

ORDINANCE #2026-1

AN ORDINANCE AMENDING HAND COUNTY ORDINANCE #09-1, AN ORDINANCE ESTABLISHING ZONING REGULATIONS FOR HAND COUNTY, SOUTH DAKOTA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTERS 11-2, 1967 SDCL, AND AMENDMENTS THEREOF, AND FOR THE REPEAL OF ALL RESOLUTIONS AND ORDINANCES IN CONFLICT THEREWITH

WHEREAS, the Hand County, South Dakota, Board of County Commissioners, hereinafter referred to as the Board of County Commissioners, deems it necessary, for the purpose of promoting the health, safety, and the general welfare of the County, to enact zoning regulations and to provide for its administration, and

WHEREAS, the Board of County Commissioners has appointed a County Planning Commission, hereinafter referred to as the Planning Commission, to recommend the district boundaries and to recommend appropriate regulations to be enforced therein, and

WHEREAS, the Planning Commission has divided Hand County into districts, and has established by reference to maps the boundaries of said districts for administration and interpretation; has provided for definitions and for amendments to this Ordinance; has provided for the enforcement; prescribed penalties for violation of provisions; has provided for building permits within the districts; has provided for invalidity of a part and for repeal of regulations in conflict herewith; and has prepared regulations pertaining to such districts in accordance with the county comprehensive plan and with the purpose to protect the tax base, to guide the physical development of the county, to encourage the 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 conserve and develop natural resources, and

WHEREAS, the Planning Commission has given reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses, and

WHEREAS, the Planning Commission and Board of County Commissioners has given due public notice to a hearing relating to zoning districts, regulations, and restrictions, and has held such public hearings, and

WHEREAS, all requirements of SDCL 11-2, with regard to the preparation of these regulations and subsequent action of the Board of County Commissioners, has been met, and

WHEREAS, copies of said zoning regulations have been filed with the Hand County Auditor for public inspection and review during regular business hours, and

WHEREAS, all ordinances, or parts of regulations in conflict herewith are hereby expressly repealed;

THEREFORE BE IT ORDAINED that **Ordinance 2026-1** is hereby adopted by the Board of County Commissioners, Hand County, South Dakota.

Adopted this **2nd day of June, 2026.**

ATTEST:

Chairperson
Hand County Board of County Commissioners

Hand County Auditor

**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 “Hand 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 Hand County, South Dakota, as established on the map entitled “The Official Zoning Map of Hand 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 Hand 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 rule, ordinance, or Board of Adjustment decision, 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. 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. Upon finding such violation, the Hand County Zoning Officer shall notify the owner of property involved verbally or by sending a written notification of the requirement that a permit be obtained to the owner of the property involved by certified mail with return receipt requested. If application for said permit is filed within seven (7) working days from the verbal notification or date of receipt of the letter, an administrative fee shall be assessed in the amount of one hundred percent (100%) of the normal fee for the associated building permit, conditional use permit, variance, and/or rezoning plus the cost of the postage for mailing the aforementioned notice. In no case shall this administrative fee be less than five dollars (\$5.00), including the postage costs.
 - ii. If application for said permit is filed after the deadline of seven (7) working days following the verbal notice or receipt of the notification of the requirement therefore, there shall be imposed an administrative fee in the amount of two (2) times the normal fee for the associated building permit, conditional use permit, variance, and/or rezoning plus the cost of the postage for mailing the aforementioned notice. The payment of the administrative fee shall not relieve such person from the provisions of paragraph (b) below.
 - iii. Any administrative fee or penalty imposed under the provisions of this Zoning Ordinance shall be in addition to any other fees or charges required under this Zoning Ordinance.

- b. 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 provision of this Zoning Ordinance may be subject to a civil or criminal penalty. The penalty for violation of this Zoning Ordinance shall be five hundred dollars (\$500.00) or imprisonment for not more than thirty (30) days, or both, and in addition the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification may constitute a separate offense. All fines for violation shall be paid to the County Auditor 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.

- c. 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 Hand 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 or threatened violation
- d. Any taxpayer of the County may institute mandamus proceedings in Circuit Court to compel specific performance by the proper official or officials of any duty required by these regulations.

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. Repeal of Conflicting Ordinances.

All ordinances or resolutions or part of ordinances or resolutions in conflict with this Ordinance or inconsistent with the provisions of this Ordinance are repealed entirely.

Section 1.02.06. 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 Auditor 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 Number 2026-1** of Hand County, State of South Dakota," together with the date of the adoption of this Ordinance.
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 Zoning Officer, 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 Auditor.
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 unincorporated portions of the County bounded by the district boundary lines.
2. Boundaries indicated at approximately following the center lines of streets, highways, or alleys, shall be construed to follow such center lines;
3. Boundaries indicated as approximately following platted lot lines shall be construed as

following such lot lines;

4. Boundaries indicated as approximately following city limits shall be construed as following such city limits;
5. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
6. Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;
7. Boundaries indicated as parallel to or extensions of features indicated in subsections 1 through 6 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map; and
8. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections 1 through 7 above, the Board of Adjustment shall interpret the district boundaries.

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

In the event that the Official Zoning Map becomes damaged, destroyed, or lost, the Board of County Commissioners may by ordinance adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map.

In the event that the Official Zoning Map becomes 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 contain previous changes and additions to the previous Official Zoning Map and may correct drafting or other errors or omissions in the prior Official Zoning Map.

The new Official Zoning Map shall be identified by the signature of the Chairperson attested by the County Auditor, 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) as part of the Zoning Ordinance of Hand County, State of 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.

Amendments to the Official Zoning Map shall require amendment of this regulation by ordinance, as provided for in Chapter 6.05, Section 6.05.03 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 "TD" Town 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.

Accessory Agricultural Housing. Any dwellings, pursuant to Chapter 5.05 occupied by employees of a Concentrated Animal Feeding Operation which has been issued a Conditional Use permit by the County.

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. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation demolition or removal of an existing building has been substantially commenced, preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that such activities are carried on diligently.

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 regarding a zoning decision thus:

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.

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.

Agriculture Product Processing Facility. A business activity customarily designed to process raw agricultural products into value added products. Agricultural processing facilities include, but are not limited to: Feed mills, ethanol plants and soybean processing facilities.

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.

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 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 Waste Facility. Any structure, equipment, contrivance, device, conduit or containment or any combination thereof and any body of water or water channel (whether natural or manmade or any combination thereof) whether above ground and/or below ground, covered or uncovered, which is contemplated for use in connection with the handling or storage of animal sewage.

Animal Unit. (See Section 5.05).

Antenna Support Structure. Means any building or structure other than a tower which can be used for location of Telecommunications Facilities.

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

Application. The process by which the applicant 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 Hand County concerning such a request.

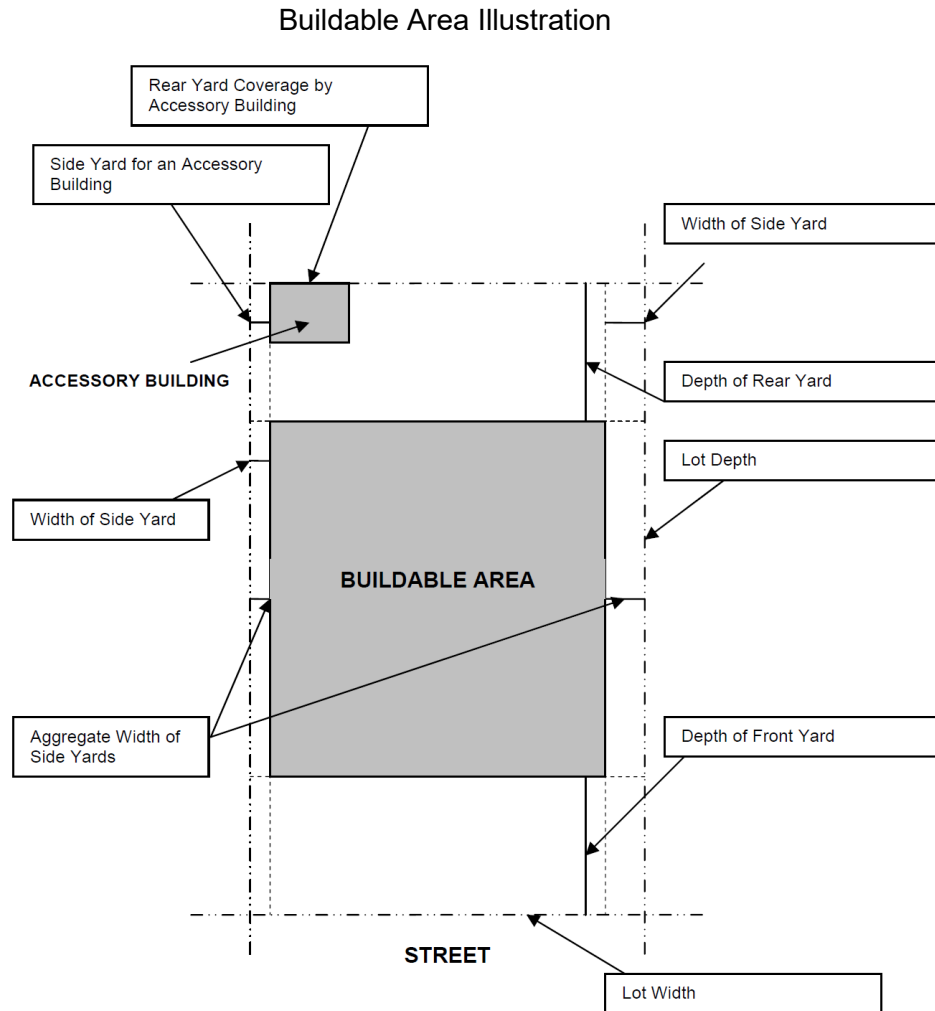
Bar/Tavern. An establishment that is licensed to sell alcoholic beverages by the drink.

Basement. A basement has more than one-half ($\frac{1}{2}$) 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.

Bed and Breakfast (B & B's). A private single-family residence, 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. Bed and Breakfast (B & B's) shall comply Chapter 5.15.

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

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.

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 (or Marijuana). All parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not

include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant *Cannabis sativa* L. (hemp) and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

Cannabis Dispensary. This term is defined as a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

Cannabis Products. Any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures.

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.

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.

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

Comprehensive Plan. The adopted long-range plan intended to guide the growth and development of Hand 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 considered 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 any use that, owing to certain special characteristics attendant to its operation, may be permitted in a zoning district subject to requirements that are different from the requirements imposed for any use permitted by right in the zoning district. Conditional uses are subject to the 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.

Contractor Shops and Yards. Those facilities to include structures and land areas where the indoor or 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.

Data Processing Center. A building, dedicated space within a building, or group of structures used to house and maintain electronic hardware, computer systems and associated components, such as telecommunications and data processing systems, to be used for the remote storage, management, processing, or distribution of electronic data. Examples of such data include, but are not limited to, computationally-intensive applications such as blockchain technology, cryptocurrency mining, weather modeling, genome sequencing, etc. Such facilities may also include air handlers, power generators, water cooling and storage facilities, utility substations, and other associated utility infrastructure to support operations.

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. The carrying out of any surface or structure construction, reconstruction or alteration of land use or intensity of use.

District, Zoning. A section of the county and/or municipalities for which the regulations governing the construction and location of buildings and occupancy 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, treat and dispose of wastewater, industrial wastes, or sludge.

Domesticated Large Animals. Any animal that through long association with man, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind. For the purpose of this Ordinance the definition shall include, but is not limited to, animals commonly raised on farms and ranches, such as cattle, horses, hogs and mules.

Dredging. Any of various practices utilizing machines equipped with scooping or suction devices that are used to deepen harbors, lakes, waterways or used 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 a mobile home or manufactured home.

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

Dwelling, Multiple-Family. A residential building designed for or 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 room, or rooms, connected together, constituting a separate, independent housekeeping establishment 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.

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

Engineer. Means 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.

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.

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 a single household unit. A family shall not include more than four (4) individuals who are unrelated by blood or law. This definition shall not include foster families as regulated by the State of South Dakota.

Farm. An area with or without a 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 all of the foregoing farm products and animals are raised for income. 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.

Farm Building. All buildings and structures needed in agricultural operation, including dwellings for owners, operators, farm laborers employed on the farm, and other family members.

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 materials and is used as a barrier of some sort.

Filling. Filling in low-lying ground with soil.

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.

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

Game Lodge. A building or group of two (2) or more detached, or semi-detached, or attached 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 more than two (2) sleeping rooms.

Garage, Private. An accessory building used for the storage of not more than four (4) 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 Hand 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.

Government Grain Storage Sites. A grain storage facility owned and operated by a State or Federal governmental entity.

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.

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

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 Liquids. Hazardous liquids includes petroleum or a petroleum product, nonpetroleum fuel, including biofuel, that is flammable, toxic, or corrosive; or would be harmful to the environment if released in significant quantities; carbon dioxide transported by a hazardous liquid pipeline facility; and any substance the Secretary of Transportation decides may pose an unreasonable risk to life or property when transported by a hazardous liquid pipeline facility in a liquid state and not subject to the Natural Gas Act (15 U.S.C. 717 et seq.)

Hazardous Liquid Pipelines. Hazardous liquid pipelines are defined per U.S. 49 CFR 195 as all parts of a pipeline facility through which a hazardous liquid moves in transportation, or transports hazardous liquid from an interstate pipeline or storage facility to a distribution main or a large volume hazardous liquid or gas user, 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.

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 fires 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

does 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.

Height of Building. The vertical distance from the established average sidewalk grade or street grade, or finished grade at the building line, whichever is the highest, to the highest point of the building.

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.

Home Occupation. A business activity customarily carried on in the home by a member of the occupant's family without structural alterations in the building or any of its rooms, without the installation or outside storage of any machinery, equipment or material other than that customary to normal household operations, without the employment of persons not residing in the dwelling, which does not cause the generation of additional traffic in the street.

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.

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

Institutional Farm. A farm owned and operated by a county, municipal, State or Federal governmental entity 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, whether for private or commercial purposes, or both, where waste, discarded or salvaged materials such as scrap metals, used building materials, used lumber, used glass, discarded vehicles, paper, rags, rubber, cordage, barrels, machinery, etc., or parts thereof, with or without the dismantling, processing, salvage, sale or other use or disposition of the same.

Kennel. Any premise or portion thereon where more than five (5) dogs, cats, or other household pets are bred, 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.

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.

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.

Lot. A lot is any lot, plot, or parcel of land under one ownership, occupied or intended for occupancy by a use permitted in this Ordinance including one (1) principal building together with its accessory buildings, open spaces and parking spaces required by this ordinance.

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

Lot, Corner. A lot abutting upon two (2) or more streets at their intersection.

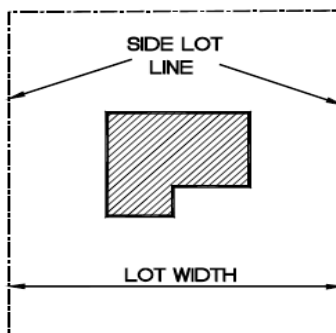
Lot Depth of. The average horizontal distance between the front and rear lot lines.

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

Lot 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.

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 line thereof. (see below).

Lot Width Illustration



Manufactured Home. A home that 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, which may be used with or without a permanent foundation. These homes are built to the national HUD standards, local building codes do not apply and were constructed after 1976, thus replacing the term mobile home for homes that were constructed prior to 1976.

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. Manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

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 is 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.

Milling. The processing or enhancing of a mineral.

Meteorological Tower. A structure used to collect meteorological data, including wind data and/or weather conditions.

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. A structure or building module that is manufactured at a location other than the site upon which it is installed and used as a residence, transportable in one or more sections on a temporary chassis or other conveyance device; and to be used as a permanent dwelling when installed and placed upon a permanent foundation system. This term includes the plumbing, heating, air conditioning and electrical systems contained within the structure. The manufacturing must meet all applicable state and local building codes.

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.

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 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.

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.

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. Means any Person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within the County.

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.

Participating Party (in reference to WES). Any landowner, person or entity receiving direct or indirect compensation for allowing a wind energy system to utilize their/its property.

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.

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

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

Principal Building. 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 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.

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. A Range Officer shall be present on site at any Range when the range is in use, if required by permit. The term range includes archery ranges.

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.

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.

Resident. A person 18 years of age or older who presently resides in and intends to continue to permanently reside in a given location and who is legally entitled to vote in his or her township elections.

Retail Sales and Trade. Establishments engaged in selling products, goods or merchandise to the general public for personal or household consumption; 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 Agriculture and Natural Resources.

Sale or Auction Yard or Barn. A place or building where the normal activity is to sell or exchange livestock. Livestock normally in yard or barn for one (1) day during sale or auction.

Sanitary Landfill. A government-owned site for the disposal of garbage and other refuse material.

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, Automobile. 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 street or property line and the front line of the building or any projection thereof, except cornices and unenclosed porches, and entrance vestibules and window bays projecting not more than three and one-half (3 ½) feet from the building and not more than fifty (50) square feet in area, and which do not extend 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.

Semi-Portable Agricultural Structures. Anything which requires placement on the ground for agriculture related purposes. Semi-portable agricultural structures include, but are not limited to, feed bunks, calving, lambing or farrowing sheds, and temporary grain storage facilities.

Shall. Shall means that the condition is an enforceable requirement of this regulation.

Shelterbelt. For the purposes of this ordinance a shelterbelt shall include ten (10) or more trees planted in a line, with each trees separated by a distance of forty (40) feet or less. Ornamental and/or shade trees, generally used in front yards and spaced further than fifteen (15) feet apart and further do extend lineally for a distance of over one hundred fifty (150) feet, are not considered shelterbelts. Shelterbelts shall comply with Chapter 5.03.

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.

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

Solar Array. A collection of two or more connected solar modules or panels.

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, as well as energy storage technology, for the primary purpose of wholesale sales of generated electricity and stored 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.

Special Permitted Use. A use which meets performance standards or criteria specific to such use. A use identified as a special permitted use shall be approved if the applicant demonstrates all performance standards or criteria have been met. A Special Permitted Use is to be approved by the Zoning Administrator and not subject to the hearing process of a conditional use.

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.

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 Plan of Hand County, South Dakota.

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

Street, Local. Any street which is not an arterial street or collector street.

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.

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 or below 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 the ground or attached to something having a temporary location on or below the ground.

Substantial improvement. Means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 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:

1. Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial; or
2. 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.

Tower. Means 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, or meteorological towers.

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.

Tree, Shade. For the purposes of this Ordinance, a shade tree is a deciduous tree which is 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.

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 nonconforming in the zoning district or uses in an adjoining zoning district.

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.

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. Turbine or multiple turbines,
2. Generator(s),
3. Blades,
4. Power collection systems,
5. Substation(s),
6. Electric interconnection systems, including feeder lines,
7. Permanent meteorological towers,
8. Communication cables, wires,
9. Accessory buildings, such as an operations and maintenance building, and
10. Access roads

Yard. An open space on the same lot with a building or group of buildings, which open space lies between the building or group of buildings and the nearest lot line. 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. (See Front, Side, and Rear Yard Illustration Below)

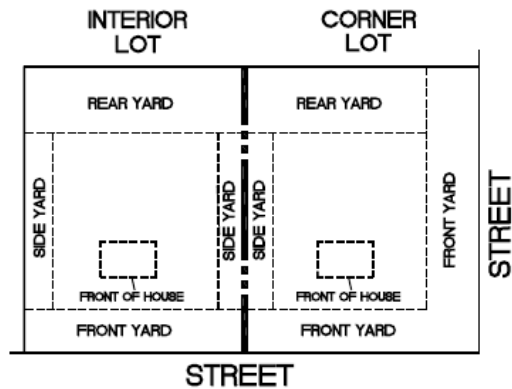
Yard, Front. A yard extending across the front of a lot between the sideyard lines, and being the minimum horizontal distance between the road right-of-way line and the main bearing wall of

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)

Yard, Rear. A yard across the whole width of a lot, extending from the rear line of the building to the rear line of the lot. (See Front, Side, and Rear Yard Illustration Below)

Yard, Side. A yard between the building and the adjacent side line of the lot which separates it from another lot, extending from the front lot line to the rear yard. (See Front, Side, and Rear Yard Illustration Below)

Front, Rear and Side Yard Illustration



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

**ARTICLE III
DISTRICT REGULATIONS**

CHAPTER 3.01. APPLICATION OF DISTRICT REGULATIONS.

Section 3.01.01. Application of District Regulations.

The regulations set by this Ordinance within each District shall be minimum regulations and shall apply uniformly to each class or kind of structure of land, and particularly, except as hereinafter provided:

1. No structure, permanent or temporary, or any part thereof shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or use of land be used, except for a purpose listed as a permitted use or conditional use in the district in which the building or land is located.
2. 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.

CHAPTER 3.02. NONCONFORMING USES.

Section 3.02.01. Purpose and Intent. The purpose of this article is to provide for the regulation of nonconforming uses, buildings, and structures, and to specify those circumstances under which they shall be permitted to continue. Further, it is intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival.

Section 3.02.02. Continuation of Nonconforming Uses. Subject to the provisions of this article, the lawful use of a premise existing immediately prior to the effective date of this ordinance may be continued although such use does not conform to the provisions hereof.

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. A nonconforming use shall not be enlarged, extended, converted, reconstructed, or structurally altered unless such use is changed to a use permitted in the district in which the premise is located.

Section 3.02.05. Restoration After Damage. When the use of a building is nonconforming as defined by this ordinance and such a building is damaged by a fire, explosion, act of God, or the public enemy to the extent of more than seventy-five (75) percent of its fair market cash value, it shall not be restored except in conformity with the provisions of the district in which the building is located. Such repair or reconstruction of such building shall be begun within six (6) months after such casualty and completed within a reasonable time thereafter. The loss in value shall be computed as the difference between the actual cash value of the structure immediately

before and after the casualty. Cash value shall be the same as that used for insurance purposes as approved by the State of South Dakota Insurance Code.

Section 3.02.06. Repairs and Maintenance. On any nonconforming structure or portion of a structure containing a nonconforming 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 nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to 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 regulations of the district in which it is located.

Section 3.02.08. Discontinuance of Nonconforming Use. No nonconforming use, building, structure or premises, if once changed to conform to the requirements of this ordinance for the district in which it is located, shall ever be changed back so as to be nonconforming. In the event that a nonconforming use is discontinued for more than one (1) year, any subsequent use shall thereafter be in conformity with the regulations of the district in which it is located.

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 premises in violation of zoning regulations in effect immediately prior to the effective date of this ordinance.

Section 3.02.10. Powers of the Planning Commission/Board of Adjustment. Nothing contained in this Section shall be so construed as to abridge or curtail the powers of the County Planning Commission or Board of Adjustment as set forth elsewhere in this Ordinance.

Section 3.02.11. Continuation of Nonstandard Uses. Nonstandard uses existing immediately prior to the effective date of this ordinance may be continued, although such uses do not conform to the provisions hereof. Nonstandard buildings or structures may be enlarged or extended, converted, reconstructed, or structurally altered as follows:

1. Enlargements, extensions, conversions, or structural alterations may be made as required by law or ordinance.
2. Structural alteration of buildings or structures may otherwise be made if such changes do not encroach into an existing front yard, side yard, or rear yard which is less than the minimum required yards for the district in which they are located.
3. Enlargement, extension, conversion of buildings or structures may otherwise be made if such changes comply with the minimum required yards, lot area, height, landscaping, parking, and density for the district in which they are located.

Section 3.02.12. Nonconforming Lots of Record.

1. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even

though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.

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 amendment 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 Ordinance, 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 unincorporated areas of the County may be divided into any of the following zoning districts: A-Agricultural; CI-Commercial/Industrial; and TD-Town 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, Hand County, South Dakota."
3. "A" AGRICULTURAL LAND DISTRICT – The Agricultural Land District is established to preserve open space and maintain and promote farming and related activities within an environment which is generally free of other land use activities. The Agricultural Land District is further characterized, as land areas not yet ready for further development, residential development, other than single-family farming units, will be discouraged to minimize conflicts with farming activities and reduce the demand for expanded public services and facilities.
4. "CI" COMMERCIAL/INDUSTRIAL DISTRICT - The Commercial District is intended to provide areas for commercial and industrial activities, which require highway access, and further are oriented primarily to, and supportive of, farming and other activities which are determined to be appropriate in the rural area. Industrial uses which produce smoke, noise, dust, odor, and/or heavy traffic and large outdoor storage areas shall require special review and consideration.
5. "TD" TOWN DISTRICT - The Town District is established to provide for orderly low density residential development, together with certain public facilities, and commercial/industrial uses which are not detrimental in the unincorporated towns of Hand County.

Section 3.03.02. Prohibited Uses.

All uses and structures not specifically listed as a permitted use, special permitted 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 Hand County.

CHAPTER 4.01. "A" AGRICULTURAL LAND DISTRICT

Section 4.01.01. Permitted Uses:

1. Field crops and grasslands.
2. Fisheries services.
3. Game propagation areas.
4. Orchards and tree farms; with or without on-site retail sales.
5. Public parks and recreation areas.
6. Truck gardening.
7. Botanical gardens (nurseries and greenhouses); with or without on-site retail sales.
8. Farm and Non-farm dwelling, to include modular home or for a manufactured home connected to an existing farmstead, but not within one (1) mile of a concentrated animal feeding operation unless waiver is registered on deed of farm dwelling or non-farm dwelling property.
9. Stables.
10. Grain bins.
11. Home occupations.
12. Bed and Breakfast provided they meet requirements of 5.15.
13. Agricultural activities and farm related buildings, including Class D concentrated animal feeding operation
14. On-premise signs.
15. Accessory uses and buildings.
16. Seasonal retail stands – including produce and fireworks – utilizing a temporary or permanent structure.
17. Private Wind Energy Conversion System (PWECS). Provided they meet the requirements of Chapter 5.16.

Section 4.01.02. Special Permitted Uses:

1. None.

Section 4.01.03. Conditional Uses:

1. Airports and airstrips.
2. Churches and Cemeteries.
3. 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.
4. Sand, gravel or quarry operation; mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants provided they meet requirements of Chapter 5.04.
5. Private clubs.
6. Sanitary landfills, rubble sites, composting sites, waste tire sites, restricted use sites, and other sites governed by the South Dakota Department of Agriculture and Natural Resources permits for solid waste.
7. Domestic sanitary sewer treatment plant/facility.
8. Class A concentrated animal feeding operations; (See Section 5.05).
9. Commercial Stables.
10. Junkyards/salvage yards.
16. Public utility and public service structure including transmission lines, substations, gas regulator stations, pipelines, community equipment buildings, pumping stations, and reservoirs.
17. Land application of petroleum-contaminated soils.
18. Institutional farms, including religious farming communities.
19. Wireless Telecommunication Towers and Facilities
20. Manufactured home not connected to an existing farmstead.
21. Game Lodge.
22. Group Homes
23. Meteorological Towers.

24. Wind Energy System (WES) provided they meet the requirements of Chapter 5.17.
25. Solar Energy System (SES) provided they meet the requirements of Chapter 5.20.
26. Public or private motorcycle recreation facilities.
27. Target/Shooting Range provided they meet requirements of Chapter 5.14.
28. Veterinarians offices and animal hospitals.
29. Golf course, golf driving range, clubhouse.
30. Livestock sales barn.
31. Schools.
32. Animal husbandry service.
33. Government grain storage sites.
34. Horticulture Services.
35. Automotive Tow Business/Impound Lot.
36. Agricultural product processing facilities, including but not limited to ethanol plants and corn/soybean processing.
37. Hazardous Liquid Pipeline (HLP) provided they meet the requirements of 5.19
38. Data Processing Center provide they meet the requirements of 5.22

Section 4.01.04. Area Regulations.

All buildings shall be set back from public road centerlines and lot lines to comply with the following yard requirements:

1. Front Yard: The minimum depth of the front yard setback shall be one hundred fifty (150) feet and in no case shall an accessory building be located or extend into the front yard. In the case of a corner lot, front yards shall be provided on both streets.
2. Side Yard: The minimum depth of a side yard setback shall be twenty-five (25) feet.
3. Rear Yard: The minimum depth of a rear yard shall be twenty-five (25) feet.
4. Uses allowed by a Conditional Use Permit shall have minimum lot area and yard setback regulations determined by the Board of Adjustment.
5. The Board of Adjustment may allow a smaller minimum lot requirement for the "A" Agricultural District under the following conditions:

- a. Where a permit for an additional single-family farm dwelling is requested on an existing farmstead, provided:
 - i. The dwelling is located on the same legal description as the existing farmstead.
 - ii. The maximum number of dwelling units within the existing farmstead will not exceed two (2).
 - iii. The dwelling is to be occupied by employees or relatives of the farm owner (existing farming operation).
 - iv. The additional single-family farm dwelling shall be removed in the event the structure becomes a non-farm dwelling.

6. Agriculture Covenant/Concentrated Animal Feeding Operation Waiver:

- a. All new residential development (farm and non-farm) shall be required to file an "Agricultural Easement" with the Register of Deeds before the issuance of a building permit. (See Chapter 5.12). 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.
- b. Applicants for residential development (farm and non-farm) are required to obtain a written waiver from the owner/operator of any existing concentrated animal feeding operation which is closer than two (2) miles from the proposed residential building site. If the applicant is unable to obtain the written waiver, he/she shall be required to file a waiver with the Register of Deeds waiving any or all common law challenges to future expansions of the said existing concentrated animal feeding operation. The waiver is to be filed with the Register of Deeds (See Chapter 5.13). 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.

7. Access:

- a. The location of driveways accessing County roads for individual parcels shall require written approval from the County Highway Superintendent or Board of Adjustment and shall be recorded with the register of deeds.
- 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.

8. Height Regulations:

- a. All buildings and structures must meet FAA standards within one (1) mile of airports.

CHAPTER 4.02. "CI" COMMERCIAL / INDUSTRIAL DISTRICT

Section 4.02.01. Permitted Uses:

1. Field crops and grasslands.
2. On-premise signs.
3. Orchards and tree farms.
4. Accessory Uses and buildings subordinate to uses listed as a permitted use or conditional use contained in Chapter 4.02.
5. Temporary structures used for sales of agricultural products provided that there have been no past violations regarding previous sales.
6. Temporary structures used for the sale of fireworks during times of the year specified in SDCL 34-37 provided that there have been no past violations regarding previous sales.

Section 4.02.02. Special Permitted Uses:

1. None.

Section 4.02.03. 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, operated by a government institution.
5. Welding and machine shops.
6. Gas, oil, liquid propane, and liquid hydrogen stations, including bulk stations.
7. Public and private utilities.
8. Livestock sales.
9. Contractors' shops and yards including offices when in conjunction with a shop or yard.
10. Wholesale distributing companies.
11. Restaurants.
12. Motel/hotels;
13. Recreation vehicle sales and park.

14. Bar/Tavern.
15. Commercial stables.
16. Kennel with or without animal grooming.
17. Veterinary clinics.
18. Wireless telecommunication towers and facilities
19. Convenience store/service station.
20. Seasonal retail stands utilizing a permanent structure.
21. Commercial orchards, tree farms, truck gardening, and greenhouses – with retail sales.
22. Off-premise signs.
23. Light manufacturing.
24. Commercial animal husbandry service.
25. Agricultural product processing facilities including but not be limited to ethanol plants and corn/soybean processing.
26. Private wind energy system (PWECS) provided they meet requirements of Chapter 5.16.
27. Retail sales and trade.
28. Automotive tow business/Impound lot.
29. Temporary structures used for the sale of fireworks during times of the year specified in SDCL 34-37 where there have been past violations regarding previous sales.
30. Temporary structures used for sales of agricultural products where there have been past violations regarding previous sales.
31. Cannabis Dispensary provided it meets the requirements of Chapter 5.21.
32. Data Processing Center provided they meet the requirements of 5.22.

Section 4.02.04. Area Regulations

- a. 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 two (2) acres, not to include the public road right-of-way. An applicant for conditional use permit shall provide a proposed site plan which can be reviewed by the Board of Adjustment. For commercial and industrial uses, buildings shall occupy no more than seventy-five percent (75%) of the lot.

- b. Front Yard. There shall be a front yard on each street which a lot abuts, and which yard shall be not less than one hundred fifty (150) feet in depth from the centerline of the road.
- c. Side Yards. On lots adjacent to a residential area, all buildings and incidental areas shall be located so as to provide a minimum side yard of one hundred (100) feet, which shall be landscaped on the side adjacent to the residential area. All other side yards shall be a minimum of fifty (50) feet.
- d. Rear Yards. On lots adjacent to a residential area, all buildings and incidental areas shall be located so as to provide a minimum rear yard of one hundred (100) feet, which shall be landscaped adjacent to the residential area. All other rear yards shall be a minimum of fifty (50) feet.
- e. Access. It is recommended that all property in the "CI" District have access to an asphalt paved or concrete State or County Highway.

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.
- 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. "TD" TOWN DISTRICT.

Section 4.03.01. Permitted Uses.

1. Single-family residential usage, including manufactured homes, modular homes.
2. Public parks.
3. Agriculture and horticulture uses, excluding feedlots.

Section 4.03.02. Special Permitted Uses.

1. None.

Section 4.03.03. Conditional Uses.

1. Retail and service business.
2. Light manufacturing.
3. Bar or tavern.
4. Warehouse.
5. Multi-family housing.
6. Home occupation.
7. Manufactured home park.
8. The Board of Adjustment may permit other uses which in its opinion are not detrimental to other uses. These may include manufacturing and processing uses.

Section 4.03.04. Area Regulations

1. Residential Uses/Lots - Structures on all corner lots shall observe two (2) front yards. The depth of the front yard on each street which the lot abuts, shall be as follows.
 - a. Minimum Yard Requirements:

Front -- Twenty-five (25) feet
Side -- Fifteen (15) feet
Rear -- Twenty-five (25) feet
 - b. Minimum Lot Size:

Public Water Supply/Septic Tank -- 20,000 Sq. Ft.
Well/Septic Tank ----- 43,560 Sq. Ft.
Public Water Supply/Public Sewer - 9,600 Sq. Ft.

2. Commercial Uses/Lots - Lot size shall be determined by off-street parking needs; availability of water and sewage disposal facilities; adjacent land uses; need for screening; and type of business. Front, side, and rear yards shall be determined by the Board of Adjustment.
3. Industrial Uses/Lots - Lot size shall be determined by off-street parking needs; impact of adjoining land use and need for screening or buffering from residential areas; availability of water and sewage disposal facilities; type of manufacturing or storage facilities; type of manufacturing or storage facilities. Front, side, and rear yards shall be determined by the Board of Adjustment.

**ARTICLE V
GENERAL REQUIREMENTS**

Pursuant to the purpose of this ordinance are certain general requirements that are not provided for under Article IV District Requirements. These requirements are set forth under this article.

CHAPTER 5.01. FENCES.

Section 5.01.01. Purpose.

The regulation of fences is intended to protect the public safety and welfare, provide privacy, buffer noise, and allow adequate air, light and vision.

Section 5.01.02. No permit required.

1. For customary farm and animal fencing in the Agricultural District and all permitted uses in all zoning districts. Conditional Use Permits may require a fence as determined by the Board of Adjustment.

CHAPTER 5.02. MOVED IN BUILDINGS.

1. **Any building to be moved requires a building permit.** The Zoning Officer 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 fee for said permit as prescribed in Section 6.01.05, shall have been paid.
 - b. That the work is to be completed within twenty-four (24) months after the permit has been issued by the Zoning Officer.
 - c. The applicant will also be required to 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 on which the building/structure will be located have been paid. If a building or structure is to be moved onto any lot within the county, the Zoning Officer 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 5.03. SHELTERBELT SETBACK REQUIREMENTS.

1. All shelterbelts shall be one hundred fifty (150) feet from the centerline of the road to the first row on the North and West sides and one hundred (100) feet from the centerline of the road to the first row on the South and East sides.
2. The shelterbelts setback requirements also apply to volunteer trees that the landowner allows to grow.

3. 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.

CHAPTER 5.04. SAND, GRAVEL OR QUARRY OPERATION; ROCK CRUSHERS; MINERAL EXPLORATION AND DEVELOPMENT AND CONCRETE AND ASPHALT MIXING PLANT REQUIREMENTS.

Section 5.04.01 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.
 - ii. Present topography, soil types, and depth to groundwater.
 - iii. Location of existing water drainage, existing buildings, existing shelterbelts.
 - iv. Identification of roads leading to the site.
 - v. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
 - vi. Proposed monitoring wells.

Section 5.04.02 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 Agriculture 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 5.04.03 Setbacks

1. Sand, gravel or quarry operation; Mineral exploration and extraction operations; rock crushers; and concrete/ asphalt mixing plants will not be allowed within one thousand (1,000) 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. The exception to this standard would apply to residences

owned and lived in by the operator of the mineral exploration and extraction operations; rock crushers, and/or concrete/asphalt mixing plants.

2. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back at 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 twenty-five (25) feet from all property lines (excluding public right-of-way). EXCEPTION: The Board of Adjustment may allow excavation of minerals, sand, or gravel provided the following conditions are met:
 - a. Any excavation performed less than twenty-five (25) feet from any rear or side property line may be allowed with a maximum slope of three (3) feet horizontal for each one (1) foot vertical.
 - b. No excavation is allowed within five (5) feet of any rear or side property line.
 - c. The applicant shall obtain the written consent of all property owners owning property adjacent to the property line for which the exception is requested.

Section 5.04.04 General Provisions:

1. Haul Roads.

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

2. Noise Pollution.

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

3. Utilities/Easements - No excavation shall occur within recorded easements. The Board of Adjustment may specify a maximum slope at which excavation may occur in relation to any utility pole or recorded easement.
4. 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.

CHAPTER 5.05. CONCENTRATED ANIMAL FEEDING OPERATION (CAFO) REGULATIONS

Section 5.05.01. 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. Concentrated Animal Feeding Operations (CAFOs) 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 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 5.05.02. Animal Units Equivalent to Animal Species:

The 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 concentrated animal feeding operation 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 5.05.1 details the class of concentrated animal feeding operations and the specific animal unit equivalency ratio. Note that the figures in Table 5.05.1 relate to inventory rather than annual production.

Number of Animals to Define Class of Concentrated Animal Feeding Operations
Table 5.05.1

| TYPE OF ANIMAL: | Class A # of Animals 1,000 AU | Animal Unit Equivalency Ratio |
|---|--|--|
| Dairy cows (mature - milked or dry) ¹ | 700 or more | 1.43 |
| Veal calves | 1,000 or more | 1.0 |
| Cattle other than mature dairy cows or veal calves ^{1 and 2} | 1,000 or more | 1.0 |
| Swine weighing over 55 pounds | 2,500 or more | 0.4 |
| Swine weighing under 55 pounds | 10,000 or more | 0.1 |
| Horses | 500 or more | 2.0 |
| Sheep, Lambs or Goats | 10,000 or more | 0.1 |
| Turkeys | 55,000 or more | 0.018 |
| Laying Hens or Broilers & Pheasants ³ | 30,000 or more | 0.0333 |
| Chickens, other than laying hens ⁴ | 125,000 or more | 0.008 |
| Laying Hens ⁴ | 82,000 or more | .0122 |
| Ducks ³ | 5,000 or more | 0.2 |
| Ducks ⁴ | 30,000 or more | 0.0333 |
| Geese | 30,000 or more | 0.0333 |

1. **Animals are counted individually once separated from the mother.**
2. **Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs.**
3. **Animal Feeding operation uses a liquid manure handling system.**
4. **Animal Feeding operation uses other than a liquid manure handling system.**

NOTE: Other animal types not listed in the above may be considered on a case-by-case basis.

Section 5.05.03. Class of Concentrated Animal Feeding Operations:

For the purpose of these regulations, concentrated animal feeding operations are the following class:

| <u>CLASS OF CAFO</u> | <u>NUMBER OF ANIMAL UNITS</u> |
|-----------------------------|--------------------------------------|
| Class A | 1,000 or more |

Section 5.05.04. Concentrated Animal Feeding Operation Permit Requirements

Two (2) or more concentrated animal feeding operations 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 concentrated animal feeding operations 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.

Owners of Class A, concentrated animal feeding operations are required to complete a conditional use permit application under the following circumstances:

1. A new concentrated animal feeding operation is proposed where one does not exist.
2. An expansion of a concentrated animal feeding operation 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 June 2, 2009, which would result in the creation of a Class A concentrated animal feeding operation
4. If a Class A concentrated animal feeding operation, which has a previously issued county permit, changes ownership, the new owner has sixty (60) days in which to apply for a transfer of ownership in order to keep the current permit valid. The new owner will be required to abide by the permit requirements and letter of assurances that were issued under the permit application. 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) or more years.
6. A signed complaint has been received and/or documented by the County Zoning Officer or South Dakota Department of Agriculture and Natural Resources and after inspection reveals that the concentrated animal feeding operation is in violation of County or State regulations.
7. Notwithstanding 5.05.04.8 (below) a change in ownership of a Class A concentrated animal feeding operation which does not have a previously issued county-permit.
8. A change in ownership of any concentrated animal feeding operation with a history of pollution documented by the County Zoning Office or State of South Dakota.

Section 5.05.05. Concentrated Animal Feeding Operation Control Requirements:

1. No Significant Contribution of Pollution

In general, no concentrated animal feeding operation shall be constructed, located, or operated so as to create a significant contribution of pollution.

2. State General Permit

Class A concentrated animal feeding shall obtain a State General Permit. A County permit for a concentrated animal feeding operation may be approved conditioned on receiving a State General permit.

3. Nutrient Management Plan

- a. New and expansion of Class A concentrated animal feeding operations are required to have a nutrient management plan. The applicant shall develop, maintain, and follow a nutrient management plan to ensure safe land application of manure and protection of surface and ground water. The South Dakota Department of Agriculture and Natural Resources must approve the plan prior to the issuance of the County Conditional Use Permit and land application of any manure. Due to crop rotation, site changes, and other operational changes, the producer shall update the plan annually to reflect the current operation and crops grown on the application sites. The applicant shall collect, store, and dispose of liquid and solid manure according to recognized practices of good agriculture management. The economic benefits derived from agricultural operations carried out at the land disposal site are secondary to the proper and safe disposal of the manure.
- b. The Nutrient Management Plan is a conservation system for concentrated animal feeding operation. It describes practices and management activities on how to best utilize animal manure as a fertilizer resource while protecting surface and groundwater. The plan deals specifically with managing the amount, source, placement, and timing of the application of manure nutrients to the land. The use of other nutrient sources (i.e. commercial fertilizer) also must be taken into account when planning manure applications. All nutrient management plans developed for concentrated animal feeding operations developed must meet all applicable SDDANR General Permit and County Zoning Standards.
- c. The applicant must maintain records to show compliance with the nutrient management plan.
- d. The plan must comply with County Manure Application, Section 5.05.05.8.
- e. Land spreading agreements shall be provided if applicant does not have minimum acreage to apply animal manure. All lease agreements for manure application must be kept up-to-date and if agreements are not renewed new land must be found to replace acres. Animal manure shall be transported no more than seven (7) miles from the point of origin for land applications (Section 5.05.05.8). Applicants intending to pump liquid manure are required to obtain permission to cross public rights-of-way. All liquid manure in storage facilities shall be injected or incorporated within twenty-four (24) hours unless

approved by the County Board of Adjustment. Emergency cases will be reviewed on a case-by-case basis.

4. Manure Management System Plan

New and expansions of Class A concentrated animal feeding Operations shall submit manure waste management system plans and specifications for review and approval prior to construction, and a Notice of Completion for a Certificate of Compliance, after construction, from the South Dakota Department of Agriculture and Natural Resources.

5. Required Minimum Setbacks and Separation Distance for New Class A Concentrated Animal Feeding Operations and those Existing Concentrated Animal Feeding Operations without a County-issued permit expanding into a Class A Concentrated Animal Feeding Operations after (date of adoption of new ordinance). See Table 5.05.2.

Table 5.05.2
Minimum Setbacks

| MINIMUM SETBACK TABLE | <u>CLASS A</u> |
|---|-----------------------|
| Dwellings (other than owner’s or operator’s) | 10,560 feet (2 Miles) |
| Incorporated Municipality Limits | 10,560 feet (2 Miles) |
| Churches, Schools, Businesses, Designated County or State Parks, Lake Park, and Town Zoning Districts | 10,560 feet (2 Miles) |
| Federal, State, County, & Township Road Right of Way | 300 feet |
| Domestic ground and surface water supplies | 660 feet (1/8 Mile) |

6. Additional Setback and Separation Distance Requirements for Class A Concentrated Animal Feeding Operations.

Each application for a new or expanded concentrated animal feeding operation will be reviewed by the Board of Adjustment on a site-specific basis. The Board of Adjustment reserves the right to increase or decrease the minimum required setbacks and separation distance on a site-specific review based on one (1) or more of the following considerations:

a. Considerations to Decrease Required Setbacks and/or Separation Distances

- i. An existing Concentrated Animal Feeding Operation proposes to expand but does not meet required setback or separation distances, the Board of Adjustment may reduce required setbacks and separation distances after review of past management practices and proposed improvements to waste handling facilities.

- ii. A new Concentrated Animal Feeding Operation is proposed which, because of the waste handling facilities, would not require conformance with required setback and separation distances as outlined herein.

b. Considerations to Increase Required Setbacks and/or Separation Distances

- i. A concentration of CAFOs in the area exists or would occur which may pose an air or water quality concern.
- ii. Due to topography and prevailing wind direction, additional setback and separation distance is appropriate to safeguard air or water quality.
- iii. A Concentrated Animal Feeding Operation is in excess of 5,000 animal units.

7. Exemptions to Setback and/or Separation Distance Requirements

- a. All Concentrated Animal Feeding Operations (CAFO) in operation prior to June 2, 2009, 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 following example are exempt from setback/separation distance requirements:
 - i. Example 1: A Class A CAFO expands by 15% of the number of animal units
- b. A concentrated animal feeding operation which is expanded or constructed, if sixty-six and two-thirds percent (66%) of the full time, adult residents of the area within the residential setback shall have waived the same in writing. The waiver shall be binding upon the heirs, successors, etc. and assigns of the title holder and shall pass with the land.
- c. A concentrated animal feeding operation 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. The written waiver becomes effective only after it's recorded with the Register of Deeds.
- d. A concentrated animal feeding operation which existed prior to the creation of a residence, educational institution, commercial enterprise, bona-fide religious institution, incorporated community, if the residence, educational institution, commercial enterprise or bona-fide institution was constructed or expanded or the boundaries of the incorporated community were expanded, after the date that the animal feeding operation was established. The date that the concentrated animal feeding operation was established is the date on which concentrated animal feeding operation commenced operating. A change in ownership or expansion shall not change the date of operation.

8. Manure Application

The following manure application rules apply to Class A concentrated animal feeding operations.

- a. The County Board of Adjustment may require liquid manure to be incorporated or injected in order to minimize air and water quality impacts.

- b. 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.
- c. Animal manure shall be transported no more than seven (7) miles from the point of origination for land application. However, the Board of Adjustment may, on a case-by-case basis, permit applications beyond seven (7) mile limitation upon its acceptance of proofs evidencing adequate undertakings to ensure both public safety and due reference to environmental concerns.

9. Standards for Conditional Use Permits

- a. The Board of Adjustment may request information relating to concentrated animal feeding operations 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 the 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. When considering an application, the Board of Adjustment will take into consideration current and past violations relating to concentrated animal feeding operations that the applicant has or had an interest in.

10. Information Required for Class A Concentrated Animal Feeding Operation

- a. Owner's name, address and telephone number.
- b. Legal descriptions of site.
- c. Number and type of animals.
- d. Documentation of a South Dakota Department of Agriculture and Natural Resources approved Nutrient management plan, if required.
- e. Documentation of a South Dakota Department of Agriculture and Natural Resources approved Manure management system plan, if required.
- f. Prior to construction all such entities shall obtain a storm water permit for construction activities from the South Dakota Department of Agriculture and Natural Resources. The storm water pollution prevention plan required by the permit must be developed and implemented upon the start of construction.
- g. Information on ability to meet designated setback requirements including site plan to scale.

- h. Documentation of approved General permit from South Dakota Department of Agriculture and Natural Resources if available for animal species, if required.
- i. Information on soils, shallow aquifers, and 100-year floodplain designation.
- j. Notification of whomever maintains the access road (township, county and state).
- k. Notification of public water supply officials.
- l. Any other information as contained in the application and requested by the County Zoning Officer.

Section 5.05.06. Accessory Agricultural Housing

- 1. Accessory Agricultural Housing dwellings may be allowed as an accessory use on site, to a Class A Concentrated Animal Feeding Operations. Any Accessory Agricultural Housing must be approved by the Board of Adjustment with a conditional use permit.

CHAPTER 5.06. ACCESSORY BUILDINGS.

- 1. Only specifically authorized accessory uses 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 required yard, and no separate accessory building shall be erected within five (5) feet of any other building.
- 4. No accessory building may be used for residential dwelling purposes at any time.
- 5. Agricultural District. In any Agricultural district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.
- 6. Commercial and Industrial Districts. In any Commercial or Industrial district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.
- 7. Town Districts. Accessory uses shall be permitted for the principal permitted uses and conditional uses of the Town Districts, except those uses specifically prohibited in the district.

CHAPTER 5.07. STRUCTURES TO HAVE ACCESS.

Every building hereafter erected or moved shall be on a lot adjacent 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 5.08. YARDS.

No part of a yard or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this ordinance, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.

Section 5.08.01. 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.

CHAPTER 5.09. 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.

CHAPTER 5.10. UTILITY EASEMENTS.

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

CHAPTER 5.11. 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 single lot, provided that yard and other requirements are met. Exception: Secondary residences in the Agricultural Zone, per 4.01.04.5, and commercial/industrial buildings in the Commercial/Industrial District may be allowed provided that yard and other requirements are met

CHAPTER 5.12. RIGHT TO FARM NOTICE COVENANT.

The following easement is to be utilized as required for farm and non-farm residential development within the Agricultural Districts. (See 4.01.04.6.a)

Prepared by:

Hand County Zoning Officer (or by Grantor or Grantor's Attorney)
Zoning Officer Address (or Grantor's or Grantor's Attorney's address)
Miller, SD 57362 (or Grantor's or Grantor's Attorney's city)

RIGHT TO FARM NOTICE COVENANT

You are hereby notified that the property you are purchasing 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 operations permitted by Hand County zoning regulations. 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 manure; 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 any 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 for agricultural operations to expand. This notification shall extend to all landowners, their heirs, successors or assigns and because it is required pursuant to obtaining a building permit, may not be removed from the record title without consent of the Hand County Board of Adjustment.

Legal

Description: _____

Signature

STATE OF SOUTH DAKOTA COUNTY OF HAND

On this the _____ day of _____, 20____, before me, _____, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that _____ executed the same for the purposes contained.

In witness whereof I hereunto set my hand and official seal.

_____ My commission expires _____

CHAPTER 5.13. WAIVER OF SETBACK FROM EXISTING CONCENTRATED ANIMAL FEEDING OPERATION

The following waiver is to be utilized as required for farm and non-farm residential development in the Agricultural Zoning District which is located within two (2) miles of an existing concentrated animal feeding operation in the Agricultural Zoning District (See 4.01.04.6.b)

Prepared by:
Hand County Zoning Officer (or by Grantor or Grantor’s Attorney)

Zoning Officer Address (or Grantor's or Grantor's Attorney's address)
Miller, SD 57362 (or Grantor's or Grantor's Attorney's city)

WAIVER OF SETBACK FROM
EXISTING CONCENTRATED ANIMAL FEEDING OPERATION

The following waiver is to be used when a dwelling (Farm or Non-Farm) is proposed to be constructed within two (2) miles of an existing Concentrated Animal Feeding Operation. The waiver shall be filed with the Register of Deeds. Grantors are the owner(s) of property applying for the proposed residential development. (See 4.01.04.6.b)

1. Purpose. This waiver is required for any dwelling to be constructed within two (2) miles of an existing concentrated animal feeding operation as defined by the Hand County Zoning Ordinance.

2. Waiver:

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

In accordance with the conditions set forth in the decision of Hand County, dated _____ 20____, approving a plat with a residential dwelling development right or by the issuance of a permit for a residential dwelling either to be located within two (2) miles of the existing concentrated animal feeding operation located at the following property, _____ and in consideration of such approval, Grantors agree to the perpetual non-exclusive easement as follows:

1. The Grantors, their heirs, successors, and assigns acknowledge that the location of a residential development/dwelling on (legal description) is within two (2) miles of an existing concentrated animal feeding operation. This easement waives the Grantors, their heirs, successors, and assigns common law rights to object to the existing concentrated animal feeding operation's, located at the above legal description, potential need for a variance from the setback requirements of the Hand County Zoning Ordinance.

2. Further, the grantors hereby waive all common law rights to appeal any decision of Hand County Board of Adjustment relating to the issuance of a variance regarding separation setbacks from the existing concentrated animal feeding operation located at above legal description.

IN WITNESS WHEREOF, _____, 20__

Grantors (Print) _____

Grantors (Signature) _____

STATE OF SOUTH DAKOTA

SS:

COUNTY OF HAND

This instrument was acknowledged before me on _____, 20____ by _____ (Grantors).

_____ Notary Public

My Commission Expires: _____

CHAPTER 5.14. TARGET RANGE REQUIREMENTS.

Section 5.14.01. Area Regulations.

1. Minimum Lot Size: Ten (10) acres.
2. Minimum Front Yard: One hundred fifty (150) feet.
3. Minimum Side Yard: Three hundred (300) feet.
4. Back of the Range Setback: A minimum of one thousand (1000) feet from any buildings and/or roads.
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.

CHAPTER 5.15. BED AND BREAKFAST ESTABLISHMENTS.

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

1. They shall be in compliance with applicable state laws including registration with the South Dakota Department of Health.
2. A license must be approved by the state prior to granting a conditional use permit and license must remain current while operating a bed and breakfast.

CHAPTER 5.16. PRIVATE WIND ENERGY CONVERSION SYSTEMS (PWECS).

The regulations regarding Private Wind Energy Conversion Systems under seventy-five (75) feet (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 turbine, and any turbine support base of a PWECS shall be equal to the proposed turbine hub 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. **Turbine Access.** Climbing access to the PWECS turbine shall be limited either by means of a fence six (6) feet high around the turbine base with a locking portal, or by limiting turbine 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 5.17. WIND ENERGY SYSTEM (WES) REQUIREMENTS

Section 5.17.01. Applicability.

The requirements of these regulations shall apply to all WES facilities except private non-commercial facilities with a single tower height of less than seventy-five (75) feet and used primarily for on-site consumption of power.

Section 5.17.02. Federal and State Requirements.

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

Section 5.17.03. General Provisions.

1. **Mitigation Measures.**
 - a. **Site Clearance.** The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the 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 land owner.

- 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.
 - vi. **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. See Table 1 below.

TABLE 1

| Setback Type | Distance |
|--|---|
| Project wind turbines from currently participating occupied residence | 1,320 feet |
| Project wind turbines from currently non-participating occupied residence | 2,640 feet |
| Project wind turbines from maintained County roadway, unless waived in writing by the County | 1.1 times wind turbine tip height |
| Project wind turbines from maintained township roadway, unless waived in writing by the applicable township | 1.1 times wind turbine tip height |
| Project wind turbines from existing overhead distribution and transmission lines, unless waived in writing by the infrastructure owner | 1.1 times wind turbine tip height |
| Pursuant to SDCL 43-13-24, Project wind turbines from property lines, unless the Developer has a written agreement with the adjacent landowner allowing the placement of the tower closer to the property line, in which case, the tower may be placed closer to the property line shared with that adjacent land owner. | 500 feet or 1.1 times wind turbine tip height, whichever is greater |

**Occupied Residence: a dwelling or manufactured/modular home which has been occupied as a residence for thirty (30) consecutive days and nights during any portion of the two (2) years immediately preceding an application for a wind energy conditional use permit.

- a. Set back distance to be measured from the wall line of the neighboring principal building to the base of the WES tower. 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.
- b. The horizontal setback shall be measured from the base of the tower to the public

right-of-way.

- c. 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.
3. Electromagnetic Interference. The permittees shall not operate the WES so as to cause microwave, television, radio, internet, cell phone, 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. At a minimum, towers shall be marked as required by the Federal Aviation Administration (FAA). Additionally, this section requires that each tower be lighted. This provision shall not apply to infrared heating devices used to protect the monitoring equipment. The required manner of lighting is by means of an Aircraft Detection Light System (ADLS). Subject to FAA approval, applicants will install an ADLS within one (1) year of approval by FAA for the specified project. In the event FAA does not approve an ADLS system, the applicant will comply with all lighting and markings otherwise required by FAA.
5. Shadow Flicker. Developer agrees to site Project wind turbines so as to limit shadow flicker resulting from Project wind turbines at currently occupied residences to 30 hours per year or less, unless waived in writing by the owner of the occupied residence.
6. Turbine Spacing. The turbines shall be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.
7. 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.
8. Electrical Cables. The permittees shall place electrical lines, known as collectors, and communication cables underground when located on private property except when total distance of collectors from the substation require 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.
9. 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 the 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. The paragraph does not apply to feeder lines.
10. Feeder Lines. Feeder lines are the conductors of electric energy from the collector lines to the main electric terminal, and may be located either above or below the ground. Overhead

electric lines, known as feeders, may be placed on private property or on public rights-of-way. Changes in routes in public rights-of-way may be made as long as approval has been obtained from the governmental unit responsible for the affected right-of-way. 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.

11. 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. Upon expiration of this permit, or upon 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 forty-two (42) inches. 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.

12. 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.

13. 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.

14. 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.

15. Noise. Noise level shall not exceed 50 DBA, average A-Weighted Sound pressure at the perimeter of participating residences and business and 45 DBA, average A-Weighted Sound pressure at the perimeter for non-participating residences and business and shall not exceed 45 DBA, average A-Weighted Sound pressure and buildings owned and/or maintained by a governmental entity.

16. Permit Expiration. The permit shall become void if either no construction as described in the application has commenced within two (2) years of issuance; or if a State Permit from the South Dakota Public Utility Commission has not been issued within two (2) years of issuance.

17. 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. Copy of easement agreements with landowners.
- d. Map of occupied residential structures, businesses and public buildings.
- e. Map of sites for WES, access roads and utility lines.
- f. Proof of utility right-of-way easement for access to transmission lines.
- g. Location of other WES in general area.
- h. Project schedule.

18. Enforcement. Each violation of the terms of the WES Ordinance provisions constitutes a Class 2 Misdemeanor and may be prosecuted as such. Each day of a continuing violation constitutes a separate and distinct criminal offense.

CHAPTER 5.18. Pipeline Structures.

Any above ground structure associated with a pipeline requiring South Dakota Public Utilities Commission approval shall also require a Hand County conditional use permit and building permit. The conditional use permit shall be issued by the Board of Adjustment if the applicant adheres to all requirements of the South Dakota Public Utilities Commission which may include various Hand County recommendations regarding such issues such as but not limited to right-of-way, haul roads, and building permits. The requirement of the conditional use permit may be waived in the event said permit requirement is contrary to federal law.

CHAPTER 5.19 HAZARDOUS LIQUID PIPELINE (HLP)

Section 5.19.01. Intent.

The intent of this Ordinance is to set forth guidelines for routing or location of HLP as allowed by 49 U.S.C. 60104€.

Section 5.19.02. Applicability.

The requirements of this Ordinance shall apply to all HLPs proposed after July 1, 2025. HLPs for which a permit has been issued prior to July 1, 2025 by the South Dakota Public Utilities Commission under South Dakota Codified Law Chapter 49-41B shall not be required to meet the requirements of this Ordinance; provided, that any such pre-existing HLP, which does not provide transportation services for a continuous period of twelve (12) months, shall meet the requirements of this Ordinance prior to recommencing transportation services.

Section 5.19.03. More Stringent Standards Required.

In the event that a permit granted by the South Dakota Public Utilities Commission imposes a similar standard to a County standard, a HLP owner or operator shall comply with the more stringent standard, unless the Public Utilities Commission expressly finds under South Dakota Codified Law Section 49-41B-28 that the County standard is unreasonably restrictive.

Section 5.19.04. Conditional Use Permit Required.

An applicant that has filed a verified petition with the PUC, Public Utility Commission, asking for a permit to construct, maintain, and operate a new HLP along, over, or across land in Hand County shall submit an Application to the Zoning Officer for a Conditional Use Permit.

Section 5.19.05. Conditional Uses.

After notice, the Board of Adjustment (BOA) may permit a Hazardous Liquid Pipeline as Conditional Uses in the following Districts:

1. Ag District

Section 5.19.06. Minimum Setback Requirements.

1. An HLP shall be setback a minimum of 2 miles from the following: schools, daycares, churches, residential dwelling, concentrated animal feeding operation, or any structure that has residential living quarters within.
 - a. The setback distance shall be measured from the center line of the proposed HLP to the closest measurement of a parcel's property line.

Section 5.19.07. Setback Waiver or Variance.

1. With the exception of setbacks from listed in 5.19.06, the developer of a HLP may apply for a reduction of the minimum setback, in the form of a setback waiver or setback variance.
2. Variance from Setback Distance. The developer of an HLP may apply for a setback variance as part of its application for a conditional use permit. The setback variance must be submitted as part of the developer's application for a conditional use permit. The procedure for requesting a setback variance as part of an HLP is as follows:
 - a. After a review of all project plans, and the presentation to the Board of Adjustment, the Board of Adjustment will make any recommendations and approve or deny said setback variances.

- b. The Board of Adjustment may approve or deny each submittal of a setback variance based on the project location, area, size, and the property use.
 - c. If the HLP project is approved, any setback variance submitted and approved as part of the conditional use permit application must be filed at the Hand County Register of Deeds Office by the developer towards each individual parcel's legal description for a setback variance to be approved, final and permanent.
3. Setback Waiver. The developer of an HLP may obtain a setback waiver from an individual property owner. The setback waiver must be submitted as part of the developer's application for a conditional use permit. The procedure for submitting a setback waiver is as follows:
- a. After a review of all project plans and the presentation to the Board of Adjustment, the Board of Adjustment will make a decision to accept the setback waivers provided.
 - b. The Board of Adjustment may approve or deny each individual submittal of a setback waiver based on the project location, area, size, and the property use.
 - c. If the HLP project is approved, any setback waiver submitted and approved as part of the conditional use permit application must be filed at the Hand County Register of Deeds Office by the owner towards each individual parcel's legal description for a setback waiver to be approved, final and permanent.

Section 5.19.08. Permit Application Requirements for HLP

- 1. An applicant applying for a Conditional Use Permit for a Hazardous Liquid Pipeline pursuant to this Chapter shall submit the following documents and information to the Zoning Officer:
 - a. The information required for a Conditional Use Permit will include submitting an application for a Conditional Use Permit and including all requirements listed in section 6.05.01.
 - b. A complete copy of the application for a permit filed with the PUC. This requirement is an ongoing requirement, and as the application for the PUC permit is amended or changed, the applicant shall provide updated information and documents to Hand County.
 - c. A map identifying each proposed crossing of any road or property located in Hand County.
 - d. A map and a list containing the names and addresses identifying each landowner of proposed HLP crossing in Hand County. The map and list shall include and identify all Property Owners who have executed an Easement, Waiver from Setback or who have been or will be contacted about the execution of a Waiver from Setback.
 - e. A map showing locations for all related facilities and above- ground structures, such as pumps, lift-stations, or substations.
 - f. All application fees for the Conditional Use Permit, Building Permit, or any other fees associated with HLP permit, must be paid at time of filing.

2. Complete Application Required. Upon receipt of an application, the Zoning Officer will review the information provided and follow the guidelines set forth in reviewing the submitted Conditional Use Permit application. In the event the application is deficient, the Planning and Zoning Officer will reject the application and provide applicant with a list of deficiencies. Applicant may submit a revised application including the omitted information within 10 days of notification.
 - a. No HLP may be constructed in Hand County until the County has approved a Conditional Use Permit for the HLP.
 - b. A Conditional Use Permit granted to an applicant pursuant to this Chapter is not transferrable to any Person. An applicant, or its successors in interest, shall apply for a new Conditional Use Permit whenever the Hazardous Liquid Pipeline is transferred, or its use is materially or substantially changed or altered.

CHAPTER 5.20 Solar Energy Systems (SES).

Section 5.20.01. 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 while also avoiding adverse impacts to important areas such as agricultural lands and other sensitive lands. This ordinance will not impede personal or business solar collector development for the primary use of self-sustaining energy. This ordinance is not intended to replace safety, health or environmental requirements contained in other applicable codes, standards, or ordinances. The provisions of this ordinance shall not nullify any provisions of local, state or federal law.

Section 5.20.02. Private Solar Energy System (PSES).

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

Section 5.20.03. 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:
 - b. Site plan as required by 5.20.05 (4)
 - c. Boundaries of the site proposed for SES and associated facilities on United States Geological Survey Map or other map as appropriate.
 - d. Map of easements for SES, if applicable.
 - e. Affidavit attesting that necessary easement agreements with landowners have been obtained, if applicable.

- f. Aviation/Airport protection if required. 5.20.05 (6)
 - g. The fencing and gates required to be around the exterior perimeter. 5.20.05 (8)
 - h. The decommissioning plan. 5.20.06
 - i. Weed/Grass control plan 5.20.05 (12)
 - j. Haul roads identified. 5.20.05 (13)
 - k. Project schedule
 - l. Any other factors relevant to the proposed system.
3. All copies of the preliminary plan and overall site layout 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 5.20.04. Compliance.

1. All SES are subject to the State of South Dakota Storm Water Management regulations 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 upon 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 5.20.05. 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-mount systems shall be maintained. Topsoils shall not be permanently removed from the project area during development or 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. It is required that any crops

planted follow all federal and state laws protecting endangered species. This will also include pollinators such as bees. 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 exterior of the site.

2. Foundations. A qualified engineer shall certify that the foundation and design of the solar panels racking and support is within accepted professional standards, given local soil and climate conditions.
3. 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. For power and communication lines inside the project site, the Permittee has the option to install them underground or above ground.
4. Site Plan Required. A detailed site plan for both existing and proposed conditions must be submitted, showing location of all solar arrays, other structures, property lines, rights-of-way, service roads, floodplains, wetlands and other protected natural resources, topography, electric equipment, and all other characteristics requested by the Board of Adjustment.
5. Setbacks. Projects including multiple, adjoining properties as part of the project plan, need not adhere to setbacks at point of connection between the adjoining properties. Solar panels will be kept at least five hundred (500) feet from a residence. 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.
 - a. Every SES shall observe a minimum rear and side yard setback of thirty (30) feet.
 - b. Every SES shall meet the minimum front yard setback of the applicable zoning district.
 - c. Every SES shall be setback at least one hundred (100) feet from the highwater mark of any lake, stream or river.
 - d. The above shall not apply to buried infrastructure, access roads, or junction boxes for cable splicing and other infrastructure related to these components.
6. 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.
7. 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.

8. 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 and shall always remained locked 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.

9. Maximum height: Solar panel arrays shall be no more than twenty-five (25) feet in height, not including power lines, substation, meteorological stations, or inverters.

10. 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.

11. 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.

12. 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.

13. 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.

Section 5.20.06. Decommissioning/Restoration/Abandonment.

- 1. 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.
- 2. Site Restoration. Upon expiration of this permit, or upon 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 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 and underground cables. 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.

CHAPTER 5.21 CANNABIS DISPENSARIES.

- 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 very 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 one (1) cannabis dispensary provided the time, place, and manner of said dispensary comply with this ordinance and the County licensing ordinance.

2. Required Separation Distances.

- a. A cannabis dispensary shall be located not less than one thousand (1,000) feet from a public or private school existing before the date of the cannabis dispensary application;
- b. A cannabis dispensary shall be located not less than one thousand (1,000) feet from a nonresidential daycare facility, religious institution, residence, public park, public pool, and/or public recreational facility area existing before the date of the cannabis dispensary application;
- c. Exemption from separation requirements. Any separation distance requirement, other than the State requirement from schools (1,000 feet), may be waived, provided:
 - i. The applicant provides documentation waiving the setback requirement from the title holder of the land benefiting from the separation.
- d. 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 dispensaries are prohibited in all other zoning districts and not eligible for a home occupation use.
- b. It shall be unlawful to operate a dispensary in a building which contains a residence or a mixed-use building with commercial and residential uses.

4. Controlled Access - No cannabis dispensary shall share premises with or permit access directly from another cannabis dispensary, business that sells alcohol or tobacco, or, if allowed by law, other cannabis dispensary.

5. Documentation of State Licensure.

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

6. Applications for Cannabis Dispensary Conditional Use Permits shall be accompanied by:

- a. Submission of a site plan containing the following:
 - i. Any information required for applicable building permit,

- ii. Ingress and egress plan
 - iii. Parking plan
 - iv. Lighting plan (including security lighting)
 - v. Screening/security fencing plan,
 - vi. Refuse and Utilities plan,
 - vii. Any other information as lawfully may be required by the Zoning official to determine compliance with this ordinance
- b. Documentation of ability to meet setback/separation requirements.
 - c. Documentation of State Licensure.
7. All Cannabis Dispensaries are required to be constructed in conformance with the International Building Code as provided in SDCL 11-10.

CHAPTER 5.22 DATA PROCESSING CENTER.

Section 5.22.01. Siting Requirements.

- 1. Data processing centers shall comply with the following requirements:
 - a. Fencing: A six (6) foot sight obscuring fence shall be required along the entire perimeter of the facility. Such fence shall comply with all other requirements of the County Zoning Ordinance.
 - b. All electrical generators shall be enclosed behind a solid wall made of concrete or another equivalent sound absorbing material a minimum of four (4) feet higher than the highest point on the generator. This requirement may be reduced or eliminated if a noise mitigation plan is submitted in accordance with all other requirements of the County Zoning Ordinance demonstrating that peak sound levels do not exceed those allowed in this Section.
 - c. Yard requirements: The entire perimeter of the facility shall be screened from adjoining properties by a buffer yard. The side and rear buffer yards shall be a minimum of fifty (50) feet and the minimum front buffer yard shall be one-hundred fifty (150) feet.
- 2. All equipment and structures shall be a minimum of fifty (50) feet from the property boundary of the facility as delineated on the site plan and/or one-quarter mile (1,320 feet) from any church, school, or occupied residence.

Section 5.22.02. Utility Notification.

- 1. No grid-connected data processing center shall be issued a permit until evidence has been provided by the operator that installation of the system has been approved by the electrical

utility provider. Off-grid systems shall be exempt from this requirement. Written verification from the Electric Utility provider shall state the following:

- a. Adequate capacity is available on the applicable supply lines and substation to ensure that the capacity available to serve the other needs of the planning area is consistent with the normal projected load growth envisioned by the data center.
- b. Utility supply equipment and related electrical infrastructure are sufficiently sized and can safely accommodate the proposed use.
- c. The use will not cause electrical interference or fluctuations in line voltage on and off the operating premises.

Section 5.22.03. Noise.

1. All proposed data centers that are within one-quarter mile (1,320 feet) of an occupied residence, church, or school shall submit a noise mitigation plan in accordance with the following:
 - a. Name and qualifications of the person who measured the decibel levels.
 - b. Equipment used.
 - c. Location of the noise measurements depicted on a scaled site plan. The points of measurement shall be at all property lines and other noise receptors (residences, etc.).
 - d. A list of all sound sources that contribute to the overall sound emissions from the site and the following for each source;
 - i. Peak sound levels, in decibels, emitted by each source; and,
 - ii. Sound levels, in decibels, for sound continuously emitted by each source for a duration exceeding thirty (30) minutes; and,
 - iii. The frequencies of the sound emissions from each source;
 - iv. A site diagram showing the location of each sound source.
 - e. A description of any and all methods, systems, devices or structures intended to be used to mitigate sound emissions, including technical specifications, descriptions of materials and/or engineering specifications.
 - f. A certification, signed by the preparer of the document, certifying the accuracy of the materials contained within the noise mitigation plan and that the plan will effectively reduce sound emissions to levels required by the County.
 - g. The county reserves the right to require independent verification of noise measurements and/or to request additional measurements at different points on the property.

- h. The maximum sound level allowed from the physical structure of any occupied residence, church, or government building is fifty-five (55) dBA after any applicable adjustments provided for herein are applied.
- i. Between the hours of 10:00 p.m. and 7:00 a.m. the maximum sound level allowed from the physical structure of any occupied residence, church, or government building is forty-five (45) dBA after any applicable adjustments provided for herein are applied.
- ii. At any hour of the day or night the applicable noise limitations in (h) and (i) above may be exceeded for any receiving property by no more than:
 - 1) 5 dBA for a total of 15 minutes in any one-hour period; or
 - 2) 10 dBA for a total of 5 minutes in any one-hour period; or
 - 3) 15 dBA for a total of 1.5 minutes in any one-hour period.

Section 5.22.04. Signage.

- 1. No signage shall be permitted on the perimeter fence, with the exception of one (1) sign not to exceed thirty-two (32) square feet that displays the name, address and emergency contact information of the facility as well as appropriate warning signs.

Section 5.22.05. Structural Requirements.

- 1. The facility shall meet all requirements of the most current edition of the International Building Code (IBC). Any electric wiring shall be located underground, except where wiring is brought together for interconnection to system components and/or the local utility power grid.
- 2. The use of cargo containers, railroad cars, semi-truck trailers and other similar storage containers for any component of the operation is strictly prohibited.

Section 5.22.06. Access.

- 1. All roads shall be of sufficient width to accommodate emergency vehicle access as determined by the County Emergency Management Director.

Section 5.22.07. Submittal Requirements.

- 1. A narrative describing the proposed data processing facility including an overview of the project, including a description of how the project meets market demand, the facility's processing capacity, and the facility's anticipated water and electricity needs.
- 2. A site plan drawn to scale showing the proposed location and dimensions of all equipment, existing and proposed structures, screening, fencing, property lines, access roads, turnout locations, ancillary equipment, and the location of any church, school, or occupied residence within one-quarter mile (1,320 feet) of the perimeter of the facility;

3. A study prepared by an acoustical engineer that describes the anticipated noise level of the facility and any proposed mitigation efforts such as sound walls, baffles, ventilation silencers, additional separation from surrounding uses, etc.;
4. Other relevant studies, reports, certifications, and approvals as may be reasonably requested by the County to ensure compliance with this Article; and
5. Signature of the property owner(s) and the owner/operator of the facility (if different than the property owner)

**ARTICLE VI
ADMINISTRATION**

CHAPTER 6.01. BUILDING/USE PERMITS.

Section 6.01.01. Permits Required.

1. No building or other structure shall be erected, moved, added to, structurally altered or used without a permit issued by the Zoning Officer. The Zoning Officer except in conformity with the provisions of this ordinance shall issue no permit, unless he received a written order from the Board of Adjustment in the form of an administrative review, under conditional use, 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. A permit is also required for any filling, grading, lagooning, or dredging which is related to site preparation for future construction.

Section 6.01.02. Applications.

1. Application for building and use permits shall be made to the Zoning Officer upon forms approved by the Board of County Commissioners. These forms shall be filled in by the owner, or authorized agent. 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 Officer, 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 as provided in 1.02.03 and shall require a new building and use permit.

Section 6.01.03. Building/Use Permit Issuance and Termination.

1. Issuance of a Building/Use Permit. If the proposed excavation, alteration, construction, or change of use, as set forth in the application for a Building/Use Permit are in conformity with the provisions of this Ordinance, and other regulations of the County then in force, the Zoning Officer shall issue a building/use permit for such excavation, construction, alteration or change in use. If a building/use permit is refused, the Zoning Officer shall immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application with the cause for denial. The Zoning Officer shall grant or deny the permit within a reasonable time from the date the application is submitted.

2. A Building/Use Permit shall be deemed to authorize, and is required for both initial and continued occupancy and use of the building or land to which it applies, and shall continue in effect, so long as such building and the use thereof or the use of such land is in full conformity with the requirements of this ordinance and any requirements pursuant thereto. However, on the serving of a written notice by the Zoning Officer of any violation of any of the said provisions or requirements with respect to any building or the use thereof or of land, the Building/Use Permit for such use shall without further action, be null and void, and a new Building/Use Permit shall be required for any further use of such building or land.
3. The issuance of a building/use permit shall, in no case, be construed as waiving any provisions of this Ordinance. A Building Permit unencumbered by a conditional use or variance application shall become null and void two (2) years from the date of issuance thereof unless substantial progress has been made by that date on the project described therein. If the work described in any building permit has not begun within one (1) year or has not been substantially completed within two (2) years of the date of issuance thereof, said permit shall expire and be cancelled by the Zoning Officer and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building/use permit has been issued. If substantial progress has been made within two (2) years from the issuance of the permit but has not been completed, the Zoning Officer may extend the building/use permit an additional one (1) year.
4. Building Permits encumbered by a special permitted use, conditional use or variance shall not expire for a period of two years following issuance, disposition of final appeals or court proceedings; provided, actual construction as described in the building permit is completed within two (2) years. Permits in violation shall be cancelled by the Zoning Officer and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit or application shall not proceed unless and until a new building/use permit has been issued.

Section 6.01.04. Permits Displayed.

1. Permits Displayed. It shall be unlawful to commence work until the building permit is displayed in a conspicuous place. The permit shall be placed upon the premises at all times from the beginning until the completion of such construction, alteration, repair, occupancy or change of use.

Section 6.01.05. Fees.

1. The Board of County Commissioners shall, by resolution, establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, and other matters pertaining to this Ordinance, the schedule of fees shall be posted in the office of the County Zoning Officer and may be altered or amended only by the Board of County Commissioners.
2. Until all applicable fees, charges, and expenses have been paid in full, no decision shall be made on any application or appeal.

CHAPTER 6.02. ZONING OFFICER.

Section 6.02.01. Zoning Officer.

1. The provisions of this Ordinance shall be administered and enforced by a County Zoning Officer appointed by the Board of County Commissioners, who shall have the power to make inspection of buildings or premises necessary to carry out his duties in the enforcement of this Ordinance.

Section 6.02.02. Duties.

The powers and duties of the Zoning Officer shall be as follows:

1. Issue all building/use 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 permit, which was unlawfully issued, or any 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 of this regulation, including, but not limited to, all maps, amendments, variances, appeals, and applications.
7. Prepare documents, easements, letters of assurance, waivers, etc. as required by this Ordinance, or at the direction of the Hand County Planning Commission and/or the Hand County Board of Adjustment and/or Hand County Commissioners.
8. Provide public information relative to all matters arising out of this Ordinance.
9. Forward to the Planning Commission all plats and/or applications for amendments to this Ordinance.
10. Forward to the Board of Adjustment, applications for appeals, conditional uses, 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 Planning Commission.
12. The Zoning Officer shall receive applications required under this ordinance, specifically but not limited to Building Permits, Conditional Uses, Variances, and Zoning Amendments.
 - a. For building/use permits, the Zoning Officer shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.

- b. For Special Permitted Uses, the Zoning Officer shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.
- c. For Conditional Uses and Variances, the Zoning Officer shall review the application, and shall make recommendations regarding said application to the Board of Adjustment.
- d. For Zoning Amendments, the Zoning Officer shall review the application, and shall make recommendations regarding said application to the Planning Commission and Board of County Commissioners.

Section 6.02.03. 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 permitted special use is submitted, indicating the section of this Ordinance under which the permitted special 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 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 Section 6.02.03 and appropriate Special Permitted Use Standards. The applicant may then appeal the decision of the Zoning Officer as described in Section 6.04.06
 - d. 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 Special Permitted Use Permit.
 - e. 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.
 - f. The Zoning Officer shall then issue any other associated building/use permits.
 - g. A Special Permitted Use permit shall expire two (2) year from the date upon which it becomes effective if no construction has commenced.
 - h. A special permitted use permit that is granted does not expire for a period of two years following completion of any final appeal of the decision.

Section 6.02.04. Right of Entry.

Whenever necessary to make an inspection to enforce any of the provisions of this regulation, or whenever the Zoning Officer or an authorized representative has reasonable cause to believe that there exists in any building or upon any premises a regulation violation, the Zoning Officer 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 Officer 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 Officer or an authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Zoning Officer or an authorized representative shall have first obtained a proper inspection warrant 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 Officer or an authorized representative for the purpose of inspection and examination pursuant to this regulation.

Section 6.02.05. Stop Order.

Whenever any work is being done contrary to the provisions of this ordinance, the Zoning Officer 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 Officer to proceed with the work.

Section 6.02.06. Use and Occupancy Violation.

Whenever any building or structure regulated by this ordinance is being used contrary to the provisions of this ordinance, the Zoning Officer 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.

CHAPTER 6.03. PLANNING COMMISSION.

Section 6.03.01. Establishment.

1. The Planning Commission shall consist of membership of the Board of County Commissioners.

Section 6.03.02. Term of Office.

1. The terms shall run concurrent with the terms of the membership of the Board of County Commissioners.

Section 6.03.03. Meetings of the Planning Commission

1. The Planning Commission shall meet at such times as may be necessary to accomplish the purposes of their duties, but in no event shall they meet less than once every three (3) months.
2. All Meetings of the Planning Commission shall be open to the public. The Planning 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 office of the Zoning Officer and shall be public record. The Planning 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.
3. A simple majority vote of a quorum of members of the Planning Commission in attendance is required to forward a recommendation, pertaining to its duties described in 6.03.05, on to the Board of County Commissioners.

Section 6.03.04. Per Diem and Expenses of Commission

1. Per Diem and expenses of the County Planning Commission shall be established by the Board of County Commissioners and paid by the County.

Section 6.03.05. Powers and Duties of the Board.

1. Comprehensive Land Use Plan. 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. Upon preparation the Planning Commission shall make recommendation to the Board of County Commissioners subject to SDCL 11-2-18.
2. Zoning Ordinance. To develop and recommend a zoning ordinance, in accordance with the Plan, for the regulation of the height, area, bulk, location, and use of private and public structures and premises, and of population density as may be provided by SDCL 11-2-13 and 11-2-14. Upon preparation the Planning Commission shall make recommendation to the Board of County Commissioners subject to SDCL 11-2-18.
3. Subdivision.
 - a. If determined appropriate, to develop and recommend regulations governing the subdivision of land within Hand County.
 - b. If a subdivision ordinance has been adopted, to review proposals for subdivision to determine whether such subdivisions comply with the subdivision ordinance of the County and make recommendation to the Board of County Commissioners relating to the approval of subdivisions.
4. Amendments. The Planning Commission may from time to time propose and make recommendation on amendments to the comprehensive land use plan, zoning ordinance, and subdivision regulations subject to SDCL 11-2-28.
5. The Planning Commission shall have all other responsibilities designated to it by this Ordinance and South Dakota Law.

CHAPTER 6.04. BOARD OF ADJUSTMENT.

Section 6.04.01. Establishment.

Within Hand County, outside of incorporated municipalities, the power and jurisdiction related to this article shall be executed by the Board of Adjustment.

1. The Planning Commission, shall act as the Board of Adjustment.
2. The Board of County Commissioners may appoint two (2) alternates to the Board of Adjustment. If a Board of Adjustment member is unable to participate in a meeting, the alternate, or second alternate in turn, may serve in the absent Board of Adjustment members place. The term of the Alternates shall be for three (3) years.

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 chairman and at such other times as the Board of Adjustment may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.
2. The Board of Adjustment 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 office of the Zoning Officer and shall be public record. The Board of Adjustment 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.
3. A quorum of the Board of Adjustment consists of four (4) members physically present or participating remotely.
4. The Board of Adjustment shall take no action on any item at a meeting where a quorum of the Board is not physically present or participating remotely.

Section 6.04.03. Powers and Duties of the Board.

1. The Board of Adjustment shall have the following powers and duties:
 - a. Administrative Review. To 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.
 - b. Conditional Uses. To hear and decide applications for conditional uses that are specified in this Ordinance and for decisions on any special questions upon which the Board of Adjustment is specifically authorized to pass.
 - c. Variance. To hear and decide applications for variance from the terms of this Ordinance because of unnecessary hardship and to authorize upon appeal in specific cases such

variance from the terms of this Ordinance as which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.

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 appealed 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 (four (4) 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 aggrieved or by an officer, department, board or bureau of the County adversely affected by any decision of the zoning officer to grant or deny the permit. No other appeal such as any relating to a ministerial act or other preliminary act to bring an application or matter before the Board of Adjustment for hearing and a final decision is authorized by this section. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The appeal shall be filed within twenty-one (21) days of the decision in question. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days. All appeals relating to a particular action or property shall be consolidated and heard at the time of the initial appeal.
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 the appeal within sixty (60) days of receiving said appeal, 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 agent or 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 office of the County Zoning Officer.

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 the 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, indicating the section of this Ordinance under which the conditional use permit is sought and stating the grounds on which it is requested.
2. Property owners adjacent to the proposed site shall be notified of the conditional use request by certified or first class mail, at the cost of the applicant. In lieu of this requirement, at the discretion of the Zoning Officer, the applicant may obtain written consent from adjacent landowners, to be submitted with the conditional use application.
3. All work to include alteration, actual construction, excavation, dirt work or other similar activity subject to a permitting process or as an allowed land use conducted upon neighboring lands which began after the date on which a complete conditional use application is accepted shall consider the following. If such action causes the application to fail to meet one or more of the performance standards or criteria for the proposed

conditional use, said action shall not cause the requested conditional use to be considered nonconforming until a final disposition of the conditional use request and any appeal is determined pursuant to § 11-2-61 or 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 following approval or determination of any appeal as set forth above, any subsequent use, lot, or occupancy of the land or premises shall conform with the zoning ordinance.

4. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
5. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
6. 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.
7. The granting any conditional use, by the Board of Adjustment shall be based upon 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. Access:
 - i. The roads providing access to the property shall be determined to be 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 the applicable road authority regarding the upgrading and continued maintenance of any roads used for conditional use requested prior to issuance of a Conditional Use Permit.
 - ii. Reasonable provisions have been made for safe vehicular and pedestrian entrance and exit of the property for daily and emergency traffic.
 - b. Parking and internal traffic:
 - i. The parking areas and driveways will be covered in materials appropriate for the internal traffic generated by the use.
 - ii. The number of parking spaces is appropriate for the proposed use of the property.
 - c. Utilities and refuse:
 - i. The manner by which electricity, water, sewer, natural gas and other utilities will be provided has been described.
 - ii. Consideration has been given to the location of refuse and service areas and manner for disposing of trash, junk, or other debris.
 - d. Screening, buffering, and open space:
 - i. The type, dimensions, and character of any fences, walls, hedges or other materials used for screening; and/or open space is appropriate for the proposed use in reference the specific property.
 - e. Lighting:

- i. Lights associated with the use will not create a nuisance nor distract traffic.
 - ii. Brightness, intensity, glare of lights will be similar to lighting which would be customarily used for permitted uses in the applicable zoning district.
- f. General compatibility with adjacent properties and other property in the district.
 - i. Any use listed as a Conditional Use is generally compatible in the district it is listed in.
 - ii. General compatibility is used when prescribing conditions for approval of a permit.
- 8. 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 variance is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation.
- 9. The affirmative majority vote of the present and voting members of the Board of Adjustment is required to pass any application for a Conditional Use Permit.
- 10. Expiration of a Conditional Use Permit
 - a. Unless otherwise specified by the Board of Adjustment, a conditional use permit shall expire two (2) years from the date upon which it becomes effective if no actual construction as described in the building permit has commenced. Upon written request to the Board of Adjustment and prior to the conditional use permit expiration date, a one (1) year time extension for the conditional use may be granted by the Board of Adjustment.
 - b. A conditional use permit that is granted does not expire for a period of two years following completion of any final appeal of the decision.
- 11. 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.
- 12. 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.

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.

2. The Zoning Officer may require the applicant for a variance to notify adjacent property owners by certified or first class mail at their last known address, at the applicant's expense, of the variance request; in lieu of the foregoing, if required, the applicant may obtain written consent from adjacent landowners, to be submitted with the Variance application.
3. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
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 unless the following criteria are met:
 - a. Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other land, structures, or buildings in the same district;
 - b. The literal interpretation of the provisions of this ordinance would 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 not 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. Granting the variance request would not 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.
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 four (4) votes is required to pass any application for a variance.
9. Expiration of a Variance
 - a. Unless otherwise specified by the Board of Adjustment, a variance shall expire two (2)

years from the date upon which it becomes effective if no actual construction as described in the building permit has commenced. Upon written request to the Board of Adjustment and prior to the variance expiration date, a one (1) year time extension for the variance may be granted by the Board of Adjustment. If the variance request is granted in connection with activities for which a conditional use permit has been granted within the past six (6) months, the variance may be extended in the same manner and shall expire at the same time and under the same conditions as the conditional use permit.

- b. A variance that is granted does not expire for a period of two years following completion of any final appeal of the decision.

Section 6.05.03. Zoning Amendments.

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 or regulations may be initiated by the Board of County Commissioners, the Planning Commission, or by application of one (1) or more of the owners of property within the area requested to be rezoned. Initiated petitions which create amendments to this ordinance are required to submit signatures of twenty (20) percent of the landowners in the zoning district or districts requesting change. 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.
2. The following procedure for requesting a Zoning Ordinance Amendment or Zoning District Boundary Change shall be followed:

The landowner or other person(s) requesting the Amendment/Boundary change shall complete an application, available from the Zoning Officer. Completed applications shall be returned to the Zoning Officer 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.

- d. A proposed time schedule for beginning and completion of development.
- e. Any additional information, as requested by the Zoning Officer, as lawfully may be required to determine conformance with and provide for enforcement of this ordinance.
- f. The Zoning Officer shall review the application, and shall forward a summary of the application, and his/her comments regarding said application, to the Planning Commission for their review.
- g. The Zoning Officer shall set the date, time, and place for public hearings to be held by the Planning Commission and Board of County Commissioners. The Zoning Officer shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed amendment; such notice shall be published not less than ten (10) days prior to each board's (Planning Commission, Board of County Commissioners) public hearing. If the proposed amendment will change the boundaries of a zoning district, the Zoning Officer shall notify all owners of property within two hundred fifty (250) feet of the proposed boundary change, by Registered or Certified Mail at the expense of the applicant, at least one (1) week before the public hearing.
- h. The public hearing shall be held. 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 the Planning Commission.
- i. The Planning Commission shall recommend approval or disapproval of a requested change, either in whole or in part. Recommendations for changes shall be presented to the Board of County Commissioners.
- j. Adoption. The Board of County Commissioners shall thereafter by ordinance either adopt or reject the proposed amendment. After passage, the Ordinance Amendment shall take effect on the 20th day after its publication in an official 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 (variances, 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.