a solid wall, with construction materials and design to be approved by the Board of Adjustment, at least two (2) feet above the highest stockpile or by a shelterbelt of shrubs and trees as approved by the Board of Adjustment; screening must be maintained in good repair.
 4. No junkyards/salvage yards will be allowed within one thousand three hundred twenty (1,320) feet from the property line of the junkyard/salvage yard to the nearest residence; excluding: the residence of the junkyard/salvage yard operator.
 5. All junkyards/salvage yards must have a minimum lot of ten (10) acres.
 6. Applicants for junkyards/salvage yards shall demonstrate that storm water run-off, upon final construction and grading, shall not exceed pre-construction storm water run-off volumes and/or negatively affect adjacent landowners.
 7. The Board of Adjustment may impose other conditions to ensure that the use of property related to the junkyard/salvage yard is conducted in a manner to be compatible with the surrounding neighborhood.
 8. A conditional use permit shall only be granted upon a finding of the Board of Adjustment that the condition of the road serving the site will not substantially deteriorate due to traffic generated by the use.
 9. Junkyards/salvage yards are prohibited over Zone A or Zone B Aquifer Protection Districts.

CHAPTER 5.27. WIND ENERGY SYSTEM (WES) REQUIREMENTS.

Section 5.27.01. Applicability.

The requirements of these regulations shall apply to all WES facilities except private facilities with a single tower height of less than ninety (90) feet and used primarily for on-site

Section 5.27.02. Federal and State Requirements.

All WESs shall meet or exceed standards and regulations of the Federal Aviation and South Dakota State Statutes and any other agency of federal or state government with the authority to regulate WESs.

Section 5.27.03. General Provisions.

1. Mitigation Measures

**ARTICLE V
GENERAL REQUIREMENT**

- a. Site Clearance. The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the WES.
- b. Topsoil Protection. The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
- c. Compaction. The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.
- d. Livestock Protection. The permittees shall take precautions to protect livestock during all phases of the project's life.
- e. Fences. The permittees shall promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the affected landowner.
- f. Roads
 - i. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used for the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the WES. Where practical, all-weather roads shall be used to deliver cement, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.
 - ii. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees shall notify the County of such arrangements upon request of the County.
 - iii. Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.
 - iv. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
 - v. Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust.
- g. Soil Erosion and Sediment control Plan. The permittees shall develop a Soil

Erosion and Sediment Control Plan prior to construction and submit the plan to the County. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

2. Setbacks

Wind turbines shall meet the following minimum spacing requirements.

- a. Distance from existing off-site residences, business, churches, and buildings or structures shall be at least one thousand (1,000) feet. Distance from on-site or lessor's residence shall be at least five hundred (500) feet. Distance to be measured from the wall line of the neighboring principal building to the base of the WES tower.
 - b. Distance from the base of the tower to the centerline of public roads shall be five hundred (500) feet or one hundred ten percent (110%) of the height of the wind turbine, whichever distance is greater. The vertical height of the wind turbine is measured from the ground surface to the tip of the blade when in a fully vertical position.
 - c. Distance from any property line shall be at least five hundred (500) feet or one hundred ten percent (110%) of the height of the wind turbine, whichever distance is greater. The vertical height of the wind turbine is measured from the ground surface to the tip of the blade when in a fully vertical position. The horizontal setback shall be measured from the base of the tower to the adjoining property line unless wind easement has been obtained from adjoining property owner.
 - i. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distances identified above if the affected landowners agree to a lesser setback/separation distance. If approved, such agreement is to be recorded and filed with the Brookings County Zoning Official. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
3. Electromagnetic Interference. The permittees shall not operate the WES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the WES or its operation, the permittees shall take the measures necessary to correct the problem.
4. Lighting. Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring

equipment. Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.

5. **Turbine Spacing.** The turbines shall be spaced no closer than three (3) rotor diameters (RD) (measurement of blades tip to tip) within a straight line. If required during final micro siting of the turbines to account for topographic conditions, up to 10 percent of the towers may be sited closer than the above spacing but the permittees shall minimize the need to site the turbines closer.
6. **Footprint Minimization.** The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.
7. **Collector Lines.** Collector lines are the conductors of electric energy from the WES to the feeder lines. When located on private property, the permittees shall place electrical lines, known as collectors, and communication cables underground between the WES and the feeder lines. The exception to this requirement is when the total distance of collectors from the substation requires an overhead installation due to line loss of current from an underground installation. Collectors and cables shall also be placed within or immediately adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.
8. **Feeder Lines.** Feeder lines are the conductors of electric energy from the collector lines to the main electric terminal. The permittees shall place overhead electric lines, known as feeders, on public rights-of-way or private property. Changes in routes may be made as long as feeders remain on public rights-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction.
9. **Decommissioning/Restoration/Abandonment.**
 - a. **Decommissioning Plan.** Within 120 days of completion of construction, the permittees shall submit to the County a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation.
 - b. **Site Restoration.** The decommissioning of the WES shall begin within eight (8)

months of the expiration of this permit, or earlier termination of operation of the WES and be completed within eighteen (18) months of the expiration of this permit or earlier termination of operation of the WES. The permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings, and ancillary equipment to a depth of four (4) feet. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen months after expiration.

- c. Cost Responsibility. The owner or operator of a WES is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.
 - d. Financial Assurance. After the tenth (10th) year of operation of a WES facility, the Board may require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board to cover the anticipated costs of decommissioning the WES facility.
 - e. Failure to Decommission. If the WES facility Owner or operator does not complete decommissioning, the Board may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board may take such action as may be necessary to decommission a WES facility.
 - f. Abandoned Turbines. The permittees shall advise the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require the permittees to decommission any abandoned turbine.
10. Height from Ground Surface. The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.
11. Towers.
- a. Color and Finish. The finish of the exterior surface shall be non-reflective and non-glass.
 - b. All towers shall be singular tubular design.

12. Noise. Noise level shall not exceed 50 dBA, average A-weighted Sound pressure including constructive interference effects at the perimeter of the principal and accessory structures of existing off-site residences, businesses, and buildings.
13. Permit Expiration. The permit shall become void if no substantial construction has been completed within three (3) years of issuance.
14. Required Information for Permit.
 - a. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other map as appropriate.
 - b. Map of easements for WES.
 - c. Affidavit attesting that necessary easement agreements with landowners have been obtained.
 - d. Map of occupied residential structures, businesses and buildings.
 - e. Preliminary map of sites for WES, access roads and collector and feeder lines. Final map of sites for WES, access roads and utility lines to be submitted sixty (60) days prior to construction.
 - f. Proof of right-of-way easement for access to transmission lines and/or utility interconnection.
 - g. Location of other WES in general area.
 - h. Project schedule.
 - i. Mitigation measures.
 - j. Project-specific environmental concerns (e.g. native habitat, rare species, and migratory routes). This information shall be obtained by consulting with applicable state and federal wildlife agencies. Evidence of such consultation shall be included in the application.
 - k. Final haul road agreements to be submitted prior to construction.

CHAPTER 5.28. METEOROLOGICAL TOWERS.

Section 5.28.01. Purposes.

1. The general purpose of this Section is to regulate the placement, construction, and modification of Meteorological (MET) Towers in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the collection of meteorological data for future development of wind energy systems.

Section 5.28.02. Development of Towers.

1. MET Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of one hundred ninety-nine (199) feet. MET Towers may be permitted in excess of one hundred ninety-nine (199) feet in accordance with Chapter 5.36.
2. An application to develop a Tower shall include:
 - a. The name, address, and telephone number of the Owner and lessee of the parcel of land upon which the Tower is situated. If the Applicant is not the Owner of the parcel of land upon which the Tower is situated, the written consent of the Owner shall be evidenced in the Application, or a copy of the lease agreement indicating the lessee has authority to place said tower on the parcel.
 - b. The legal description, folio number, and address (as applicable) of the parcel of land upon which the Tower is situated.
3. The Board of Adjustment may require an Applicant to supplement any information that the Board considers inadequate or that the Applicant has failed to supply. The Board of Adjustment may deny an application on the basis that the Applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the Board in a prompt manner and all decisions shall be supported in writing setting forth the reasons for approval or denial.

Section 5.28.03. Setbacks.

1. All MET Towers up to one hundred (100) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district.
2. MET Towers in excess of one hundred (100) feet in height shall meet the following.
 - a. Distance from existing off-site residences, business and public buildings shall be one thousand (1,000) feet. Distance from on-site or lessor's residence shall be five hundred (500) feet.
 - b. Distance from right-of-way (ROW) of public roads shall be 500 feet or one point one (1.1) times the height of the wind turbines depending upon which is greater, measured from the ground surface to the tip of the blade when in a fully vertical position.
 - c. Distance from any property line shall be 500 feet or one point one (1.1) times the height of the wind turbines depending upon which is greater, measured from the ground surface to the tip of the blade in a fully vertical position unless wind easement has been obtained from adjoining property owner.
3. Setback requirements for Towers shall be measured from the base of the Tower to the property line of the parcel of land on which it is located.
4. Setback requirements may be modified, as provided herein, when placement of a Tower in a location which will reduce the visual impact can be accomplished. For example, adjacent to trees which may visually hide the Tower.

Section 5.28.04. Structural Requirements.

1. All Towers must be designed and certified by an Engineer to be structurally sound and, at minimum, in conformance with applicable building codes, and any other standards outlined in this Ordinance. All Towers in operation shall be fixed to land.

Section 5.28.05. Federal Aviation Administration and South Dakota Department of Transportation Compliance.

1. The proposed Meteorological Tower shall meet or exceed all requirements of the Federal Aviation Administration (FAA) and South Dakota Department of Transportation- Aeronautics Commission (SDDOT-AC) with regard to transmission of signals, height, marking, and registration of the Tower. If compliance is not necessary, documentation from the applicable agency shall be provided to the Zoning Official and kept with this application.
2. If the FAA or SDDOT-AC do not regulate the markings of the proposed MET Tower, the Board of Adjustment may require marking of towers including but not limited to: alternating orange and white markings on the structure and markers on any guyed wires.

Section 5.28.06. Notification of Aerial Applicators.

1. As a condition of approval of a Conditional Use Permit for a MET Tower the Board of Adjustment may require the notification of airports and airfields of the proposed location of the tower and specific information relating to the tower's height, appearance, etc.

CHAPTER 5.29. PRIVATE WIND ENERGY CONVERSION SYSTEMS (PWECS).

The regulations regarding Private Wind Energy Conversion Systems (hereafter referred to as PWECS) shall be as follows:

1. Limited Use. No PWECS installed in accordance with the requirements of these regulations shall generate power as a commercial enterprise as defined by the Public Utility Commission.
2. Setback Requirements. The minimum distance between the property line, overhead utility lines or another wind turban, and any tower support base of a PWECS shall be equal to the proposed tower height (plus the radius of the rotor for the horizontal access machines).
3. Contiguous property owners and planned developments may construct a PWECS for their use in common. If property held by more than one (1) single owner is used to meet the setback requirements, a site plan establishing easements or reserved areas must be submitted to the Board of Adjustment for their approval.
4. Tower Access. Climbing access to the PWECS tower shall be limited either by means of a fence six (6) feet high around the tower base with a locking portal, or by limiting tower climbing apparatus so there is access to it no lower than twelve (12) feet from the ground.

5. Electromagnetic Interference. If a PWECS is installed in any location along or within the major access of an existing microwave communications link, the person desiring to install the PWECS shall be required to provide a letter from the business whose link they are within or adjacent to stating that the business whose link is affected would have no objection to the installation of the PWECS.
6. Air Space. A PWECS shall be located or installed in compliance with the guidelines of the Federal Aviation Administration Regulations with regard to Airport Approach Zones and clearance around VOR stations.
7. Interconnect. The PWECS, if interconnected to an electric utility distribution system, shall meet the interconnect requirements of the electric utility company.

CHAPTER 5.30 RELIGIOUS FARMING COMMUNITY.

Section 5.30.01 Purpose.

The purpose of this chapter is to provide for areas in the county for religious farming communities to be located and occupied. A permit to establish a religious farming community shall not imply consent to operate any other use for which a separate permit is required.

Section 5.30.02 Minimum Requirements.

1. A religious farming community shall comply with the following conditions:
 - a. A religious farming community shall be prohibited if proposed to be located on a parcel situated over Zone A or B of the Brookings County Aquifer Protection District.
 - b. The minimum lot area for a religious farming community shall be thirty-five (35) acres.
 - c. Direct access to public roads shall be limited. Roads shall be provided so as to provide access for emergency vehicles to each structure.
 - d. The religious farming community shall be supplied with a potable water supply and sewage disposal facilities, including washing, toilets and bathing facilities, and similar facilities, and all of which shall meet all applicable State and County codes and regulations.
 - e. Garbage and rubbish storage and disposal shall be handled in such a manner so as not to create a health hazard, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution. The religious farming community shall provide a sanitary method of disposing of solid waste, in compliance with state laws, rules and regulations.
 - f. The growth of brush, weeds, and grass shall be controlled. All areas shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health.
 - g. The Board of Adjustment may impose other conditions to ensure that the use of property related to the religious farming community is conducted in a manner to be compatible with the surrounding neighborhood.

Section 5.30.03 Application Requirements.

An application for a religious farming community shall be filed with the Zoning Official. The application shall contain the following:

1. The address and legal description of all property upon which the religious farming community is to be located, together with the name, residence and mailing address of the recorded owners of all such property.
2. Plans for supplying potable water including the source.
3. The plans for providing private wastewater facilities, i.e. septic tanks, holding tanks, sanitary sewer treatment systems.
4. The plans for holding, collecting and disposing of solid waste material.
5. A sketch plan of the property showing:
 - a. Proposed location of residences, agricultural activities, commercial/industrial activities, places of assembly.
 - b. Dimensions of all buildings.
 - c. Distance from all buildings/uses to the property lines at the closest points.
 - d. Dimensions of all property lines.
 - e. Name and location of all adjacent streets and roads.
 - f. Proposed grading and drainage pattern.
 - g. Proposed interior circulation pattern of roads.
 - h. Utility (water, sewer, electricity) plans.

Section 5.30.04. Separate Permits Required.

1. Any use proposed in conjunction with the religious farming community requiring a conditional use permit shall be considered separately from the conditional use permit for the religious farming community.
2. Building permits are required in accordance with Section 6.01.03 of this ordinance. The Zoning Official may only issue building permits and allow uses in accordance with the approved site plan for each specific conditional use permit. Upon approval of the site plan, the Board of Adjustment may indicate what, if any, uses may be additionally allowed and under what conditions without the Board's reconsideration. Similarly, upon approval of the site plan the Board of Adjustment may indicate if the location or size of any structures may be changed between the Board's approval and the approval of the Zoning Official.

CHAPTER 5.31. SAND, GRAVEL OR QUARRY OPERATION; ROCK CRUSHERS; MINERAL EXPLORATION AND DEVELOPMENT AND CONCRETE AND ASPHALT MIXING PLANTS REQUIREMENTS.

Section 5.31.01 Application.

1. In addition to the application and required fee for a Conditional Use Permit, the applicant shall submit a site plan indicating the following information:
 - a. A description of the mineral or minerals which are the subject of the mining or milling.
 - b. A detailed site Map(s) showing:
 - i. The general area within which the mining or milling operation will be conducted with areas identified by phase if applicable.
 - ii. Present topography, soil types, and depth to groundwater.
 - iii. Location of existing water drainage, wetlands, buildings, and shelterbelts.
 - iv. Identification of roads leading to the site.
 - v. Property boundaries of adjacent landowners within 500 feet.
 - vi. Proposed changes at the site such as access drives, shelterbelts, buildings, changes in topography, topsoil storage areas, berms, and fence lines.
 - vii. Proposed wetland mitigation areas, if any.
 - viii. Location of on-site storage of chemicals and petroleum products including containment plan.

Section 5.31.02 State and Federal Requirements.

1. All applicants for sand, gravel or quarry operations; mineral exploration and extraction operations; rock crushers; and concrete/ asphalt mixing plants shall demonstrate prior to the commencement of operation that the site meets the requirements of the State Department of Environment and Natural Resources.
2. The applicant shall identify specific phases when monitoring and inspection of the mining and milling activities shall be conducted by County, State, or Federal personnel or their representatives to assure compliance with all applicable rules and regulations. If the conditional use permit is granted, the permit shall identify such inspection and it shall be the responsibility of the applicant to notify said agency when monitoring or inspection is required. The applicant shall bear the burden of the cost of the monitoring and inspection program as determined by the Board of Adjustment.

Section 5.31.03 Setbacks.

1. Sand, gravel or quarry operation; Mineral exploration and extraction operations; rock crushers; and concrete/ asphalt mixing plants will not be allowed within two hundred (200)

feet of a residence. The setback will be measured from the mineral exploration and extraction operations; rock crushers; and/or concrete and asphalt mixing plant's property line to the nearest residence. Exception: The owner of a residence may waive the setback requirement provided the owner submits a notarized waiver form acceptable to the Zoning Officer.

2. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back at least one hundred (100) feet from any public right-of-way.
3. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back a minimum of fifty (50) feet from all property lines (excluding public right-of-way).

Section 5.31.04 General Provisions.

1. Haul Roads.

A requirement for receiving a permit for extraction/mining operations shall include a haul-road agreement between the applicant and appropriate road authority (County, Township, or Municipality).

2. Noise Pollution.

The applicant may be required to provide information regarding how potential noise pollution would be minimized.

3. Visual Considerations.

- a. Earth berms and vegetation should be employed to minimize visual impacts and reduce the effects of noise and dust.
- b. The need for and placement of berms should be determined by the orientation and position of the excavation site with respect to residences and roadways. Berms should be located in a way as to restrict the public's view of the property. Generally, berms should be six feet in height and seeded immediately after construction to avoid soil erosion. Berms should be maintained and kept reasonably free of weeds.
- c. Location of berms and vegetation may not create sight distance obstructions at roadway intersections.

4. Hydrology, dewatering and drainage.

- a. Dewatering of the extraction site should not result in downstream flooding.
- b. Berms should not interrupt the natural drainage of the area, unless the diversion is part of an approved drainage control system.

5. The applicant shall further provide:

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- a. A description of the major environmental impacts upon air quality, water quality and quantity, and land use modification presented by the proposed mining or milling.
 - b. A description of the proposed plan to address the identified environmental impacts to include all measures to be taken to prevent soil erosion, water contamination, air contamination, disruption of the area's ecological balance and any other related hazard to public health and safety.
6. The applicant shall provide a plan for land reclamation of the land after mining is completed. Measures to be taken for surface reclamation shall take into account the impact on adjacent land uses and natural resources, and the proposed future use of the lands mined and adjacent lands.
- a. A reclamation schedule.
 - b. Methods of plugging exploration drill holes.
 - c. Methods of removing and returning topsoil and subsoil.
 - a. Methods of grading, backfilling and contouring of exploration sites, access roads, and mining sites.
 - e. Methods of waste management and disposal, including liquid and solid wastes.
 - f. Method of revegetation.
7. Utilities/Easements. No exploration or excavation shall occur within recorded easements without the express written consent of the party holding such record of the utility/easement.
8. A conditional use permit shall be issued only after all conditions specified herein have been met. Evidence of violation of the regulations, including but not limited to air and water contamination, shall be cause for an immediate cessation of mining and milling activities.
9. Solution mining, in situ mining of an ore body with circulation of chemicals through injection and recovery wells, for minerals is prohibited.

CHAPTER 5.32 SANITARY LANDFILLS, RUBBLE SITES, COMPOSTING SITES, WASTE TIRE SITES, AND RESTRICTED USE SITES REQUIREMENTS.

1. The site must meet the requirements of the South Dakota Department of Agricultural and Natural Resources for the use which is proposed.
2. A sanitary landfill, rubble sites, composting sites, waste tire sites and restricted use sites shall be prohibited if proposed to be located on a parcel situated over Zone A or B of the Brookings County Aquifer Protection District.
3. A site plan is provided indicating the following information:
 - a. Present topography, soil types, depth to groundwater.

- b. Location of existing water drainage, existing buildings, existing shelterbelts.
 - c. Identification of roads leading to the site.
 - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
 - e. Proposed monitoring wells.
4. A minimum of one thousand three hundred twenty (1,320) feet from the property line of the sanitary landfill, rubble site, composting site, waste tire site, and restricted use site to the nearest residence or commercial use; excluding: the residence of the landfill operator.
 5. Applicants for sanitary landfills, rubble sites, composting sites, waste tire sites, and restricted use sites requirements shall be responsible for preventing debris from leaving the site.
 6. Applicants for sanitary landfills, rubble sites, composting sites, waste tire sites, and restricted use sites requirements shall prepare a plan for reclamation of the site.
 7. A Conditional Use Permit shall only be granted upon the finding of the Board of Adjustment that the condition of the road serving the site will not substantially deteriorate due to the traffic generated by the use.
 8. The Board of Adjustment may impose other conditions to ensure that the use of property related to the sanitary landfill, rubble site, composting site, waste tire site, and restricted use site is conducted in a manner to be compatible with the surrounding neighborhood.

CHAPTER 5.33. DOMESTIC SANITARY SEWER TREATMENT PLANT/FACILITY REQUIREMENTS.

1. The site must meet the requirements of the South Dakota Department of Agriculture and Natural Resources for the use which is proposed.
2. A site plan is provided indicating the following information:
 - a. Present topography, soil types, and depth to groundwater.
 - b. Location of existing water drainage, existing buildings, existing shelterbelts.
 - c. Identification of roads leading to the site.
 - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
 - e. Proposed monitoring wells.
3. No sewage treatment plant/facility will be allowed within one thousand three hundred twenty (1,320) feet from the property line of the sewage treatment plant/facility to the nearest residence; excluding: the residence of the sewage treatment plant/facility operator.

4. A Conditional Use Permit shall only be granted upon the finding of the Board of Adjustment that the condition of the road serving the site will not substantially deteriorate due to the traffic generated by the use.
5. The Board of Adjustment may impose other conditions to ensure that the use of property related to the sanitary sewer treatment plant/facility is conducted in a manner to be compatible with the surrounding neighborhood.

CHAPTER 5.34. COMMERCIAL SHOOTING RANGE REQUIREMENTS.

Section 5.34.01. Conditional Use Permits.

No commercial Shooting Range shall be established within Brookings County without first obtaining a Conditional Use Permit.

Section 5.34.02. General Regulations for All Ranges.

No Conditional Use Permit shall be approved for any Shooting Range unless the following conditions are met or specifically waived by the Board of Adjustment.

1. Once the range is open for business the approved plan, once approved, shall be posted in a prominent place at the site. Any changes to the safety plan shall be submitted to the County Board of Adjustment for approval. At a minimum the safety plan must state:
 - a. A method of identifying the Range Officer when the Range Officer is present at the site. Additionally, a permanent log identifying the Range Officer who is present when required at the facility must be maintained and available for inspection by the County or local law enforcement officers.
 - b. The authority of Range Officers to carry out the rules and regulations on the site and to enforce penalties.
 - c. Controlled substances are prohibited on the site.
 - d. Rules for the safe handling of weapons.
 - e. A building and grounds maintenance plan.
 - f. Administrative Rules to include regulations that normally govern range schedules, parking, guest policies, member/user responsibilities, hours of operation, security, program development, range supervision and other items such as sign-in procedures.
 - g. Regulations on the type of weapon, shooting activity, caliber, shot size or type of target to ensure safety for range users and others.
 - h. The penalties that are in force for violations of the safety plan.
 - i. The method used to control trespass or unauthorized access to the range.
2. On an annual basis, applicants must provide proof of liability insurance.

3. Applicants shall continuously keep the County informed as to the current names and telephone numbers of the officers of any organization having an interest in the Range. Any changes to the names or telephone numbers of the officers shall be reported to the County within thirty (30) days of the change.
4. All Shooting Ranges must control entrance to their sites.
5. No alcohol licenses shall be permitted on site.
6. Parking space for all members, owners or guests must be on-site and is not allowed on public streets or roads.

Section 5.34.03. Special Regulations for Ranges.

Applications for all ranges, in addition to any other requirements of this Ordinance, must also show:

1. A survey delineating the layout of all individual Ranges.
2. Setbacks to all property lines.
3. Method of containing projectiles within each individual range (such as earthen berms or other method).
4. Methods to be employed to reduce noise, including impulse noise.
 - a. The maximum noise that may escape the range into areas not controlled by the owner is 125 db.
5. All Shooting Ranges shall be designed using the NRA Range Source Book as a guideline.

Section 5.34.04. Application Requirements.

Each application for a Range shall, at a minimum, include the following:

1. A description of specific activities to be conducted on-site.
2. The hours and days of operation.
3. The maximum number of people using the facility at any one time.
4. A plan, if applicable, for collecting and recycling used shot.
5. A delineation of any special events, if any.
6. A sewage, water and solid waste management plan.

Section 5.34.05. Area Regulations.

1. Minimum Lot Size: Ten (10) acres.
2. Minimum Front Yard: One hundred (100) feet.
3. Minimum Side Yard: Three hundred (300) feet.
4. Back of the Range Setback: A minimum of one thousand (1,000) feet from any buildings and/or roads, excluding range buildings.
5. Setback from Residences: One-quarter (1/4) mile to be measured from the firing line to the nearest residential dwelling.
6. Setback from Commercial Uses: One-quarter (1/4) mile to be measured from the firing line to the nearest commercial structure.
7. Setback from Churches and Schools: One-quarter (1/4) mile to be measured from the firing line to the nearest church or school.
8. Setback from Municipalities: Three (3) miles to be measured from the firing line to the corporate limits of the municipality.
9. Any setback from the firing line do not apply for archery or indoor shooting ranges. Archery and indoor shooting ranges follow NRA Range Source Book as a guideline.

Section 5.34.06. Miscellaneous Regulations.

1. In the event that any provision of this Chapter or the Conditional Use Permit is violated, or the County otherwise reasonably believes that the health, safety or general welfare of the public is endangered by the use, or if the County reasonably believes that a public nuisance has been created, then, upon ten (10) days written notice, the County may originate action to either modify or cancel any Conditional Use Permit.

CHAPTER 5.35 SOLAR ENERGY CONVERSION SYSTEM (SES).

Section 5.35.01. Purpose.

The purpose of this Section is to facilitate the construction, installation, operation and decommission of Solar Energy Systems in a manner that promotes economic development and ensures the protection of health, safety, and welfare. These regulations will not impede personal or business solar collector development for the primary use of self-sustaining energy. These regulations are not intended to replace safety, health or environmental requirements contained in other applicable codes, standards, or ordinances. The provisions of these regulations shall not nullify any provisions of local, state, or federal law.

Section 5.35.02. Private Solar Energy System (PSES).

A PSES shall be for a single use commercial or residential structure and used primarily for on-site consumption of power. PSES shall be permitted as an accessory use and shall meet the requirements of the zoning district.

Section 5.35.03. Permitting.

1. No SES shall be erected, built, or constructed without a conditional use permit having been approved by the Board of Adjustment.
2. Application(s) for SES Conditional Use Permits shall be accompanied by:
 - a. Site plan sufficient to determine compliance with the requirements of this ordinance.
 - b. A location map of all occupied structures and other solar arrays within one-half (1/2) mile of the proposed SES to include setbacks from said structures and arrays.
 - c. Map of easements for SES, if applicable.
 - d. Affidavit attesting that necessary easement agreements with landowners have been obtained, if applicable.
 - e. Screening or buffering plans to include grading and/or landscape plantings proposed along public roads or abutting residential properties.
 - f. Aviation/Airport protection if required. See 5.35.05 (4)
 - g. The fencing and gates required to be around the exterior perimeter. See 5.35.05 (6)
 - h. The storm water pollution and prevention/drainage plan identifying specific erosion control, sedimentation control or stabilization measures to address soil limitations during and after project construction. See 5.35.04 (1)
 - i. Preliminary decommissioning plan. See 5.35.06
 - j. Weed/Grass control plan. See 5.35.05 (10)
 - k. Haul roads identified. See 5.35.05 (11)
 - l. Project schedule
 - m. Any other information required to determine compliance with this ordinance.
3. All copies of the plans must be submitted, signed and sealed by an engineer.
4. The Board of Adjustment may require an independent engineer, chosen by the County, to review plans at the petitioner's expense. Findings by the independent engineering firm are to be submitted to the Board of Adjustment.

Section 5.35.04. Compliance.

1. All SES are subject to the State of South Dakota Storm Water Management regulations, erosion and sediment control provisions if adopted and National Pollutant Discharge Elimination System (NPDES) permit requirements, if applicable.
2. The Board of Adjustment may provide for a final site inspection before the facility is authorized to become operational.
3. An emergency contact name and phone number must be posted at the point of access on all SES sites.
4. The permit holder will allow the County, or its Authorized Agent (appointed by the County), access to the property within one (1) business day of an inspection request by the County. In the event of an emergency, the County, or its Authorized Agent, has the right to access the premises.
5. All SES shall meet or exceed applicable standards and regulations of any state or federal agency.

Section 5.35.05. General Provisions for Solar Energy Systems.

Ground-mount solar energy, designed for providing energy to off-site uses or export to the wholesale market, are permitted under the following standards:

1. **Ground Cover and Buffer Areas.** Ground cover shall be maintained according to the approved weed/grass plan. Topsoils shall not be removed post construction, unless part of a remediation effort. Soils shall be planted to and maintained in perennial vegetation to prevent erosion, manage run off and build soil. Foundations, gravel, or compacted soils are considered impervious. Ground-mount systems shall be exempt from impervious surface calculations if the soil under the collector is not compacted and maintained in vegetation, including any access or service roads. A minimum thirty (30) foot managed vegetative buffer shall always be present and maintained around the perimeter of the site.
2. **Power and Communication Lines.** Power and communication lines running between banks of solar panels are allowed. Power and communication lines running between banks of solar panels and to nearby electric substations or interconnections with buildings may be required to be buried underground. Exemptions may be granted in instances where the natural landscape interferes with the ability to bury lines, or distance makes undergrounding infeasible.
3. **Separation Distances/Setbacks.**
 - a. **Separation Distances:**
 - i. Solar panels will be kept at least five hundred (500) feet from a residence, business, church, and building owned and/or operated by a governmental entity.
 - ii. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distance identified, if the applicant obtains waivers from all dwellings and owners of property within the separation distance. If approved, such

agreement is to be recorded and filed with the County Register of Deeds. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.

- iii. Separation Distance to be measured from the wall line of the neighboring principal structure to the base of the nearest solar panel.
- b. Setbacks:
 - i. Except for front yard setbacks, all setback distances set forth herein shall be measured from the exterior of the fencing and gates which are required around the perimeter of all SES. Setbacks for front yards shall be measured from the base of the nearest solar panel.
 - ii. Every SES shall observe a minimum rear and side yard setback of thirty (30) feet. Projects including multiple, adjoining properties as part of the project plan, need not adhere to setbacks at point of connection between the adjoining properties.
 - iii. Every SES shall meet the minimum front yard setback of the applicable zoning district.
 - iv. Every SES shall be setback at least one hundred (100) feet from the highwater mark of any lake, stream or river.
4. Aviation/Airport Protection: If required by state or federal agencies the applicant must complete and provide the results of the Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower cab and final approach paths, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federally Obligated Airports, or most recent version adopted by the FAA.
5. Glare: All solar energy systems shall minimize glare from affecting adjacent or nearby properties. Measures to minimize glare include selective placement of the system, screening on the north side of the solar array, modifying the orientation of the system, reducing use of the reflector system, or other remedies that limit glare.
6. Safety Fencing/Gates and Locks.
 - a. All SES shall be fenced around the exterior of the SES with a fence at least six (6) feet in height.
 - b. All fencing and gates shall be constructed to substantially lessen the likelihood of entry into a SES by unauthorized individuals.
 - c. All gates to the fences of all SES shall be equipped with locks or other means to provide restricted access, and shall always remained locked or otherwise restrict access except for those times when the owner and/or operator, or their respective agents is/are using the gate for ingress and/or egress or is/are otherwise present and monitoring the SES.
 - d. The fencing and gates shall be maintained in serviceable condition. Failure to maintain the fencing or gates required hereunder shall constitute a violation of this ordinance.
 - e. The fencing and gate requirements specified hereunder shall continue notwithstanding the fact that a SES is no longer operational and/or falls into disuse unless and until the SES is properly decommissioned.

- f. Fences may be constructed on property and right-of-way lines provided the walls are not more than thirty percent (30%) solid.
7. Maximum height: Solar panel arrays shall be no more than twenty (20) feet in height, not including power lines.
8. Lighting: If lighting is provided at the project site, lighting shall be shielded and downcast such that the light does not spill onto the adjacent parcel.
9. Outdoor Storage: Only the outdoor storage of materials, vehicles, and equipment that directly support the operation and maintenance of the solar farm shall be allowed.
10. Weed/Grass Control Plan: The applicant shall submit an acceptable weed/grass control plan for property inside and outside the fenced area for the entire property. The operating company or successor during the operation of the SES shall adhere to the approved weed/grass control plan.
11. Roads.
 - a. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used during the construction of the SES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the SES. Where practical, all-weather roads shall be used to deliver cement, solar collectors and components, and all other heavy components to and from the site.
 - b. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the SES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and SES components. The permittees shall notify the County of such arrangements upon request of the County.
 - c. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
 - d. Control of Dust. The permittees shall utilize reasonable measures and practices of construction to control dust.
 - e. Final haul road agreements to be submitted prior to construction.
12. Signs. In addition to required safety signs, one (1) on-premise sign, not exceeding thirty-two (32) square feet may be placed on site.

13. Permit Expiration. Unless otherwise specified by the Board of Adjustment, a conditional use permit for and SES shall expire three (3) years from the date upon which it becomes effective if no work has commenced. In the event of an appeal, remains in effect for an additional number of days equal to the number of days between the filing date of the appeal until final decision regarding the appeal.

Section 5.35.06. Decommissioning/Restoration/Abandonment.

1. Cost Responsibility. The owner or operator of a SES is responsible for all costs associated with decommissioning the SES facility and any associated facilities.
2. Decommissioning Plan. Prior to construction, the applicant shall file a decommissioning plan for Board of Adjustment approval. The plan shall include an acceptable financial assurance plan which estimates the decommissioning cost and a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation. A SES shall be deemed inoperable if it has not generated power for 12 consecutive months.
3. Financial Assurance. The Board of Adjustment shall require a performance bond, surety bond, escrow account, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board of Adjustment to cover the anticipated costs of decommissioning the SES facility. If a decommissioning account is required, it will be subject to the following:
 - a. A decommissioning account is to be funded by the project owner at a rate to be determined by the Board of Adjustment until the funds within said account are sufficient to meet the cost of decommissioning as identified in the decommissioning plan. Funding of the decommissioning account to commence no later than the commercial operation date.
 - b. The Board of Adjustment may allow a decreased annual payment, if the Board of Adjustment determines the full rate as identified in the financial assurance plan is not necessary to cover costs of decommissioning.
 - c. All interest earned by any financial assurance account remains in the account.
 - d. A financial assurances statement is to be provided upon request to the administrative official.
 - e. The financial assurance plan follows ownership of the SES. The Board of Adjustment may allow current and subsequent SES owners to request a change in the type of financial assurance instrument to be utilized.
 - f. The financial assurances are not subject to foreclosure, lien, judgment, or bankruptcy.
 - g. Beginning in year ten (10) following the beginning of operation and each fifth year thereafter, the SES owner shall submit to the Board of Adjustment an estimated decommissioning date, if established, and estimated decommissioning costs and

salvage values. Based on the verification of the information in this filing the Board of Adjustment may change the annual financial assurance funding rate to more closely match the estimated amount needed for decommissioning.

- h. Funds from the financial assurances are to be paid to the SES owner at the time of decommissioning. Said funds are to be paid as decommissioning costs are incurred and paid for by the SES owner.
 - i. If the SES owner fails to execute the decommissioning requirement, the funds are payable to the landowner as the landowner incurs and pays decommissioning costs.
 - j. In the event the South Dakota Public Utilities Commission requires a Decommissioning Plan which includes a financial instrument to decommission to be filed with the State. The county may waive its required financial instrument.
4. **Site Restoration.** The decommissioning of the SES shall begin within eight (8) months of the expiration of this permit, or earlier termination of operation of the SES and be completed within eighteen (18) months of the expiration of this permit or earlier termination of operation of the SES. The permittees shall have the obligation to dismantle and remove from the site all solar collectors and components, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four (4) feet. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen (18) months after expiration.
5. **Failure to Decommission.** If the SES owner or operator does not complete decommissioning, the Board of Adjustment may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond or other forms of final assurances. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board of Adjustment may take such action as may be necessary to decommission a SES facility.

CHAPTER 5.36. WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES.

Section 5.36.01. Development of Towers.

- 1. Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of one hundred and fifty (150) feet. Towers may be permitted in excess of one hundred and fifty (150) feet in accordance with "Criteria for Site Plan Development Modifications."
- 2. No new Tower shall be built, constructed, or erected in the County unless the Tower is capable of supporting three other telecommunications Facilities comparable in weight, size, and surface area to the Telecommunications Facilities installed by the Applicant on the

Tower within six (6) months of the completion of the Tower construction. No tower shall charge co-location fees in excess of commercially reasonable industry amounts. Each tower constructed shall upon the request of Brookings County mount law-enforcement or public safety communications apparatus.

3. An application to develop a Tower shall include:
 - a. The name, address, and telephone number of the Owner and lessee of the parcel of land upon which the Tower is situated. If the Applicant is not the Owner of the parcel of land upon which the Tower is situated, the written consent of the Owner shall be evidenced in the Application.
 - b. The legal description and address (if assigned) of the parcel of land upon which the Tower is situated.
 - c. A site plan with applicable descriptions of the design.
 - d. A written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.
 - e. Written, technical evidence from an Engineer(s) that the proposed structure meets the standards set forth in, "Structural Requirements," of this Ordinance.
 - f. The Act gives the FCC sole jurisdiction of the field of regulation of RF emissions and does not allow the County to condition or deny on the basis of RF impacts the approval of any Telecommunications Facilities (whether mounted on Towers or Antenna Support Structures) which meet FCC standards. In order to provide information to its citizens, the County shall make available upon request copies of ongoing FCC information and RF emission standards for Telecommunications Facilities transmitting from Towers or Antenna Support Structures. Applicants shall be required to submit information on the proposed power density of their proposed Telecommunications Facilities and demonstrate how this meets FCC standards.
4. The Board of Adjustment may require an Applicant to supplement any information that the Board considers inadequate or that the Applicant has failed to supply. The Board of Adjustment may deny an Application on the basis that the Applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the Board in a prompt manner and all decisions shall be supported in writing setting forth the reasons for approval or denial.

Section 5.36.02. Setbacks.

1. All Towers up to one hundred (100) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district.
2. Towers in excess of one hundred (100) feet in height shall meet the following.

- a. Distance from existing off-site residences, business and public buildings shall be one thousand (1,000) feet. Distance from on-site or lessor's residence shall be five hundred (500) feet.
 - b. Distance from public right-of-way shall be set back one (1) additional foot per each foot of tower height in excess of one hundred (100) feet.
 - c. Distance from any property line shall be set back one (1) additional foot per each foot of tower height in excess of one hundred (100) feet.
3. Setback requirements for Towers shall be measured from the base of the Tower to the property line of the parcel of land on which it is located.
 4. Setback requirements may be modified, as provided herein, when placement of a Tower in a location which will reduce the visual impact can be accomplished. For example, adjacent to trees which may visually hide the Tower.

Section 5.36.03. Structural Requirements.

1. All Towers must be designed and certified by an Engineer to be structurally sound and, at minimum, in conformance with applicable building codes, and any other standards outlined in this Ordinance. All Towers in operation shall be fixed to land.

Section 5.36.04. Separation of Buffer Requirements.

For the purpose of this Section, the separation distances between Towers shall be measured by drawing or following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan of the proposed Tower. Proposed Towers must meet the following minimum separation requirements from existing Towers or Towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Ordinance:

1. Monopole Tower structures shall be separated from all other Towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet.
2. Self-supporting lattice or guyed Tower structures shall be separated from all other self-supporting or guyed Towers by a minimum of fifteen hundred (1,500) feet.
3. Self-supporting lattice or guyed Tower structures shall be separated from all monopole Towers by a minimum of seven hundred and fifty (750) feet.
4. The separation requirements contained in 5.24.05 shall not be required of existing Towers or Towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Ordinance.

Section 5.36.05. Method of Determining Tower Height.

1. Measurement of Tower height for the purpose of determining compliance with all requirements of this Section shall include the Tower structure itself, the base pad, and any other Telecommunications Facilities attached thereto which extend more than twenty (20) feet over the top of the Tower structure itself. Tower height shall be measured from grade.

Section 5.36.06. Illumination.

1. Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA.

Section 5.36.07. Modification of Towers.

1. A Tower existing prior to the effective date of this Ordinance, which was in compliance with the County's zoning regulations immediately prior to the effective date of this Ordinance, may continue in existence as a nonconforming structure. Such nonconforming structures may be modified or demolished and rebuilt without complying with any of the additional requirements of this Section, except for Sections "Separation or Buffer Requirements", "Certification and Inspections", and "Maintenance," provided:
 - a. The Tower is being modified or demolished and rebuilt for the sole purpose of accommodating, within six (6) months of the completion of the modification or rebuild, additional Telecommunications Facilities comparable in weight, size, and surface area to the discrete operating Telecommunications Facilities of any Person currently installed on the Tower.
 - b. The height of the modified or rebuilt Tower and Telecommunications Facilities attached thereto do not exceed the maximum height allowed under this Ordinance.
2. Except as provided in this Section, a nonconforming structure or use may not be enlarged, increased in size, or discontinued in use for a period of more than one hundred eighty (180) days. This Ordinance shall not be interpreted to legalize any structure or use existing at the time this Ordinance is adopted which structure or use is in violation of the Code prior to enactment of this Ordinance.

Section 5.36.08. Maintenance.

1. Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
2. All Towers, Telecommunications Facilities, and Antenna Support Structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any Person.
3. In the event that the use of a Tower is discontinued by the Tower owner, the Tower owner shall provide written notice to the County of its intent to discontinue use and the date when the use shall be discontinued.

Section 5.36.09. Criteria for Site Plan Development Modifications.

Notwithstanding the Tower requirements provided in this Ordinance, a modification to the requirements may be approved by the Board of Adjustment as a Conditional use in accordance

with the following:

1. In addition to the requirement for a Tower Application, the Application for modification shall include the following:
 - a. For a modification of the setback requirement, the Application shall identify all parcels of land where the proposed Tower could be located, attempts by the Applicant to contract and negotiate an agreement for collocation, and the result of such attempts.
 - b. The Board of Adjustment may require the Application to be reviewed by an independent Engineer under contract to the County to determine whether the antenna study supports the basis for the modification requested. The cost of review by the County's Engineer shall be reimbursed to the County by the Applicant.
2. The Board of Adjustment shall consider the Application for modification based on the following criteria:
 - a. That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.
 - b. Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.
 - c. In addition, the board may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower and mitigate any adverse impacts which arise in connection with the approval of the modification.

Section 5.36.10. Abandonment.

1. If any Tower shall cease to be used for a period of three hundred sixty-five (365) consecutive days, the Brookings County Board of Adjustment shall notify the Owner, with a copy to the Applicant that the site will be subject to a determination by the Board of Adjustment that such site has been abandoned. The Owner shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence that the Tower has been in use or under repair during the period. If the Owner fails to show that the Tower has been in use or under repair during the period, the Board of Adjustment shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the Owner shall, within seventy-five (75) days, dismantle and remove the Tower.
2. To secure the obligation set forth in this Section, the Applicant [and/or Owner] may be required to post a bond.

Section 5.36.11. Action of the Board of Adjustment.

1. Brookings County shall approve or deny an application for co-location within ninety (90) days of the submission date of a complete application. Failure to act by the Board of Adjustment within the prescribed time frame entitles the applicant the ability to file a court action. The court action is to be filed within thirty (30) days from the required date of action of the Board of Adjustment.

2. Brookings County shall approve or deny an application for a new wireless telecommunications facility within one hundred fifty (150) days of the submission date of a complete application. Failure to act by the Board of Adjustment within the prescribed time frame entitles the applicant the ability to file a court action. The court action is to be filed within thirty (30) days from the required date of action of the Board of Adjustment.
3. The Board of Adjustment may not deny the application on the basis that a competing provider already provides coverage.

Section 5.36.12. Meteorological Towers (MET Towers) Exempt from this Chapter.

Meteorological Towers (MET Towers) as defined herein are regulated in accordance with Chapter 5.28 and shall hereby be exempt from the requirements of Chapter 5.36.

CHAPTER 5.37. ADULT USE REGULATIONS.

The purpose of this section is to establish regulation in the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this section. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.

Section 5.37.01. Setbacks.

1. None of the following uses may be established, operated, or maintained within one thousand (1,000) feet of a residence, a church, a school meeting all the requirements of the Compulsory Education Laws of the State of South Dakota, or a public park, bar, liquor store or any other adult use.
 - a. Adult bookstore.
 - b. Adult Motion Picture Theater.
 - c. Adult photo studio.
 - d. Adult Entertainment or Amusement Facility.
 - e. Any use which has as a part of its operation an adult use component or provide Adult Amusement Entertainment.
2. Not more than two of the following uses may be established, operated, or maintained within one thousand (1,000) feet of each other:
 - a. Adult bookstore.
 - b. Adult Motion Picture Theater.

- c. Adult photo studio.
 - d. Adult Entertainment or Amusement Facility.
 - e. Any use which has as a part of its operation an adult use component including but not limited to, a restaurant or eating place, a bar, lounge or tavern.
 - f. Any use intended to provide adult amusement or entertainment.
 - g. A bar.
 - h. A liquor store.
3. The 1,000-foot restriction provided for in 5.37.01.01 above may be waived and a conditional use permit issued upon proper application if the Board of Adjustment makes the following findings.
- a. That the proposed use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of these regulations will be observed.
 - b. That the proposed use will not enlarge or encourage the development of a 'skid row' area.
 - c. That all applicable regulations will be observed.

Section 5.37.02. Required License.

1. It shall be unlawful for any person to engage in the business of operating an adult use in Brookings County without first having obtained a license from the Brookings County Commissioners. Any person who violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any provision of this Zoning Ordinance may be subject to a civil or criminal penalty. The maximum penalty for violation of this Zoning Ordinance shall be five hundred dollars (\$500.00) or thirty (30) days in the County Jail or both. In addition, the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification shall constitute a separate offense. All fines for violation shall be paid to the Finance Office and shall be credited to the General Fund of the County.

Section 5.37.03. Application; Standards for Issuance.

1. Application for an adult use license shall be made in writing and shall state the following:
- a. The name, address, telephone number and age of the applicant and the registered agent of the applicant if the applicant is a corporation.
 - b. The location of the adult use business.
 - c. The exact nature of the adult use to be conducted and of the proposed place of business and the facilities related thereto.

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- d. A statement that the applicant is familiar with the provisions of this article and is in compliance with them.
 - e. A statement of whether the business will be conducted by a manager and, if so, the name, address, telephone number, and age of each such manager.
 - f. A statement that no manager or principal operating the business has been convicted of any offense of prostitution and or soliciting for prostitution as defined in the South Dakota Compiled Statutes within the last two (2) years, and that the applicant has not had any license for an adult use in any other community revoked within the last two (2) years.
 - g. Documentation of a conditional use permit for the site proposed by the applicant to operate and adult use as defined herein.
2. Within thirty (30) days after receipt of an application for an adult use license, the Brookings County Commissioners shall investigate the information contained in the application and shall determine the following:
- a. That the premises designated by the applicant as the location of the business is in full compliance with all applicable ordinances of Brookings County, including zoning ordinances.
 - b. That the premises and each manager and employee comply with the provisions of Section 5.37.03.1 as such provisions apply to them.
 - c. That the applicant, each manager and each employee are over twenty-one (21) years of age.
 - d. That no manager or principal operator of the business has been convicted of any offense of prostitution and or solicitation for prostitution as defined in the South Dakota Compiled Statutes within the last two (2) years, and that the applicant has not had any license for an adult use revoked within the last two (2) years.
3. If the investigation shows the compliance of the applicant for an adult use license, the premises upon which the business is to be conducted and each manager and employee, if applicable, with each of the requirements established in subsections (1) and (2) of this section, and with the conditions and regulations set forth in Section 5.37.03 within thirty (30) days after completion of such investigation, the Brookings County Commissioners shall issue a license, and upon payment by the applicant of the license fee required under this article, the license shall be issued.
4. If the investigation shows that the applicant for an adult use license, the premises on which the business is to be conducted, or the managers and employees, if applicable, do not comply with each of the requirements established in subsection (1) of this section, and with the conditions and regulations set forth in Section 5.37.03 within fifteen (15) days after completion of such investigation, the Brookings County Commissioners shall notify the applicant in writing that the license has been denied. Such denial shall be the final administrative action of the County with respect to the license application, and shall be subject to the immediate appeal by the applicant to the circuit court.

Section 5.37.04. Conditions & Regulations Governing Operation; Violation; Penalty.

1. The following regulations shall govern and control the business of operating an adult use in Brookings County:
 - a. No person under twenty-one (21) years of age shall be allowed on the licensed premises.
 - b. At all times during the hours of operation there shall be present a manager or other employee of the licensee who shall be not less than twenty-one (21) years of age.
 - c. Upon a change of any manager conducting business for the licensee, the licensee shall, within ten regular business days, give the County Commissioners written notice of such change by actual delivery or by registered or certified mail. The licensee shall, thereafter, as promptly as practicable, but in any event within five (5) regular business days, provide the information concerning the new manager which is required in Section 5.37.03.
 - d. No adult use shall be located on-premises for which a license to sell alcoholic beverages has been issued, and no alcoholic liquor shall be permitted on such premises.
 - e. No adult use shall be permitted unless the premises on which such business is located complies with the requirements of the zoning ordinance.
 - f. No licensee or manager under the provisions of this article shall knowingly permit any person to remain in or upon licensed premises who commits any act of public indecency or obscenity as defined in the South Dakota Compiled Statutes.
 - g. No licensee or manager under the provisions of this article shall permit any act of prostitution, solicitation for prostitution or patronization of a prostitute on the licensed premises.
 - h. No sign shall be posted on the licensed premises which depicts, displays or refers to specified anatomical areas or specified sexual activities, as defined in this article.
2. In addition to the requirements established in Section (1) of this section, the following regulations shall govern and control the operation of an adult entertainment cabaret:
 - a. All performers shall be at least twenty-one (21) years of age.
 - b. All performances, exhibitions or displays shall take place on a platform raised at least two (2) feet from the level of the floor, and located at least ten (10) feet from any patron.
 - c. No performer shall fondle or caress any patron or other performer and no patron shall fondle or caress any performer.
 - d. No patron shall be permitted to pay or give any gratuity to any performer, and no performer shall solicit any pay or gratuity from any patron.
3. It shall be unlawful for any person licensed to engage in the business of operating an adult use within the County to fail to comply with the conditions and regulations set forth in

subsections 5.37.03 and 5.37.04 of this section as they are applicable to the licensed business, or to suffer or permit noncompliance with such conditions and regulations on or within the licensed premises. In this regard, any act or omission of an employee shall be deemed the act or omission of the owner if such act or omission occurred either with the authorization, knowledge, or approval of the owner or as a result of the owner's negligent failure to supervise the employee's conduct. All conduct occurring while on the premises shall be presumed to be the responsibility of the owner.

4. Any person convicted of a violation of this section shall be subject to a fine pursuant to Section 1.02.03 of this Ordinance.

Section 5.37.05 Suspension or Revocation.

Nothing in the terms of this article shall preclude the right of the Brookings County Commissioners to suspend or revoke the license of the licensee, as follows:

1. The Brookings County Commissioners may temporarily suspend any license issued under the terms of this article when he has reason to believe that the continued operation of a particular licensed premises will immediately threaten the welfare of the community or create an imminent danger of violation of applicable law. In such case, he may, upon the issuance of a written order stating the reason for such determination, and without notice or hearing, order the licensed premises closed for not more than seven (7) days; provided, that the licensee shall be given an opportunity to be heard in a public hearing during the seven (7)-day period, and further provided that if such licensee shall also be engaged in the conduct of other business on the licensed premises, such order shall not be applicable to such other businesses.
2. The Brookings County Commissioners may suspend or revoke any license issued under the terms of this article upon a ten (10) day notice to the licensee of the time and place of a public hearing, and a public hearing at which the licensee may appear and present evidence, if the Brookings County Commissioners determines upon such hearing that the licensee has failed or refused to comply with the terms of this article, has failed or refused to comply with other law applicable to the business of operating an adult use, has knowingly permitted the failure of any manager or employee on the premises to comply with the terms of this article or with other law applicable to the business of operating an adult use, has knowingly furnished false or misleading information on any application required for any license under this section or has suffered or caused another to furnish or withhold such information on his behalf, or has been convicted by a court of competent jurisdiction of a violation of any provision of this section.

CHAPTER 5.38 Campground.

Section 5.38.01 Purpose.

The purpose of this chapter is to provide areas for commercial recreation facilities which are open to the public, for a fee where camping units can be located and occupied as temporary living quarters.

Section 5.38.02 Minimum Requirements.

1. A campground shall comply with the following conditions:
 - a. The minimum lot area for a private campground facility shall be five (5) acres.
 - b. Each campsite shall contain at least two thousand (2,000) square feet.
 - c. The Board of Adjustment will determine whether the street(s) directly providing access to the proposed private campground will adequately withstand traffic generated.
 - d. Access roads shall be provided to each campsite and all access roads shall have a minimum unobstructed width of fourteen (14) feet for all one-way roads, and twenty (20) feet for all two-way roads.
 - e. No manufactured homes shall be located in the campground.
 - f. The campground(s) shall be supplied with a potable water supply and sewage disposal facilities, including washing, toilets, and similar facilities, and all of which shall meet all applicable State and County codes and regulations.
 - g. Garbage and rubbish storage and disposal shall be handled in such a manner so as not to create a health hazard, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution. The campground shall provide a sanitary method of disposing of solid waste, in compliance with state laws, rules and regulations.
 - h. The grounds shall be kept free of rubbish, trash, or debris, which could become a safety hazard.
 - i. The growth of brush, weeds, and grass shall be controlled. All areas shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health.
 - j. Public Safety Access – The owner of the private campground shall allow Law Enforcement and Brookings County Zoning Official or designee immediate access to determine if the terms and conditions within the conditional use permit are complied with.
 - k. No camping units on site November 1st through April 1st.
 - l. In the event the private campground does not comply with the terms of the conditional use permit and said permit is revoked, the owner of the private campground shall provide for, at their expense, the restoration of the site to its original condition, including the removal of all campers or RV's, dumpsters, and other related vehicles, or to a use permitted by the zoning ordinance in a time frame to be determined by the Board of Adjustment.
 - m. All applicable requirements of the South Dakota Department of Health shall be met.
 - n. The Board of Adjustment may impose other conditions to ensure that the use of property related to the private campground is conducted in a manner to be compatible with the surrounding neighborhood.

Section 5.38.03 Application Requirements.

An application for a private campground shall be filed with the County Zoning Official. The application shall contain the following:

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1. The address and legal description of all property upon which the campground is to be located, together with the name, residence and mailing address of the recorded owners of all such property.
2. Plans for supplying potable water including the source, amount available and location of outlets.
3. The plans for providing toilet including the source, number and location, type and the means of disposing of waste deposited, to include black or grey water from campers.
4. The plans for holding, collecting, and disposing of garbage.
5. The plans, if any, to light the campground.
6. A sketch plan of the property showing:
 - a. Location of Camping Pads/sites.
 - b. All amenities (bathrooms, showers, drinking water, outlets, light poles, roads)
 - c. All existing and proposed buildings or additions.
 - d. Dimensions of all buildings.
 - e. Distance from all campsites/buildings to the property lines at the closest points.
 - f. Dimensions of all property lines.
 - g. Parking lots or spaces; designate each space, give dimensions of the lot, stalls and aisles.
 - h. Name and location of all adjacent streets, alleys, waterways, and other public places.
 - i. Proposed grading and drainage pattern.
 - j. Proposed interior traffic circulation pattern.
 - k. Proposed open space uses.
 - l. Utility (water, sewer, electricity) plans.
 - m. Relation of the proposed development to the surrounding area and comprehensive plan.
7. All campgrounds shall directly access to a county, state or federal paved (hard surfaced) road.

CHAPTER 5.39 CONTRACTOR SHOP AND YARD REQUIREMENTS.

Section 5.39.01 Purpose.

1. The purpose of this chapter is to provide for areas in the Commercial/Industrial District for the storage of indoor and outdoor storage of equipment and supplies as well as a base of operations for contractors that perform construction, excavation, and other services.
2. Further, the purpose of this Chapter is to provide the ability to temporarily store equipment and supplies as a base of operations for contractors performing construction, excavation, and other services in the Agricultural District until a specific project is completed.

Section 5.39.02 Application and Regulations.

1. A site plan is provided indicating the following information:
 - a. Present topography, soil types, and depth to groundwater.
 - b. Location of existing water drainage, existing buildings, existing shelterbelts.
 - c. Identification of roads leading to the site.
 - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
 - e. Operation plans including means of providing security and hours of operation and/or crushing.
 - f. Total area to be used for storage.
 - g. Potential traffic generated.
 - h. Duration of project to which the use is accessory (Agricultural District only).
2. Permit shall only be granted upon assurance that the condition of the designated haul road(s) will not deteriorate due to traffic generated by the use.
3. The Board of Adjustment reserves the ability to require screening by means of tree plantings, berms, indoor storage, fences or any combination of these or other means of screening the site.
4. The Board of Adjustment may impose other conditions to ensure that the use of property related to the contractor shop or yard is conducted in a manner to be compatible with the surrounding neighborhood.
5. Unless otherwise specified by the Board of Adjustment, Conditional Use Permits for Contractor Shops and Yards in the Agricultural District expire one (1) year from the date of issuance; and may be extended by the Board of Adjustment to allow for the completion of the specified project to which the contractor yard is accessory.

CHAPTER 5.40 (RESERVED).

CHAPTER 5.41 RESORT.

Section 5.41.01 Purpose.

The purpose of this chapter is to provide areas in the Lake Park District for commercial hospitality lodgings in settings that are principally intended for vacationing, relaxation and conference activities for visitors to the county. A permit to establish a resort shall not indicate implied consent to operate any other use for which a separate permit is required.

Section 5.41.02 Minimum Requirements.

1. A resort shall comply with the following conditions:
 - a. The minimum lot area for any resort providing temporary lodging, or seasonal dwelling shall include a minimum of two thousand (2,000) square feet per bedroom. In no case shall the minimum lot area for a resort shall be less than two (2) acres.
 - b. The Board of Adjustment will determine whether the street(s) directly providing access to the proposed resort will adequately withstand traffic generated in determining whether a road agreement is necessary.
 - c. Private access shall be provided to each temporary lodging structure, or seasonal dwelling, and all access roads shall have a minimum unobstructed width to accommodate emergency response vehicles.
 - d. The resort shall be supplied with a potable water supply and sewage disposal facilities which shall meet all applicable county and state laws, rules and regulations.
 - e. Garbage and rubbish storage and disposal shall be handled in such a manner so as not to create a health hazard, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution. The resort shall provide a sanitary method of disposing of garbage and other solid waste, in compliance with county and state laws, rules and regulations.
 - f. The grounds shall be kept free of rubbish, trash, or debris which could become a safety hazard.
 - g. Public Safety Access – The owner of the resort shall allow Law Enforcement and Brookings County personnel immediate access to determine if the terms and conditions within the conditional use permit are complied with.
 - h. In the event the resort does not comply with the terms of the conditional use permit and said permit is revoked, the owner of the resort shall provide for, at the owner's expense, the restoration of the site to its original condition or to a use compliant with the zoning ordinance in a time frame to be determined by the Board of Adjustment.
 - i. All applicable requirements of the South Dakota Department of Health shall be met.
 - j. Sanitary sewer shall be provided by sealed holding tank, connection to an approved sanitary sewer district, or by some other means approved by the Board of Adjustment

and South Dakota Department of Agriculture and Natural Resources. All septic systems are required to be installed by a South Dakota Department of Agriculture and Natural Resources (SD DENR) certified installer following South Dakota Administrative Rules Chapter 74:53.

- k. The Board of Adjustment may impose other conditions to ensure that the use of property related to the resort is conducted in a manner to be compatible with the surrounding neighborhood and the purpose of the Lake Park District set forth in Chapter 4.03.

Section 5.41.03 Application Requirements.

An application for a resort shall be filed with the zoning administrator. The application shall contain the following:

1. The address and legal description of all property upon which the resort is to be located, together with the name, residence and mailing address of the recorded owners of all such property.
2. Plans for supplying potable water.
3. Manner of providing sewer services to all structures.
4. The plans for holding, collecting, and disposing of garbage and other solid waste material.
5. The plans, if any, to illuminate the resort.
6. Preliminary (Subdivision) Plan in accordance with the Brookings County Subdivision Ordinance if it is the intent to provide individual units for sale within the resort.
8. A detailed plan of the property showing:
 - a. Location of any existing or proposed buildings or additions.
 - b. Size of any existing structures.
 - c. Maximum dimensions of any proposed structures (including maximum width, depth, and area of structures.)
 - d. All proposed uses to be operated within the resort and their proposed location.
 - e. All amenities (bathrooms, showers, drinking water, outlets, light poles, roads)
 - f. Distance from all buildings and parking lots to the property lines at the closest points.
 - g. Dimensions of all property lines.
 - h. Parking lots or spaces; designate each space, give dimensions of the lot, stalls and aisles.

- i. Name and location of all adjacent streets, alleys, waterways, and other public places.
- j. Proposed grading and drainage pattern.
- k. Proposed interior circulation pattern indicating the status of street ownership and maintenance agreement.
- l. Proposed access for emergency response access.
- m. Proposed management, ownership and use of open space.
- n. Utility (water, sewer, electricity) plans.
- o. Relation of the proposed development to the surrounding area and comprehensive plan.

CHAPTER 5.42. (RESERVED)

CHAPTER 5.43. (RESERVED)

CHAPTER 5.44. RIGHT TO FARM NOTICE COVENANT.

The following easement is to be utilized as required for farm and non-farm residential development within the Agricultural and Lake Park Districts. (See 4.01.05.2)

Prepared by Brookings County Zoning Office
520 3rd St, Suite 110
Brookings, SD 57006

RIGHT TO FARM NOTICE COVENANT

You are hereby notified that the property you are constructing a new residence, stick-built, modular or manufactured, or modifying an existing residence, described in the Legal Description below, that is in or near agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural or agricultural processing facility operations. Agricultural operations may include, but are not limited to, the following: the cultivation, harvesting, and storage of crops; livestock production; ground rig or aerial application of pesticides or herbicides; the application of fertilizer, including animal waste; the operation of machinery; the application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. Discomforts and inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during a 24-hour period. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector. You are also notified that there is the potential

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for agricultural or agricultural processing operations to expand. This notification shall extend to all landowners, their heirs and successors or assigns.

Legal Description: _____

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

Signature, Grantor

Signature, Grantor

Print, Grantor

Print Grantor

STATE OF SOUTH DAKOTA

SS:

COUNTY OF BROOKINGS

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

(Grantors).

Notary Public

My Commission Expires: _____

ARTICLE VI
ADMINISTRATION

CHAPTER 6.01. GENERAL

Section 6.01.01. Permits Required.

1. No building or other structure shall be erected, moved, added to, structurally altered or used without a building permit issued by the Brookings County Zoning Official. The Zoning Official, except in conformity with the provisions of this ordinance, shall issue no permit unless said Official received a written order from the Brookings County Board of Adjustment in the form of an administrative review, a conditional use permit, or variance as provided by this ordinance.
2. It shall be unlawful to commence the excavation for the construction of any building or any accessory building without a permit, unless the building meets the requirements of 6.01.03(a) or 6.01.03(b). A permit is also required for any filling, grading, lagooning, or dredging which is related to site preparation for future construction. Deviations shall be deemed a violation of this Ordinance, and punishable in accordance with 6.05.05.

Section 6.01.02. Applications.

All applications for permits shall be accompanied by a site plan drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of the buildings already existing, if any; and the location and dimensions of the proposed building(s) or alteration. The applicant shall also state the existing and intended use of all such buildings, and the location of existing or proposed water and sewer facilities. In the case of a change of use, the applicant shall, in writing, state the intended change. The application shall include such other information as lawfully may be required by the Zoning Official, including legal description, existing or proposed buildings or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; existing or proposed water, sewer, electrical facilities; and such other matters as may be necessary to determine conformity with, and provide for the enforcement of, this ordinance. All plans and data accompanying the permit shall be final and conclusive. Deviations shall be deemed a violation of this Ordinance, and punishable in accordance with 6.05.05 and shall require an updated building permit and/or a conditional use a permit.

Section 6.01.03. Building Permits.

1. Building Permits Required. It shall be unlawful to commence the excavation for, or the construction of, any building, structure, or any accessory building, or to commence the moving or alteration of any buildings, including accessory buildings, until the County Zoning Official has issued a building permit for such work. Furthermore, it shall be unlawful to commence work until the building permit is displayed in a conspicuous place visible from public right-of-way. Deviations shall be deemed a violation of this Ordinance, and punishable in accordance with 6.05.05.

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- a. No building permit is necessary for a structure under one-hundred twenty (120) square feet or less.
 - b. No building permit is necessary for the following: shingling, replacement siding, window replacement, painting of exterior, and any interior improvements that do not involve the moving of load-bearing walls.
2. Issuance of a Building Permit. In applying to the County Zoning Official for a building permit, the applicant shall submit a dimensioned sketch or a scale plan indicating the shape, size, and height and location of all buildings, to be erected, altered, or moved and of any building already on the lot. The County Zoning Official shall also state the existing and intended use of all such buildings, the location of existing or proposed water and sewer facilities, and supply such other information as may be required by the County Zoning Official for determining whether the provisions of this regulation are being observed. If the proposed excavation or construction, as set forth in the application, are in conformity with the provisions of this regulation, and other regulations of the County then in force, including the International Building Code (IBC) and International Residence Code (IRC), as adopted by the Brookings County Commission, the County Zoning Official shall issue a building permit for such excavation or construction. If a building permit is refused, the County Zoning Official shall state such refusal in writing, with the cause, and shall thereupon mail notice of such refusal to the applicant at the address indicated upon the application, and a copy retained by the County Development Department. The County Zoning Official shall grant or deny the permit within a reasonable time from the date the application is submitted.
3. The issuance of a building permit shall, in no case, be construed as waiving any provisions of this regulation. All building permits shall be valid for eighteen (18) months after the date of issuance; however, a building permit shall become void six (6) months from the date of issuance unless substantial progress has been made by that date on the project described therein. A six (6) month extension may be granted if requested in writing at least one (1) month prior to the expiration date. Maximum extension authorized is six (6) months.

Section 6.01.04. Building Permits Displayed.

1. Permits Displayed. It shall be unlawful to commence work until a building permit is issued. The permit is intended to be placed upon the premises at all times from the beginning until the completion of such construction, alteration, repair, occupancy or change of use. Deviations shall be deemed a violation of this Ordinance, and punishable in accordance with 6.05.05.

Section 6.01.05. Fees.

1. The Board of County Commissioners shall establish, by resolution, a schedule of fees, charges, and expenses and a collection procedure for building permits, appeals, and other matters pertaining to this regulation. The schedule of fees shall be posted in the County Development Department and may be altered or amended only by the Board of County Commissioners. Changes in the zoning regulations or maps which are initiated by incorporated communities, or the County shall not require a fee.
2. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

CHAPTER 6.02. ZONING OFFICIAL.

Section 6.02.01. Enforcing Officer.

The provisions of this Ordinance shall be administered and enforced by the Zoning Official appointed by the Board of County Commissioners, who shall have the power to make inspection of buildings or premises necessary to enforce this Ordinance.

Section 6.02.02. Duties.

The powers and duties of the County Zoning Official shall be as follows:

1. Issue all building permits and make and maintain records thereof.
2. Conduct inspections of buildings, structures, and the use of land to determine compliance with this Ordinance.
3. Notify in writing persons responsible for violations, indicating the nature of the violation and ordering action necessary to correct.
4. Order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions; alterations or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.
5. Revoke any building permit, which was unlawfully issued, or any building permit wherein defective work has been performed, and when such work has not been corrected within ninety (90) days of notification.
6. Maintain permanent and current records, in accordance with the State of South Dakota Record Retention, as adopted by resolution by the Brookings County Commission, of this regulation, including, but not limited to, all maps, amendments, variances, appeals, and applications.
7. Prepare all necessary documents as required by this Ordinance, or at the direction of the Brookings County Planning Commission and/or the Brookings County Board of Adjustment and/or the Brookings County Commission. The Zoning Official shall consult with the States Attorney's Office as needed for assistance with drafting said documents.
8. Provide public information relative to all matters arising out of this Ordinance.
9. Forward to the Brookings County Planning Commission all plats and/or applications for amendments to this Ordinance.
10. Forward to the Brookings County Board of Adjustment, applications for appeals, conditional use permits, variances, or other matters on which the Board of Adjustment is required to pass under this Ordinance.
11. Initiate, direct, and review, from time to time, a study of the provisions of this Ordinance, and to make such reports available to the Brookings County Planning Commission.

12. The Zoning Official shall receive applications required under this Ordinance, specifically but not limited to Building Permits, Conditional Use Permits, Variances, and Zoning Amendments.
- a. For building/use permits and Special Permitted Use permits, the Zoning Official shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.
 - b. For Conditional Uses and Variances, the Zoning Official shall review the application, and shall make recommendations regarding said application to the Brookings County Board of Adjustment.
 - c. For Zoning Amendments, the Zoning Official shall review the application, and shall make recommendations regarding said application to the Brookings County Planning Commission and Board of County Commissioners.

Section 6.02.03. Right of Entry.

Whenever necessary to make an inspection to enforce any of the provisions of this regulation, or whenever the Zoning Official or an authorized representative has reasonable cause to believe there exists in any building or upon any premises a regulation violation, the Zoning Official or an authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Zoning Official by this Ordinance, provided that if such building or premises be occupied, they shall first present proper credentials and request entry; and if such building or premises be unoccupied, they shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the Zoning Official or an authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Zoning Official or an authorized representative shall have first obtained a court order or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Zoning Official or an authorized representative for the purpose of inspection and examination pursuant to this regulation.

Section 6.02.04. Stop Order.

Whenever any work is being done contrary to the provisions of this Ordinance, the Zoning Official may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Zoning Official to proceed with the work.

Section 6.02.05. Occupancy Violation.

Whenever any building or structure regulated by this Ordinance is being used contrary to the provisions of this Ordinance, the Zoning Official may order such use discontinued and the structure, or portion thereof, vacated by notice served on any person causing such use to be continued. Such persons shall discontinue the use within the time prescribed after receipt of such notice to make the structure, or portion thereof, comply with the requirements of this Ordinance.

In the event of a violation or a threatened violation of these regulations or restrictions, the Board of County Commissioners or any member thereof, in addition to other remedies, may institute an appropriate action or proceeding to seek an injunction in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation, and it is the duty of the State's Attorney to institute such action.

Section 6.02.06. Procedures for Approval of Special Permitted Use Permit.

1. The Special Permitted Use procedure is an administrative review process, where the Zoning Officer shall have the power to review an application for conformance with the applicable standards and approval criteria and issue a Special Permitted Use permit. Requests for Special Permitted Uses may be granted if it has been determined that the prescribed conditions for a specific use have been met or assurance has been provided that the conditions will be met. A Special Permitted Use Permit shall not be granted unless and until:
 - a. A written application for a special permitted use is submitted, indicating the section of this Ordinance under which the special permitted use is sought and stating the grounds on which it is requested.
 - b. The Zoning Officer shall review the application for conformance with this ordinance.
 - c. If the Zoning Officer determines that the application is in conformance with the prescribed performance standards, the Zoning Officer shall make written findings certifying compliance with the specific standards governing the specific Special Permitted Use Permit and that satisfactory provisions and arrangements have been made concerning the prescribed conditions for the specific Permitted Special Use Permit. The Zoning Officer shall then issue the Special Permitted Use Permit subject to the applicant agreeing to any conditions prescribed by this ordinance or the zoning officer for the Specific Permitted Special Use Permit.
 - d. The Zoning Officer shall then issue the Special Permitted Use Permit subject to the applicant agreeing to any conditions prescribed by this ordinance or the zoning officer for the specific Special Permitted Use Permit.
 - e. The Zoning Officer shall then issue any other associated building/use permits.
 - f. If the application does not meet all of the performance standards for the Special Permitted Use, or the applicant fails to meet any of the prescribed conditions or safeguards; the Zoning Officer shall determine that the application is not in conformance with this Section and appropriate Special Permitted Use standards. The applicant may, as appropriate:
 - i. Apply for a variance from lot area, or size of yards, and open spaces.

- ii. Apply for Conditional Use Permit, if eligible.
- iii. Appeal the decision of the Administrative Official in accordance with Sections 6.04.04, 6.04.05, and 6.04.06.
- g. A Special Permitted Use permit shall expire six months (6) months from the date upon which it becomes effective if no actual construction has commenced. Upon written request to the Administrative Official and prior to the Special Permitted Use expiration date, a six (6) month time extension for the Special Permitted Use may be granted by the Zoning Officer.
- h. If a decision by the Administrative Official to issue a Special Permitted Use permit is appealed to circuit court the special permitted use permit that was granted does not expire for a period of two (2) years following completion of any final appeal of the decision.

CHAPTER 6.03. PLANNING AND ZONING COMMISSION.

Section 6.03.01. Establishment.

Within Brookings County, outside of incorporated municipalities and joint jurisdictional areas, the power and jurisdiction related to this article shall be executed by the County Planning and Zoning Commission.

Section 6.03.02. Membership and Terms of Members.

1. The Planning and Zoning Commission shall consist of nine (9) members. One (1) County Commissioner shall serve as a member of the Planning Commission. Two (2) members shall reside in the unincorporated areas of District 1 which consists of Bangor, Volga, Brookings, Lake Sinai, Oslo, and Medary Townships. Two (2) members shall reside in the unincorporated areas of District 2 which consists of Laketon, Preston, Eureka, Winsor, Oakwood, and Sterling Townships. Two (2) members shall reside in the unincorporated areas of District 3 which consists of Argo, Oak Lake, Lake Hendricks, Afton, and Sherman Townships, and the northern portion of Richland (Sections 3-34) Townships. Two (2) members shall reside in the unincorporated areas of District 4 which consists of Alton, Aurora, Trenton, Parnell, and Elkton Townships, and the southern portion of Richland (Sections 3-34) Township. All Members of the Planning and Zoning Commission shall be appointed by the County Commission. District members shall reside in the district they represent. If no person from a district is willing to serve on the Planning and Zoning Commission, the County Commission shall appoint a resident from the unincorporated area of Brookings County to serve that district. (SDCL 11-2-2 and 11-2-14)
2. The Board of County Commissioners shall also appoint two (2) alternates, who reside in the unincorporated area of Brookings County, to the Planning and Zoning Commission. If a Planning and Zoning Commission member is unable to attend a meeting, or participate in a proceeding, the alternates shall serve on the Planning and Zoning Commission on a rotating basis. Alternates shall be appointed for a three (3) year term.
3. Planning and Zoning Commission Members are appointed to four (4) year terms. These terms shall be staggered with the terms of two (2) members expiring in any given year. (SDCL 11-2-3)

Section 6.03.03. Per Diem and Expenses of Commission.

Per Diem and expenses of the County Planning and Zoning Commission shall be established by the Board of County Commissioners and paid by the County. (SDCL 11- 2-3.2)

Section 6.03.04. Duties of Planning and Zoning Commission.

The Planning and Zoning Commission shall have the following duties:

1. Comprehensive Land Use Plan:
 - a. The Planning Commission may prepare, or cause to be prepared, a comprehensive plan for the county including those municipalities within the county which are either unincorporated or which have requested by resolution of the governing board of such municipality to be included. (SDCL 11-2-11) Upon preparation the Planning and Zoning Commission shall make recommendation to the Board of County Commissioners after complying with the public hearing and noticing requirements set forth in SDCL 11-2-18.
 - b. The comprehensive plan shall be for the purpose of protecting and guiding the physical, social, economic, and environmental development of the county; to protect the tax base; to encourage a distribution of population or mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements; to lessen governmental expenditure; and to conserve and develop natural resources. (SDCL 11-2-12)
2. Zoning Ordinance:
 - a. For the purpose of promoting health, safety, or the general welfare of the county, the County Commission, upon recommendation from the Planning and Zoning Commission, may adopt a zoning Ordinance to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of the yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, flood plain, or other purposes. (SDCL 11-2-13)
 - b. For any of the purposes specified in SDCL 11-2-13, the County Commission may divide the county into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within the districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one (1) district may differ from those in other districts. (SDCL 11-2-14).
 - c. The regulations shall be made in accordance with the Comprehensive Plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration or scattering of population; to facilitate the adequate provision of transportation, water, sewage, schools, parks; and other public requirements. (SDCL 11-2-14)

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- d. The regulations shall be made with reasonable consideration, among other things, to the character of the district, and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the county. (SDCL 11-2-14)
 - e. Upon preparation of a zoning Ordinance, or any amendment thereto, the Planning and Zoning Commission shall make a recommendation to the Board of County Commissioners after complying with the public hearing and noticing requirements set forth in SDCL11-2-18.
3. Subdivision:
- a. The Planning and Zoning Commission may make recommendations to the County Commission for the adoption of a subdivision Ordinance which shall be made in accordance with the Comprehensive Plan. The regulations may establish standards and procedures to be employed in land development including subdividing of land and the approval of land plats and the preservation of streets and land for other public purposes requiring future dedication or acquisition and general design of physical improvements. (SDCL 11-2-17)
 - b. To review proposals for subdivision Ordinance adoption, or amendments thereto, to determine whether such subdivisions comply with the subdivision Ordinance of Brookings County and make recommendation to the Board of County Commissioners relating to the approval of subdivisions.
 - c. Upon preparation of a subdivision Ordinance, or any amendment thereto, the Planning and Zoning Commission shall make a recommendation to the Board of County Commissioners after complying with the public hearing and noticing requirements set forth in SDCL11-2-18.

4. Amendments:

The Planning and Zoning Commission may from time to time propose and make recommendation on amendments to the comprehensive land use plan, zoning Ordinance, and subdivision regulations to the Board of County Commissioners after complying with the public hearing and noticing requirements set forth in SDCL11-2-18 and SDCL 11-2-28.

Section 6.03.05. Procedures for Meetings.

- 1. The members of the Planning and Zoning Commission shall select one (1) of their members as Chair and another as Vice-Chair, who shall act as Chair in the Chair's absence. Both shall serve one (1) year and until their successors have been selected. Meetings of the Planning and Zoning Commission shall be held monthly or at the call of the Chair and at such other times as the Planning and Zoning Commission shall determine. (SDCL 11-2-3.1)
- 2. The Chair, or in his or her absence the acting Chair, may administer oaths and compel the attendance of witnesses in order to execute the purposes of this article. All meetings of the Planning and Zoning Commission shall be open to the public. The Planning and Zoning Commission shall keep minutes of its proceedings and shall keep records of its

examinations and other official actions, all of which shall be immediately filed in the Brookings County Development Department and shall be public record. The Planning and Zoning Commission shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

A simple majority vote of a quorum of members of the Planning and Zoning Board in attendance is required to forward a recommendation, pertaining to its duties described in 6.03.04, on to the Board of County Commissioners.

CHAPTER 6.04. BOARD OF ADJUSTMENT.

Section 6.04.01. Establishment.

1. That pursuant to SDCL 11-2-49 the Brookings County Planning and Zoning Commission shall act as the Board of Adjustment.
2. Within Brookings County, outside of incorporated municipalities, the power and jurisdiction related to this article shall be executed by the Board of Adjustment.
3. The Board of County Commissioners shall appoint two (2) alternates to the Board of Adjustment. If a Planning Commissioner acting as a Board of Adjustment member is unable to participate in a meeting, the alternate, or second alternate in turn, shall serve in the absent Planning Commissioner's place. The term of the Alternates shall be for three (3) years. (SDCL 11-2-50)

Section 6.04.02. Procedures for Meetings.

1. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the Chair and at such other times as the Board of Adjustment may determine. The Chair, or in the Chair's absence the acting Chair, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. (SDCL 11-2- 51)
2. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Brookings County Development Department and are public records. (SDCL 11-2-52)

Section 6.04.03. Powers and Duties of the Board.

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

1. Variance. Authorize upon appeal in specific cases such variance from terms of the Ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship and so that the spirit of the Ordinance is observed and substantial justice done. (SDCL 11-2-53)

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2. Conditional Uses. Hear and determine conditional uses as authorized by the zoning Ordinance. The uses shall be determined by an affirmative vote of the present and voting members of the board of adjustment at a percentage specifically set forth in this zoning Ordinance at 6.05.01(8) (SDCL 11-2-53)
3. Administrative Review. Hear and decide where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Zoning Officer or other administrative officers in the carrying out or enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map. (SDCL 11-2-53)

Section 6.04.04. Power and Jurisdiction Relating to Administrative Review.

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

Section 6.04.05. Board of Adjustment has Powers of Administrative Officer on Appeals: Reversing Decision of Zoning Officer.

1. In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appeal from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Officer from whom the appeal is taken.
2. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (six (6) votes) shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in the application of this ordinance.

Section 6.04.06. Appeals, Record of Appeal, Hearing and Stays.

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Officer, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Officer and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by the laws of the State of South Dakota.
2. An appeal to the Board of Adjustment may be taken by any person meeting the definition of an “aggrieved person” within this ordinance or by an officer, department, board or bureau of the County affected by any decision of the zoning officer, that is not a ministerial act or other preliminary act to bring an application or matter before the Board of Adjustment for hearing and a final decision. Such appeals shall be taken within a reasonable time not to exceed twenty-one (21) days, as provided by the rules of the Board of Adjustment by filing with the Administrative Official from whom the appeal is taken and with the Board of Adjustment specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. All appeals relating to a particular action or property shall be consolidated and heard at the time of the initial appeal.

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3. An appeal stays all proceedings in furtherance of the action appealed from, except ministerial or other preliminary acts necessary to allow consolidated appeals on all matters prior to final decision by the Board of Adjustment, unless the Zoning Officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property.
4. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the office from whom the appeal is taken and on due cause shown.
5. The Board of Adjustment shall hear and decide, on not less than ten (10) days public notice prior to an affixed time and place for hearing appeals where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Zoning Officer or other administrative officers in carrying out the enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map. At the hearing, any party may appear in person or by an agent or attorney.
6. The Board of Adjustment shall decide the appeal within sixty (60) days of receiving a notice of appeal. Any party may appear at the hearing in person or by agent or by attorney.

Section 6.04.07. Appeals to a Court of Record.

Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board, or bureau of the county, aggrieved by any decision of the board of adjustment, may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision in the Brookings County Development Department. (SDCL 11-2-61)

CHAPTER 6.05. PROCEDURES FOR CONDITIONAL USES, VARIANCES, AND ZONING AMENDMENTS.

Section 6.05.01. Powers and Jurisdiction Relating to Conditional Uses.

The Board of Adjustment shall have the power to hear and decide, in accordance with 6.04.03 and any other provisions of this Ordinance, requests for conditional uses or for decisions upon other special questions upon which the Board of Adjustment is authorized by this Ordinance to pass; to decide such questions as are involved in determining whether special conditions and safeguards as are appropriate under this Ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this Ordinance. A conditional use shall not be granted by the Board of Adjustment unless and until:

1. A written application for a conditional use permit is submitted which indicates the section of this Ordinance under which the conditional use is sought and stating the grounds on which it is requested.

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2. The Zoning Official shall notify adjacent property owners by First Class mail at their last known address of the public hearing time and date at least ten (10) days prior to the hearing of the application for the conditional use permit.
3. Notice of time and place of the hearing on an application for conditional use permit shall be published once at least, ten (10) days prior to the Board of Adjustment public hearing, in a legal newspaper of the county.
4. The public hearing shall be held. Any party may appear in person, by agent or attorney.
5. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the conditional use and that the granting of the conditional use will not adversely affect the public interest.
6. Before granting any conditional use, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangements have been made concerning the following, where applicable:
 - a. Entrance and exit to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
 - b. Off-street parking and loading areas where required, with particular attention to the items in (a) above, and the economic, noise, glare or other effects of the conditional use on adjoining properties and properties generally in the district.
 - c. Utilities, refuse, and service areas, with reference to locations, availability, and compatibility.
 - d. Screening and buffering with reference to type, dimensions and character.
 - e. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, compatibility and harmony with properties in the district.
 - f. Required yards and other open space.
 - g. General compatibility with adjacent properties and other property in the district.
 - h. The roads providing access to the property are adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with any affected township or other governmental unit regarding the upgrading and continued maintenance of any roads used for the conditional use requested prior to issuance of a Conditional Use Permit.
 - i. Any required notifications to law enforcement or fire department.
 - j. Any safety inspections required.

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7. In granting any conditional use, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation. The Board of Adjustment may, after notice and hearing, revoke a conditional use permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the conditional use permit may not be transferred during any violation.
8. The concurring vote of a simple majority of the present and voting members of the Board of Adjustment shall be necessary to pass any application for a Conditional Use Permit.
9. Expiration of Conditional Use Permit:
 - a. Unless otherwise specified by the Board of Adjustment, a conditional use permit shall expire three (3) years from the date upon which it becomes effective if no actual construction has commenced.
 - b. If a decision by the Board of Adjustment to grant a Conditional Use Permit is appealed to circuit court, the Conditional Use Permit that was granted does not expire for a period of two (2) years following the completion of any final appeal of the decision.
10. A conditional use permit is transferable, subject to the new permittee signing a letter agreeing to the same terms of the previously issued letter(s) of assurance/Findings of Facts.
11. Any alteration, construction, use of earthmoving equipment, or other change pursuant to a zoning permit or allowed land use on neighboring land that began after the date on which an application for a conditional use is received, and that causes the application to fail to meet one or more of the criteria or requirements for conditional use under the zoning ordinance, does not cause the request for a conditional use permit to be considered nonconforming until a final disposition of the conditional use request is determined pursuant to SDCL 11-2-61 or SDCL 11-2-65. If the conditional use permit is granted, the conditional use shall be considered a lawful use, lot, or occupancy of land or premises and may be continued even though the use, lot, or occupation does not conform to the provisions of the ordinance. If the conditional use is not pursued by the applicant for a period of more than one year, any subsequent use, lot, or occupancy of the land or premises shall conform with the zoning ordinance.

Section 6.05.02. Powers and Jurisdiction Relating to Variances.

The Board of Adjustment shall have the power, where, by reason of exception, narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantially impairing the intent and purpose of this Ordinance. A variance shall not be granted by the Board of Adjustment unless and until:

1. A written application for a variance is submitted, indicating the section of this Ordinance under which the variance is sought and stating the grounds on which it is requested.

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2. The Zoning Official may require the notification of adjacent property owners by First Class mail, at their last known address, of the public hearing at least ten (10) days prior to the hearing of the variance request.
3. Notice of time and place of the hearing on an application for a variance shall be published once at least, ten (10) days prior to the Board of Adjustment public hearing, in a legal newspaper of the county.
4. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
5. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the variance, and that the granting of the variance will not adversely affect the public interest. A variance from the terms of this Ordinance shall not be granted if the following occur:
 - a. There are no special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are applicable to other land, structures, or buildings in the same district;
 - b. The literal interpretation of the provisions of this Ordinance would not deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
 - c. The special conditions and circumstances do result from the actions of the applicant;
 - d. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
 - e. The granting the variance request would confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.
 - f. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
6. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under the terms of this regulation in accordance with 6.05.05.
7. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this regulation in the district involved, or any use expressly or by implication prohibited by the terms of this regulation in said district.
8. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (six (6) votes) shall be necessary to approve an application for a variance.

9. A variance shall expire three (3) years from the date upon which it becomes effective if no work has commenced.

Section 6.05.03. Zoning Amendments (rezoning requests).

1. Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the Planning Commission, as provided herein, the Board of County Commissioners may change zoning district boundaries, use groups, or the regulations established by this Ordinance. A proposed change of zoning district boundaries (rezoning) or regulations may be initiated in the following manners:
 - a. The Board of County Commissioners may direct the Planning Commission to consider a change of zoning district boundaries (rezoning) or regulations;
 - b. The Planning Commission may initiate a change of zoning district boundaries (rezoning) or regulations;
 - c. One (1) or more of the owners of property within the area proposed to be rezoned may present a request to change the zoning district boundaries;
 - d. Initiated petitions specifying and requesting amendments to the regulations of this Ordinance containing signatures of twenty (20) percent of the landowners in the zoning district or districts may be presented to the Zoning Official.
2. Unless otherwise provided for in these regulations, any change in these regulations, shall require Board of County Commissioners approval of an Ordinance describing said changes. The Board of County Commissioners may not consider said Ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said Ordinance amendment.
3. The following procedure for requesting a Zoning Ordinance Amendment or Zoning District Boundary Change (rezoning) shall be followed:

The landowner or other person(s) requesting the Amendment/Boundary change shall complete an application, available from the Zoning Official. Completed applications shall be returned to the Zoning Official for review. To be considered by the Planning Commission and Board of County Commissioners, the application form shall be completed and shall be accompanied by the following items:

- a. Any required attachments and fees, including Registered or Certified Mail.
- b. Intention: A complete statement giving reason and intention for the planned future use of the area proposed for amendment.
- c. Site Plan: A site plan, drawn to scale, showing existing and proposed structures, uses, open space, and facilities for parking and loading, and arrangements for pedestrian and vehicular circulation of the area proposed for amendment and all abutting properties with their use and zoning district defined. Water and sewer facilities must also be shown on site plan.

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- d. A proposed time schedule for beginning and completion of development.
- e. Any additional information, as requested by the Zoning Official, as lawfully may be required to determine conformance with and provide for enforcement of this Ordinance.
- f. The Zoning Official shall review the application, and shall forward a summary of the application, and their comments regarding said application, to the Planning Commission for review.
- g. The Zoning Official shall set the date, time, and place for public hearings to be held by the Planning Commission. An individual landowner may petition the board to change the zoning of all or any part of the landowner's property. The petitioning landowner shall notify abutting and adjoining landowners by registered or certified mail of the petitioned zoning change at least ten (10) days before the public hearing is held on the matter by the planning commission. The landowner shall use information provided by the county director of equalization to determine the abutting and adjoining land owners. Property is considered as abutting and adjoining even though it may be separated from the property of the petitioner by a public road or highway. If the affected property abuts, adjoins, or is within one (1) mile of a county border, the county auditor on behalf of the individual landowner shall also notify, by registered or certified mail, the county auditor in the adjoining county of the petitioned zoning change at least ten (10) days before the public hearing is held on the matter by the planning commission. Certified or registered mailing receipts shall be filed with the Zoning Official ten (10) days prior to the hearing. The Zoning Official shall publish notice of the public hearing in a legal newspaper of the county, such notice shall be published not less than ten (10) days prior to the Planning and Zoning board's public hearing.
- h. Within forty-five (45) days of receipt of a petition for rezoning, the planning commission shall hold a public hearing on any proposed change or modification to the plan or ordinances. Notice of the time and place of the hearing shall be given once at least ten (10) days in advance by publication in a legal newspaper of the county. At the public hearing, any person may appear and request or protest the requested change. The county planning and zoning board shall consider the requested action and make a recommendation thereon to the board of County Commissioners. The Planning Commission shall recommend approval or disapproval of a requested change either in whole or in part. SDCL 11-2-28.2
- i. The Brookings County Board of County Commissioners shall publish notice of the public hearing in a legal newspaper of the county, such notice shall be published not less than ten (10) days prior to the County Commissioner's public hearing.
- j. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the records of each respective board.
- k. Adoption. The Board of County Commissioners shall thereafter by ordinance either adopt or reject the proposed amendment with or without changes. After passage, the Ordinance Amendment shall take effect on the 20th day after its publication in a legal newspaper of the County.

Section 6.05.04. Reapplication.

No application requesting a variance, conditional use, or zoning ordinance amendment or district classification change on any property whose application includes any such property either entirely or substantially the same as that which has been denied by the Board of Adjustment (administrative appeals, variances, and conditional uses) or Board of County Commissioners (Zoning Amendments, Zoning District Boundary Changes), shall again be considered by the Planning Commission, Board of Adjustment or Board of County Commissioners before the expiration of six (6) months from the date of the final action of the Planning Commission, Board of Adjustment, or Board of County Commissioners.

Section 6.05.05. Violations and Penalties.

1. It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the Board of County Commissioners pursuant thereto. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any provisions of this Zoning Ordinance may be subject to a civil or criminal penalty. The maximum penalty for violation of this Zoning Ordinance shall be five hundred dollars (\$500.00) or thirty (30) days in the County Jail or both. In addition, the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification shall constitute a separate offense. All fines for violation shall be paid to the Finance Office and shall be credited to the General Fund of the County.

The owner or tenant of any building, structure, premises, or part thereof, any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided. Nothing herein contained shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation.

2. In the event any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of Brookings County in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct or abate such violation of these regulations, and it is the duty of the State's Attorney to institute such action. (All other standards for conditional uses shall remain the same.)

APPENDIX A

25-Year, 24-Hour Rainfall Map

For South Dakota

APPENDIX 1

Natural Resource Conservation Service South Dakota
Engineering Standard, Waste Storage Ponds 425
Has been replaced by:

Natural Resource
Conservation Service

Conservation Practice
Standard

Waste Storage Facility
(No.) Code 313

Current as of: October 2006

NATURAL RESOURCES CONSERVATION SERVICE

CONSERVATION PRACTICE STANDARD

WASTE STORAGE FACILITY

(No.)

CODE 313

DEFINITION

A waste storage impoundment made by constructing an embankment and/or excavating a pit or dugout, or by fabricating a structure.

PURPOSE

To temporarily store wastes such as manure, wastewater, and contaminated runoff as a storage function component of an agricultural waste management system (AWMS).

CONDITIONS WHERE PRACTICE APPLIES

Where the storage facility is a component of a planned AWMS.

Where temporary storage is needed for organic wastes generated by agricultural production or processing.

Where the storage facility can be constructed, operated, and maintained without polluting air or water resources.

Where site conditions are suitable for construction of the facility.

To facilities utilizing embankments with an effective height of 35 feet or less where damage resulting from failure would be limited to damage of farm buildings, agricultural land, or township and country roads.

To fabricated structures including tanks, stacking facilities, pond appurtenances, and roof structures.

This practice does not apply to storage of human domestic sewage or wastewater.

CRITERIA**General Criteria Applicable to All Waste Storage Facilities.**

Laws and Regulations. Waste storage facilities must be planned, designed, and constructed to meet all federal, state, and local laws and regulations.

Where South Dakota Department of Environment and Natural Resources (SD DENR) approval is to be obtained, SD DENR requirements must be met.

South Dakota dam safety requirements shall be met for construction of facilities utilizing embankments.

Location. Waste storage facilities shall not be located within the 100-year frequency flood plain unless the structure is protected from inundation and damage that may occur during the 100-year frequency flood event.

Waste storage facilities or manure and wastewater disposal sites cannot be located closer than 1,000 feet from an existing public water well or drinking water source nor 250 feet from a well or drinking water source not owned by the producer.

Waste storage facilities or manure and wastewater disposal sites shall not be located closer than 150 feet from a water well or drinking water source that is owned by the producer.

Waste storage facilities shall be located so the potential impacts from breach of embankment, accidental release, and liner failure are minimized; and separation distances are such that prevailing winds and landscape elements such as building arrangement, landforms, and

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vegetation minimize odors and protect aesthetic values.

Storage Period. The storage period is the maximum length of time anticipated between emptying events. The minimum storage period shall be based on the timing required for environmentally safe waste utilization considering the climate, crops, soil, equipment, and local, state, and federal regulations.

Storage facilities that receive drainage from open lots must store at least 365 days of manure, wastewater, and contaminated runoff produced by the livestock operation. Storage facilities that do not receive drainage from open lots must store at least 270 days of manure and wastewater, except facilities emptied only once per year must store at least one-year of waste.

Design Storage Volume. Design storage volume shall consist of the total of the following as appropriate:

Residual volume after liquids have been removed. A minimum of 6 inches shall be provided for tanks and 12 inches for all facilities constructed of earthen materials;

Manure, wastewater, and other wastes accumulated during the storage period;

Normal runoff from the facility's drainage area during the storage period less evaporation calculated on the surface of the pond at the average active storage depth (depth midway between the top of the residual and the maximum operating level) during the storage period;

Average annual precipitation falling on the area inside the top of the structure embankment;

Waste storage facilities for animal feeding operations that commenced construction (or had significant expansion) after February 12, 2003, that require permitting through SD DENR, and that involve waste from swine, poultry or veal, must contain the 100-year frequency, 24-hour duration runoff without discharge. Storage capacity for the 100-year frequency, 24-hour duration storm precipitation on the surface area inside the tops of the

containment dikes must also be contained for these systems;

For other waste storage facilities, include the 25-year frequency, 24-hour duration precipitation runoff (if the structure receives runoff from an open lot or other drainage area), and the depth of the 25-year frequency, 24-hour duration storm precipitation on the surface area inside the tops of the containment dikes; additional storage as may be required to meet management goals or regulatory requirements (including freeboard).

Note - Uncontaminated storm water runoff shall be diverted away from the facility wherever possible.

Freeboard. Design depth for waste storage facilities constructed of earthen materials must include at least two feet of freeboard, except one foot of freeboard may be used for small ponds that do not have significant contributing drainage areas and that will not need SD DENR review or approval.

Fabricated structure design depth must include at least six inches of freeboard.

Maximum Operating Level. The maximum operating level for waste storage facilities shall be the level that provides the volume required by the first four paragraphs under Design Storage Volume.

A permanent marker or recorder shall be installed at this maximum operating level to indicate when drawdown should begin. The marker or recorder shall be referenced and explained in the Operation and Maintenance (O&M) plan.

Active Storage Volume. The active storage volume is defined as the volume at maximum operating level minus residual volume (first paragraph under Design Storage Volume). Active storage depth is defined as the pond depth at maximum operating level minus the depth required for residual volume.

Volume Reduction by Evaporation. Waste Storage Facilities designed to emphasize significant reduction of liquid volume through evaporation must only contain contaminated liquid (not solids). Manure or other solid wastes must be stored in a separate waste

storage facility. A sediment basin or other solids removal method must be used to minimize entry of solids into the evaporation facility.

Dimensions of the evaporation facility will be determined by evaluating the expected annual runoff from the contributing area, the annual rainfall on the pond, and the expected annual evaporation calculated on the surface area at the average active storage depth (see the third paragraph under Design Storage Volume).

Active storage volume for evaporation designs must contain the average annual runoff and precipitation minus the mean annual shallow lake evaporation over a minimum period of five years. A minimum of one-foot of depth must be provided above the residual depth and below the maximum operating level.

The (Design Storage Volume) requirements to provide storage for large storm events above the maximum operating level and to provide freeboard also apply to facilities emphasizing evaporation.

Recommended Minimum Liquid Surface Area for Evaporation Facilities.	
Average Annual Precipitation, inches	Ratio, pond bottom area / drainage area
<18"	0.12
18"-20"	0.15
20"-22"	0.18
22"-24"	0.22
24"-26"	0.30
>26"	0.33

The O&M plan for each evaporation facility shall include specific language to explain that pumping (partial emptying) will be necessary to maintain required storage capacity during periods of wet climatic conditions. The O&M Plan should also address maintaining the moisture content of the bottom and inner side slopes of the facility during drought to reduce cracking and future seepage losses.

Inlet. Inlets shall be of any permanent type designed to resist corrosion, plugging, freeze

damage, and ultraviolet ray deterioration while incorporating erosion protection as necessary.

For inlets carrying solids, the inlet should be designed to deposit waste near the center of the side of the waste storage facility. Minimum pipe diameter shall be 10 inches except as recommended by equipment manufacturers. The preferred pipe slope for gravity flow is one percent. Flatter slopes may be used where provisions are made to clear blockages.

Emptying Component. Some type of component shall be provided for emptying storage facilities. It may be a facility such as a gate, pipe, dock, wet well, pumping platform, retaining wall, or ramp. Features to protect against erosion, tampering, and accidental release shall be incorporated as necessary.

Accumulated Solids Removal. Provision shall be made for periodic removal of accumulated solids to preserve storage capacity. The anticipated method for doing this must be considered in planning, particularly in determining the configuration of ponds and type of seal, if any.

Safety. Design shall include appropriate safety features to minimize the hazards of the facility. Ramps used to empty liquids shall have a slope of four horizontal to one vertical or flatter. Those used to empty slurry, semi-solid, or solid waste shall have a slope of 10 horizontal to 1 vertical or flatter unless special traction surfaces are provided.

Warning signs, fences, ladders, ropes, bars, rails, and other devices shall be provided, as appropriate, to ensure the safety of humans and livestock. Ventilation and warning signs must be provided for covered waste holding structures, as necessary, to prevent explosion, poisoning, or asphyxiation. Pipelines shall be provided with a water-sealed trap and vent, or similar device, if there is a potential, based on design configuration, for gases to enter buildings or other confined spaces. Gravity discharge pipes used for emptying a storage/treatment facility shall have a minimum of two gates or valves, one of which shall be manually operated.

Ponds and uncovered fabricated structures for liquid or slurry waste with walls less than five

feet above ground surface shall be fenced and warning signs posted to prevent children and others from using them for other than their intended purpose.

Erosion Protection. Embankments and disturbed areas surrounding the facility shall be seeded or otherwise treated to control erosion.

Clay Liners. Clay liners must be at least 18 inches thick and compacted to at least 95 percent of standard maximum dry unit weight, and at water content within 2 percent of optimum as determined by ASTM D698. Where SD DENR approval will be obtained, the compacted clay liner must meet SD regulatory requirements.

Flexible Membranes. Flexible membranes must be designed to be waterproof (including seams) and must be designed for permanent exposure to ag waste, soils, and sunlight. Flexible membranes must meet the minimum requirements contained in the NRCS Practice Standard Pond Sealing or Lining – Flexible Membrane (521A). Thicker membranes may be required by state or local government regulatory agencies.

Livestock Access. Livestock shall be prohibited access to the interior of waste storage facilities, with the exception of the interior of roofed structures that are used to provide a portion of the required waste storage capacity.

Waste Stockpiling Outside Feedlots. Stockpiling sites must follow requirements of SD DENR General Water Pollution Control Permit for Concentrated Animal Feeding Operations.

Groundwater Monitoring. Where waste storage facilities are located over shallow aquifers or where discharge to groundwater may occur, regularly sampled groundwater monitoring wells or a Groundwater Discharge Permit may be required. For each affected site, these requirements will be as specified by the SD DENR.

Additional Criteria for Waste Storage Ponds

Soil and foundation. The pond shall be located in soils with an acceptable permeability

that meets all applicable regulation, or the pond shall be lined. Information and guidance on controlling seepage from waste impoundments can be found in the Agricultural Waste Management Field Handbook (AWMFH), Appendix 10D.

The pond shall have a bottom elevation that is a minimum of two feet above the seasonal high water table unless features of special design are incorporated that address buoyant forces, pond seepage rate, and non-encroachment of the water table by contaminants. The water table may be lowered by use of perimeter drains, if feasible, to meet this requirement.

An onsite soils investigation shall be conducted in sufficient detail to determine:

The soil type(s), based on the Unified Soil Classification System;

The need for and extent of seepage control measures required;

Embankment and liner design parameters;

The location of the seasonal high water table, when one is present;

That SD DENR requirements have been met (where applicable);

Soils information must be obtained to a minimum depth of two feet below the bottom of the proposed storage facility.

Outlet. No outlet shall automatically release storage from the required design volume. Manually operated outlets shall be of permanent type designed to resist corrosion and plugging.

Embankments. The minimum elevation of the top of the settled embankment shall be one foot above the waste storage pond's required volume. Required fill height shall be increased by the amount needed to ensure that the top elevation will be maintained after settlement.

Where required compaction is less than 95 percent of ASTM D698 standard maximum dry unit weight, the fill height increase for settlement shall not be less than five percent. Minimum freeboard for facilities permitted by SD DENR must meet state regulations.

Earth embankment slopes must be designed to be stable and must be three horizontal to one vertical or flatter.

The minimum top widths are shown in Table 1.

Table 1 – Minimum Top Widths

Total Embankment Height at Centerline, ft	Top Width, feet
19.9 or less	10
20–24.9	12
25–29.9	14
30–35	15

Note - SD DENR may require other top widths.

Excavations. Unless supported by a soil investigation, excavated side slopes shall be no steeper than two horizontal to one vertical.

Wind and Wave Protection. Erosion protection shall be provided for earthen waste storage facilities having a five-acre or larger liquid surface at maximum operating level.

Additional Embankment Criteria for Storage Ponds Receiving Runoff from Contributing Drainage Areas.

Additional embankment overtopping protection must be provided for embankment storage ponds that receive runoff from contributing drainage areas. Overtopping protection may take the form of embankment armoring, additional storage capacity or an auxiliary spillway.

Where designs include auxiliary spillways, the crest of the auxiliary spillway must be at least one foot above design storage elevation, and settled embankment top elevation must be at least 1 foot above the water surface during passage of runoff from the 25-year frequency, 24-hour duration storm occurring when the design volume is filled. The auxiliary spillway may be a channel, chute structure, drop structure, or overflow pipe. Earthen channel auxiliary spillways must have four foot minimum bottom width. Chute and drop structure spillways must have four foot minimum weir width. Overflow pipes must have six inch minimum nominal diameter. Auxiliary spillway outflows must not be directed onto property not owned by the owner/operator, within 250 feet of the structure.

All embankment storage ponds without an auxiliary spillway must have settled embankment top elevation a minimum of one foot above design storage volume, and must not be overtopped by the runoff from a 25-year frequency, 24-hour duration storm occurring when the design storage volume is filled.

Minimum freeboard for facilities permitted by SD DENR must also meet state regulations.

Additional Criteria for Roofed Animal Production Facilities Utilized to Minimize Contaminated Runoff

When a roof structure is used to eliminate contaminated runoff, the structure shall be designed to prevent manure under the roof from becoming a pollution problem. Roofs shall be designed for the snow and wind loads found in the local building code.

Building Structural Requirements. All foundation or structural components will meet the requirements contained in this standard under "Criteria for Fabricated Structures."

The design and construction of the roof structure shall be approved and sealed by a professional engineer licensed to practice engineering in the state of SD.

Design Storage Volume. It is recognized that the floor area of these facilities will provide some portion of the overall waste storage capacity. The minimum required capacity for process generated wastes associated with this type facility will be 270 days. Storage capacity for manure and bedding shall be provided within the roofed structure and/or other storage facilities that will meet all minimum requirements of this standard. Storage facilities that are exposed to direct precipitation will meet all minimum requirements for storage capacity defined elsewhere in this standard for waste storage ponds.

Roofed Structure Floor Requirements. For floor slabs constructed with concrete, the minimum thickness of the slab on uniform foundations shall be five inches and shall contain distributed reinforcing steel.

In order to control seepage, the concrete slab shall be constructed with water stops in all construction joints or placed over a twelve inch

thick compacted clay lining designed according to procedures in the AWMFH, Chapter 10, Appendix 10D. A minimum four-inch thick layer of sand and gravel shall be utilized above the clay lining to minimize the potential for cracking of the concrete due to moisture or frost heaving.

Flexible impermeable membranes may be utilized in place of the compacted clay lining beneath a concrete floor. Flexible membranes must meet the minimum requirements contained in the NRCS Practice Standard Pond Sealing or Lining – Flexible Membrane (521A). A minimum 16-inch thick layer consisting of a 12-inch thick layer of earthen materials placed above the membrane and 4 inches of sand and gravel immediately below the concrete shall be utilized for protection of the membrane during concrete placement.

For roof structure floors constructed of earthen materials, an 18-inch thick compacted clay lining designed according to procedures in the AWMFH, Chapter 10, Appendix 10D, will be utilized to control seepage from the floor used as a waste storage area. A 12-inch thick layer of compacted earthen material over a flexible membrane may also be used. Provisions for maintaining the integrity of the clay lining or impermeable membrane will be included in the O&M plan for the facility.

Nutrient Management. A Comprehensive Nutrient Management Plan which will meet the Conservation Practice Standard Nutrient Management (590) will be developed and implemented as a part of the roofed structure system of components for waste storage.

Additional Criteria for Fabricated Structures

Foundation. The foundations of fabricated waste storage structures shall be proportioned to safely support all superimposed loads without excessive movement or settlement.

Where a non-uniform foundation cannot be avoided or applied loads may create highly variable foundation loads; settlement should be calculated from site-specific soil test data. Index tests of site soil may allow correlation with similar soils for which test data is available. If no test data is available,

presumptive bearing strength values for assessing actual bearing pressures may be obtained from Table 2 or another nationally recognized building code. In using presumptive bearing values, adequate detailing and articulation shall be provided to avoid distressing movements in the structure.

Foundations consisting of bedrock with joints, fractures, or solution channels shall be treated or a separation distance provided consisting of a minimum of one foot of impermeable soil between the floor slab and the bedrock or an alternative that will achieve equal protection.

Table 2 - Presumptive Allowable Bearing Stress Values^{1/}

Foundation Description	Allowable Stress
Crystalline Bedrock	12000 psf
Sedimentary Rock	6000 psf
Sandy Gravel or Gravel	5000 psf
Sand, Silty Sand, Clayey Sand, Silty Gravel, Clayey Gravel	3000 psf
Clay, Sandy Clay, Silty Clay, Clayey Silt	2000 psf
^{1/} Basic Building Code, 12th Edition, 1993, Building Officials and Code Administrators, Inc. (BOCA)	

Liquid Tightness. Applications such as tanks that require liquid tightness shall be designed and constructed in accordance with standard engineering and industry practices to achieve liquid tightness.

Structural Loadings. Waste storage structures shall be designed to withstand all anticipated loads including internal and external loads, hydrostatic uplift pressure, concentrated surface and impact loads, water pressure due to seasonal high water table, and frost or ice pressure and load combinations in compliance with this standard and applicable local building codes.

Lateral earth pressures should be calculated from soil strength values determined from the results of appropriate soil tests. Lateral earth pressures can be calculated using the procedures in Natural Resources Conservation Service Technical Release 74, Lateral Earth Pressures, (TR-74). If soil strength tests are not available, the presumptive lateral earth

pressure values indicated in Table 3 shall be used.

Lateral earth pressures based upon equivalent fluid assumptions shall meet the following:

Rigid frame or restrained wall. Use the values shown in Table 3 under the column "Frame tanks," which gives pressures comparable to the at-rest condition.

Flexible or yielding wall. Use the values shown in Table 3 under the column "Free-standing walls," which gives pressures comparable to the active condition. Walls in this category are designed on the basis of gravity for stability or are designed as a cantilever having a base wall thickness to height of backfill ratio not more than 0.085.

Equivalent fluid pressures lower than 60 lbs./ft.²/ft. depth, are appropriate for design only where excellent drainage is provided for backfill.

Internal lateral pressure used for design shall be 65 lb/ft² where the stored waste is not protected from precipitation. A value of 60 lb/ft² may be used where the stored waste is protected from precipitation and will not become saturated. Lesser values may be used if supported by measurement of actual pressures of the waste to be stored. If heavy equipment will be operated near the wall, an additional two feet of soil surcharge shall be considered in the wall analysis.

Tank covers shall be designed to withstand both dead and live loads. The live load values for covers contained in ASAE EP378.3, Floor and Suspended Loads on Agricultural Structures Due to Use, and in ASAE EP 393.2, Manure Storages, shall be the minimum used. The actual axle load for tank wagons having more than a 2,000 gallon capacity shall be used.

If the facility is to have a roof, snow, and wind loads shall be as specified in ASAE EP288.5, Agricultural Building Snow and Wind Loads. If the facility is to serve as part of a foundation or support for a building, the total load shall be considered in the structural design.

Structural Design. The structural design shall consider all items that will influence the

performance of the structure, including loading assumptions, material properties, and construction quality. Design assumptions and construction requirements shall be indicated on standard plans.

Tanks may be designed with or without covers. Covers, beams, or braces that are integral to structural performance must be indicated on the construction drawings. The openings in covered tanks shall be designed to accommodate equipment for loading, agitating, and emptying. These openings shall be equipped with grills or secure covers for safety, and for odor and vector control.

All structures shall be underlain by free draining material or shall have a footing located below the anticipated frost depth.

A single layer of steel placed near the center of the slab or wall may be used for members that are not more than eight inches thick.

Trusses delivered to job site shall be accompanied with a certification stamped by a professional engineer showing that the truss design conforms to this standard for the building dimension shown on the drawings.

Fabricated structures shall be designed according to the criteria in the following references as appropriate:

Steel: "Manual of Steel Construction," American Institute of Steel Construction.

Timber: "National Design Specifications for Wood Construction," American Forest and Paper Association.

Concrete: "Building Code Requirements for Reinforced Concrete, ACI 318," American Concrete Institute.

Masonry: "Building Code Requirements for Masonry Structures, ACI 530," American Concrete Institute.

Midwest Plan Service (MWPS-36) Concrete Manure Storage Handbook available from the Extension Service.

Slabs on Grade. Slab design shall consider required performance and the critical applied loads along with both the subgrade material and material resistance of the concrete slab. Where applied point loads are minimal and

liquid-tightness is not required and the subgrade is uniform and dense, the minimum slab thickness shall be 4 inches with a maximum joint spacing of 10 feet. Joint spacing can be increased if steel reinforcing is added based on subgrade drag theory.

For applications where liquid-tightness is required such as floor slabs of storage tanks, the minimum thickness for uniform foundations shall be five inches and shall contain distributed reinforcing steel. The required area

of such reinforcing steel shall be based on subgrade drag theory as discussed in industry guidelines such as American Concrete Institute, ACI 360, "Design of Slabs-on-Grade."

When heavy equipment loads are to be resisted and/or where a non-uniform foundation cannot be avoided, an appropriate design procedure incorporating a subgrade resistance parameter(s) such as ACI 360 shall be used.

Table 3 - Lateral earth pressure values^{1/}

Soil		Equivalent fluid pressure (lb/ft ² /ft of depth)			
		Above seasonal high water table ^{2/}		Below seasonal high water table ^{3/}	
Description ^{4/}	Unified Classification ^{4/}	Free-standing walls	Frame tanks	Free-standing walls	Frame tanks
Clean gravel, sand or sand-gravel mixtures (maximum 5% fines) ^{5/}	GP, GW, SP, SW	30	50	80	90
Gravel, sand, silt and clay mixtures (less than 50% fines) Coarse sands with silt and and/or clay (less than 50% fines)	All gravel sand dual symbol classifications and GM, GC, SC, SM, SC-SM	35	60	80	100
Low-plasticity silts and clays with some sand and/or gravel (50% or more fines) Fine sands with silt and/or clay (less than 50% fines)	CL, ML, CL-ML SC, SM, SC-SM	45	75	90	105
Low to medium plasticity silts and clays with little sand and/or gravel (50% or more fines)	CL, ML, CL-ML	65	85	95	110
High plasticity silts and clays (liquid limit more than 50) ^{6/}	CH, MH	-	-	-	-

^{1/} For lightly-compacted soils (85 percent to 90 percent maximum standard density.) Includes compaction by use of typical farm equipment.

^{2/} Also below seasonal high water table if adequate drainage is provided.

^{3/} Includes hydrostatic pressure.

^{4/} All definitions and procedures in accordance with ASTM D 2488 and D 653.

^{5/} Generally, only washed materials are in this category

^{6/} Not recommended. Requires special design if used.

CONSIDERATIONS

Waste storage facilities should be located as close to the source of waste and polluted runoff as practicable.

Non-polluted runoff should be excluded from the structure to the fullest extent possible except where its storage is advantageous to the operation of the agricultural waste management system.

Solid/liquid separation of runoff or wastewater entering pond facilities should be considered to minimize the frequency of accumulated solids removal and to facilitate pumping and application of the stored waste.

Due consideration should be given to environmental concerns, economics, the overall waste management system plan, and safety and health factors.

Considerations for Minimizing the Potential for and Impacts of Sudden Breach of Embankment or Accidental Release from the Required Volume.

Features, safeguards, and/or management measures to minimize the risk of failure or accidental release, or to minimize or mitigate impact of this type of failure should be considered when any of the categories listed in "Potential Impact Categories from Breach of Embankment or Accidental Release" might be significantly affected.

The following should be considered either singly or in combination to minimize the potential of, or the consequences of, sudden breach of embankments when one or more of the potential impact categories listed under "Potential Impact Categories from Breach of Embankment or Accidental Release" may be significantly affected:

An auxiliary (emergency) spillway;

Additional freeboard;

Storage for wet year rather than normal year precipitation;

Reinforced embankment -- such as, additional top width, flattened, and/or armored downstream side slopes;

Protection of exterior embankment slopes which may be exposed to erosive flow conditions when located on or near floodplains.

Secondary Containment.

The following options should be considered to minimize the potential for accidental release from the required volume through gravity outlets when one or more of the potential impact categories listed in the "Potential Impact Categories from Breach of Embankment or Accidental Release" may be significantly affected:

Outlet gate locks or locked gate housing;

Secondary containment;

Alarm system;

Another means to empty the required volume.

Potential Impact Categories from Breach of Embankment or Accidental Release

Surface water bodies -- perennial streams, lakes, wetlands, and estuaries.

Critical habitat for threatened and endangered species.

Riparian areas.

Farmstead, or other areas of habitation.

Off farm property.

Historical and/or archaeological sites or structures that meet the eligibility criteria for listing in the National Register of Historical Places.

Considerations for Minimizing the Potential of Waste Storage Pond Liner Failure

Sites with categories listed under "Potential Impact Categories for Liner Failure" should be avoided if possible. If avoidance is not possible, give consideration to providing an additional measure of safety from seepage.

Should any of the potential impact categories listed in "Potential Impact Categories for Liner Failure" be affected, consideration should be given to the following:

A clay liner designed in accordance with procedures in AWMFH, Chapter 10, Appendix 10D;

A flexible membrane liner over a clay liner;

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A geosynthetic clay liner flexible membrane liner;

A concrete liner designed in accordance with slabs on grade criteria for fabricated structures requiring water tightness.

Potential Impact Categories for Liner Failure

Any underlying aquifer is at a shallow depth and not confined.

The vadose zone is rock.

The aquifer is a domestic water supply or ecologically vital water supply.

The site is located in an area of solutionized bedrock such as limestone or gypsum.

Considerations for Improving Air Quality

To reduce emissions of greenhouse gases, ammonia, volatile organic compounds, and odor, other practices such as Anaerobic Digester, Ambient Temperature (365); Anaerobic Digester, Controlled Temperature (366); Waste Facility Cover (367); and Composting Facility (317) can be added to the waste management system.

Adjusting pH below seven may reduce ammonia emissions from the waste storage facility but may increase odor when waste is surface applied (see Waste Utilization, (633)).

Some fabric and organic covers have been shown to be effective in reducing odors.

PLANS AND SPECIFICATIONS

Plans and specifications shall be prepared in accordance with the criteria of this standard and shall describe the requirements for applying the practice to achieve its purpose.

OPERATION AND MAINTENANCE

An O&M plan shall be developed that is consistent with the purposes of the practice, its design life, safety requirements, and design criteria.

The plan shall contain the operational requirements for emptying the storage facility. This shall include the requirement that waste shall be removed from storage and utilized at

locations, times, rates, and volume in accordance with the overall waste management system plan. Include an explanation of permanent markers or recorders installed to indicate maximum operating level.

Include a strategy for removal and disposition of waste with least environmental damage during the normal storage period to the extent necessary to insure the pond's safe operation. This strategy includes removal of the contribution of unusual storm events that may cause the pond to fill to capacity prematurely with subsequent inflow prior to the end of the normal storage period.

Development of an emergency action plan should be considered for waste storage facilities where there is a potential for significant impact from breach or accidental release. Include site-specific provisions for emergency actions that will minimize these impacts.

Where evaporation facilities are included, the O&M plan shall include specific language to explain that pumping (partial emptying) will be necessary to maintain required storage capacity during very wet weather. The O&M plan should also address maintaining the moisture content of the bottom and inner side slopes of the facility during drought to reduce cracking and future seepage losses.

REFERENCES

ASAE. 1991. EP 393.2 - Manure Storages,
ASAE. 1992. EP470 - Manure Storage Safety.
ASAE. St. Joseph, MI

Midwest Plan Service. 1993. Livestock Waste Facilities Handbook, 3rd Ed. (MWPS-18),
Midwest Plan Service. 1994. Concrete Manure Storages Handbook. (MWPS-36),
Department of Agricultural and Biosystems Engineering, Iowa State University, Ames, IA.

Agricultural Waste Management Field Handbook. 1992. USDA - NRCS, Washington, D.C.

South Dakota Department of Environment and Natural Resources references.

Animal Waste Management to Protect Water Quality (EC-895), South Dakota Cooperative Extension Service.

Technical Reports 33 and 34, National Oceanic and Atmospheric Administration (NOAA).

APPENDIX 2

Not used at this time.

APPENDIX 3

EPA SARA Title III
Extremely Hazards List
Is on file at the Brookings
County Emergency
Management and Zoning
Offices

ADDENDUM 1

Right-To-Farm Covenant

BROOKINGS COUNTY ORDINANCE NO. 2024-01

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF ORDINANCE 2015-03

WHEREAS, BROOKINGS COUNTY previously adopted Ordinance 2015-03, which re-adopted the 1997 Revised Zoning Ordinance in accordance with Chapter 11-2;

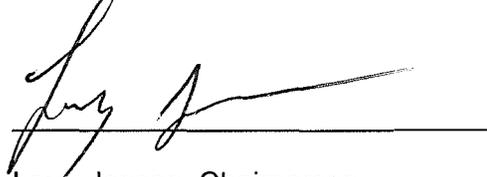
WHEREAS, the Brookings County, South Dakota, Board of County Commissioners deems it necessary, for the purpose of promoting the health, safety, and the general welfare of the County, to amend Ordinance 2015-03 by repealing the following Articles: Article 1.00 Short Title and Application; Article 2.00 Definitions; Article 3.00 Establishment of Districts; Article 4:00 Non-conforming Uses or Lots of Record; Article 9.00 Legal Status Provisions; Article 11.00 Agricultural Districts; Article 17: General Requirements; Article 18: Minimum Mobile/Manufactured Home Requirements; Article 19: Shelterbelt Setback Requirements; Article 20: Home Occupations; Article 21: Extended Home Occupations; Article 22: Concentrated Animal Feeding Operations, Article 23: Wind Energy Systems (WES) Requirements; Article 24: Transmission Pipeline Risk Reduction Overlay District. And replacing said Articles with Article I General Provisions-Chapter 1.01 Title and Application.; Chapter 1.02 Ordinance Provisions.; Chapter 1.03 Official Zoning Map.; Article II Definitions.; Article III District Regulations-Chapter 3.01 Application of District Regulations.; Chapter 3.02 Nonconforming Uses.; Chapter 3.03 Zoning Districts; Article IV District Requirements-Chapter 4.01 "A" Agricultural Land District.; Chapter 4.07 Transmission Pipeline Risk Reduction Overlay District.; Article V General Requirements-Chapter 5.01 Vision Clearance on Corner Lots.; Chapter 5.02 Permanent Foundation Required for Dwelling.; Chapter 5.03 Utility Easements.; Chapter 5.04 Erection of More Than One Principal Structure on A Lot.; Chapter 5.05 Structures to Have Access.; Chapter 5.06 Minimum Water and Sewer Requirements.; Chapter 5.07 Refuse.; Chapter 5.08 Reserved.; Chapter 5.09 Manufactured Home Regulations.; Chapter 5.10 Yards.; Chapter 5.11 Accessory Buildings.; Chapter 5.12 Signs.; Chapter 5.13 Moved in Buildings.; Chapter 5.14 Shelterbelt Setback Requirements.; Chapter 5.15 Existing Farmstead Exemptions.; Chapter 5.16 Home Occupations.; Chapter 5.17 Cannabis Dispensaries.; Chapter 5.18 Exceptions to Front Yard Setbacks for Agricultural Structures.; Chapter 5.19 Agricultural Tourism.; Chapter 5.20 Reserved.; Chapter 5.21 Bed and Breakfast Establishments.; Chapter 5.22 Concentrated Animal Feeding Operations.; Chapter 5.23 Commercial Public Entertainment Enterprise Requirements.; Chapter 5.24 Extended Home Occupations.; Chapter 5.25 Game Lodge Requirements.; Chapter 5.26 Junkyards/Salvage Yard Requirements.; Chapter 5.27 Wind Energy Systems (WES) Requirements.; Chapter 5.28 Meteorological Towers.; Chapter 5.29 Private Wind Energy Conversions Systems (PWECS).; Chapter 5.30 Religious Farming Community.; Chapter 5.31 Sand, Gravel or Quarry Operations, Rock Crushers; Mineral Exploration and Development and Concrete and Asphalt Mixing Plants Requirements.; Chapter 5.32 Sanitary Landfills, Rubble Sites, Composting Sites, Waste Tire Sites and Restricted Use Site Requirements.; Chapter 5.33 Domestic Sanitary Sewer Treatment Plant/Facility Requirements.; Chapter 5.34 Commercial Shooting Range Requirements.; Chapter 5.35 Solar Energy Conversion Systems (SES).; Chapter 5.36 Wireless Telecommunications Towers and Facilities.; Chapter 5.37 Adult Use Regulations.; Chapter 5.38 Campgrounds.; Chapter 5.39 Contractor Shop and Yard Requirements.; Chapter 5.40 Reserved.; Chapter 5.41 Resort.; Chapter 5.42 Reserved.; Chapter 5.43 Reserved.; Chapter 5.44 Right to Farm Notice Covenant.; Article VI Administration as amended. Article IV District Requirements-Chapter 4.02 "CI"-Commercial/Industrial Districts, Chapter 4.03 - "LP" Lake

Park Districts, Chapter 4.04 – Natural Resources Districts, Chapter 4.05 – Flood Damage Prevention, Chapter 4.06 – Aquifer Protection shall remain the same as attached and repealing conflicting Ordinances.

THEREFORE, BE IT ORDAINED BY BROOKINGS COUNTY, SOUTH DAKOTA, that Ordinance 2015-03 is hereby amended by repealing the following Articles: Article 1.00 Short Title and Application; Article 2.00 Definitions; Article 3.00 Establishment of Districts; Article 4:00 Non-conforming Uses or Lots of Record; Article 9.00 Legal Status Provisions; Article 11.00 Agricultural Districts; Article 17: General Requirements; Article 18: Minimum Mobile/Manufactured Home Requirements; Article 19: Shelterbelt Setback Requirements; Article 20: Home Occupations; Article 21: Extended Home Occupations; Article 22: Concentrated Animal Feeding Operations, Article 23: Wind Energy Systems (WES) Requirements; Article 24: Transmission Pipeline Risk Reduction Overlay District. And replacing said Articles with Article I General Provisions-Chapter 1.01 Title and Application.; Chapter 1.02 Ordinance Provisions.; Chapter 1.03 Official Zoning Map.; Article II Definitions.; Article III District Regulations-Chapter 3.01 Application of District Regulations.; Chapter 3.02 Nonconforming Uses.; Chapter 3.03 Zoning Districts; Article IV District Requirements-Chapter 4.01 “A” Agricultural Land District.; Chapter 4.07 Transmission Pipeline Risk Reduction Overlay District.; Article V General Requirements-Chapter 5.01 Vision Clearance on Corner Lots.; Chapter 5.02 Permanent Foundation Required for Dwelling.; Chapter 5.03 Utility Easements.; Chapter 5.04 Erection of More Than One Principal Structure on A Lot.; Chapter 5.05 Structures to Have Access.; Chapter 5.06 Minimum Water and Sewer Requirements.; Chapter 5.07 Refuse.; Chapter 5.08 Reserved.; Chapter 5.09 Manufactured Home Regulations.; Chapter 5.10 Yards.; Chapter 5.11 Accessory Buildings.; Chapter 5.12 Signs.; Chapter 5.13 Moved in Buildings.; Chapter 5.14 Shelterbelt Setback Requirements.; Chapter 5.15 Existing Farmstead Exemptions.; Chapter 5.16 Home Occupations.; Chapter 5.17 Cannabis Dispensaries.; Chapter 5.18 Exceptions to Front Yard Setbacks for Agricultural Structures.; Chapter 5.19 Agricultural Tourism.; Chapter 5.20 Reserved.; Chapter 5.21 Bed and Breakfast Establishments.; Chapter 5.22 Concentrated Animal Feeding Operations.; Chapter 5.23 Commercial Public Entertainment Enterprise Requirements.; Chapter 5.24 Extended Home Occupations.; Chapter 5.25 Game Lodge Requirements.; Chapter 5.26 Junkyards/Salvage Yard Requirements.; Chapter 5.27 Wind Energy Systems (WES) Requirements.; Chapter 5.28 Meteorological Towers.; Chapter 5.29 Private Wind Energy Conversions Systems (PWECS).; Chapter 5.30 Religious Farming Community.; Chapter 5.31 Sand, Gravel or Quarry Operations, Rock Crushers; Mineral Exploration and Development and Concrete and Asphalt Mixing Plants Requirements.; Chapter 5.32 Sanitary Landfills, Rubble Sites, Composting Sites, Waste Tire Sites and Restricted Use Site Requirements.; Chapter 5.33 Domestic Sanitary Sewer Treatment Plant/Facility Requirements.; Chapter 5.34 Commercial Shooting Range Requirements.; Chapter 5.35 Solar Energy Conversion Systems (SES).; Chapter 5.36 Wireless Telecommunications Towers and Facilities.; Chapter 5.37 Adult Use Regulations.; Chapter 5.38 Campgrounds.; Chapter 5.39 Contractor Shop and Yard Requirements.; Chapter 5.40 Reserved.; Chapter 5.41 Resort.; Chapter 5.42 Reserved.; Chapter 5.43 Reserved.; Chapter 5.44 Right to Farm Notice Covenant.; Article VI Administration as amended. Article IV District Requirements-Chapter 4.02 “CI”- Commercial/Industrial Districts, Chapter 4.03 - “LP” Lake Park Districts, Chapter 4.04 – Natural Resources Districts, Chapter 4.05 – Flood Damage Prevention, Chapter 4.06 – Aquifer Protection shall remain the same as attached and repealing conflicting Ordinances.

Adopted this 19th day of March 2024.

BROOKINGS COUNTY:

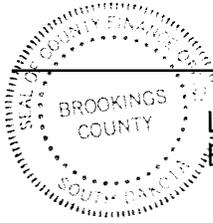


Larry Jensen, Chairperson,
Brookings County
Board of County Commissioners

ATTEST:



Lori Schultz
Brookings County Finance Officer



First Reading: February 20, 2024
Second Reading: March 19, 2024
Adopted: March 19, 2024
Publications: March 28, 2024, and April 4, 2024
Effective Date: April 25, 2024

BROOKINGS COUNTY ORDINANCE NO. 2024-05

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF ORDINANCE 2024-01

WHEREAS, BROOKINGS COUNTY, previously adopted Ordinance 2024-01 in accordance with SDCL Chapter 11-2;

WHEREAS, the Brookings County, South Dakota, Board of County Commissioners deems it necessary, for the purpose of promoting the health, safety, and the general welfare of the County, to amend Ordinance 2024-01 by amending Article V General Requirements: Chapter 5.22. Concentrated Animal Feeding Operations: Section 5.22.05. Concentrated Animal Feeding Operation Control Requirements, # 9 Standards for Conditional Uses.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BROOKINGS COUNTY, SOUTH DAKOTA: that "Article V General Requirements: Chapter 5.22. Concentrated Animal Feeding Operations: Section 5.22.05. Concentrated Animal Feeding Operation Control Requirements: # 9 Standards for Conditional Uses" is hereby amended by adding subsection letter "e" in underline font.

"e. The permit holder shall provide and at all times maintain General Liability insurance in the amount of at least \$1,000,000.00, with an Environmental Protection Insurance rider of at least \$100,000.00. Proof of such insurance must be received prior to the issuance of a permit and must be provided annually during the operation of such CAFO. The insurance carrier shall be required to provide Brookings County with notice of insurance and with a notice of cancellation or change in coverage. Failure to maintain such insurance shall be grounds for cancellation of the Conditional Use Permit." (all other standards for conditional uses shall remain the same.)

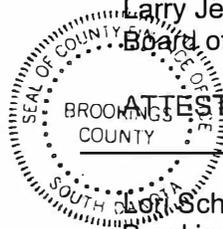
Adopted this 6th day of August 2024.

BOARD OF COMMISSIONERS

By: _____

Larry Jensen, Chairman
Board of Commissioners

First Reading: July 16, 2024
Second Reading: August 6, 2024
Adopted: August 6, 2024
Published: August 15, 2024
Effective date: September 5, 2024



ATTEST:

Lori Schultz
Brookings County Finance Officer

Ordinance # 2025-01

ORDINANCE # 2025-01, AN ORDINANCE AMENDING #2024-01, "THE BROOKINGS COUNTY ZONING ORDINANCE," AS AMENDED.

BE IT ORDAINED by the Board of County Commissioners of Brookings County, South Dakota that Section 3.03.01 Districts [Chapter 3.03. Zoning Districts], which was adopted by Ordinance #2024-01, The Brookings County Zoning Ordinance, as amended, be amended by adding the following text in bold and underlined font, and removing the following text in strikethrough font:

6. "FP" FLOODPLAIN PROTECTION OVERLAY DISTRICT – The Flood~~plain Protection~~ Overlay District is established to protect the natural environment and resources from destructive land uses and to protect lives and property along and adjacent to streams and rivers.

BE IT ORDAINED by the Board of County Commissioners of Brookings County, South Dakota that Chapter 4.05 FLOOD DAMAGE PREVENTION., which was adopted by Ordinance # 2024-01, The Brookings County Zoning Ordinance, as amended, be amended by replacing it in its entirety with the following text in bold and underlined font:

CHAPTER 4.05 FLOODPLAIN DISTRICT.

Section 4.05.01. Statutory Authorization, Findings of Fact, Purpose and Methods of Reducing Flood Losses.

1. Statutory Authorization

The Legislature of the State of South Dakota has in SDCL Chapter 11-2-13 and 11-4-1 delegated the responsibility to local governmental units to adopt land use regulations designed to promote the public health, safety, and general welfare of its citizenry through flood plain and land use regulation. Therefore, the Board of County Commissioners of Brookings County, South Dakota, ordains as follows:

Brookings County elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program (NFIP) is a voluntary program administered by the Federal Emergency Management Agency (FEMA), a component of the U.S. Department of Homeland Security, and Brookings County's community officials have elected to join the program, participate and enforce these flood damage prevention regulations to areas not identified as Special Flood Hazard Areas (SFHAs) by FEMA on the community's effective Flood Insurance Rate Map (FIRM), if the community has documentation to support that there is an inherent risk of flooding in such areas.

2. Findings of Fact

a. The flood hazard areas of Brookings County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare of the inhabitants of the Brookings County.

b. These potential flood losses are caused by:

i) The cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities;

ii) The occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage; and

iii) Uses deemed unsuitable for floodplain areas or that do not account for the increased flood risk.

3. Statement of Purpose. It is the purpose of this Ordinance to promote the public health safety, and general welfare, and to minimize public and private losses due to flood conditions to specific areas by provisions designed:

a. To protect human life and health.

b. To minimize expenditure of public expenditures flood control projects.

c. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.

d. To minimize prolonged business interruptions caused by flooding.

e. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard.

f. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.

g. To ensure that potential buyers are notified that property is in an area of special flood hazard.

4. Methods of Reducing Flood Losses. In order to accomplish its purpose, this Ordinance includes methods and provisions for:

- a. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in times of flooding, or cause excessive increases in flood heights or velocities;**
- b. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;**
- c. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters.**
- d. Controlling filling, grading, dredging, and other development which may increase flood damage.**
- e. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters, or which may increase flood hazards in other areas.**

Section 4.05.02. Definitions.

In addition to the Definitions in Article II of this ordinance, unless specifically defined below, words or phrases used in Chapter 4.05 shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance its most reasonable application. The definitions contained in Section 4.05.02 shall supersede the definitions in Article II of this ordinance only in the interpretation of Chapter 4.05 of this ordinance. In all other cases where these definitions conflict with the definitions in Article II, the definitions in Article II shall apply.

***100-Year Flood* means a flood having a recurrence interval that has a 1-percent chance of being equaled or exceeded during any given year (1-percent-annual-chance flood). The terms "100-hundred-year flood" and "1-percent-annual-chance flood" are synonymous. The term does not imply that the flood will necessarily happen once every 100 hundred years. Mandatory flood insurance requirements may apply.**

***100-Year Floodplain* means the area of land susceptible to being inundated due to the occurrence of a 1-percent-annual-chance flood.**

***500-Year Flood* means a flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-annual-chance flood). The term does not imply that the flood will necessarily happen once**

every 500 years and mandatory flood insurance requirement generally does not apply.

500-Year Floodplain means the area of land susceptible to being inundated due to the occurrence of a 0.2-percent-annual-chance flood.

Accessory Structure is a structure that is on the same parcel of property as a principal structure. Its use is incidental to the use of the principal structure the ownership of the accessory structure is the same owner as of the principal structure. An accessory structure is a non-residential structure of low value that is used solely for the parking of vehicles and storage of tools, materials, or equipment. No human habitation is allowed within an accessory structure.

Addition is any improvement that expands the enclosed footprint or increases the square footage of an existing structure. This includes lateral additions added to the side, front, or rear of a structure; vertical additions added on top of a structure; and enclosures added underneath a structure.

Alluvial Fan Flooding means flooding occurring on the surface of an alluvial fan or similar landform that originates at the apex. It is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appurtenant Structure—see Accessory Structure.

Area of Future-Conditions Flood Hazard means the land area that would be inundated by the 1-percent-annual-chance (100-year) flood, based on future-conditions hydrology.

Area of Shallow Flooding means a designated AO, AH, AR/AO, or AR/AH zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood-Related Erosion Hazard is the land within a community that is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area, in preparation for publication of the FIRM, Zone E may be further refined.

Area of Special Flood Hazard is the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, or V1-30, VE, or V. For purposes of these regulations, the term “special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard”.

Base Flood means the flood having a 1-percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) is the water surface elevation of the 1-percent-annual-chance flood event. It is the height in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas. It is also the elevation shown on the FIRM and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1-percent chance of equaling or exceeding that level in any given year.

Basement means any area of the building having its floor subgrade (below ground level) on all sides. A walkout basement that does not require a step up to grade is not considered a basement.

Best Available Data is existing flood hazard information adopted by a community and reflected on an effective FIRM, FBFM, and/or within an FIS report; or draft or preliminary flood hazard information supplied by FEMA or from another source. Other sources may include, but are not limited to, state, other federal agencies, or local studies, the more restrictive of which would be reasonably used by the community.

Breakaway Wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system. Any walls below the lowest floor in a building in a V or VE Zone should give way under wind and water loads without causing collapse, displacement, or other damage to the elevated portion of the building of the supporting pilings or columns. Breakaway walls apply only to V or VE Zones.

Building—see **Structure**.

Channelization means the artificial creation, enlargement, realignment, or alteration of a stream channel’s slope, shape, or alignment. Streambank restoration may be deemed as channelization.

Code of Federal Regulations (CFR) is the codification of the general and permanent

rules published in the Federal Register by the executive departments and agencies of the Federal Government.

Conditional Letter of Map Revision (CLOMR) is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic and/or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective BFEs, and/or the SFHA. The letter does not revise an effective map; it indicates whether the project, if built as proposed, would be recognized by FEMA.

Conditional Letter of Map Revision Based on Fill (CLOMR-F) is FEMA's comment on a proposed structure or property. The letter does not revise an effective map; it indicates whether the project, if built as proposed, would be removed from the floodplain.

Crawlspace means an under-floor space that has its interior floor area (finished or not) no more than 4 feet from the bottom floor joist the next higher floor elevation, designed with proper openings that equalize hydrostatic pressures of flood water, and is not used for habitation.

Critical Facility means a facility or building where even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, fire stations, police stations, schools, storage of critical records, assisted living and similar facilities.

Deed Restriction refers to a clause in a deed that limits the future use of the property in some respect. Deed restrictions may impose a vast variety of limitations and conditions. For example, they may limit the density of buildings, dictate the types of structures that can be erected, or prevent buildings from being used for specific purposes or from being used at all.

Detached Garage is a building that is used solely for storage of materials or vehicle parking for up to four housing occupants. If a detached garage is designed or used for habitation or conducting business, or has multiple stories, then the building is not considered a detached garage under the NFIP.

Development means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, demolition, excavation or drilling operations, or storage either temporary or permanent of equipment or materials.

Elevated Building is a non-basement building built, in the case of a building in Zone A1-30, AE, A, A99, AR, AO, AH, B, C, X and D, to have the top of the elevated floor above the ground level by means of pilings, columns (post and piers), or shear walls parallel to the flow of the water and adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of a building in Zone A1-30, AE, A, A99, AR, AO, AH, B, C, X

and D, an “elevated building” also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

Enclosure refers to an enclosed walled-in area below the lowest floor of an elevated building. Enclosures below the BFE may only be used for building access, vehicle parking, and storage.

Erosion means the process of the gradual wearing away of land masses by wind, water, or other natural agents.

Existing Construction refers to structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. It may also be referred to as Existing Structures.

Existing Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Existing Structures—see Existing Construction.

Expansion to an Existing Manufactured Home Park or Subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA means the Federal Emergency Management Agency.

Fill refers to the placement of materials, such as dirt, sand, or rock to elevate a structure, property, or portion of a property above the natural elevation of the site, regardless of where the material was obtained from. The common practice of removing unsuitable material and replacing with engineered material is not considered fill if the elevations are returned to the existing conditions. Any fill placed or used prior to the area being mapped as a flood hazard area is not deemed as fill.

Flood or Flooding means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:

a. The overflow of inland or tidal waters.

b. The unusual and rapid accumulation or runoff of surface waters from any source.

2. Mudslides (i.e., mudflows) that are proximately caused by flooding as defined in this ordinance and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

3. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this ordinance.

Flood Insurance Manual is the document FEMA produces twice a year and is used to write flood insurance policies underwritten by the NFIP. The document contains definitions, policy rates, coverage and limitations, application, and insurance policy forms.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Administrator has delineated both the SFHAs, and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) or Flood elevation study means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Floodplain Development Permit is a community issued permit or document that is used for any development that occurs within an SFHA identified by FEMA or the community. It is used to address the proposed development to ensure compliance with the community's ordinance.

Floodplain or Flood-Prone Area means any land area susceptible to being inundated by water from any source whether or not identified by FEMA (see definition of *Flooding*).

Floodplain Management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, mitigation plans, and floodplain management regulations.

Floodplain Management Regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such

as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for flood damage prevention and reduction.

Flood Opening refers to an opening in the wall of an enclosed structure that allows floodwaters to automatically enter and exit the enclosure. Refer to FEMA Technical Bulletin 1.

Flood Protection System means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to an SFHA and to reduce the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees, or dikes. These specialized, flood modifying works are those constructed in conformance with sound engineering standards. FEMA only accredits levees, both private and public, that have been certified by a professional engineer or firm in which the certification shows that the levee have met and continue to meet the minimum regulatory standards cited in Title 44, Chapter 1, Section 65.10 of the Code of Federal Regulations (44 CFR 65.10).

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. Floodproofing can either be accomplished in the form of dry floodproofing in which the structure is watertight below the levels that need flood protection, or wet floodproofing in permanent or contingent measures applied to a structure that prevent or provide resistance to damage from flooding, while allowing floodwaters to enter the structure or area.

Floodway—see *Regulatory Floodway*.

Floodway encroachment lines mean the lines marking the limits of floodways on federal, state, and local flood plain maps.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Functionally Dependent Use means a development that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and repair facilities. It

does not include long-term storage or related manufacturing facilities.

Highest Adjacent Grade (HAG) means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. In AO Zones, the highest adjacent grade is utilized by comparing the lowest floor elevation to that of the highest adjacent grade and the depth of the AO Zone.

Historic Structure means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic reservation programs that have been approved by the Secretary of the Interior;
or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior, or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Letter of Map Amendment (LOMA) means an official amendment, by letter, to an effective FIRM. A LOMA establishes a property's location in relation to the SFHA. It is usually issued because a property or structure has been inadvertently mapped as being in the floodplain when the property or structure is actually on natural high ground above the BFE.

Letter of Map Revision (LOMR) means FEMA's modification or revision to an entire or portion of the effective FIRM, or Flood Boundary and Floodway Map, or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective BFEs, or the SFHA.

Letter of Map Revision Based on Fill (LOMR-F) means FEMA's amendment, by letter, to an effective FIRM where fill was brought in or used to elevate a property, portion of property or structure above the BFE.

Levee means a man-made structure usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee System means a flood protection system that consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest Adjacent Grade (LAG) means the lowest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. For an existing structure, it means the lowest point where the structure and ground touch, including but not limited to attached garages, decks, stairs, and basement windows.

Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Section 60.3.

Manufactured Home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle"; however, a manufactured home may be used for both residential and non-residential use.

Manufactured Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Map means the FHBM or the FIRM for a community issued by FEMA.

Mean Sea Level means, for purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which BFEs shown on a community's FIRM are referenced.

Mixed Use Structures are structures with both a business and a residential component, but where the area used for business is less than 50 percent of the total floor area of the structure.

New Construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation

adopted by a community and includes any subsequent improvements to such structures. For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

No-Rise Certifications are formal certifications signed and stamped by a professional engineer licensed to practice in the state, demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that a proposed development will not result in any increase (0.00 feet) in flood levels within the community during the occurrence of a base flood event.

Physical Map Revision (PMR) is FEMA’s action whereby one or more map panels are physically revised and republished.

Recreational Vehicle means a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily, not for use as a permanent dwelling but, as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, creek, etcetera, which can be intermittent or perennial.

Section 1316 refers to the section of the National Flood Insurance Act of 1968, as amended, which provides for the denial of flood insurance coverage for any

property that the Administrator finds has been declared by a duly constituted State or local authority to be in violation of State or local floodplain management regulations. Section 1316 is issued for a property, not a property owner, and remains with the property even after a change of ownership.
Special Flood Hazard Area—see Area of Special Flood Hazard.

Start of Construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)) includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes in Chapter 4.05, a walled and roofed building, culvert, bridge, dam, or a gas or liquid storage tank that is principally above ground, as well as a manufactured home. *Structure*, for insurance purposes and Chapter 4.05, means:

1. A building with two or more outside rigid walls and a fully secured roof, which is affixed to a permanent site;
2. A manufactured home (“a manufactured home,” also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
3. A travel trailer without wheels built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For insurance purposes, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

Substantial Damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed.

The term does not, however, include:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and are the minimum necessary to assure safe living conditions; or
2. Any alteration of a “historic structure”, if the alteration will not preclude the structure's continued designation as a “historic structure.”

Variance means a grant of relief by a community from the terms of a flood plain management regulation. Reference: 4.05.05. VARIANCE PROCEDURES

Violation means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sections 44 CFR 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies, such as the 1-percent-annual-chance flood event, in the flood plains of coastal or riverine areas.

Watercourse means the channel and banks of an identifiable water in a creek, brook, stream, river, ditch, or other similar feature.

Section 4.05.03. General Provisions.

1. Lands to Which This Ordinance Applies.

This Ordinance shall apply to all areas of special flood hazard identified by FEMA within the jurisdiction of Brookings County.

2. Compliance.

No structure or land shall hereafter be constructed, located, extended, or altered without full compliance with the terms of this Ordinance and other applicable regulations.

3. Basis for Establishing the Areas of Special Flood Hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Brookings County, South Dakota and Incorporated Areas," dated April 23, 2025, with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this Ordinance.

4. Abrogation and Greater Restrictions.

This Ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance and another Ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

5. Interpretation - In the interpretation of this Ordinance, all provisions shall be:

a. Considered as minimum requirements;

b. Liberally construed in favor of the governing body; and

c. Deemed neither to limit nor repeal any other powers granted under State statute.

6. Warning and Disclaimer of Liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur and flood heights may be increased by human-made or natural causes.

This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance, or any administrative decision lawfully made thereunder.

7. Penalties for Noncompliance.

In accordance with Section 59.2(b) of CFR 44, Chapter 1, of the NFIP regulation, to qualify for the sale of federally subsidized flood insurance, a community must adopt floodplain management regulations that meet or exceed the minimum standards of Section 60. "These regulations must include effective enforcement provisions." In accordance with Section 60.1(b) of CFR 44, Chapter 1, of the NFIP regulations, "These regulations must be legally enforceable, applied

uniformly throughout the community to all privately and publicly owned land within flood-prone (i.e., mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over less restrictive conflicting local laws, ordinances, or codes.”

Section 4.05.04. Administration.

1. Designation of the Floodplain Administrator.

The Administrative Official of this Ordinance, see Section 6.02.01, is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of the NFIP Regulations and 44 CFR pertaining to floodplain management.

2. Duties and Responsibilities of the Floodplain Administrator.

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- a. Uphold the goals of the community and the NFIP to reduce risk when possible and increase the community’s resistance to future disasters.
- b. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance, including the actual elevation of the lowest floor (including basement or crawlspace) of all new or substantially improved structures and any floodproofing certificates, including the data supporting such certificates.
- c. Maintain and hold open for public inspection maps that identify and locate the boundaries of the SFHAs to which this ordinance applies, including, but not limited to, the FIRM.
- d. Review development proposals to determine whether a proposed building site, including sites designed for the placement of manufactured homes, will be reasonably safe from flooding.
- e. Review, approve, or deny all applications for development permits required by adoption of this ordinance.
- f. Ensure that all necessary permits have been obtained from those federal, state, or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334 and the Endangered Species Act of 1973) from which prior approval is required.
- g. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

- h. Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the South Dakota Office of Emergency Management, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
- i. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make the necessary interpretation.
- j. When BFE data has not been provided by FEMA, the Floodplain Administrator shall obtain, review, and reasonably utilize any BFE data and floodway data available from a federal, state, or other source including data provided by the applicant, in order to administer the provisions of this ordinance.
- k. When a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30, AE, and AH on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than 1.00 foot at any point within the community.
- l. Under the provisions of 44 CFR Chapter 1, Section 65.12 of the NFIP Regulations, a community may approve certain development in Zones A1-30, AE, and AH on the community's FIRM, which increases the water surface elevation of the base flood by more than 1.00 foot, provided that the community first meets the requirements of Section 65.12 for a conditional FIRM revision through FEMA's CLOMR process.
- m. If the project is determined or reasonably believed to cause an adverse effect on the BFE(s), boundaries of the floodplain or any insurable structures, technical justification for the proposed development shall be submitted and the community may require a CLOMR or LOMR to be submitted prior to the permit approval or as a requirement of the permit.

3. Requirement to Submit New Technical Data.

- a. The property owner or developer shall notify FEMA by submittal of a LOMR within 6 months of project completion when an applicant had obtained a CLOMR from FEMA or when development altered a watercourse, modified floodplain boundaries, or modified BFE.
- b. The property owner or developer shall be responsible for preparing technical

data to support the CLOMR or LOMR application and paying any processing or application fees to FEMA. The property owner or developer is responsible for submitting the CLOMR and LOMR to FEMA and shall provide all necessary data to FEMA if requested during the review process to ensure the CLOMR or LOMR is issued.

c. The Floodplain Administrator shall be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application, until the applicant demonstrates that the project will or has met the requirements of this ordinance and all applicable state federal, and local laws.

4. Permit Procedures.

a. Application for a Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to:

i) Duplicated plans drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations.

ii) Duplicated plans drawn to scale showing the location, dimensions, and elevation of existing and proposed structures, including the placement of manufactured homes.

iii) Location of the foregoing in relation to SFHAs.

iv) Elevation (in relation to mean sea level), of the lowest floor (including basement and crawlspace) of all new and substantially improved structures, if applicable;

v) Elevation (in relation to mean sea level), to which any nonresidential structure (if applicable) shall be floodproofed.

vi) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure (if applicable) shall meet the floodproofing criteria of this ordinance and the NFIP Regulations.

vii) Description of the extent to which any watercourse or natural drainage will be altered or relocated because of proposed development, if applicable.

viii) At the community's discretion, the community may charge a fee for issuance of floodplain development permits.

ix) Copies of all floodplain development permits, and the associated

documents shall become property of the community and a permanent record.

b. Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:

i) The danger to life and property due to flooding or erosion damage.

ii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

iii) The danger that materials may be swept onto other lands to the injury of others.

iv) The compatibility of the proposed use with existing and anticipated development.

v) The safety of access to the property in times of flood for ordinary and emergency vehicles.

vi) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical, and water systems.

vii) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.

viii) The necessity to the facility of a waterfront location, where applicable.

ix) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

x) The relationship of the proposed use to the comprehensive plan for that area.

Section 4.05.05. Variance Procedures.

1. The Board of Adjustment as established by the community shall hear and render judgment on requests for variances from the requirements of this Ordinance.

2. The Board of Adjustment shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or

determination made by the Floodplain Administrator in the enforcement or administration of this Ordinance.

3. Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
4. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
5. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Ordinance.
6. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in 4.05.05.10 have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
7. Upon consideration of the factors noted above and the intent of this Ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Ordinance.
8. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
9. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
10. Prerequisites for granting variances:
 - a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - b. Variances shall only be issued upon:
 - i) showing a good and sufficient cause;
 - ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and

iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or Ordinances.

c. Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

11. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

a. the criteria outlined in 4.05.05 are met, and

b. the structure or other development is protected by methods that minimize flood; and

c. damages during the base flood and create no additional threats to public safety.

Section 4.05.06. General Standards for Flood Hazard Reduction.

1. General Standards.

In all areas of special flood hazards, the following provisions are required for all new construction and substantial improvements:

a. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

b. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

c. All new construction or substantial improvements shall be constructed with materials resistant to flood damage.

d. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during

conditions of flooding.

- e. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- f. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters.
- g. On-site waste disposal systems shall be designed or located to avoid impairment to them or contamination from them during flooding.

2. Substantial Improvement.

Any combination of repair, reconstruction, rehabilitation, addition, or improvement of a building or structure, if the cumulative cost of the entire project equals or exceeds 50 percent of the market value of the structure only (not of the structure and land value combined) before the improvement or repair is started then the work shall be considered as substantial improvement. If the structure has sustained substantial damage, any repairs are considered substantial improvements regardless of the actual repair work performed. For Substantial Damage, refer to 4.05.06.3 SUBSTANTIAL DAMAGE. The term does not, however, include either:

- a. Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- b. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

3. Substantial Damage

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure only before the damage occurred. This term also applies to structures which have incurred any damage that equals or exceeds 50 percent of the structure's market value regardless of the actual repair work performed. When a structure or building has been determined as substantially damaged, any work or repair on said structure or building will be considered as substantial improvement and will be required to meet the development requirements set forth within this ordinance for substantial improvement.

4. Substantial Improvement and Substantial Damage Determination

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the applicable community officials and staff, shall:

- a. Estimate the market value or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure only, not of land and building, before the start of construction of the proposed work. In the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.**
- b. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure.**
- c. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in Section 4.05.06.2 SUBSTANTIAL IMPROVEMENT.**
- d. Utilize FEMA's Substantial Improvement/Substantial Desk Reference when making any determination on Substantial Improvement and/or Substantial Damage.**
- e. The substantial improvement regulations apply to all of the work that is proposed as the improvement, even if multiple permits are issued. Therefore, the determination of the cost of the improvement should consider all costs of all phases of the work before issuance of the first permit.**
- f. Notify the applicant that if it is determined that the work constitutes substantial improvement or repair of substantial damage, that compliance with the floodplain management ordinance is required.**

Section 4.05.07. Specific Standards for Flood Hazard Reduction.

In all SFHAs and areas of suspected flood risk areas, the following provisions are required:

1. Residential Construction

New construction and substantial improvement of any residential structure

shall have the lowest floor (including basement) elevated to 1 foot above the BFE, A registered professional engineer, architect, or land surveyor shall submit certified elevations to the Floodplain Administrator that the standards of this ordinance are satisfied.

2. Nonresidential Construction

New construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement) elevated to 1 foot above the BFE, or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification that includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator. If the use or occupancy of the building changes in the future to residential, then the dry floodproofing of the structure cannot be used when determining compliance of the structure to the residential construction of this ordinance, Section 4.05.07.1 RESIDENTIAL CONSTRUCTION. As such, the building will not be grandfathered into compliance and will be required to be brought into compliance with the residential construction requirements of this ordinance.

3. Enclosures

New construction and substantial improvements, with fully enclosed areas below the lowest floor that are to be used solely for parking of vehicles, building access, or storage in an area other than a basement, and are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or must meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.
- b. The bottom of all openings shall be no higher than 1 foot above grade.
- c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of

floodwaters.

- d. The development and construction of the structure must conform with the provision in FEMA/Federal Insurance Administration (FIA)-Technical Bulletins 1 and 2. Certification and documentation from a professional, licensed engineer or architect is required if the structure's lowest floor is built below the BFE.

4. Crawlspace

New construction and substantial improvements built on a crawlspace or sub-grade (below grade) crawlspace may be permitted if the development is designed and meets or exceeds the standards found in FEMA's Technical Bulletins 1, 2, and 11, which include but are not limited to the following:

- a. The structure must be affixed to a permanent foundation, designed, and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than 5 feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer.
- b. The crawlspace is an enclosed area below the BFE and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than 1 foot above the lowest adjacent grade (LAG).
- c. The crawlspace enclosure must have proper openings that allow equalization of hydrostatic pressure by allowing automatic entry and exit of floodwaters. To achieve this, a minimum of 1 square inch of flood opening is required per 1 square foot of the enclosed area subject to flooding.
- d. Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, piers, or other materials that extend below the BFE. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.
- e. Any building utility systems within the crawlspace must be elevated above the BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions.
- f. The interior grade of a crawlspace below the BFE must not be more than 2 feet below the LAG.

- g. The height of the below-grade crawlspace, measured from the lowest interior grade of the crawlspace floor to the bottom of the floor joist of the next higher floor cannot exceed 4 feet at any point.
- h. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event.
- i. Buildings with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction, with the interior elevation at or above the LAG.

5. Manufactured Homes

- a. Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- b. Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites outside of a manufactured home park or subdivision;) in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated as high as the BFE, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- c. In A-1-30, AH, AO and AE Zones, require that manufactured homes to be placed or substantially improved in an existing manufactured home park to be elevated so that the lowest floor is at least as high as the BFE; or the chassis is supported by reinforced piers no less than 36 inches in height above grade and securely anchored.

6. Recreational Vehicles

Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:

- a. Be on the site for fewer than 180 consecutive days and be fully licensed and

ready for highway use;

- i) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.
- b. Or meet the permit requirements of 4.05.04.4, PERMIT PROCEDURES, and the elevation and anchoring requirements for "manufactured homes" of this section.

Section 4.05.08. Standards for Subdivision Proposals.

1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with the provisions of this ordinance.
2. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
3. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of this ordinance.
4. BFE data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions, which is greater than 50 lots or 5 acres, or whichever is lesser.
5. All subdivision proposals including the placement of manufactured home parks and subdivisions shall minimize flood damage.

Section 4.05.09. Standards for Floodways.

Floodways located within SFHAs are extremely hazardous areas due to the velocity of flood waters that carry debris, potential projectiles, and erosion potential, the following provisions shall apply:

1. Designate a regulatory floodway that will not increase the base flood level more than 1 foot.
2. Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway *unless* it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase greater than 0.00 feet in flood levels within the community during the occurrence of the base flood discharge.

3. All new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 4.05.06 in this ordinance.
4. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the NFIP Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in BFEs, provided that the community first applies for a conditional LOMR and floodway revision through FEMA.

Passed and adopted this 4th day of February, 2025.



Chairperson
Brookings County Board of
County Commissioners



Lori Schultz
Finance Officer

First Reading: January 21, 2025
Second Reading: February 4, 2025
Adopted: February 4, 2025
Publications: February 13, 2025
Effective Date: March 6, 2025

BROOKINGS COUNTY ORDINANCE NO. 2025-07

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF ORDINANCE 2024-01

WHEREAS, BROOKINGS COUNTY, previously adopted Ordinance 2024-01 in accordance with SDCL Chapter 11-2;

WHEREAS, the Brookings County, South Dakota, Board of County Commissioners deems it necessary, for the purpose of promoting the health, safety, and the general welfare of the County, to amend Ordinance 2024-01 by amending Article IV District Requirements, Chapter 4.07 Transmission Pipeline Risk Reduction Overlay District; Section 4.07.05.02 Planning Zone: Liquid Pipelines

THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BROOKINGS COUNTY, SOUTH DAKOTA: that Article IV District Requirements, Chapter 4.07 Transmission Pipeline Risk Reduction Overlay District; Section 4.07.05.02 Planning Zone: Liquid Pipelines: is hereby amended by removing strike out and adding in underline font:

~~3. A planning distance for liquid pipelines may be defined based on a pipeline and location-specific analysis considering the following three elements:~~

- ~~• How much liquid might be spilled?~~
- ~~• Where would the spilled liquid go?~~
- ~~• What locations would be impacted?~~

3. As a starting point for HLP placement in Brookings County the following setbacks, which are in place for Confined Animal Feeding Operations (CAFOs) are in place for placement of HLP pipelines.

<u>Established Residences</u>	<u>2,640 feet</u>
<u>Adjoining Property Lines</u>	<u>330 feet</u>
<u>Churches, Businesses and Commercially Zoned Areas</u>	<u>2,640 feet</u>
<u>Incorporated Municipality Limits</u>	<u>5,280 feet</u>
<u>Established Private Water Well</u>	<u>250 feet</u>
<u>Existing Public Water Well</u>	<u>1,000 feet</u>
<u>Lakes and Streams classified as Fisheries as identified by the State</u>	<u>150 feet</u>

Adopted this 4th day of November 2025.

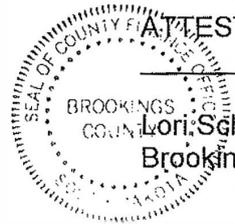
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BOARD OF COMMISSIONERS



Larry Jensen, Chairman
Board of Commissioners

ATTEST: 



Lori Schultz
Brookings County Finance Officer