

# DIVIDE COUNTY ZONING ORDINANCE



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<b>SECTION</b>	<b>PAGE</b>
<hr/>	
<b>Section 1 Introduction</b>	
1.1 Title	5
1.2 Statutory Authority	5
1.3 Purpose	5
1.4 Intent	5
1.5 Interpretation	6
1.6 Repeal	6
1.7 Severability	6
1.8 Effective Date	6
<hr/>	
<b>Section 2 Language and Definitions</b>	
2.1 General	7
2.2 Definitions	7
<hr/>	
<b>Section 3 Administration</b>	
3.1 Administrative Entities	24
3.2 Board of County Commissioners	24
3.3 Planning and Zoning Commission	25
3.4 Divide County Auditor	26
3.5 Land Use Administrator/Planning and Zoning Office	27
3.6 Public Hearings	28
3.7 Application Process	29
3.8 Request for Separate Hearing	37
3.9 Right to Appeal	37
3.10 Violations, Remedies, and Enforcement	37
<hr/>	
<b>Section 4 General Provisions</b>	
4.1 Jurisdiction	40
4.2 General Zoning Regulations	40
4.3 Compliance	42
4.4 Non-conforming Use	42
4.5 Permitted Use	42
4.6 Conditionally Permitted Use	42
4.7 Prohibited Use	43
4.8 Variance	43
4.9 Bonding	43
4.10 Amendment	47
<hr/>	
<b>Section 5 Zoning Districts</b>	
5.1 Districts	48
5.2 Zoning Map	55
<hr/>	
<b>Section 6 Building Standards and Regulations</b>	
6.1 Building Construction	56
6.2 Minimum Lot Size and Building Density	56
6.3 Maximum Height	58
6.4 Setback Requirements	58
6.5 Private Water and Sewer	59

6.6 Fences	59
6.7 Parking	59
6.8 Signs	60
6.9 Outdoor Storage of Materials	61
6.10 Public Nuisance	62
6.11 Buffer Strips	63
6.12 Storm Water Pollution Prevention Plan	63
6.13 Noxious Weed Control	63
<b>Section 7 Special Provisions</b>	
<hr/>	
7.1 General	65
7.2 Work Camp Housing	65
7.3 Mobile Home Parks	69
7.4 Campground and Recreational Vehicle Parks	70
7.5 Animal Feeding Operations	72
7.6 Farm Related Business	75
7.7 Home Occupations	76
7.8 Mineral Mining and Extraction	76
7.9 Pipelines	79
7.10 Petroleum Processing Plant	79
7.11 Chemical Processing Plant	79
7.12 Railroad Yards/Spurs	80
7.13 Commercial Solar Energy Conversion Facilities	80
7.14 Wind Energy Facilities	84
7.15 Waste Disposal Sites	87
7.16 Salvage and Junk Yards	89
7.17 Adult Entertainment Businesses	90
7.18 Medical Marijuana	93
<b>Section 8 Subdivisions</b>	
<hr/>	
8.1 Purpose	100
8.2 Platting Authority	100
8.3 Policy	100
8.4 Restrictions on Recording and Permits	101
8.5 General Provisions for Subdivision of Land	101
8.6 Sketch Plan	103
8.7 Platting	104
8.8 Filing and Review of Application	107
8.9 Form and Content	110
8.10 Recording	110
8.11 As Built Plans	110
8.12 Administrative Subdivision	111
8.13 Design Standards	112
8.14 Public Improvements	116
8.15 Financial Security	117
8.16 Completion of Improvements	118

8.17 Maintenance of Improvements  
Annex A: Fee Schedule  
Annex B: Application Forms

## SECTION 1 INTRODUCTION

### 1.1 Title

The ordinance, its regulations, and the District Zoning Map shall be known and cited to as the Divide County Zoning Ordinance and Subdivision Regulations (referred herein as “the Ordinance”).

### 1.2 Statutory Authority

The Ordinance has been enacted pursuant to the authority granted by North Dakota Century Code Chapters 11-33 and 11-33.2. The Ordinance has been developed and adopted in accordance with the 1994 Divide County Comprehensive Plan.

### 1.3 Purpose

The purpose of the Ordinance is to promote the health, safety, moral, public convenience, general prosperity, and public welfare through the regulation and restriction of the location and use of buildings and other structures and the use, condition of use, and occupancy of lands for residential, recreation, and other purposes within the County which is consistent with the comprehensive plan.

### 1.4 Intent

The intent is to promote the health, safety, moral and general welfare of the county residents and the orderly development of land within the county by:

- a. Preserving and maintaining agricultural lands for farm and ranch use;
- b. Encouraging non-farm growth to locate within or adjacent to existing communities or community served districts;
- c. Promoting a healthy and visually attractive environment;
- d. Promoting the development of utility corridors which utilize the least productive agricultural land;
- e. Regulating development in flood plain areas so as to reduce flood damages and protect stream flows; and
- f. Discouraging development which places an excessive financial burden on County government.

## **1.5 Interpretation**

The provisions of this Ordinance shall be minimum requirements. Wherever the requirements of this Ordinance are in conflict with the requirements of any state or federal statute, administrative rule, or regulation, or township law, ordinance, or regulation, the most restrictive or that imposing the higher standards shall be deemed to apply.

## **1.6 Repeal**

All prior regulations or parts of the regulations, ordinances, districts, district zoning maps, or resolutions are hereby repealed.

## **1.7 Severability**

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

## **1.8 Effective Date**

This Ordinance shall be effective on the 21<sup>st</sup> day of June, 2023 , and, unless otherwise accepted by this Ordinance, shall apply to the location and use of any building and other structure, and each use, condition of use, and occupancy of land for residential, recreation, and other purposes under the authority of Divide County.

## SECTION 2 LANGUAGE AND DEFINITIONS

### 2.1 General

The language set forth in the text of this Ordinance shall be interpreted in accordance with the following rules of construction:

- a. Tense and Form – words used or defined in one tense or form shall include other tenses or derivative forms.
- b. Number – Words used in the singular shall include the plural number and words in the plural number shall include the singular number.
- c. The masculine gender shall include the feminine and the neutral gender. The feminine gender shall include the masculine and the neutral gender. The neutral gender shall include the masculine and feminine gender.
- d. Person – The word “person” includes individuals, any legal entity, whether or not organized as a corporation, limited liability company, partnership, unincorporated association, firm, partnership, joint venture, trust, trustee, or estate...
- e. Shall, Must, Will, and May – The words “shall,” “must,” and “will” are mandatory in nature and establish an obligation or duty to comply with the particular provision. The word “may” is permissive in nature and involve the discretion of the County, its officials, employees, or agents.

### 2.2 Definitions

For the purpose of this Ordinance, the following terms shall use the meaning defined below:

**ACCESSORY BUILDINGS:** A subordinate building or structure, the use of which in customary use is incidental to that of principal building or structure on the same lot. (Examples include a garden shed, garage, outdoor storage, tool shed on a residential lot.)

**ADJACENT LANDOWNERS:** Landowners whose property is located within one (1) mile of the parcel or location of the property identified in the zoning application.

**ADULT ENTERTAINMENT CENTER:** Any building, premise, structure, or other facility which provides the opportunity to view materials, live or recorded performances of activities of a sexual nature which are characterized by an emphasis on matters depicting, describing, or related to specified sexual activities or specified anatomical areas such as genitals, breasts, or buttocks. Adult Entertainment Center includes but is not limited to adult bookstores and novelty shops, adult establishments, adult motion picture theaters, adult mini-motion picture theaters, as those terms are defined in N.D.C.C. Section 11-11-62, as well as exotic dancing establishments. An Adult Entertainment Center shall not include the guest rooms of a hotel or motel.

**AGRICULTURAL BUILDING AND STRUCTURE:** A building or structure used for the purposes related to agriculture, farming, ranching, dairying, pasturage, horticulture, floriculture, viticulture, and animal and poultry husbandry, and which is not used as a place of human habitation or for the use of the public.

**AGRICULTURAL DISTRICT:** All lands and areas used for: cultivating the soil, producing crops and/or raising livestock, and so designated by the Divide County Board of County Commissioners on the Zoning District Map.

**AGRICULTURE EQUIPMENT SALES AND SERVICE:** Sale, service and storage of agriculture machine equipment, parts, and accessories.

**ALTERATION:** A change or rearrangement in the structural parts of an existing facility, building, or structure or a square footage enlargement of such by any method, or the moving an existing facility, building, or structure from one location or position to another.

**AMENDMENT:** Any change, revision, or modification of the text of this Ordinance or the Zoning District Map.

**ANIMAL FEEDING OPERATION (AFO):** Is a lot or facility where animals (other than aquatic) have been, are or will be stabled or confined and fed or maintained for a total of 45 days or more in any twelve month period and where crops, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

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

**BARS/NIGHTCLUBS:** Businesses serving or selling alcoholic beverages, on-sale and/or off-sale, with or without entertainment.

**BASEMENT:** One or more floors of a building that are either completely or partially below the ground level.

**BED AND BREAKFAST:** A private home that is used to provide accommodations for a charge to the public, with not more than seven lodging units, in which no more than two family-style meals per day are provided. "Family-style meal" means a meal ordered by persons staying at a bed and breakfast facility which is served from common food service containers, as long as any food not consumed by those persons is not reused or fed to other people if the food is unwrapped.



**BOARD OF TOWNSHIP SUPERVISORS:** 3-5 supervisors elected by the residents of a township to manage and control the affairs of the township to include establishing an annual budget, levying annual taxes, and to oversee township roads.

**BONDING:** A bond or [surety](#) is a promise by a surety or guarantor to pay one party (the *obligee*) a certain amount if a second party (the *principal*) fails to meet some obligation, such as fulfilling the terms of a contract. The bond protects the obligee against losses resulting from the principal's failure to meet the obligation.

**BUILDABLE AREA:** The portion of a lot remaining after required yards and setbacks have been provided.

**BUILDING:** A structure with a permanent foundation on the ground, fully enclosed, with or without permanent hookup to water and sewer facilities, which does not have wheels or other means to facilitate transport to another site, and is designed or intended for the enclosure, shelter, or protection of persons, animals, or property, or for commercial, public, government, or industrial operations.

**BUILDING PERMIT:** A permit issued by the Divide County Land Use Administrator or Divide County Auditor before and as a prerequisite to construction, erection, reconstruction, alteration, repair, or enlargement of any building or structure otherwise subject to Divide County Zoning Ordinances and Subdivision Regulations and NDCC Chapter 11-33.

**BUSINESS AND FINANCIAL SERVICES:** Services in the fields of business, accounting, banking, insurance, and real estate which may or may not require licensure or certification by state law.

**CAMPGROUND:** Any parcel of land containing three or more lots intended for temporary occupancy by travel trailers or tents not to exceed 45 days occupancy in any consecutive six-month period.

**CERTIFICATE OF SURVEY:** A land survey prepared by a land surveyor registered in the State of North Dakota with a certification that the information on the land survey is accurate.

**CHEMICAL PROCESSING PLANT:** An industrial process plant that manufactures or otherwise processes chemicals. Chemical Processing Plants use chemical or biological processes to transform feedstock chemicals into products.

**COMMERCIAL DISTRICT:** The area designated by the Divide County Board of County Commissioners on the Zoning District Map which provides for the grouping of retail merchandising, light industry and service activities.

**COMMERCIAL ESTABLISHMENT:** Any building, structure, enclosure, or premise used for normal business transactions, including the buying and selling of goods and services.

**COMMERCIAL STORAGE:** Storage facilities for short-term or long-term rental to multiple parties for the storage of personal property. Such facilities shall not be used as a place of human or animal habitation.

**COMMUNICATION TOWER:** A tall, free-standing or stayed structure that is attached to either the ground or another structure and is designed to support radio, television, microwave, or wireless communication systems.

**COMPREHENSIVE PLAN:** A document that is a statement of public policy concerning future land use, transportation, and public facilities. It establishes goals, objectives, and strategies to guide future development in the county. Zoning ordinances are developed to support these strategies.

**LARGE CONCENTRATED ANIMAL FEEDING OPERATIONS:** Any animal feeding operations that stables or confines as many or more than the numbers specified in North Dakota Administrative Code chapter 33-15-03.1.

**COMPREHENSIVE PLAN:** A long term, strategic plan that defines development goals for the county that guide public policy decisions in terms of transportation, utilities, land use, economic development, recreation, and housing in order to protect the health and welfare of all citizens.

**CONDITIONAL USE PERMIT:** A conditional use permit may be issued by the Divide County Board of County Commissioners for an activity or structure that is not expressly permitted in a given zoning district. The Board of County Commissioners may attach specific conditions or restrictions on a conditional use permit. Conditional uses that may be approved are specifically identified in this Ordinance. The process for obtaining a conditional use permit is specified in Section 4.6 of this Ordinance.

**CONSERVATION AREA, PRIVATE:** An area owned, used, or managed by a private individual or organization through land trusts, conservation easements, and private preserves to protect ecologically valuable land from future development. Land use restrictions vary in effect but shall not be established in Divide County to prevent normal agricultural use of land currently zoned and utilized as agricultural.

**CONSERVATION AREA, PUBLIC:** An area owned, used, or managed by a public entity through land trusts, conservation easements, and private preserves to protect ecologically valuable land from future development. Land use restrictions vary in effect but shall not be established in Divide County to prevent normal agricultural use of land currently zoned and utilized as agricultural.

**CONSERVATION DISTRICT:** The area designated by the Divide County Board of County Commissioners on the Zoning District Map as having a delicate resource base and providing for its protection from potentially damaging forces.

**CONSTRUCTION SERVICES:** General contractors, concrete and masonry construction, carpenters, metal building construction, and other similar construction-related activities.

**COUNTY HIGHWAYS AND ROADS:** Any and all highways and roads designated and selected by the Divide County Board of County Commissioners as part of the Divide County road system and over which it has authority as provided by law.

**CREW HOUSING FACILITIES:** One or more lodging units or skid units, ordinarily designed for human living quarters or a place of business, on a temporary or permanent basis, which are not real property, as defined in NDCC Section 57-02-04, and are not mobile homes, as defined in NDCC Section 57-55-01. A group of crew housing facilities that are connected physically or by common ownership may be treated as a single crew housing facility.

**DEVELOPMENT:** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within Divide County.

**DEVELOPER:** A person who submits an application to the Planning and Zoning Department for the purpose of land subdivision as defined herein. The developer may be the owner or the authorized agent of the owner of the land to be subdivided.

**DISTRICT:** The areas of Divide County for which the zoning regulations governing the use of land and the use, density, bulk, height, and location of structures and buildings are uniform.

**DWELLING:** A shelter, such as a house, where a person lives.

**DWELLING, ACCESSORY:** Additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities, and can be either attached or detached from the main residence. Examples include but are not limited to a guest house, mother-in-law apartment or basement/attic apartments.

**DWELLING, MULTI-FAMILY:** A building designed and constructed with more than one dwelling unit for occupancy by more than one family. Multi-family dwellings include, but are not limited to, townhouses, twin homes, duplexes, 4-plexes, 6-plexes, condominiums, apartment buildings, and other similar multi-family dwellings.

**DWELLING, SINGLE FAMILY:** Single-family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than 1 separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

**DWELLING UNIT:** A group of rooms in a dwelling designed for occupancy by one family for living purposes and having installed its own cooking and sanitary facilities. Within this Ordinance, the term residence, residential lot, or similar term shall be included in the definition of "dwelling unit".

**EASEMENT:** A vested or acquired right to use land of another owner, other than as a tenant, for a specific purpose.

**ENCROACHMENT:** Any fill, building, structure, or use, including accessory uses, located on real property which projects onto any portion or part of adjacent property.

**EVENT PERMITS:** Permits issued by the Divide County Board of County Commissioners for certain temporary and occasional uses before operation of said uses are allowed in the County.

**FAMILY:** One or more persons occupying a dwelling unit and living as a single household [or housekeeping unit. It does not include individuals or groups occupying nursing homes, motels, hotels, bed and breakfasts, or other similar lodging facilities. Unrelated persons are limited to three (3) people per housekeeping unit.

**FARM:** A single tract of land or contiguous tracts of agricultural land containing a minimum of 10 acres and which normally provides a farmer, who is actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, with at least fifty-one percent (51%) of his annual gross income.

**FARMER:** In order to be considered a farmer for the purposes of this Ordinance, the owner or tenant of the farm shall earn fifty-one percent (51%) or more of his or her annual gross income, excluding passive investment income, from the operation of the farm. A farmer, thus defined, shall include those no longer actively engaged in the participation of farm activities (retired) but maintain an ownership interest in or tenancy interest in the farm.

**FARM RESIDENCE:** A residence that is situated on a farm and which is occupied or used by a person who is a farmer as defined by this Ordinance. It does not apply to property which is occupied or used by a person who is not a farmer.

**FEEDER LINES:** The power lines between a wind energy facilities collector stations and the regions high voltage transmission lines.

**FINANCIAL SECURITY:** An amount of money posted with the County or a third-party, whether in the form of a surety bond, irrevocable letter of credit, an escrow account, or other approved security, prior to or at the time of approval of a plat guaranteeing that the developer shall make and install all required public improvements at the developer's expense and within such time as the Board of County Commissioners shall set.

**FOOD PROCESSING FACILITY:** A commercial operation that manufactures, packages, labels, or stores food for human consumption, but does not provide food directly to a consumer, including any establishment that cans food, or packages food in packaging with a modified atmosphere, or processes vitamins, food supplements, food additives, spices, tea, coffee, salsa, jelly or jam, condiments, or candy.

**FRATERNAL ORDER:** A fraternal order is generally defined as an organization wherein a group of men, women or men and women are bound together for the purposes of advancing their educational, social or other benefits. It generally has membership requirements, rights and privileges and may or may not have secret rites. Examples would include Loyal Order of the Moose, Elks, Knights of Columbus, etcetera.

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

**FUEL STORAGE & FUEL TANK TERMINAL:** An industrial facility for the storage of petroleum products and from which these products are usually transported to end users or further storage facilities.

**GAME FARM/PRESERVE:** A commercial operation that raises wild animals, birds, or fish in a confined environment. The wildlife may be hunted for fees or raised for commercial food sales.

**GOVERNMENT FACILITIES:** Any building or structure, or group thereof, which is owned or leased by federal, state, local, and tribal governments. Some government facilities are open to the public for business activities, commercial transactions, or recreational activities while others are not open to the public due to highly sensitive information, materials, processes, and equipment. These facilities include general-use office buildings, special-use military installations, courthouses, national laboratories, and structures that may house critical equipment, systems, networks, and functions.

**HAZARDOUS WASTE:** Divide County defines Hazardous Waste as outlined in North Dakota Administrative Code Article 33-24, Hazardous Waste Management, and Chapter 33-24-02, Identification and Listing of Hazardous Waste.

**HEARING:** A public meeting held before the Divide County Planning and Zoning Commission or the Divide County Board of County Commissioners whenever the same is required by law.

**HOME OCCUPATIONS:** A home occupation is an occupation conducted as an accessory use in or from a residential dwelling or its accessory building by persons whose principal residence is on the premises and which has no more effect on adjacent property than normal residential use. Examples include a beautician, photographer, ordained minister, seamstress, sales representative, or small repair services such as watches and clocks, toys or small household appliances.

**HVAC SERVICES:** Heating, ventilation, and air conditioning services.

**INDOOR RECREATIONAL FACILITIES:** Facilities such as bowling alleys, movie theaters, health and fitness centers, roller skating rinks, etcetera.

**INDUSTRIAL DISTRICT:** The area designated by the Divide County Board of County Commissioners on the Zoning District Map which provides for the grouping of manufacturing, processing, assembly, or heavy commercial activities.

**INERT WASTE:** Non-putrescible solid waste which will not generally contaminate water or form a contaminated leachate. Inert waste does not serve as food for vectors. Inert waste includes, but is not limited to: construction and demolition material such as metal, wood, bricks, masonry and cement concrete; asphalt concrete; metal; tree branches; bottom ash from coal fired boilers; and waste coal fines from air pollution control equipment.

**JUNK OR SALVAGE YARD:** Land or buildings where waste, discarded or salvage materials are bought, sold, stored, exchanged, cleaned, packed, disassembled or handled, including but not limited to scrap metal, paper, hides, rubber products, glass products, lumber products, and products from the wrecking of automobiles or other vehicles, and oil and gas surplus equipment.

**KENNELS:** Any building or lot where dogs, cats, and other household pets are boarded, bred, or maintained for compensation.

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

**LANDFILL:** Specifically selected, designed, and operated sites for the disposal of solid waste in accordance with NDCC Section 23-29-03 and the provisions of this Ordinance.

**LAND USE ADMINISTRATOR:** The officer appointed by the Divide County Board of County Commissioners to administer the zoning affairs of Divide County and to administer the North Dakota State Building Code in Divide County.

**LIGHT INDUSTRY:** A section of an economy's secondary industry characterized by less capital-intensive and more labor-intensive operations. Products made by an economy's light industry tend to be targeted toward end consumers rather than other businesses. Consumer electronics and clothing manufacturing are examples of light industry.

**LIVESTOCK:** Any animal raised for food, raw materials or pleasure, including, but not limited to, beef and dairy cattle, bison, sheep, swine, poultry horses, elk, and any other animals that are raised, fed, or produced as part of farming or ranching activities. Livestock also includes fur animals raised for pelts.

**LODGING ESTABLISHMENT:** Every building or structure, or any part thereof, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished for pay to transient guests whether or not meals are provided. It does not include a facility

providing personal care services directly or through contract services as defined in N.D.C.C. Sections 23-09.3-01 or 50-32-01.

**LOT:** A parcel of land of at least sufficient size to meet minimum zoning requirements for use intended for occupancy by one main building with its accessory buildings and having its principal frontage upon a road or street.

**LOT FRONTAGE:** The portion of a lot adjacent to a street or road. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage.

**LOT WIDTH:** The distance between straight lines connecting front and rear lot lines at each side of the lot, measured at the rear of the required front yard.

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

**MAN CAMP:** Divide County will include “man camp” under the more inclusive term, work camp housing.

**MANUFACTURED HOME:** A structure, transportable in one or more sections, that, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this definition except the size requirements and with respect to which a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under title 42 of the United States Code.

**MECHANICAL REPAIR SERVICES:** Services involving or related to the repair and maintenance of motor vehicles and other types of machinery and equipment.

**MET TOWER:** A free-standing or stayed structure used to collect/record metrological data on wind and weather conditions for weather services or for wind energy conversion farms.

**METES AND BOUNDS:** A method of property description by means of their direction and distance from an identifiable point of beginning.

**MOBILE HOME:** Any re-locatable structure or unit, either single or multi-sectional, which is built on a permanent chassis, ordinarily designed for human living quarters, either on a temporary or permanent basis, which owned or used as a residence or place of business by the owner or occupant, which is either attached to utility services (services purchased by the occupant from a utility company regulated by the Public Service Commission or rural electric co-op or a political

subdivision of the State of North Dakota) or is twenty-seven feet or more in length. A mobile home includes a manufactured home as defined in NDCC Section 41-09-02 and this Ordinance, other than a manufactured home with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied. Utility services" under this definition means services purchased by the occupant from a utility company under the jurisdiction of the public service commission, a rural electric cooperative, or a political subdivision of the state. (NDCC Section 57-55-01).

**MOBILE HOME PARK:** Any parcel of land containing three (3) or more lots intended for occupancy by mobile homes designed to be used as living quarters which meets the requirements of mobile home parks in the NDCC Chapter 23-10 and this Ordinance, and for which a mobile home park license has been issued by the State Health Department.

**MODULAR HOME/HOUSING/STRUCTURE:** Refers to a systems-built, ready-built, or pre-fabricated home that is shipped on a removable frame and is set on a crawlspace or basement and is treated the same as site built homes for appraisal and financing. A modular home placed in the North Dakota must be constructed in compliance with the State Building Code.

**MOTOR VEHICLE AND EQUIPMENT SALES AND SERVICE:** Sale, service and storage of motorized vehicles, to include watercraft, parts, and accessories.

**NDAC:** North Dakota Administrative Code.

**NDCC:** North Dakota Century Code.

**NON-CONFORMING USE:** Any building or tract of land lawfully occupied by a conforming use at the time of the passage of this Ordinance or amendments thereto, which does not conform with the provisions of this Ordinance or amendments thereto.

**NON-FARM RESIDENCE:** Any single family dwelling which is to be situated on a parcel zoned agriculture whose occupant is or is to be a non-farmer or any other person who does not intend to farm such parcel or engage in upon such parcel the raising of livestock or other similar operations associated with farming or ranching, or who does not meet the requirements and definitions of NDCC Sections 57-02-01(17) and 57-02-08(15).

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

**PARK MODEL TRAILER:** A recreational vehicle not exceeding forty feet [12.19 meters] in length which is primarily designed to provide temporary living quarters for recreation, camping, or seasonal use, is built on a single chassis, is mounted on wheels, has a gross trailer area not exceeding four hundred square feet [37.16 square meters] of enclosed living space in the setup mode, and is certified by the manufacturer as complying with American National Standards Institute standard A119.5.



**PARKING SPACE:** An area for the purpose of storing one parked vehicle. For the purpose of this Ordinance, one parking space shall have a minimum width of nine (9) feet and a minimum length of twenty (20) feet. In computing off street parking, additional space shall be required off street for access drives to parking areas.

**PERMANENT FOUNDATION:** A wood or masonry foundation which extends below ground level and is set on footings of concrete or gravel depending on soil conditions.

**PERMITTED USE:** Any use which complies with the requirements of a Zoning District. Uses which are listed as permitted for a given district do not require a public hearing. Building permits are still required if any structure or building is being built or moved onto the property.

**PERSONAL SERVICES:** Services such as spas, tanning salons, and hair salons which may or may not require licensure or certification by state law.

**PETROLEUM / NATURAL GAS PROCESSING FACILITY:** A facility that is involved in the refining of crude oil into finished consumer products such as gasoline, diesel fuel, liquefied petroleum gas or other petroleum based products. It also refers to a facility involved in the refrigeration or processing of well head/raw gas into liquefied natural gas. For the purpose of this ordinance; it shall also refer to any facility that pumps, pressurizes, refrigerates, transfers or otherwise facilitates the transportation of crude oil, well head or natural gas.

**PLAT:** Any map, plan, or chart of a tract of land or subdivision indicating the location and boundaries of individual lots or properties.

**PRIVATE CLUB OR LODGE:** A facility operated by a private membership club or fraternal order primarily for the benefit of the members and is not generally open to use by the general public.

**PROFESSIONAL SERVICES:** Services in the fields of engineering, law, and other technical fields which typically involve licensure or certification by state law.

**PROTECTIVE COVENANT:** A restriction or condition on the use of land placed upon the property by a present or former owner and recorded in the Office of the Divide County Recorder.

**PUBLIC ACCESS ROAD:** Any road available to the general public, commercial traffic, or emergency vehicles whether maintained by the government or private entity.

**PUBLIC FACILITIES:** A public facility can be any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity. These differ slightly from government facilities in they are not generally used by government officials or employees for interaction with the public as part of their duties. Examples include services such water or sewage treatment plants, municipal waste facilities, or recreational swimming pools, parks, golf courses.

**PUBLIC IMPROVEMENTS:** Street grading or surfacing, installation of sidewalks, curb, gutter, water, sanitary and storm sewer systems, drainage, culverts, bridges, street or area lighting, traffic control signs, utilities, and trees or other landscaping, as may be required in a developer's agreement.

**RECREATION DISTRICT:** The areas designated by the Divide County Board of County Commissioners on the Zoning District Map which provide for general or specific recreational use.

**RECREATIONAL ACTIVITIES:** Activities that one does for refreshment of health or spirits or for pleasure. Examples include picnics, golf, ball games, hiking, swimming, boating, skiing or other similar activities.

**RECREATIONAL VEHICLE:** A vacation trailer or other vehicular or portable unit which is either self-propelled, towed, or is carried by a motor vehicle and which is intended for human occupancy and is designated for vacation or recreation purposes but not a year-round residential use.

**RECREATION VEHICLE PARK (RV PARK):** A tract of land, designed and utilized, and operated for a fee or other basis as a place for temporary parking (45 days or less) of occupied recreation vehicles.

**RECYCLING PLANT:** A recycling plant is a facility which processes materials for recycling by melting, shredding, crushing, or pulping.

**REGISTERED LAND SURVEY:** A survey map of parcels on record designed to simplify a complicated metes and bounds description, designating the same into a tract or tracts of Registered Land Survey Number.

**REGISTERED LAND SURVEYOR:** A land surveyor licensed and registered in the State of North Dakota.

**RETAIL ESTABLISHMENTS:** Businesses involved primarily in the sale of consumer goods to the end user. Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property.

**RE-SUBDIVISION:** A change in an approved and recorded subdivision plat if such change affects any street layout on such map or area reserved for public use, or if it affects any map or plan legally recorded prior to the adoption of this Ordinance.

**RIGHT-OF-WAY:** The area, either public or private, over which the right of passage exists for alleys, bikeways, sidewalks, streets, roads or highways, or utilities such as electric transmission

lines, telecommunications, pipelines, sanitary or storm sewers, and waterlines. The right of way shall not be considered as land area when computing lot size.

**SEASONAL HOME:** A single family or multi-family dwelling unit building or structure that is not designed, constructed, or used for year round occupancy. Examples would include a summer lake home or a hunting cabin.

**SEPTIC DISPOSAL SITE (RV DUMPING):** A facility that collects or stores wastewater for later removal and treatment, including the use of holding tanks or chemical toilets.

**SEPTIC SYSTEM:** A waste disposal system consisting of a tank of between 1,000 and 2,000 gallons in size connected to an inlet wastewater pipe at one end and a septic drain field at the other. The term "septic" refers to the anaerobic bacterial environment that develops in the tank which decomposes or mineralizes the waste discharged into the tank.

**SETBACK:** The line within a property defining the required minimum distances between any building or structure or use and the adjacent right-of-way or property line of any lot. Setbacks shall be measured from the point where the building, structure, or use protrudes the farthest out.

**SEWAGE LAGOON:** Small municipal sewage systems (1 million gal/day or less) employing aerated lagoons. Lagoons utilize a biological oxidation processes in surface aerated basins for treating municipal wastewaters.

**SEWAGE TREATMENT FACILITY:** Any facility for removing contaminants from wastewater and household sewage, domestic, commercial and institutional. It includes physical, chemical, and biological processes to remove physical, chemical and biological contaminants. Its objective is to produce an environmentally safe fluid waste stream and a solid waste or treated sludge suitable for disposal or reuse. It may refer to large municipal treatment facilities or smaller, even temporary facilities utilizing membrane bioreactors, sequencing batch reactors, or other approved technology.

**SIGHT LINE:** An area of unobstructed vision at a street or road intersection defined by lines of sight between points at a given distance from the intersecting street or road right-of-way lines.

**SIGN:** Any emblem, name, identification, description, or illustration which is used for outdoor advertising having a permanent location on the ground or attached to or painted on a building including bulletin boards, poster boards, and billboards. This does not include real estate for sale signs, political campaign signs, or public information and traffic signs.

**SITE PLAN:** A detailed plan for making improvements to a parcel(s) of land for the purpose of building or development as provided in this Ordinance.

**SKID UNIT:** A structure or group of structures, either single or multi-sectional, which is not built on a permanent chassis and is ordinarily designed for human living quarters or place of business on a temporary or permanent basis.

**SOLAR ENERGY CONVERSION FACILITY (SOLAR FARM):** For the purpose of this ordinance, solar farm includes the use of land where a series of solar collectors are placed for the purpose of generating photovoltaic power which generates 15 kW direct current or more when operating at maximum efficiency. The term solar farm shall not be construed to prohibit the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, or generating electricity for individual residential, agricultural, or commercial buildings.

**SOLAR POWER:** Solar power is the conversion of energy from sunlight into electricity, either directly using photovoltaics, indirectly using concentrated solar power, or a combination.

**STREET:** Except for the section lines, a way for vehicular traffic whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, land place or however otherwise designated.

**STRUCTURE:** Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground.

**SUBDIVISION:** The division of a lot, parcel of land, or tract, creating one or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights-of-way, whether public or private, for access to or from any such lot, tract or parcel, and the creation of new or enlarged parks, playgrounds, plaza, or open spaces.

**SUBDIVISION, SIMPLE:** The creation of one lot which is 15 acres or less, where the remaining parcel is 15 acres or more and not adjacent to a lot that is 15 acres or less.

**SUBDIVISION, STANDARD:** The creation of one or more lots under the provision of this Ordinance that does not meet the definition of a simple subdivision.

**SURFACE WATER:** Waters on the surface of the earth, excluding diffused surface waters but including surface waters whether flowing in well-defined channels or flowing through lakes, ponds, or marshes which constitute integral parts of a stream system, or waters in lakes.

**TOPOGRAPHY:** The configuration of the surface of the land, including its relief in detail.

**TRACT:** A plot, piece, or parcel of land, other than a lot which is recorded in the Office of the Divide County Recorder's Office.

**TRANSLOAD/TRANSMISSION FACILITY:** A facility designed and constructed for the collection and temporary storage of crude oil while awaiting transfer to railcar or a pipeline for transportation to a petroleum processing facility. It may also refer to any facility designed and constructed for the purpose of refrigeration or pressurization of natural gas for transmission to a natural gas processing facility.

**TRANSMISSION LINE:** Overhead electrical lines of 46 KV or larger.

**TRUCK TERMINAL:** Truck parking for oil and gas development, mineral extraction, commercial hauling, or construction activities.

**USE:** The term referring to:

- a. Any purpose for which buildings, other structures or land may be arranged, designed, intended, maintained or occupied; and
- b. Any occupation, business activity or operation carried on (or intended to be carried on) in a building or other structure or on land;
- c. A name of a building, or structure or tract of land which indicates the purpose for which it is arranged, designed, intended, maintained or occupied.

**UTILITY:** The basic facilities for public use such as water, sanitary and storm sewer, as well as electric, gas, cable, and telephone lines.

**VARIANCE:** A relaxation of the terms of this Ordinance by the Board of County Commissioners in any specific case where a literal enforcement of any provisions or resolution would result in great practical difficulties, unnecessary hardship, or injustice.

**VETERINARY FACILITIES:** Buildings, structures, premises, or lots used for the treatment, care, advice or guidance, or other services, or supplies related to the health or death of an animal or animal populations.

**WAREHOUSES:** Temporary storage of goods before transport to the point of sale or another warehouse location. Freight terminals are included in this definition.

**WASTE:** Divide County will utilize the definitions set forth in the North Dakota Administrative Code.

1. **COMMERCIAL WASTE:** means solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities exclusive of household waste, industrial waste, and special waste.
2. **HAZARDOUS WASTE:** Hazardous waste" has the meaning given by North Dakota Century Code section 23-20.3-02 and further defined in North Dakota Administrative Code chapter 33-24-02
3. **HOUSEHOLD WASTE:** solid waste, such as trash and garbage, normally derived from households, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas.

4. **INDUSTRIAL WASTE:** Solid waste has the same meaning as in North Dakota Century Code section 23-29-03. It does not include special waste or hazardous waste as defined by NDAC Chapter 33-20.
5. **RADIOACTIVE WASTE:** waste containing radioactive material and subject to the requirements of article 33-10
6. **SOLID WASTE:** "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. The term does not include:
  - a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
  - b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].
7. **SPECIAL WASTE:** Solid waste that is not a hazardous waste regulated under NDCC Chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration; waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal or industrial waste.

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

**WHOLESALE ESTABLISHMENT:** Businesses involved primarily in the sale of consumer goods to retail establishments.

**WIND ENERGY FACILITIES:** A scaled power plant (wind farm) that uses wind turbines to generate electricity for commercial purposes.

**WIND TURBINE:** A structure that captures kinetic energy from the wind to generate/produce electricity. The components of this structure normally include blades, tower, and nacelle body.

**WORK CAMP HOUSING:** An area specifically designed to accommodate the siting of approved housing units for a temporary influx of workers and meeting the requirements of this Ordinance and the North Dakota Century Code. This term is inclusive of the terms "man camp" or "crew housing facilities."

**YARD:** The minimum amount of open space on a lot which is required to be unoccupied or unobstructed by any portion of a structure from the ground upward.

**ZONING:** A tool that allows the County to regulate the use of land in a manner that protects the general health, safety, and welfare of the community and ensures that the community evolves and changes in a manner consistent with the vision described in the Divide County Comprehensive Plan.

**ZONING DISTRICT MAP:** The map showing the zoning districts of Divide County officially adopted by the Divide County Board of County Commissioners.

## **SECTION 3 ADMINISTRATION**

### **Section 3.1 Administrative Entities**

The Divide County Zoning Ordinance shall be administered and enforced by the Divide County Board of County Commissioners (hereafter “the Board of County Commissioners”), the Divide County Planning and Zoning Commission (hereafter “the Planning and Zoning Commission”), the Divide County Auditor, the Divide County Land Use Administrator, and the Divide County States Attorney.

### **Section 3.2 Board of County Commissioners**

In accordance with NDCC Chapter 11-33, the Board of County Commissioners may regulate and restrict within the County, subject to NDCC Section 11-33-20 and NDCC Chapter 54-21.3, the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes. The Board of County Commissioners shall not prohibit or prevent the use of land or buildings for farming or ranching and shall not prohibit or prevent any of the normal incidents of farming or ranching. The Board of County Commissioners may not prohibit the reasonable diversification or expansion of a farming or ranching operation. Specific duties of the Board of County Commissioners include but are not limited to:

3.2.1 The Board of County Commissioners, after considering the recommendation by the Planning and Zoning Commission, may divide all or any parts of the County, subject to NDCC Sections 11-33-02.1 and 11-33-20, into zoning districts of such number, shape, and area as may be determined necessary.

3.2.2 The Board of County Commissioners, after considering the recommendation by the Planning and Zoning Commission, may enact suitable regulations, in accordance with the Divide County Comprehensive Plan, to carry out the purpose of the County’s zoning power under NDCC Chapter 11.33.

3.2.3 The Board of County Commissioners may from time to time review and approve all proposed repeals of or amendments to zoning districts, this Ordinance, or any other zoning regulation.

3.2.4 The Board of County Commissioners, upon a timely petition by an aggrieved person, shall hold a hearing on any enactment adopted establishing zoning.

3.2.5 The Board of County Commissioners shall establish and appoint members to the Planning and Zoning Commission in accordance with the provisions of NDCC Section 11-33-04.



3.2.6 The Board of County Commissioners may appoint a Land Use Administrator to assist the Auditor and the Planning and Zoning Commission with the execution of their duties.

3.2.7 The Board of County Commissioners shall hear and decide all requests for a variance from this Ordinance.

3.2.8 The Board of County Commissioners may consider and adjust the application or enforcement of any of the provisions of this Ordinance in a specific case upon a showing of the circumstances set forth in NDCC Section 11-33-11.

3.2.9 The Board of County Commissioners shall review and decide all applications for conditional use permits and temporary permits.

3.2.10 The Board of County Commissioners shall review and decide whether to adopt any and all rules, regulations, requirements, and fees schedules recommended by the Planning and Zoning Commission.

3.2.11 The Board of County Commissioners shall serve as the Board of Adjustment and shall hear and decide all appeals of decisions made by the Planning and Zoning Commission, the Land Use Administrator, and the County Auditor regarding the administration, investigation, or enforcement of this Ordinance.

3.2.12 The Board of County Commissioners shall investigate and provide for the enforcement of this Ordinance and of resolutions and regulations made thereunder and may impose investigation and enforcement duties on any officer, department, agency, or employee of the County.

3.2.14 The Board of County Commissioners may authorize and provide for the issuance of permits, including the establishment and collection of reasonable fees therefor, as a prerequisite to the construction, erection, reconstruction, alteration, repair, or enlargement of any building or structure otherwise subject to this Ordinance and NDCC Chapter 11-33.

### **Section 3.3 Divide County Planning and Zoning Commission**

The Planning and Zoning Commission shall consist of seven members appointed by the Board of County Commissioners in accordance with the provisions of NDCC Section 11-33-04. The Planning and Zoning Commission must have a quorum of four members to conduct a meeting or public hearing. The duties of the Planning and Zoning Commission include:

3.3.1 The Planning and Zoning Commission shall make recommendations to the Board of County Commissioners regarding the boundaries of the various County zoning districts, and appropriate regulations and restrictions to be established.

3.3.2 The Planning and Zoning Commission may adopt and administer rules and procedures not inconsistent with NDCC Chapter 11-33.

3.3.3 The Planning and Zoning Commission shall investigate and determine the necessity of establishing districts and prescribing regulations for districts in accordance with NDCC Section 11-33-06 and shall make recommendations to the Board of County Commissioners regarding the same.

3.3.4 The Planning and Zoning Commission shall hold public hearings on any proposed zoning districts or regulations for districts, any applications for amendments to this Ordinance, existing zoning districts, or regulations for districts and make recommendations to the Board of County Commissioners for approval or denial of the same.

3.3.5 The Planning and Zoning Commission may adopt requirements and procedures necessary for submission of zoning applications subject to review and approval by the Board of County Commissioners.

3.3.6 The Planning and Zoning Commission may recommend fee schedules and accounting thereof to the Board of County Commissioners.

3.3.7 The Planning and Zoning Commission shall publicize and post notices of public hearings and proposed amendments to zoning districts or regulations, or this Ordinance, as required by law.

3.3.8 The Planning and Zoning Commission shall conduct public hearings on applications for conditional use permits and temporary permits and make recommendations, including the imposition of conditions on any such use as it deems necessary, to the Board of County Commissioners for the approval or denial of such applications.

### **Section 3.4 Divide County Auditor**

The duties of the Divide County Auditor with regard to County Zoning include:

3.4.1 The County Auditor shall serve as clerk for the Board of County Commissioners and shall keep an accurate record of the official proceedings of the Board.

3.4.2 The County Auditor shall keep all books required to be kept by the Board of County Commissioners.

3.4.3 The County Auditor shall attend all meetings and public hearings of the Board of County Commissioners and, in that capacity, shall record and maintain minutes of all meetings and public hearings.

3.4.4 The County Auditor shall serve as secretary to the Planning and Zoning Commission and, in that capacity, shall attend all meetings conducted by the Planning and Zoning Commission and keep an accurate record of the official proceedings of the Commission.

3.4.5 The County Auditor shall keep copies of all records and accounts of the Planning and Zoning Commission.

3.4.6 The County Auditor shall prepare the agenda Board of County Commissioner meetings or public hearings.

3.4.7 The County Auditor shall maintain the official Divide County Zoning Map.

3.4.8 The County Auditor shall receive all petitions filed contesting any enactment by the Board of County Commissioners establishing a zoning district or zoning regulation, or any amendment thereto, or adopting or amending this Ordinance.

3.4.9 The County Auditor shall receive, disburse, or hold all funds related to this Ordinance for applications, permits, fees, and bonds.

3.4.10 The County Auditor shall file all enactments or amendments thereto adopted by the Board of County Commissioners with the Divide County Recorder as required by law.

3.4.11 The County Auditor shall cause a notice of any enactment establishing zoning districts or prescribing regulations for districts, or amendments thereto, or adopting or amending this Ordinance by the Board of County Commissioners to be published in the official newspaper of the County and in such other newspapers published in the County as the Board of County Commissioners may deem necessary as required by law.

### **Section 3.5 Divide County Land Use Administrator/Planning and Zoning Department**

The Board of County Commissioners may appoint a Land Use Administrator to assist the Board of County Commissioners, the Planning and Zoning Commission, and the Divide County Auditor with the administration, execution, or enforcement of their respective duties. The duties of the Divide County Land Use Administrator shall include:

3.5.1 The Land Use Administrator or Office Deputy shall attend all meetings and public hearings conducted by the Planning and Zoning Commission and, when necessary in the performance of his or her other duties, shall attend the meetings and public hearings conducted by the Board of County Commissioners.

3.5.2 The Planning and Zoning Department shall receive all zoning and building applications and, when requested by an applicant, provide copies of application forms and this Ordinance as needed.

3.5.3 The Planning and Zoning Department shall verify all applications for completeness in accordance with this Ordinance.

3.5.4 The Planning and Zoning Department shall provide all notices to adjacent landowners or affected townships required by this Ordinance.

3.5.5 The Planning and Zoning Department shall update and maintain the Divide County Zoning Register.

3.5.6 The Planning and Zoning Department shall prepare the agenda and all paperwork for all Planning and Zoning Commission meetings or public hearings.

3.5.7 The Planning and Zoning Department shall publicize and post notices of all public hearings for any proposed amendments to zoning districts or district regulations. Notices shall conform to NDCC Section 11-33-08.

3.5.8 The Planning and Zoning Department shall issue all zoning and building permits that do not require a hearing before the Planning and Zoning Commission and/or the Board of County Commissioners or as approved and directed by the Board of County Commissioners.

3.5.9 The Planning and Zoning Department shall maintain a record of all zoning and building applications, permits, minutes, meetings, public hearings, notifications, and publications.

3.5.10 The Land Use Administrator shall investigate any reported violations of this Ordinance and shall enforce the provisions of this Ordinance as directed by the Board of County Commissioners or as permitted by law.

### **3.6 Public Hearings before the Planning and Zoning Commission**

The Planning and Zoning Commission shall hold public hearings on applications, or to review and consider changes to this Ordinance, including changes to zoning districts and the zoning district map. Public hearings will normally be scheduled on the third Friday of each month, but may be rescheduled based on conflicts with other events or public holidays. All requests for amendments to this Ordinance, applications for amendments to the zoning districts and the zoning district map, applications for conditional use permits or temporary permits, or applications for variances to this Ordinance must be addressed at a public meeting to allow any individual to voice objection to or support for said application or request. Specific rules for public hearings include:

3.6.1 The Land Use Administrator will notify the applicant of the date, time, and place of the public hearing in writing.

3.6.2 Notice of the public hearing will be published for two consecutive weeks in the official newspaper as designated by the Board of County Commissioners or other newspapers as specified by the Planning and Zoning Commission. The publication shall

include the nature, scope, and purpose of the proposed amendment or application and the time it is available for inspection and copying at the office of the County Auditor.

3.6.3 The Land Use Administrator will notify all adjacent land owners no later than 10 days prior to date set for the public hearing.

3.6.4 The Land Use Administrator shall notify the Board of Township Supervisors of the affected township(s) at least 10 days prior to the date set for the public hearing on any action pending on amendments of the Ordinance, the zoning districts and zoning district map, or on applications for a conditional use permit, temporary permit, or variances.

### **3.7 Application Process for Zoning Permits, Changes, Amendments, and Variances**

A copy of the Ordinance and all application forms are available in the offices of the Land Use Administrator or the County Auditor's office. Links for forms are also available under the "[Planning and Zoning](#)" section under "County Offices" section of the official Divide County website located at [www.dividecountynj.gov](http://www.dividecountynj.gov).

#### **3.7.1 General Application Process**

- a. Any construction, alteration, substantial improvement, activity, or land use that is not expressly permitted by the Ordinance shall require an application and review by the Land Use Administrator and/or the Planning and Zoning Commission.
- b. All applications must be complete and submitted to the Land Use Administrator no later than the first business day of each month.
- c. Application fees are due at the time of application. Applications without the appropriate fees will not be accepted.
- d. The Planning and Zoning Office shall review the application and inform the applicant in writing or at the time of submission if it is complete. Incomplete applications will not be accepted or scheduled for a public hearing.
- e. Permit applications that do not require a conditional use permit, zoning change, or variance as specified in this Ordinance do not require a public hearing.
- f. Unless otherwise scheduled due to conflicts; hearings will be held on the 3<sup>rd</sup> Friday of each month. The Planning and Zoning Office shall inform the applicant in writing of the time and date of the public hearing. Scheduled public hearing dates are also posted on the calendar on the county website.
- g. The Planning and Zoning Office shall prepare a folder with the original application and all related documentation for each application. Once the application has been approved or denied, this folder shall be submitted to the County Auditor for safe keeping.

- h. The Planning and Zoning Office shall publish a Notice of Public Hearing detailing the applications to be heard by the Planning and Zoning Commission in the official newspaper for Divide County the 2<sup>nd</sup> and 3<sup>rd</sup> week of each month.
- i. The Planning and Zoning Office shall prepare copies of each application for the Planning and Zoning Commission members and a Permit Application Review for each application.
- j. The order of each public hearing will be based on the sequence of acceptance of the completed application and required fee in the office of the Land Use Administrator, unless the Planning and Zoning Commission amends the order at its discretion.
- k. The Planning and Zoning Commission will take up each application at the scheduled public hearing. The applicant shall present his proposal for conditional use or temporary use. Adjacent Landowners, Township supervisors, and the public may comment for or against the proposal or may provide a statement for consideration at the public hearing. After hearing comments, if any, and closing the public hearing, the Planning and Zoning Commission may:
  - 1) Forward the application to the Board of County Commissioners with a recommendation to approve.
  - 2) Forward the application to the Board of County Commissioners with a recommendation to approve with conditions.
  - 3) Forward the application to the Board of County Commissioners with a recommendation to deny.
  - 4) Table the application pending research by the County, additional information to be provided by the applicant, upon absence or request of the applicant, or any other reason deemed necessary by the Planning and Zoning Commission.
  - 5) Take any other action deemed necessary by the Planning and Zoning Commission.
- l. The Planning and Zoning Commission shall vote to forward its recommendation, including any recommended conditions to be imposed on the applicant, to the Board of County Commissioners.
- m. When the Planning and Zoning Commission forwards the application to the Board of County Commissioners with its recommendation, the Planning and Zoning Office shall prepare all required permits. The Land Use Administrator shall submit them to the Board of County Commissioners at the next available scheduled meeting.

- n. The Board of County Commissioners, after receiving a recommendation from the Planning and Zoning Commission, shall consider an application at a regularly scheduled public meeting, unless a special meeting is required. The Board of County Commissioners may:
  - 1) Approve the application.
  - 2) Approve the application with conditions.
  - 3) Deny the application.
  - 4) Send the application back to the Planning and Zoning Commission for further investigation, action, and/or information.
  - 5) Table the application pending research by the County, additional information to be provided by the applicant, upon absence or request of the applicant for valid reason, or any other reason deemed necessary by the Planning and Zoning Commission.
  - 6) Take any other action deemed necessary by the Board of County Commissioners.
- o. If the application is approved by the Board of County Commissioners, Planning and Zoning Office shall provide the approved permit to the applicant and file a copy with the original application packet held by the County Auditor.
- p. If the application is denied by the Board of County Commissioner, the Land Use Administrator shall notify the applicant of the denial and the reason for denial.

### 3.7.2 Application for Building Permit

- a. Any person who intends to construct, erect, alter, repair, enlarge, or move any building or structure as defined in this Ordinance, must apply for a building permit.
- b. All applications must be complete and submitted to the Planning and Zoning Department no later than the first business day of the month in order to be placed on the agenda for that month. Applications submitted after the first business day of the month will be placed on the agenda for the following month's meeting.
- c. Any application for a building permit requiring a variance, conditional use permit, event permit, zoning change, or amendment to this Ordinance, must also comply with the application procedures set forth in Section 3.8.1, and shall be subject to a public hearing as required by Section 3.8.1.
- d. Application fees are due at the time of application. Applications without the appropriate fees will not be accepted.

- e. The Planning and Zoning Office shall review the application and inform the applicant in writing, or at the time of submission, if it is complete.
- f. If the applicant's plans meet the regulations set forth in this Ordinance and do not require a variance, conditional use permit, temporary use permit, zoning change, or amendment to this Ordinance as set forth in Section 3.8, the Land Use Administrator shall issue the building permit without the requirement of a public hearing.
- g. If the application does not comply with the regulations established in this Ordinance, the applicant will be notified of the deficiencies and shall be required to correct any such deficiencies before any building permit will be issued.
- h. The Planning and Zoning Office shall prepare a folder with the original application and all related documentation for each application. Upon the completion of the application process, this folder shall be submitted to the County Auditor for safe keeping.
- i. Once the building permit is issued, the building permit shall be posted in a conspicuous place until the building project is completed by the applicant, and all required inspections and approvals have been completed. No certificate of occupancy shall be issued, and the building may not be occupied for use, until all required inspections and approvals have been completed.

3.7.3 Application for Conditional Use Permit: A conditional use permit may only be issued for those activities or structures identified as eligible for a conditional use permit in Section 5 of this Ordinance. A conditional use permit is issued to an individual applicant and is not transferable.

- a. Any request for a conditional use permit shall follow the application procedures set forth in Section 3.8.1.
- b. A conditional use permit shall be subject to any restrictions imposed by the Board of County Commissioners at the time of permit approval. Common restrictions are listed in Section 4.6 of this Ordinance.
- c. Divide County has three Conditional Use Permit applications:
  - 1) Application for Conditional Use Permit
  - 2) Application for a Conditional Use Permit Mining: Scoria, Gravel, Sand, Rock, Stone, Clay.
  - 3) Application for Temporary Crew Housing Conditional Use Permit: Requirements and restrictions for this permit are listed in section 7.2 of this Ordinance.



- d. Requirements for conditional uses shall include:
- 1) The conditional use will not be detrimental to or endanger the public health, safety, or general welfare.
  - 2) The existing permitted uses in the area will not be substantially impaired or diminished by the establishment of the conditional use.
  - 3) The conditional use will not impede the normal and orderly development of the surrounding property for permitted uses in the district.
  - 4) Adequate utilities, access roads, drainage, and other site improvements are or will be provided.
  - 5) Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion on the public roads and streets.
  - 6) The conditional use shall conform to all provisions of the zoning district in which it is located.
- e. Specific conditions imposed on a conditional use permit may include:
- 1) A time limit for the permit's validity.
  - 2) Noise, traffic, run-off, odor, pollution, dust and visual abatement programs and restrictions.
  - 3) Employee level restrictions and off street/road parking requirements.
  - 4) Building permit specifications.
  - 5) Additional yard, or open space, set-asides, and setbacks.
  - 6) Hours of operation.
  - 7) Additional lighting restrictions or requirements.
  - 8) The use of signs.
  - 9) Joint Road Maintenance Agreements.
  - 10) Related public facilities or public easements.
  - 11) Compliance with the Divide County Comprehensive Plan.

12) State of North Dakota and federal design and performance standards which may include but are not limited to the North Dakota Department of Health, North Dakota Department of Transportation, the North Dakota State Water Commission, the North Dakota State Industrial Commission – Oil and Gas Division, the North Dakota State Fire Marshall, Federal Aviation Administration, and the Army Corps of Engineers.

f. The Planning & Zoning Commission may, as it deems necessary, request the following information to be submitted with applications for a conditional use permit in addition to the information requested on the application form:

- 1) Preliminary maps showing the location of structures to be developed or used at the site.
- 2) A description and map of the site prepared by a North Dakota licensed land surveyor.
- 3) A boundary line survey of the site prepared by a North Dakota licensed land surveyor.
- 4) Topographic maps in five-foot (5') contours of the site.
- 5) Classification of soils at the site
- 6) The location of existing utilities and proposed utility extensions.
- 7) Parking plans showing off-street parking areas, loading areas, and transfer stations.
- 8) A schedule showing anticipated starting and completion dates.
- 9) Written approval of respective highway authorities for new access roads and/or highway approaches.
- 10) Copies of all plans and specifications which have been submitted to other federal, state, or local governmental departments and agencies.
- 11) Written documentation of approved waste collection and/or disposal for waste generated at the site.
- 12) Additional information for particular conditional uses may also be required by the Planning and Zoning Commission under this Ordinance.

- g. Failure to submit any required documentation may delay the application process.

3.7.4 Application for a Zoning Change: If the zoning on a parcel of land is inconsistent with the use the landowner desires, the landowner may apply for a change to the Zoning District Map. Unlike a conditional use for an existing zoning district, a zoning change is a permanent change from one zoning district to another for the particular parcel(s). If approved, the Zoning District Map is changed for the parcel(s) and the permitted and conditionally permitted uses of the new zoning district apply.

- a. Any request for zoning change shall follow the application procedures set forth in Section 3.8.1.b. The Board of County Commissioners may, from time to time, on its own accord amend or repeal any provision(s) of the Zoning District Map as allowed by NDCC Chapter 11-33.

3.7.5 Application for Amendments to Ordinance: Amendments to the Ordinance are used to make changes to the entire zoning ordinance or any provision(s) thereof and are not intended for a specific parcel, landowner, structure, use, or activity.

- a. Any request for an amendment to this Ordinance shall follow the application procedures set forth in Section 3.8.1.
- b. The Board of County Commissioners may, from time to time, on its own accord amend or repeal any provision(s) of the Ordinance as allowed by NDCC Chapter 11-33.

3.7.6 Application for a Variance: A variance is required whenever a permitted use or a conditionally permitted use or construction does not fully comply with the provisions of this Ordinance and strict enforcement of the provision(s) would create great practical difficulty, unnecessary hardship, or injustice.

- a. Any request for a variance shall follow the application procedures set forth in Section 3.8.1.
- b. A variance may relax a provision for a specific applicant but cannot eliminate the provision. An example is that a variance may amend a setback requirement from 200' to 175' with the approval of the Board of County Commissioners.
- c. A variance will not serve as a convenience to the applicant but will alleviate some demonstrable or unusual difficulty that was not self-created.
- d. No variance shall be granted which will have an adverse effect on the public interest, safety, health and welfare or on adjacent property owners.
- e. A variance cannot be utilized to authorize a use which is otherwise prohibited by this Ordinance.

- f. A variance shall not grant one individual an advantage that is not granted to another individual in a similar situation.

### 3.7.7 Application for Event Permit

- a. The Board of County Commissioners may grant event permits for occasional uses. These permits are valid for such a period of time as determined by the Board of County Commissioners.
- b. Applications for an event permit shall be submitted to the Planning and Zoning Office and shall include the following:
  - 1) Name, address, and telephone number of the applicant.
  - 2) Purpose of the permit.
  - 3) Written description of the location of the site or event.
  - 4) Written approval of the owner of the proposed site.
  - 5) Location of any temporary structures incidental to the event.
  - 6) Whether the event will involve the use of any mobile enclosures, such as recreational vehicles, travel trailers, mobile food trucks, and the anticipated number, location, and parking of such.
  - 7) Anticipated number of persons for the event.
  - 8) Hours of operation and duration of the event.
  - 9) Plans for sanitation, emergency medical care, security, and transportation.
  - 10) Written proof from the sponsor or operator of liability insurance, if required by the Board of County Commissioners at their discretion.
- c. The Planning and Zoning Office shall ensure the application is complete and notify the applicant of the time and date of the public hearing.
- d. Event permits may be granted in any zoning district as the Board of County Commissions approves, notwithstanding the permitted uses and conditional uses enumerated in Section 5 of this Ordinance.

3.7.8 All application forms are available in the offices of the Land Use Administrator or the County Auditor's office. Links for forms are also available under the "[Planning and Zoning](#)" section under "County Offices" section of the official Divide County website located at [www.dividecountynynd.gov](http://www.dividecountynynd.gov).

### **3.8 Request for Separate Hearing**

Any person aggrieved by any provision of a resolution adopted by the Board of County Commissioners under NDCC Chapter 11-33, or an amendment thereto, may, within thirty (30) days after the first publication of such resolution or amendment, petition for a separate hearing thereon before the Board of County Commissioners. The petition shall be in writing and shall specify in detail the grounds for the objections. The petition shall be filed with the County Auditor.

A hearing thereon shall be held by the Board of County Commissioners no sooner than seven (7) days, nor later than thirty (30) days, after the filing of the petition with the County Auditor, who shall notify the petitioner of the time and place of the hearing. At this hearing, the Board of County Commissioners shall consider the matter complained of and shall notify the petitioner, by registered or certified mail, what action, if any, it proposes to take thereon. The Board of County Commissioners, at their next regular meeting, shall rescind or affirm such resolution or amendment.

The provisions of this section shall not operate to curtail or exclude the exercise of any other rights or powers of the Board of County Commissioners.

### **3.9 Right to Appeal**

Any person, or persons, jointly or severally, aggrieved by a decision made by the Board of County Commissioners may appeal to the District Court in the manner provided by law.

### **3.10 Violations, Remedies, Enforcement, and Penalties**

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a verbal or written complaint with the Planning and Zoning Office, the County Auditor, any member of the Planning and Zoning Commission, or any member of the Board of County Commissioners. Such complaint shall state fully the cause and the basis of the complaint.

3.11.1 The Land Use Administrator shall inspect reported or alleged violations of this Ordinance. Violations include: (1) failure to comply with any of the provisions of this Ordinance; (2) failure to comply with NDCC Chapter 11-33; (3) failure to comply with the conditions and/or restrictions imposed on conditional use permits, temporary use permits, building permits, or grants of variances; and (4) the erection, construction, reconstruction, alteration, repair, conversion, or maintenance, of any building or structure, or the use of any building, structure, or land in violation of this Ordinance, NDCC Chapter 11-33, or any permit issued by the Board of County Commissioners.

3.11.2 When, upon investigation, the Land Use Administrator determines that a violation has occurred, the Land Use Administrator shall give written notice to the owner and occupant of the property that a violation has occurred and order the violation to be abated and the property, structure, or use thereof be brought into compliance with this

Ordinance or the condition of any permit or variance issued. No less than five (5) nor more than forty five (45 days) shall be allowed for compliance.

3.11.3 Each violation of this Ordinance constitutes the maintenance of a public nuisance and is a Class B misdemeanor under NDCC Section 11-33-21 and subjects a person or organization to the following fines and/or imprisonment:

- a. Any person who violates, causes, or, with knowledge, permits a violation of this Ordinance may, upon conviction, be subject to a fine of one thousand five hundred dollars (\$1500) per violation.
- b. Any organization that violates, causes, or, with knowledge, permits a violation of this Ordinance may, upon conviction, be subject to a fine of ten thousand dollars (\$20,000) per violation.
- c. Any person who is convicted of a violation of this Ordinance in a criminal action may, in addition to the fines, be subject to imprisonment not to exceed thirty (30) days per violation.

3.11.4 If the provisions of this Ordinance are not complied with, a revocation of any permit issued by the Board of County Commissioners under the authority of this Ordinance or NDCC Chapter 11-33 may result.

3.11.5 If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used in violation of this Ordinance, NDCC Chapter 11-33, or any permit or variance issued by the Board of County Commissioners, the proper County authorities or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceedings to:

- a. Prevent such unlawful erection, construction, re-construction, alteration, repair, conversion, maintenance, or use.
- b. Restrain, correct, or abate such violations.
- c. Prevent the occupancy of the building, structure, or land.
- d. Prevent the illegal act, conduct, business, or use in or about the premises.

3.11.6 Each violation of this Ordinance may subject a person or organization to the following civil penalties:

- a. Any person who violates, causes or, with knowledge, permits a violation of this Ordinance may be subject to a civil penalty of one thousand dollars (\$1000) per violation.

- b. Any organization that violates, causes, or, with knowledge, permits a violation of this Ordinance may be subject to a civil penalty of ten thousand dollars (\$10,000) per violation.

3.11.7 A person or organization shall be deemed to have committed a separate violation for each and every day during any portion of which any violation is committed, permitted, or continued by such person or organization.

3.11.8 Violations of this Ordinance may be enforced by a criminal proceeding and/or a civil proceeding, or other proceeding, as provided in this Section or as allowed by law. The remedies contained under Section 3.12 are non-exclusive and may be imposed separately or in conjunction with any other remedy allowed by law.

3.11.9 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, maintains, or with knowledge permits such violation may each be subject to the remedies provided herein and/or as allowed by law.

3.11.10 Nothing herein shall prevent the County from taking any other lawful action as necessary to prevent or remedy any violation of this Ordinance.

## SECTION 4 GENERAL PROVISIONS

### Section 4.1 Jurisdiction

The restrictions and regulations found within this Ordinance shall govern all land and other property over which the Board of County Commissioners is empowered by law to regulate.

4.1.1 This Ordinance shall apply to all unorganized townships within Divide County.

4.1.2 This Ordinance does not prevent organized townships from making regulations as provided but law, but such townships may formally agree by resolution of the governing body to relinquish to Divide County their powers or any portion thereof to enact zoning regulations. If such cases, the organized township shall be subject to this Ordinance as set forth in the township's resolution and approved by the Board of County Commissioners.

4.1.3 Notwithstanding Section 4.1.2, and even if an formal relinquishment has been made, this Ordinance shall apply to all organized townships within Divide County that have not adopted their own zoning ordinances pursuant the authority under N.D.C.C. Sections 58-03-11 through 58-03-15.

4.1.4 This Ordinance may not be construed to affect any property, real or personal, located within the zoning or subdivision authority of any city within the County, except that any city by resolution of its governing body may relinquish to Divide County its authority, or any portion thereof, to enact zoning regulations under NDCC Chapter 40-47 or subdivision regulations under NDCC Chapter 40-48, in which case the property is subject to this Ordinance.

4.1.5 The extra-territorial jurisdiction of incorporated cities, if exercised as required by law, shall not be regulated by this Ordinance, with the exception that this Ordinance shall apply to any areas subject to joint zoning and subdivision regulation jurisdiction as provided by N.D.C.C Section 40-47-01.1.

### 4.2 General Zoning Regulations

4.2.1 For the purposes of these regulations, all land under the jurisdiction of Divide County, not previously designated otherwise on the existing zoning map, is zoned as Agricultural.

4.2.2 No building or structure, other than those associated with the normal incidents of agriculture, shall be erected, constructed, converted, enlarged, placed, reconstructed or structurally altered without a building permit. Agricultural buildings and structures, as defined in this Ordinance, are exempt from the state building code; however, such



buildings and structures shall adhere to all other restrictions and requirements of this Ordinance.

4.2.3 No building or structure shall be erected, constructed, converted, enlarged, placed, or reconstructed, or structurally altered, nor shall any building, structure, or land be used except for the purpose of permitted uses, or conditionally permitted uses or temporarily permitted uses where a permit has been approved by the Board of County Commissioners, in the zoning district in which the land, building, or structure is located.

4.2.4 No building or structure shall be erected, constructed, converted, enlarged, placed, reconstructed or structurally altered except in conformity with the area and density regulations of the zoning district in which the building or structure is located.

4.2.5 The minimum yard, open space, lot, acreage, or buildable area required by this Ordinance for each and every building or structure at the time of adoption of this Ordinance or for any building or structure erected or constructed after adoption shall not be encroached upon nor shall any lot area be reduced beyond the zoning district requirements of this Ordinance.

4.2.6 All residential buildings erected, constructed, or structurally altered after the adoption of this Ordinance shall be located on a lot as defined in this Ordinance. In no event shall there be more than one principle building for each lot except as otherwise provided for in this Ordinance. Accessory buildings or structures shall not exceed the size requirements of this Ordinance.

4.2.7 No residential dwelling shall be constructed on or moved onto a lot which does not abut a dedicated public access road, or a street if located within a subdivision.

4.2.8 No application for a building permit, other permit, or license, and no certificate of occupancy or compliance, shall be approved by the Land Use Administrator or any other County official, department, board, or commission which would authorize the use or change of use of any land, building, or structure contrary to this Ordinance except as expressly allowed by this Ordinance or law.

4.2.9 Any future use, activity, building, or structure that is not an expressly permitted use in any zoning district in this Ordinance must come before the Planning and Zoning Commission for review and recommendation, and is subject to review and approval by the Board of County Commissioners.

4.2.10 Any application for land use that is not included on the list of permitted uses or conditionally permitted uses, unless granted an event permit, shall require the applicant to make a request for an amendment to this Ordinance as set forth in Section 3.7.5.

### **4.3 Compliance**

From the effective date of this Ordinance, each building, structure and land use within Divide County, not otherwise excepted, shall be in compliance with the provisions of this Ordinance.

### **4.4 Non-conforming Use**

Any building, structure, or use which was lawful before this Ordinance was passed, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or under amendments to this Ordinance is a Non-Conforming Use.

4.4.1 The lawful existence or use of such non-conformities which are present at the time of the adoption or amendment of this Ordinance may be continued even though such use or existence does not conform to the provisions of this Ordinance. However, the intent of this Ordinance is that while such non-conformities may continue in their present state, their survival will not be encouraged, nor shall they be enlarged upon, expanded, or extended.

4.4.2 If a non-conforming use ceases for a period of more than twenty four (24) months, any future use of that building, structure, land, or other property shall be in conformity with this Ordinance.

4.4.3 If a non-conforming building or structure is damaged or has deteriorated and the cost of repairs exceeds fifty percent (50%) of the fair market value, as determined by the Divide County Director of Tax Equalization, of the building or structure, the use of such building or structure shall be discontinued unless permanently changed to a conforming use under this Ordinance.

### **4.5 Permitted Use**

A permitted use is a use or development which is specifically listed as a “Permitted Use” in a zoning district enumerated in Section 5 of this Ordinance. Permitted uses are those that do not involve any variables or components which may affect the health, safety, or welfare of the general public. A permitted use does not require a permit application.

### **4.6 Conditionally Permitted Use**

A conditional use is any use which may represent a potential hazard to the health, safety, and welfare of Divide County residents. A conditional use requires a conditional use permit, to which the Board of County Commissioners shall attach specific conditions to in order to protect the health, safety, and welfare of Divide County residents. A conditional use permit only applies to those uses specified as conditional uses in Section 5 of this Ordinance. Conditional use permits

shall only be issued to an individual applicant and not to the use or land. Any change of ownership shall require a new application.

#### **4.7 Prohibited Use**

Any uses, activities, buildings, or structures which are not listed as permitted or a conditionally permitted use in a zoning district shall be prohibited and shall not be allowed any permit or variance. A prohibited use shall require an amendment to this Ordinance in order to be a permitted or conditionally permitted use.

#### **4.8 Variance**

A relaxation of the terms of this Ordinance by the Board of County Commissioners in any specific case where a literal enforcement of any provisions or resolution would result in great practical difficulties, unnecessary hardship, or injustice. A variance cannot authorize a use which is otherwise prohibited by this Ordinance.

#### **4.9 Bonding**

Bonds are a mechanism used to protect the County from unnecessary financial problems caused by property abandonment, contract agreements and/or correcting violations.

##### **4.9.1 Exceptions**

The bonds outlined here may be waived if an applicant can show to the satisfaction of the County that the required bond duplicates the purpose of the state required bond. The Planning and Zoning Commission retains the right to waive bond requirements for a particular project.

Pipelines are exempt from the bond requirements. This exemption includes the portions of a pipeline that are brought to the surface for valves, maintenance or other necessary uses. Bonding for other surface structures and facilities are not exempt.

##### **4.9.2 Reclamation Bonds**

a. A reclamation bond may be required for some allowed uses (as required specifically in certain zoning districts) and many conditional use permits (as outlined in section 5.1 of this Ordinance) and temporary site plans (as outlined in sections 3.7 and 7) or other applications determined by the Divide County Planning and Zoning Commission.

b. The bond shall be for one hundred and fifty (150%) percent of the licensed engineer's estimate submitted by the applicant or the engineer hired by the Divide County Planning and Zoning Board. The Divide County Planning and Zoning Board shall have the discretion to decide what engineer estimate to use.

c. The engineer's estimate of the reclamation cost shall be submitted with the application.

- d. The cost estimate shall be subject to approval of the Divide County Planning and Zoning Commission.
- e. The bond shall be presented to the Divide County Planning and Zoning Commission within thirty (30) days of the later of the following:
- f. The Divide County Board of County Commissioners approval of the permit for which the bond is required and
  - ii. If any other county, state or federal permit, certificate, determination or approval is needed in order for the permittee to commence construction, the issuance of the last such permit, certificate, determination or approval. The permittee shall notify the Land Use Administrator within thirty (30) days of the issuance of the last such permit, certificate, determination or approval, if applicable.

No construction or other activity may commence prior to presenting the bond to the Divide County Planning and Zoning Commission and the permit may be deemed null and void if the bond is not presented within the time

required or if the bond expires, is cancelled or revoked, or otherwise becomes uncollectible by the County.

#### 4.9.3 Violation Bonds

- a. A bond shall be posted when filing an application and the applicant has been notified that the land use applied for is in violation of this Ordinance. The applicant shall post a bond equal to one hundred fifty percent (150%) of the amount estimated by a licensed engineer and approved by the Divide County Planning and Zoning Commission, to be required to terminate the violation and bring the land or structure into compliance with this Ordinance.
  - i. Any improvement to the land that the Divide County Board of County Commissioners required a bond that has reached the end of their useful life or have not been in active and continuous service for a reasonable period of time, as determined by the Divide County Planning and Zoning Commission, shall be removed at the owner's or operator's expense, except if the project is being improved and/or modified or a force majeure event has or is occurring requiring longer repairs; however, the Divide County Planning and Zoning Commission may require evidentiary support that a longer repair period is necessary.
  - ii. Failure of the owner/operator to pay applicable property taxes or maintain any state or federal permits or licenses shall be deemed a violation.
  - iii. Decommissioning shall include removal of all improvements, so that any agricultural ground upon which the improvement was located is again tillable and suitable for agricultural uses. The site shall be graded and reseeded to restore it to

as natural a condition as possible within a reasonable timeframe after equipment removal, as determined by the Divide County Planning and Zoning Commission or other land surface areas not be restored, and this request is approved by the Divide County Planning and Zoning Commission (other conditions might be more beneficial or desirable at that time).

- iv. The owner or operator shall notify the Land Use Administrator by certified mail, return receipt requested, of the proposed date of discontinued operations and plans for removal.
- v. Decommissioning shall be performed in compliance with the approved decommissioning plan. The Divide County Planning and Zoning Commission may approve any appropriate amendments to or modifications of the decommissioning plan.
- vi. Hazardous material from the property shall be disposed of in accordance with federal and state law.
- vii. The applicant shall provide a reliable and detailed cost estimate for the decommissioning of the improvement prepared by a professional engineer or contractor who has expertise in the type of improvement that applicant is seeking to install, prior to being granted a conditional use permit. The decommissioning cost estimate shall explicitly detail the cost and shall include a mechanism for calculating increased removal costs due to inflation and without any reduction for salvage value. This cost estimate shall be recalculated every five (5) years and the surety shall be updated in kind.
- viii. The Divide County Planning and Zoning Board shall have the authority to hire their own engineer to review and verify the estimate. Any and all costs associated with hiring an engineer shall be paid by the applicant.
- ix. The decommissioning cost shall be guaranteed by cash escrow at a federally insured financial institution approved by the county before any building permits are issued. The governing body may approve alternative methods of surety or security, such as a performance bond, letter of credit, or other surety approved by Divide County, to secure the financial ability of the owner or operator to decommission the facility.
- x. If the owner or operator of the improvement fails to remove the installation in accordance with the requirements of this permit or within the proposed date of decommissioning, the Divide County may collect the surety and staff or a hired third party may enter the property to physically remove the installation. The owner/ operator/ applicant will be financially responsible for any and all costs incurred by Divide County to complete decommission and reclamation.

4.9.4 Application Process – The permit application shall include the following:

- a. A check or money order for the permit fees. The fees include a \$6500 base fee for each site plus engineer’s consulting fee, as specified in section 7.13.3.
- b. The name, business address, and phone number of the person in whose name the permit is to be issued. If the authorized agent for service of process is different than the prospective permit holder, the name and North Dakota address of the person authorized to receive service of process on the person’s behalf.

- c. Evidence of the applicant's capacity to contractually bind the person seeking the permit and authority to make binding representations on the person's behalf for purposes of zoning, siting, and construction of the Solar Energy Facility.
- d. Documents demonstrating the ownership of the subject parcel(s).
- e. Proof that the applicant has authorization to act upon the owner's behalf.
- f. The improvement shall be constructed and operated in substantial compliance with the approved concept plan, with allowances for changes required by any federal or state agency. The project shall be limited to the phases and conditions set forth in the concept plan that constitutes part of this application, notwithstanding any other state or federal requirements. No additional phasing or reduction in facility size shall be permitted, and no extensions beyond the initial period shall be granted without amending the use permit. The concept plan shall include the subject parcels; the proposed location of the improvements and related facilities; including but not limited to, the location of proposed fencing, driveways, internal roads, and structures; the closest distance to adjacent property lines and dwellings; the location of proposed setbacks; the location and nature of proposed buffers, including vegetative and constructed buffers and berms; the location of points of ingress/egress; any proposed construction phases.
- g. A schedule for the proposed start and completion of construction of the improvement which includes the applicant's proposal for final repairs to public roads.
- h. Information describing the applicant's rights within the boundaries of the proposed site.
- i. A USGS topographical map of improvement and 1320 feet of adjoining land, non-participating land, contiguous with any proposed host property. The following items will be clearly marked on the map:
  - 1) Each existing wind turbine, solar energy facility fixture, accessory structure or building, including substation, electrical infrastructure, and collector line or transmission line regardless of ownership.
  - 2) Each of the applicant's proposed improvements or accessory structure or building, electrical equipment, electrical line, and access road.
  - 3) Each occupied structure, improvement, public road, private road, utility line, and public facility.
  - 4) All section lines and boundaries between abutting parcels, tracts or lots owned by different parties.
  - 5) Each public or private airstrip with FAA identification number.
  - 6) Natural terrain features.
  - 7) The names of property owners inside the site and of the property owners for adjoining land noted on the map or via a key.
  - 8) Any and all easements on the solar energy facility and 1320 feet of adjoining land.
- j. A reliable and detailed estimate of the costs of decommissioning, including provisions for inflation.
- k. A proposed method of providing appropriate escrow, surety, or security for the cost of the decommissioning plan.

Traffic study modelling the construction and decommissioning processes. Staff will review the study in cooperation with the state department of transportation or other official transportation authority.

#### **4.10 Amendment**

Any change, revision, or modification of the text, requirements, or restrictions of this Ordinance or the Zoning District Map.

## SECTION 5 ZONING DISTRICTS

### Section 5.1 General

The Divide County zoning districts are established and intended to promote compact settlements separated by rural landscape in such a way that more concentrated residential, industrial, and commercial developments are clustered and the County's rural, agricultural character is preserved. In order for any district, or parcel(s) within a particular district, to be changed to another zoning district, an amendment to this Ordinance and the Zoning District Map must be approved by the Board of County Commissioners. Upon approval of the amendment, the affected parcel(s) or zoning district shall be rezoned and the permitted uses and conditional uses allowable in the rezoned district shall be applicable. The following zoning districts are established to carry out this intent:

#### 5.1.1 Agricultural District:

- a. Purpose – To preserve the majority of Divide County for farming, ranching, and rural tourism and to minimize the scale and impact of any other development in the zone.
- b. Permitted Uses – The following uses are allowed in the Agricultural District with no permit requirements.
  - 1) Agricultural buildings or structures
  - 2) Agriculture production
  - 3) Churches and cemeteries
  - 4) Farm residence
  - 5) Accessory Dwelling (Section 6.2.2)
  - 6) Greenhouses and nurseries
  - 7) Home occupations
- c. Conditional Uses – The following uses require an application for a conditional use permit, a hearing before the Planning and Zoning Commission, and approval by the Divide County Board of County Commissioners.
  - 1) Agricultural chemical or seed sales
  - 2) Agricultural equipment sales and service
  - 3) Airports or commercial airstrips
  - 4) Anhydrous ammonia sales and storage
  - 5) Animal feeding operations
  - 6) Animal hospitals and clinics
  - 7) Automobile repair and body shops
  - 8) Bed and breakfast lodging
  - 9) Business or financial services
  - 10) Campgrounds/RV parks
  - 11) Commercial feedlots



- 12) Commercial storage
- 13) Communication towers
- 14) Conservation area, private
- 15) Conservation area, public
- 16) Construction services
- 17) Crew camp
- 18) Electric power generation
- 19) Electrical power transmission lines
- 20) Fertilizer plants
- 21) Fuel storage and fuel tank terminals
- 22) Game farm
- 23) Gas stations and convenience stores
- 24) Government facilities
- 25) Grain elevators and grain storage facilities
- 26) Hotels and motels
- 27) HVAC services
- 28) Hunting lodges
- 29) Indoor recreation facilities
- 30) Kennels
- 31) Licensed daycare
- 32) Manufacturing or processing plants
- 33) Mechanical repair services
- 34) Mining and mineral extraction
- 35) Natural habitat protection areas
- 36) Non-farm residences
- 37) Parks
- 38) Personal services
- 39) Public and parochial schools
- 40) Public facilities and utilities
- 41) Railroad yard or spur
- 42) Recreational activities and associated structures
- 43) Recycling facilities, salvage, and junkyards
- 44) Resorts
- 45) Restaurants
- 46) Saltwater storage tank facilities
- 47) Solar Energy Conversion Facility
- 48) Transmission Pipeline
- 49) Veterinary facilities
- 50) Water reservoirs, storage tanks, and pumping stations
- 51) Welding shops
- 52) Wind Energy Conversion Facility

- d. Prohibited Uses – All uses not specifically listed as a permitted use or conditional use.

### 5.1.2 Commercial District:

- a. Purpose – To provide for the grouping of retail merchandising, light industry, and service activities into a central area in order to reduce the impact on county services and traffic flow.
- b. Permitted Uses – The following uses are allowed in the Commercial District with no permit requirements.
  - 1) Agriculture production
  - 2) Greenhouses and nurseries
- c. Conditional Uses – The following uses require an application for a conditional use permit, a hearing before the Planning and Zoning Commission, and approval by the Divide County Board of County Commissioners.
  - 1) Adult Entertainment Center
  - 2) Agricultural chemical or seed sales and storage
  - 3) Agricultural equipment sales and service
  - 4) Airports and commercial airstrips
  - 5) Amusement Parks
  - 6) Anhydrous ammonia sales and storage
  - 7) Automobile repair and body shops
  - 8) Automobile sales and service
  - 9) Bars/nightclubs
  - 10) Business or financial services
  - 11) Churches and cemeteries
  - 12) Campgrounds/RV parks
  - 13) Commercial and retail establishments
  - 14) Commercial feedlots
  - 15) Commercial storage
  - 16) Communication towers
  - 17) Construction services
  - 18) Crew camp
  - 19) Driving Range/miniature golf
  - 20) Dry-cleaning and laundry
  - 21) Fertilizer plants
  - 22) Food processing facilities
  - 23) Fuel storage and fuel tank terminals
  - 24) Gas stations/convenience stores
  - 25) Go cart track
  - 26) Government facilities
  - 27) Grain elevators and grain storage facilities
  - 28) Hotels and motels
  - 29) HVAC services

- 30) Indoor recreation facilities
- 31) Kennels
- 32) Licensed daycare
- 33) Liquor stores
- 34) Lumber yards/home improvement stores
- 35) Manufacturing or processing plants
- 36) Mechanical repair services
- 37) Mobile home park
- 38) Personal Services
- 39) Professional services
- 40) Public and parochial schools
- 41) Public facilities and utilities
- 42) Railroad yard or spur
- 43) Recreational facilities and associated structures
- 44) Recycling facilities, salvage and junk yards
- 45) Resort
- 46) Restaurants
- 47) Retirement and group homes
- 48) Sewage Disposal/RV dumping
- 49) Transmission Pipelines
- 50) Trucking terminal
- 51) Truck stop
- 52) Veterinary facilities
- 53) Warehouses
- 54) Water reservoirs, storage tanks, or pumping stations
- 55) Welding shops
- 56) Wholesale establishments
- 57) Compassion Center, Medical Marijuana Dispensary

- d. Prohibited Uses – All uses not specifically listed as a permitted use or conditional use.

#### 5.1.3 Industrial District:

- a. Purpose – To encourage the use of land in this district for agricultural activities and to provide for the grouping of heavy commercial and industrial uses into a centralized area.
- b. Permitted Uses – The following uses are allowed in the Industrial District with no permit requirements.
  - 1) Agriculture production
  - 2) Agricultural buildings and structures

c. Conditional Uses – The following uses require an application for a conditional use permit, a hearing before the Planning and Zoning Commission, and approval by the Divide County Board of County Commissioners:

- 1) Agricultural chemical or seed sales and storage
- 2) Agricultural equipment sales and service
- 3) Airports and commercial airstrips
- 4) Anhydrous ammonia sales and storage
- 5) Chemical Processing Facility
- 6) Coal gasification plants
- 7) Communication towers
- 8) Construction services
- 9) Crew camp
- 10) Electric power
- 11) Fertilizer plants
- 12) Food processing facilities
- 13) Fuel storage and fuel tank terminals
- 14) Gas stations/convenience stores
- 15) Government facilities
- 16) Grain elevators and grain storage facilities
- 17) Greenhouses and nurseries
- 18) Hazardous or special waste plants
- 19) HVAC service
- 20) Lumberyards
- 21) Manufacturing or processing plants
- 22) Mechanical repair services
- 23) Oil and/or Gas transload/transmission facility
- 24) Petroleum products processing facilities
- 25) Public facilities and utilities
- 26) Railroad yard or spur
- 27) Recycling facilities, salvage and junk yards
- 28) Saltwater storage tank facilities
- 29) Sewage disposal plant/RV dumping
- 30) Sewage treatment facility
- 31) Solid waste management facilities
- 32) Special waste facility
- 33) Transmission Pipelines
- 34) Trucking terminals
- 35) Truck stop
- 36) Veterinary facilities
- 37) Warehouses
- 38) Water reservoirs, storage tanks, and pumping stations
- 39) Welding shops
- 40) Wholesale establishments

41) Compassion Center, Medical Marijuana Manufacturing Facility

- d. Prohibited Uses – All uses not specifically listed as a permitted use or conditional use.

5.1.4 Rural Residential District:

- a. Purpose – To provide for and guide the development of any rural subdivisions which may have individual or collective sewer and water facilities and for preserving and protecting the character of unincorporated areas in Divide County.
- b. Any individual planning a residential development for real property within the zoning and subdivision regulation jurisdiction of Divide County shall follow the procedures for applications for any necessary zoning changes and the Subdivision Regulations set forth in this Ordinance prior to beginning any subdivision platting, construction, or development.
- c. Permitted Uses – The following uses are allowed in the Rural Residential District with no permit requirements.
  - 1) Agriculture production
  - 2) Agriculture buildings and structures
  - 3) Home occupations
  - 4) Parks
  - 5) Single family dwellings
- d. Conditional Uses – The following uses require an application for a conditional use permit, a hearing before the Planning and Zoning Commission, and approval by the Divide County Board of County Commissioners.
  - 1) Accessory truck parking – limited to one truck only
  - 2) Apartments and townhomes
  - 3) Bed and breakfast lodging
  - 4) Business or financial services
  - 5) Churches and cemeteries
  - 6) Dry-cleaning and laundry
  - 7) Government facilities
  - 8) HVAC Services
  - 9) Kennels
  - 10) Licensed daycare
  - 11) Mechanical repair services
  - 12) Mobile home park
  - 13) Professional services
  - 14) Public facilities and utilities

- 15) Restaurant
- 16) Schools
- 17) Water reservoirs, storage tanks, and pumping stations

- e. Prohibited Uses – All uses not specifically listed as permitted or conditional uses.
- f. No dwelling unit shall be built on a lot which does not directly access a dedicated public right-of-way.

#### 5.1.5 Recreational District:

- a. Purpose – To encourage the use of land for general recreational activities and those buildings and structures incidental to recreational use.
- b. Permitted Uses – The following uses are allowed in the Recreational District with no permit requirements.
  - 1) Agriculture production
  - 2) Agriculture buildings and structures
  - 3) Home occupations
- c. Conditional Uses – The following uses require an application for a conditional use permit, a hearing before the Planning and Zoning Commission, and approval by the Divide County Board of County Commissioners.
  - 1) Airports and commercial airstrips
  - 2) Amusement parks
  - 3) Bars and nightclubs
  - 4) Bed and breakfast lodging
  - 5) Churches and cemeteries
  - 6) Campgrounds/RV parks
  - 7) Communication towers
  - 8) Driving range, miniature golf
  - 9) Game farm
  - 10) Gas stations/convenience stores
  - 11) Go cart track
  - 12) Golf course
  - 13) Government facilities
  - 14) Hotels/Motels
  - 15) Hunting lodges
  - 16) Indoor recreation facilities
  - 17) Kennels
  - 18) Licensed daycare
  - 19) Liquor stores

- 20) Mechanical repair service
- 21) Mining and mineral extraction
- 22) Mobile home park
- 23) Multi-family dwellings
- 24) Natural habitat protection areas
- 25) Parks
- 26) Public and private conservation areas
- 27) Public facilities and utilities
- 28) Recreational activities and associated structures
- 29) Resort
- 30) Restaurants
- 31) Retail establishments
- 32) Retirement and group homes
- 33) Sewage disposal plant/RV dumping
- 34) Seasonal homes
- 35) Single family dwellings
- 36) Transmission Pipelines
- 37) Water reservoirs, storage tanks, and pumping stations

d. Prohibited Uses – All uses not specifically listed as permitted or conditional uses.

## **Section 5.2 Divide County Zoning District Map**

The location and boundaries of the various existing zoning districts within Divide County are hereby established as shown on the Zoning District Map, as prepared and recommended by the Planning and Zoning Commission and approved by the Board of County Commissioners. The map shall be regularly updated by the Land Use Administrator as directed by the Board of County Commissioners to show changes in zoning districts or uses resulting from amendments to this Ordinance or approved conditional use permits that are issued. A current map may be inspected at the Planning and Zoning office or online in GIS format at [www.dividecountynynd.org](http://www.dividecountynynd.org).

## SECTION 6 STANDARDS AND REGULATIONS

### Section 6.1 Building Construction

The Divide County Board of County Commissioners have adopted the North Dakota State Building Code (<http://www.communityservices.nd.gov/government/state-building-code/>) as the standard for Divide County. All buildings and structures erected, constructed, converted, altered, enlarged, placed, or reconstructed within Divide County must meet the standards and requirements established in the North Dakota State Building Code. The Board of County Commissioners is responsible for enforcement of the building code and may incorporate additional requirements based on local needs.

### Section 6.2 Minimum Lot Size and Building Density

#### 6.2.1 General

- a. No dwelling unit shall be built on any lot which does not abut a dedicated public access road.
- b. Homes with septic systems require a minimum lot size of 43,560 square feet and must be at least 100 feet wide and a minimum of 200 feet deep.

#### 6.2.2 Agricultural District

- a. All lots shall have a minimum width of at least one hundred (100) feet.
- b. The Board of County Commissioners shall review all proposed points of access and the applicant shall obtain a permit from the Divide County Road Department or the Township Board for the road being accessed.
- c. No more than two non-farm residences are allowed per 160 acre quarter section.
- d. Non-farm rural residential single family dwellings and accessory structures shall utilize not more than 50% of the lot.
- e. Farmers may establish up to two (2) accessory dwellings for their employees directly engaged in agricultural operations.

#### 6.2.3 Rural Residential District

- a. Homes with septic systems require a minimum lot size of 43,560 square feet and must be at least 100 feet wide and a minimum of 200 feet deep.
- b. If the rural residential district has a municipal sewage treatment or disposal system, single family homes shall not be constructed or moved onto any lot less



than 6000 square feet and must have a setback of 25 feet for the front yard and a setback of 20 feet for side and 30 feet for rear yards.

- c. The minimum lot width for any single family dwelling shall be 75 feet.
- d. No lot shall contain more than one principal single family dwelling unit without a conditional use permit authorizing multi-family dwelling.
- e. Single family dwellings and accessory buildings may not cover more than forty (40) percent of the buildable area.
- f. Churches and schools may cover up to seventy (70) percent of the buildable lot.
- g. Multiple family dwellings shall be subject to the following additional conditions:
  - 1) Three (3) units require a minimum lot of 10,000 square feet.
  - 2) Two thousand (2000) additional square feet is required for each unit over three.
  - 3) The buildings or structures shall not cover more than forty (40) percent of the net buildable area of interior lots or forty five (45) percent of corner lots.

#### 6.2.4 Recreational District:


- a. All lots, except recreational vehicle park spaces, shall have a minimum lot size of 15,000 square feet. Single family dwellings and seasonal homes with septic systems require a minimum lot size of 43,560 square feet.
- b. Minimum lot width shall not be less than 100 feet nor less than 150 feet in depth.
- c. No lot shall contain more than one principal single family dwelling unit without a conditional use permit authorizing a multi-family dwelling or an accessory dwelling.
- d. Single family dwellings with private water and septic shall not exceed fifty (50) percent of the buildable area.
- e. Recreational vehicle park spaces in a recreational district shall have a maximum density of 12 spaces per gross acre.

#### 6.2.5 Commercial District:

- a. Commercial facilities with an individual septic system will be situated on a parcel no less than 43,560 square feet.

- b. Buildings or structures with sewer and water delivery systems, public or private, require a minimum lot size of no less than 7,000 square feet.
- c. There are no density requirements in this district. Building and structure size and placement shall be governed by setback and off-street parking requirements set forth in Sections 6.4 and 6.7.

6.2.6 Industrial District:

- a.  The minimum lot size in this district shall be no less than ten (10) acres.
- b. Primary and accessory buildings or structures in this district shall not exceed sixty (60) percent of the total buildable area.

**Section 6.3 Maximum Height**

6.3.1 All buildings and structures, excluding those used for agricultural, industrial or institutional (i.e. Hospital, public education, or government) purposes, shall not be greater than forty (40) feet in height except by variance and shall not affect solar access for neighboring structures. This height restriction applies to the main frame of the building or structure and does not affect church spires, chimneys, flagpoles, television aerials, or satellite dishes.

6.3.2 All free standing structures which exceed 40 feet in height shall be erected or constructed only following approval of a conditional use permit issued by the Board of County Commissioners in accordance with Section 5 of this Ordinance. These structures include but are not limited to radio towers, cellular phone towers, television towers, microwave towers, wind chargers, water tanks or towers, or flaring towers.

**Section 6.4 Setback Requirements**


6.4.1 Adjacent to primary (state or federal) highways – 250 feet from the center of the road.

6.4.2 Adjacent to county highways – 200 feet from the center of the road.

6.4.3 Adjacent to rural or township roads – 165 feet from the center of the road.

6.4.4 Adjacent to any surface water (lakes, ponds, or streams) – 100 feet from the high water mark.

6.4.5 Between any structure and side lot line – 20 feet.

6.4.6  Between any structure and rear lot line – 30 feet.

6.4.7 Front setback from the front property line in a rural residential district shall be a minimum of thirty five (35) feet.

6.4.8 All industrial structures must be situated a minimum of one hundred (100) feet from any residential property line and fifty (50) feet from all other property lines.

6.4.9 Shelterbelts – Shelterbelts shall meet the same setback requirements as any structure. Any reduction of this distance shall require permission from the township board.

6.4.10 No dwelling unit shall be built within 500 feet of any oil or saltwater storage tank, gas flares, scrubbers, or associated well site equipment.

### **Section 6.5 Private Water and Sewer**

6.5.1 Any building or structure which is to utilize a private water and sewer system shall, prior to final approval and hookup, have said system inspected by the Upper Missouri District Health Unit and shall receive certification that the system as designed and positioned meets State Health Department standards for such systems.

6.5.2 All soil absorption systems shall adhere to the rules and regulations of the Upper Missouri District Health Unit and the State Health Department guidelines.

### **Section 6.6 Fences**

The following fencing restrictions apply to all districts regulated by the Board of County Commissioners:

6.6.1 No visual obstructions higher than three (3) feet shall be allowed within one hundred (100) feet from each side of the intersection of roads under the County's jurisdiction and within thirty (30) feet of each side of the intersection of driveways, approach roads, and county roads.

6.6.2 No sight obscuring fence over 48 inches shall be erected within the front yard of any residential lot.

6.6.3 Electrical fences shall conform to the State of North Dakota regulations for electrical wiring and shall only be energized with Underwriters Laboratories approved equipment.

### **Section 6.7 Parking Facilities**

All off street parking spaces shall be at least nine (9) feet wide and twenty (20) feet long and shall be exclusive of access drives. The restrictions specific to each County zoning district are as follow:

6.7.1 Commercial District – one (1) off-street parking space will be provided for each commercial vehicle; one (1) off-street parking space for each employee; and one (1) off-street parking space for each management employee. Off-street parking for visitors and customers shall be sufficient to prevent on-street parking.

6.7.2 Industrial District – one (1) off-street parking space will be provided for each commercial vehicle; one (1) off-street parking space for every employee. Parking will be allowed on setbacks and yards.

#### 6.7.3 Residential Districts

- a. At least two (2) off-street parking spaces will be provided for each single-family dwelling unit.
- b. At least two off-street parking spaces will be provided for each dwelling unit in any multi-family dwelling unit.
- c. Mobile home parks shall have two off-street parking spaces for each mobile home.

6.7.4 All other Districts – Parking is permissible on setbacks and yards but parking shall not encroach upon public rights-of-way or roadways, nor shall parking in any manner impede traffic or infringe upon sight lines within 35 feet of an intersection.

6.7.5 Off-street parking for temporary use permits will be determined by the Board of County Commissioners.

## Section 6.8 Signs

The purpose of regulating signs in the County is to provide for a visually pleasant environment and minimize potentially unsafe conditions, while also offering opportunities for public and private information and advertising.

#### 6.8.1 General Requirements

- a. Signs must be of billboard, monument, free standing, or similar design and construction. The use of trailers, buildings, or other objects as signs is prohibited.
- b. Signs providing directions shall not be larger than thirty two (32) square feet in area.
- c. Advertising signs shall not be larger than ninety-six (96) square feet.
- d. Off-premises signs are only allowable in Industrial and Commercial Districts and shall be limited to 225 square feet in size.

- e. Home Occupation signs must be flat mounted to a vertical surface of the building or structure in which the occupation is practiced. It must not be an electronic or lighted sign and shall not exceed four (4) square feet in surface area.
- f. Portable signs must meet the same requirements as fixed signs.

#### 6.8.2 Special Requirements

- a. Signs in the Commercial and Industrial Districts shall be limited to:
  - 1) Forty (40) feet in height.
  - 2) One general identification sign per business not exceeding fifty (50) square feet in area which may be wall, pedestal, ground, or projecting type.
  - 3) Temporary signs including “For Sale”, political campaign signs, greeting signs, and rally signs not exceeding thirty two (32) square feet in area.
  - 4) Directory and advertising signs shall not be larger than ninety-six (96) square feet in area and placed nearer than six hundred (600) feet apart.
- b. Directory and advertising signs in the Agricultural District shall not be larger than ninety-six (96) square feet in area and placed nearer than six hundred (600) feet apart.
- c. The placement of all signs shall be subject to the setback requirements of the zoning district in which the sign(s) will be located and in no event upon a County road or right-of-way.
- d. No flashing, neon, LED, or bare bulb signs are allowed outside of city limits without a variance.

### **Section 6.9 Outdoor Storage of Materials**

6.9.1 Agricultural, Recreational, Commercial & Industrial Districts – The outdoor storage of material is prohibited on front yards or in any manner that interferes with traffic sight lines.

6.9.2 Residential Districts: The outdoor storage of material is prohibited on front yards or in any manner that interferes with traffic sight lines.

6.9.3 Commercial hazardous bulk storage is not permitted within 600 feet of any existing dwelling unit or mobile home.

## Section 6.10 Public Nuisances

The maintenance of public nuisances including but not limited to noxious weeds, smoke, gases, radio interference, noise, excessively bright lights, blighted structures or buildings, accumulation of junk, trash, rubbish, automobiles, or dead or diseased trees shall be prohibited. (NDCC Chapter 42)

6.10.1 The traditional definition of noise is “unwanted or disturbing sound”. Sound becomes unwanted when it either interferes with normal activities such as sleeping, conversation, or disrupts or diminishes one’s quality of life.

6.10.2 It shall be unlawful for any person to make any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within Divide County.

6.10.3 The following table establishes the maximum permissible Equivalent Sound Levels (average) for noise based on the Environmental Protection Agency (EPA) guidelines. Equivalent Sound Levels measured at noise generating property line shall not exceed:

Zoning District	Industrial	Commercial	Residential
7AM – 10PM	90	65	55
10PM – 7AM	70	60	45

6.10.4 Noise generated from any source shall not exceed the outdoor levels for residential areas as measured at the residential property line. Example, if your industrial operations generate 80db levels at the source, the level cannot exceed 55db at the property line of the closest residence

6.10.5 General provision; tests for unlawful noise. The standards which shall be considered in determining whether a violation exists shall include, but shall not be limited to, the following:

- a. The volume of the noise.
- b. The intensity of the noise.
- c. Whether the nature of the noise is usual or unusual.
- d. Whether the origin of the noise is natural or unnatural.
- e. The volume and intensity of the background noise, if any.
- f. The proximity of the noise to residential sleeping facilities.
- g. The nature and zoning of the area within which the noise emanates.
- h. The density of inhabitation of the area within which the noise emanates.
- i. The time of the day or night the noise occurs.
- j. The duration of the noise.
- k. Whether the noise is recurrent, intermittent or constant.

6.10.6 Light trespass occurs when unwanted light enters one's property, for instance, by shining over a neighbor's fence. A common light trespass problem occurs when a strong light enters the window of one's home from the outside, causing problems such as sleep deprivation or the blocking of an evening view.

- a. Any business, facility, or residence shall restrict or shield light emissions to one (1) lux at the edge of any adjacent residential property line between the hours of 10:00PM and 6:00AM.
- b. Roadway and intersection lighting shall be directional to prevent blinding oncoming traffic and to minimize light trespass on adjacent property.

### **Section 6.11 Buffer Strips**

The Board of County Commissioners may set requirements for buffer strips whenever a use in the Commercial or Industrial District is adjacent to a non-farm rural residential dwelling.

### **Section 6.12 Storm Water Pollution Prevention Plan**

Any construction project that will involve a land disturbance of 1 or more acres or that will move more than 50 cubic yards of earth must have a Storm Water Pollution Prevention Plan (SWPPP), approved by the North Dakota Department of Health, Division of Water Quality, as part of the application for a building permit. The intent of this requirement is to establish erosion, runoff, and sediment controls (ESCs) to limit pollution and "brown water." The SWPPP must list the best management practices utilized to reduce unwanted runoff. Divide County's requirements shall meet the minimum requirements of the Environmental Protection Agency and the State Health Department, Water Quality division.

### **Section 6.13 Noxious Weed Control Policy**

Any application made to the Divide County Planning and Zoning Board shall be subject to the approval of the Divide County Weed Board. The Divide County Planning and Zoning Board will adhere to the restrictions made to the Divide County Weed Board regarding applications made to the Divide County Planning and Zoning Board. Applications may require approval from the Divide County Weed Board for any of the parameters established by the Divide County Weed Board including but not limited to geographical area within Divide County and type of application that the applicant is seeking approval from the Divide County Planning and Zoning Board. This provision is being enacted to be proactive against noxious weeds and with the authority granted in the North Dakota Century code Chapter 4.1-47.

6.13.1 If an applicant is required to have approval from the Divide County Weed Board, the applicant shall have approval prior to the application being reviewed by the Divide County Planning and Zoning Board. An applicant may be required to prepare a plan on how they are going to control any noxious weeds as established by the Divide County

Weed Board. Additionally, any money that would be required in order to inspect and/or complete any weed control plan that is required by the Divide County Weed Board shall be provided by the applicant at the time the application is submitted to the Divide County Planning and Zoning Board prior to any application being reviewed.

6.13.2 A condition of the application or approval from the Divide County Planning and Zoning Board shall be to comply with any and all the requirements of the Divide County Weed Board. Should any applicant not comply with the parameters established by the Divide County Weed Board, the Divide County Planning and Zoning Board shall have the authority to revoke and terminate any permit that was approved by the Divide County Planning and Zoning Board after the applicant has been notified and a hearing has been held on the alleged violation. The Divide County Planning and Zoning Board shall have the authority to suspend any activity that was previously allowed on the applicant's property in there is an allegation of a violation of section 6.13 after notice is given to the applicant.

6.13.3 Anything listed in this section of the Divide County Planning and Zoning Board ordinance shall not limit the Divide County Weed Board for any relief or authority they have under North Dakota century code 4.1-47.



## SECTION 7 SPECIAL PROVISIONS

### Section 7.1 General

Several activities are permitted uses or conditional uses under Section 5 of this Ordinance, but have such a significant impact on the health, safety and general welfare of the County that special provisions shall be applied by the Planning and Zoning Commission and the Board of County Commissioners when evaluating conditional use applications for the following uses:

### Section 7.2 Work Camp Facility

Work Camp Housing is an area specifically designed to accommodate the siting of approved housing units for a temporary influx of workers and meeting the requirements for crew camps of this Ordinance. Divide County will use the term “Work Camp” for the purposes of this Ordinance and the terms “Man Camp” or “Crew Camp” will be included in this description.

7.2.1 Work Camps may be permitted as a conditional use only in those zoning districts designated in Section 5 of this Ordinance.

7.2.2 A conditional use permit for work camp housing may be issued for a period not to exceed two (2) consecutive years from the date of the issue. The Planning and Zoning Commission may recommend the issuance of and the Board of County Commissioners may approve and issue a Temporary Work Housing Conditional Use Permit for a period of less than two (2) consecutive years, but in no event shall a Temporary Work Housing Conditional Use Permit be issued for a greater period of time than the said two (2) consecutive year period. At the expiration of the two (2) year period, another application for a Temporary Work Housing Conditional Use Permit may be made by the original applicant for the same work camp housing and will be subject to the same review, recommendation, and approval required for the initial conditional use permit.

7.2.3 Skid shacks, temporary modular housing, mobile homes, and park model homes are the only housing types allowed in Work Camp Housing. Mobile homes and park model homes as defined under Chapter 57-55 and Section 39-18-03.2 of the NDCC shall not be mixed with modular housing or skid shacks.

7.2.4 Recreational Vehicles, trailers, campers, and tents ARE NOT allowed as Work Camp Housing. Trailers, tents, recreational vehicles, and campers are only allowed in campground or trailer parks approved and licensed by the State Health Department.

### 7.2.5 State of North Dakota Requirements:

Entities considering development of housing in oil-impacted areas of North Dakota are cautioned to secure all necessary approvals and permits PRIOR TO CONSTRUCTION. This is important to avoid possible costly infrastructure modifications or replacement and enforcement action.

- a. All modular structures must be inspected by an approved third party inspector and have an International Building Code (IBC) label before being brought into North Dakota. If it has not been inspected and labeled by the IBC, the owner or occupant of the modular structure must contact the State Health Department.
- b. All County zoning and siting requirements must be met.
- c. Water Supply System, Wastewater System, Water Hauling. Plans and specifications for the water supply system must be approved by the North Dakota Department of Health (NDDOH) prior to construction. Water systems that qualify as a public water system must meet specific monitoring/reporting requirements under the Safe Drinking Water Act. Plans and specifications for the wastewater system must be approved by the Upper Missouri District Health Unit and NDDOH prior to construction.
- d. Storm Water, Wastewater Discharges, Underground Injection Control (UIC), Wastewater Hauling. A construction activity permit issued by NDDOH, which includes a storm water pollution prevention plan, is required for construction projects that disturb 1 or more acres. A direct discharge permit from NDDOH is required for any proposed wastewater discharge to a surface drainage. A UIC permit may be required for: large capacity septic tank/drain field systems (designed to serve more than 20 people per day); and, waste disposal systems receiving sanitary wastes co-mingled with commercial, industrial or automotive wastes. Wastewater Hauling and disposal must be conducted by licensed septic tank pumpers/haulers and meet specific requirements of the NDDOH.
- e. Solid Waste. All solid waste (garbage) must be properly managed (transported by a permitted waste hauler to a permitted disposal facility). Contact: State Health Department, Division of Waste Management
- f. Food and Lodging Establishments. Food and lodging establishments must meet specific requirements and be licensed by the NDDOH, Division of Food and Lodging. Lodging establishments include lodging facilities, mobile home parks, trailer parks and campgrounds, and work camps.
- g. NDCC Section 43-09-22 provides that the North Dakota State Electrical Board has jurisdiction over and shall provide inspection for all electrical installations.
- h. NDCC Section 43-18-17.3 provides that the North Dakota State Plumbing Board has jurisdiction over and shall make provision for inspection of plumbing

installations in newly constructed dwelling units except as provided by law.

#### 7.2.6 Prohibited Activities

- a. No alcoholic beverages, illegal substances, or animals are allowed on the premises of a work camp housing facility.
- b. No parking will be allowed between units.
- c. The site shall be maintained free of garbage and junk, except for approved trash or garbage collection facilities or areas.

#### 7.2.7 Termination of Temporary Work Camp Housing Conditional Use Permit

A Temporary Work Housing Conditional Use Permit is subject to review by the Planning and Zoning Commission and the Board of County Commissioners at any time. The permit may be revoked by the Board of County Commissioners, upon recommendation of the Planning and Zoning Commission, pursuant to Section 3.11 of the Ordinance anytime the applicant, landowner, or site/facility manager is in non-compliance with any of the conditions set by the Board of County Commissioners in issuing the permit or for non-compliance with this Ordinance.

#### 7.2.8 Application Procedure:

An application for a Temporary Work Housing Conditional Use Permit shall be signed by the applicant or authorized representative and shall include the following information:

- a. A description of the units together with the numbering system for the same.
- b. A description of how the proposed units are set/and or anchored.
- c. A statement that all roads and/or any approaches for the same that are to be within the facility meet County specifications.
- d. The name and address of the applicant and contact information.
- e. The name and address of the onsite manager and contact information.
- f. A copy of lease to be used for the premises, which shall include a provision allowing law enforcement, emergency vehicles and other county and/or state agencies to enter upon the premises used for the temporary work housing for the purposes of patrol, rendering of emergency services and inspection to ensure compliance with applicable zoning provisions.
- g. An occupancy list to be maintained and provided to the County 911 emergency coordinator on a monthly basis.
- h. Plot plans drawn to scale showing placement of housing units, additional structures, setbacks, utilities, roads and streets, drainage, ingress and egress, parking plans, screens, buffers, and fencing. Section 6.7 governing parking

facilities for zoning districts shall not apply to temporary work housing applications. Instead, off-street or on-site parking for temporary work housing shall be provided as follows: One parking space for a personal vehicle and one parking space for a commercial vehicle for each occupant.

- i. Unit spacing adequate to accommodate emergency services.
- j. The type of housing units to be used on the site, i.e., whether a skid unit, mobile or manufactured home, park model trailer, or other lodging or housing unit.
- k. List of house rules and regulations.
- l. On site security plan.
- m. Fire and emergency evacuation plan.
- n. Copy of any permit or approval issued by the State Health Department, together with any other relevant permits or letters of approval from relevant governmental authorities and/or agencies having jurisdiction over the subject property.
- o. Refuse disposal plan.
- p. Septic or sewer discharge plan.
- q. Pay a Planning and Zoning Fee as follows:
  - 1) A annual work housing fee in the amount of \$400 per available man/bed shall be assessed for any “work housing facilities” as that term is defined in NDCC Section 57-02.4-01 (1) as set forth in the Definitions Section of this Ordinance. This fee shall not be assessed against mobile or manufactured homes as defined under NDCC Chapter 57-55 nor any park model trailers for which the owner has paid a park model trailer fee under NDCC Section 39-18-03.2. The fee is from 1 January to 31 December each year and shall be prorated for any operations starting during the calendar year.
  - 2) For any lot utilized for the purposes of allowing the placement of mobile or manufactured homes as defined under NDCC Chapter 57-55 or any park model trailers for which the owner has paid a park model trailer fee under NDCC Section 39-18-03.2 as “work housing”, a “work housing facility” fee shall not be assessed. However, an annual “lot” fee of \$0.10 per square foot for the total square footage of the site shall be assessed. Example:
    - 1. Site 200’ x 400’ = 80,000SF
    - 2. 80,000SF x \$0.10 = \$8,000
  - 3) The Planning and Zoning Fee is payable at the time of approval of the work camp housing conditional use permit.
- l. A copy of the closure/reclamation plans.
- m. A surety bond for clean-up purposes using the following calculation:

- 1) The surety bond shall be calculated by requiring the sum of \$500 per occupant for which the applicant has applied in requesting a Temporary Work Housing Conditional Use Permit. For example, in the event that the applicant has applied for a work housing facility that would allow a maximum of 250 occupants to be housed in the said facility or upon the said site, the bond would be calculated as follows:
    1. 250 occupants x \$500 = \$125,000
  - 2) This bond shall be based upon the number of occupants allowed under the Temporary Work Housing Conditional Use Permit and not the number of occupants actually residing in or upon said housing facilities or site. For example, in the event that a facility or site is permitted to house up to 250 occupants, but in fact, only 150 individuals actually reside in or upon the said facility or site, a surety bond based on the 250 occupants permitted in the amount of \$125,000, would still be required under this provision.
- n. Any additional information deemed necessary by the Land Use Administrator, the Planning and Zoning Commission, or the Board of County Commissioners.

### **7.3 Mobile Home Parks**

7.3.1 Mobile homes or park model trailers that are not mounted on a permanent foundation may only be placed in mobile home parks which are regulated and licensed by the State of North Dakota.

7.3.2 Mobile home parks are allowed in the County only with a Conditional Use Permit granted by the Board of County Commissioners under the requirements of Section 5 of this Ordinance.

7.3.3 An application for a Conditional Use Permit for a mobile home park is subject to the following requirements and restrictions:

- a. The applicant shall submit a site plan showing the location of streets, utilities, off-street parking, driveways, walkways, blocks, lots, playground and park area, and accessory buildings to be used for all mobile home park residents.
- b. Where the mobile home park is served by private streets, those streets shall conform to the design standards adopted by the Board of County Commissioners.
- c. The applicant must obtain written approval from the Divide County Road Department or the Township Board for access to and from the mobile home park via County or Township roads.
- d. The mobile home park shall maintain a 100 foot setback from sensitive areas such as streams, rivers, lakes, reservoirs or other water areas in addition to all other setback requirements.
- e. The mobile home park shall contain a minimum of five (5) acres of land.

- f. The maximum density of mobile homes in a mobile home park shall not exceed five (5) units per gross acre.
- g. Each mobile home shall be placed on a lot that is at least sixty (60) feet wide has a minimum area of 6000 square feet.
- h. Each mobile home shall have a minimum setback of 10 feet from an adjacent lot within the park and meet County setback requirements in Section 6.4 of this Ordinance from any public right-of-way.
- i. Each lot shall have a minimum side yard of ten (10) feet.
- j. Each mobile home shall be firmly anchored to avoid accidental movement or overturning.
- k. There shall be two off-street parking spaces per mobile home.
- l. All lots in the mobile home park must be accessible to emergency vehicles.
- m. Each mobile home in the park shall be served by underground utilities unless expressly waived by the Board of County Commissioners upon request of the applicant.
- n. The applicant must demonstrate compliance with NDCC Chapter 23-10 and rules and regulations of the State Health Department regulating mobile home parks.

7.3.4 Mobile homes are permitted as permanent farm, non-farm, or seasonal homes only if they are mounted on a permanent foundation, the wheels and hitch are removed, and they are permanently attached to water and sewer facilities.

#### **Section 7.4 Campgrounds and Trailer Parks**

A campground and/or trailer park is designed, utilized, and operated on a fee or other basis for temporary parking of occupied trailers, tents, campers, or recreational vehicles engaged in recreational activities.

7.4.1 Trailer parks and campgrounds are required to be licensed by the State Health Department – Division of Food and Lodging. Campgrounds are subject to requirements of NDCC Chapter 23-10, North Dakota Administrative Code 33.33.02, and any rules or regulations adopted by the State Health Department under those chapters.

7.4.2 Privately operated trailer parks and campgrounds are allowed in the County only with a conditional use permit granted by the Board of County Commissioners under the requirements of Section 5 of this Ordinance.

7.4.3 Recreational camping at campgrounds in Divide County is limited to 10 continuous days unless the camper has purchased a seasonal pass from the Divide County Park Board.

7.4.4 The Divide County Park Board shall have the authority to designate specific camp sites for seasonal passes and to establish the fee for seasonal passes. The Park Board must ensure that sufficient temporary camping sites are provided to meet peak demand.

7.4.5 Proposed parking regulations and site plans for privately operated trailer parks/campgrounds shall be submitted by the applicant for review and recommendation by the Planning and Zoning Commission subject to approval by the Board of County Commissioners.

7.4.6 Trailers, tents, recreational vehicles, and campers SHALL NOT be used as Work Camp Housing as defined in this Ordinance, on any parcel or lot subject to this Ordinance. Trailers, tents, recreational vehicles, and campers shall be allowed only in campground or trailer parks approved and licensed by the State Health Department, and under a conditional use permit granted by the Board of County Commissioners.

#### 7.4.7 Pets

7.4.7.1 Animals at Large Prohibited : Divide County requires that all dogs be kept under restraint either by leash, cord, chain, electronic/invisible fence, or by being kept in an enclosure in all recreational districts.

Dogs or cats that are running or being at large on property (public or private) other than that of the pet's owner is prohibited. Pet owners can receive a citation for Dog/Cat at Large from the Sheriff's Department. This citation would be in addition to the fee imposed if the pet is recovered and impounded.

7.4.7.2 Clean Up After Pets: Pet owners are required to clean up after their pets in a timely manner. Excess feces and rotting pet food are not healthy for pets or humans. Pet owners have a higher level of duty expected when the property involved is private property belonging to someone other than the pet owner or public property, including parks, sidewalks and streets. In this case, the pet owner is expected to immediately clean up after their pet. To assist pet owners with clean up and disposal, disposal stations are provided that dispense bags for pet waste.

7.4.7.3 Noise: Pet owners have a responsibility to keep their pets from disturbing their neighbors. Continual barking, howling, or other noises which disturb the neighbors could result in a citation to the pet owner which could include a monetary fine and potentially the loss of the ability to keep pets in a recreational district.

7.4.7.4 Penalties: Fines for violations of this section shall be established as follows:

- (1) First Offense – Written warning
- (2) 2<sup>nd</sup> Offense - \$50.00
- (3) 3<sup>rd</sup> Offense - \$100.00

(4) Habitual Offender – in addition to the civil fine, the States Attorney may pursue criminal charges for a Class B Misdemeanor – Public Nuisance in accordance with NDCC 11-33-21.

#### **7.4.8 Funds**

All fees or fines collected for infractions or seasonal passes shall be presented to the Divide County Auditor for deposit in the county accounts for the Divide County Park Board.

### **Section 7.5 Animal Feeding Operations**

An Animal Feeding Operation (AFO) is a lot or facility where animals (other than aquatic) have been, are or will be stabled or confined and fed or maintained for a total of 45 days or more in any twelve month period and where crops, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. AFOs are defined as Small AFOs, Medium AFOs, and Large CAFOs based on the numbers of animals as specified in NDAC Chapter 33-16-03.1. Adjoining AFOs and CAFOs under common ownership shall be considered one operation if they have common areas or systems for feeding or manure handling.

True pasture and rangeland operations where the animals are in pastures, croplands, or rangeland that sustain crops or forage during the normal growing season are not considered AFOs. If the livestock have free movement between a feedlot or shelter and pasture or rangeland, it is not generally considered an AFO either.

7.5.1 The Divide County Board of County Commissioners have adopted the State of North Dakota requirements as specified in NDAC Chapter 33-16-03.1.

7.5.2 Classification of Animal Feeding Operations.

- a. Large Confined Animal Feeding Operation means any animal feeding operation that confines as many or more than the numbers specified in any of the following categories:
  - 1) 700 mature dairy cows, milked or dry
  - 2) 1,000 veal calves
  - 3) 1,000 cattle other than mature dairy cows or veal calves.
  - 4) 2,500 swine each weighing 55 pounds or more.
  - 5) 10,000 swine, each weighing less than 55 pounds
  - 6) 500 horses
  - 7) 10,000 sheep or lambs
  - 8) 55,000 turkeys
  - 9) 30,000 laying hens or broilers if the AFO uses a liquid manure handling system.
  - 10) 125,000 chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.
  - 11) 82,000 laying hens if the AFO uses other than a liquid manure handling system.



- 12) 30,000 ducks if the AFO uses other than a liquid manure handling system.
- 13) 5,000 ducks if the AFO uses a liquid manure handling system.
- b. Medium Animal Feeding Operation means any animal feeding operation that confines the numbers of animals specified in any of the following ranges:
  - 1) 200 - 699 mature dairy cows, milked or dry
  - 2) 300 - 999 veal calves
  - 3) 300 - 999 cattle other than mature dairy cows or veal calves.
  - 4) 750 - 2499 swine each weighing 55 pounds or more.
  - 5) 3,000 - 9,999 swine, each weighing less than 55 pounds
  - 6) 150 - 499 horses
  - 7) 3,000 - 9,999 sheep or lambs
  - 8) 16,500 – 54,999 turkeys
  - 9) 9,000 – 29,999 laying hens or broilers if the AFO uses a liquid manure handling system.
  - 10) 37,500 – 124,999 chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.
  - 11) 25,000 – 81,999 laying hens if the AFO uses other than a liquid manure handling system.
  - 12) 10,000 – 29,999 ducks if the AFO uses other than a liquid manure handling system.
  - 13) 1,000 – 4,999 ducks if the AFO uses a liquid manure handling system.
- c. A Small Animal Feeding Operation is any animal feeding operations that stables or confines less than the numbers of animals specified for a medium animal feeding operation.

7.5.3 Setback requirements: The operator of any animal feeding operation shall not locate or establish that operation:

- a. Within a delineated source water protection area for a public water system. The source water protection areas for water supply wells include the entire wellhead protection area.
- b. Within 1,500 feet (457.1 meters) of a private ground water well which is not owned by the operator or of a public ground water well which does not have a delineated source water protection area.
- c. Odor setbacks:
  - 1) Any owner of property seeking to establish a residence, business, church, school, public park, or zone for residential use shall provide a separation distance from any existing AFO.
  - 2) The separation distances, or setbacks are as listed. An owner of property who is an operator may locate the owner’s residence or business within the setbacks.
    - i. Small AFO - .75 miles
    - ii. Medium AFO – 1 mile
    - iii. Large CAFO – 1.5 miles

- 3) The operator of a AFO shall locate the site of that operation from existing residences, businesses, churches, schools, public parks and areas of property that are zoned residential so as to exceed the corresponding listed setback from these places.
- 4) An operator of a planned future expansion of a AFO, is to notify the Board of County Commissioners in writing of said expansion and the Board of County Commissioners may implement the corresponding odor setback for a temporary time period not to exceed two years, after which time the setback will remain in effect only if the expansion was completed.

7.5.4 The Board of County Commissioners may, upon recommendation by the Planning and Zoning Commission or Land Use Administrator, increase or decrease a setback distance for a AFO after consideration of the proposed operation's plans, if it is determined that a greater or lesser setback distance is necessary or acceptable, respectively, based upon site considerations, including the size of the operation and the species and type being fed, or demonstrable safety, health, environmental or public welfare concerns.

7.5.5 Procedures to be followed in considering an application for a conditional use permit for an AFO:

- a. An application for a conditional use permit shall be submitted to the Planning Zoning Commission and then to the Board of County Commissioners for tentative approval. The Board of County Commissioners shall notify the State Health Department that it has received such application.
- b. The Board of County Commissioners shall notify by certified mail all property owners having property within the corresponding odor setback distances of a proposed AFO. This notification must occur within 21 days of receiving the application.
- c. Following tentative approval or denial of the application by the Board of County Commissioners, the applicant shall be notified by letter of the decision, including conditions imposed, if any.
- d. The applicant shall then forward its application for a conditional use permit, together with the tentative approval by the Board of County Commissioners, to the State Health Department.
- e. Following a review of the application by the State Health Department for a state permit, the State Health Department will notify the Board of County Commissioners of its decision.
- f. The conditional use permit will become final upon granting of a permit by the State Health Department.
- g. A conditional use permit granted to the operator of a CAFO shall be put into use within twenty four (24) months, or the permit shall lapse and the operator may re-apply.

7.5.6 Special application requirements under this section: The application for a conditional use permit to operate a AFO shall include a scaled site plan. If the operation is a medium AFO or larger, the scaled site plan shall be prepared by a land surveyor registered in this State, a civil engineer licensed in this State, or other person having comparable experience or qualifications and being registered or licensed in this State. The Planning and Zoning Commission may require any or all of the following elements, or require additional elements, in its site plan review process when needed to determine the nature and scope of the concentrated animal feeding operation.

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

7.5.7 Ownership change: An operator of a CAFO having a conditional use permit granted by the Board of County Commissioners under this Ordinance shall notify the Board of County Commissioners of the sale or transfer of the ownership of that operation.

7.5.8 Operating Change: An operator of a CAFO having a conditional use permit granted by the Board of County Commissioners under this Ordinance shall notify the Board of County Commissioners of any intent to include an alternative livestock type. The notice shall be given at least 120 days prior to the anticipated date of the change.

## **Section 7.6 Farm Related Businesses**

7.6.1 One limited agriculture-related commercial activity ancillary to the farm or ranch operation shall be allowed on the operation without obtaining a conditional use permit.

7.6.2 The following agricultural-related activities, providing they provide less than fifty (50) percent of annual income, shall be allowed without a conditional use permit subject to 7.6.1 above:

- a. Feed, grain, and agriculture supplies sales
- b. Mechanical Service
- c. Trailer sales
- d. Welding services
- e. Fence construction
- f. Riding stables
- g. Water well drilling service
- h. Septic cleaning service

## **Section 7.7 Home Occupations**

This section provides for regulations and requirements for home occupations in the County.

7.7.1 The occupation shall be limited to the dwelling and the area of the occupation shall not exceed twenty five (25) percent of the main floor area, but not including the basement or garage floor space.

7.7.2 Structural changes shall not be made in the dwelling unit unless a building permit is obtained.

7.7.3 Employees are limited to two full-time or four part-time personnel excluding the owners. Any additional employees will require the home owner or occupant to obtain a conditional use permit.

7.7.4 No sign may be permitted larger than four (4) square feet.

7.7.5 As determined by the Board of County Commissioners, the character of the home occupation shall not adversely affect the character of the uses permitted in the district in which it is located.

## **Section 7.8 Mineral Mining Operations**

All mineral exploration, excavation, extraction, and production, of coal, sand, gravel, scoria, clay, cement rock, limestone, manganese, molybdenum, peat, potash, pumicite, salt, sodium sulfate, stone, zeolite, or other minerals, shall require a conditional use permit and shall conform to all requirements established by the Board of County Commissioners.

7.8.1 All mining operations shall be located at sites to protect and preserve agricultural land and to minimize the traffic, noise, dust, fumes, and vibration impact on adjoining uses and disruption of known water sources.

7.8.2 The public hearing conducted in the County shall address the site location the needs of the operation and employees with regard to roads, housing, community facilities, and the impact or need for County and community services.

7.8.3 No conditional use permit shall be issued for a mining operation without a reclamation agreement with the landowner establishing minimum reclamation requirements and a timeframe for completion.

7.8.4 Mining operation activities shall not result in undue damage to roads, bridges, or rights-of-way in the County or to any public or private property.

7.8.5 Mining operation activities must be in compliance with all County, State, and Federal regulations.

7.8.6 Any sand and gravel pit, underground or surface mine, or injection well that has been vacated for 3 or more years will be deemed abandoned and the operator must re-apply for a conditional use permit before restarting the operation.

7.8.7 Approval of a conditional use permit for mining and mineral extraction DOES NOT authorize any form of work camp housing or any other dwelling units on site. A separate application for a Temporary Work Housing Conditional Use Permit is required under the provisions of Section 7.2.

7.8.8 Additional Requirements for Mining Operations for Sand, Gravel, Rock, Stone, Scoria, and Clay In addition to the requirements for applications for conditional use permits set forth in this Ordinance, the applicant shall submit the following:

- a. Evidence of a written agreement between the applicant and any adjacent property owner(s) that excavation or processing shall not take place within three hundred (300) feet of any adjacent property.
- b. Evidence of a written agreement between the applicant and all adjacent landowners that excavation or processing shall not take place within five hundred (500) feet of an existing residence unless otherwise agreed in writing by the applicant and the adjacent landowner(s).
- c. Evidence that all site approval requirements have been met. All excavation sites require approval by the Board of County Commissioners.
- d. Data Submission Requirements:
  - 1) A site plan for operation and reclamation of the mined land including maps showing the location of the land to be mined, location of roads and points of access to the site, adjacent residences within one mile of site, maps showing the existing and proposed contours after the land is mined and a time table for operation of the site. There will be a minimum 1-to-3 slope. All top soil shall be replaced and planted to protect natural vegetation.
  - 2) Reclamation of the site shall be completed within one year of the resource being exhausted or abandoned, or closure of the operation of the site.
  - 3) Proof of compatibility with the existing landform including the vegetation, surface, and ground water resources.
- e. Rock crushers shall be considered accessory to sand and gravel mining operations, provided that the material used and processed by said crusher is limited to that found on the site of the operation.
- f. All crushing and screening operations/plants must have an approved permit for Rock, Sand, and Gravel Plants from the NDDOH Division of Air Quality before starting and during all operations.

7.8.9 Additional Requirements for Coal Mining Operations

These provisions shall apply only to coal mining for commercial purposes. It shall not apply to the mining of coal for private non-commercial uses. The applicant shall meet the following requirements in addition to the procedures and requirements contained in this Ordinance for applications for a conditional use permit:

- a. All coal mining operations shall comply with Chapter 43-02-01 of the North Dakota Administrative Code.
- b. Provide a copy of all information submitted to the North Dakota Industrial Commission concerning site reclamation.
- c. Provide evidence of approval by the North Dakota Industrial Commission for operation of the coal mining operation, if required by state law.
- d. Conform to all state and federal laws relating to the preservation, removal, or relocation of historical or archaeological artifacts and to reclamation of strip-mined lands.

#### 7.8.10 Additional Requirements for Other Subsurface Mineral Mining

“Subsurface minerals” means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of boron, bromine, calcium, fluorine, iodine, lithium, magnesium, phosphorus, potassium, sodium, thorium, uranium, and sulfur, and their compounds, but does not include sand and gravel and rocks crushed for sand and gravel.

These provisions shall apply to mining operations for commercial purposes. They do not apply to private, non-commercial mining of subsurface minerals. The applicant shall provide the following information and documents with the application and meet the following requirements in addition to the procedures and requirements for applications for a conditional use permit:

- a. Provide evidence of the approval of the North Dakota Industrial Commission of all permits required by North Dakota Administrative Code Chapter 43-02-02 for subsurface mineral mining.
- b. Provide copies of all non-confidential information that was submitted to the North Dakota State Geologist concerning site operations, location, and ownership patterns.
- c. Provide a copy of all information submitted to the North Dakota State Geologist concerning site reclamation.
- d. Provide written evidence of approval by the North Dakota State Geologist for the mining operation, if required by state law.
- e. Conform to all state and federal laws relating to the preservation, removal, or relocation of historical or archaeological artifacts and to reclamation of strip-mined lands.

#### 7.8.11 Additional Requirements for Clay Borrow Pits

Clay borrow pits that are used strictly for the construction or repair of federal, state, or local roads shall not require a conditional use permit. Any commercial sale or use of material from a clay borrow pit shall require a conditional use permit.

7.8.12 : The owner/operator of any mineral mining facility shall comply with section 6.13, the county noxious weed control policy.

### **Section 7.9 Pipelines**

7.9.1 All pipelines shall be routed to minimize adverse impact on agricultural operations and to utilize the least productive land for pipelines.

- a. All pipelines shall be routed at the edge of property lines to minimize disruption of agricultural operations.
- b. All pipelines crossing a township or county road must obtain a permit from the county or township owning the road.
- c. Applications for a conditional use permit must include and ESRI shape file that depicts the route through Divide County.

7.9.2 No pipelines shall be routed within 500 feet of a rural residence unless waived in writing by the landowner in accordance with NDCC Section 49-22-05.

### **Section 7.10 Petroleum/Natural Gas Processing Facility**

7.10.1 This is defined as a facility that is involved in the refining of crude oil into finished consumer products such as gasoline, diesel fuel, liquefied petroleum gas or other petroleum based products. It also refers to a facility involved in the refrigeration or processing of well head/raw gas into liquefied natural gas. For the purpose of this ordinance; it shall also refer to any facility that pumps, pressurizes, refrigerates, transfers or otherwise facilitates the transportation of crude oil, well head or natural gas

7.10.2 Petroleum processing plants shall only be permitted in an Industrial District.

7.10.3 Any applicant shall provide evidence of compliance with all OSHA, EPA, Federal Energy Regulatory Commission, NDDOH and NDIC regulations and requirements upon request from the Planning and Zoning Commission or the Board of County Commissioners.

7.10.4 No petroleum processing facility shall be located within one mile of an existing rural residence without a written agreement with the residence owner.

### **Section 7.11 Chemical Processing Plant**

7.11.1 Chemical processing plants shall only be permitted in an Industrial District.

7.11.2 Any applicant shall provide evidence of compliance with all Federal and State regulations and permits

7.11.3 No Chemical Processing Plant shall be located within one mile of any existing rural residence without written agreement with the residence owner.

### **Section 7.12 Railroad Yards/Spurs**

7.12.1 Railroad spurs or yards may be permitted as a conditional use in Agricultural, Industrial, and Commercial Districts.

7.12.2 The Board of County Commissioners shall take into consideration the impact to County and township roads when evaluating a conditional use permit for a railroad yard or spur.

7.12.3 No railroad yard or spur shall be located within one-half (1/2) mile of an existing rural residence.


7.12.4 The permissible day/night noise shall not exceed 65dBA measured at the edge of the railroad yard or spur property line.

### **Section 7.13 Commercial Solar Energy Conversion Facilities**

This Ordinance provides a framework for siting, construction, and operation of a Solar Energy Conversion Facility within Divide County that will preserve the safety and well-being of residents and property within Divide County while facilitating orderly development.

7.13.1 Definitions: The following definitions shall be used in the interpretation of this article.

- a. Commercial Solar Energy Facility (CSEF): A commercial solar energy farm or development with a complete design or assembly for commercial purposes consisting of energy collection, an energy storage facility, and components, and components for a distribution of transformed energy.
- b. Commercial Solar Energy Conversion System (SECS): Any device or assembly of devices that (i) is ground installed and (ii) uses solar energy from the sun for generating electricity for the primary purpose of wholesale or retail sale and not primarily for consumption on the property on which the device or devices are located.

 7.13.2 No Commercial Solar Energy Conversion Facility shall be constructed in Divide County without a conditional use permit issued by the Board of County Commissioners and without complying with all requirements of the Divide County Planning and Zoning Ordinances. This does not preclude solar monitoring, soil testing, or survey work prior to obtaining a conditional use permit.

7.13.3 Commercial Solar Energy Conversion Facility: Commercial Solar Energy Conversion Facility shall not be construed to prohibit the installation of a solar collector that gathers solar radiation as a substitute for traditional energy sources for water heating, active



space heating and cooling, or generating electricity for individual residential, agricultural, or commercial buildings and other agricultural uses. This provision of the Divide County Planning and Zoning Ordinances is directed at individuals or businesses that are in the business of collecting and selling power collected by a Commercial Solar Energy Conversion Facility, not individuals using solar power for individual use, farmers and ranchers using solar power for their own use to farm and ranch in Divide County.

#### 7.13.4 Regulations Applicable to Commercial Solar Energy Conversion Facility:

##### a. General:

- i. A Commercial Solar Energy Conversion Facility shall not obtain a building permit until evidence is given to the county that an electric utility company has a signed interconnection agreement with the permittee.
- ii. Agricultural land or land with scenic, cultural or recreational significance, and land that is identified as future growth areas as determined by the Divide County Planning and Zoning Board, shall not be used for Solar Energy Conversion Facility.
- iii. Any Commercial Solar Energy Conversion Facility must meet or exceed the standards and regulations of the Federal Aviation Administration (FAA), State Corporation Commission (SCC) or equivalent, and any other agency of the local, state, or federal government with the authority to regulate such facilities that are in force at the time of the application.
- iv. Applicants for a Commercial Solar Energy Conversion Facility shall coordinate with emergency services staff to provide materials, education and/or training to the departments serving the property with emergency services in how to safely respond to on-site emergencies. A request for a Commercial Solar Energy Conversion Facility shall not be granted until the Divide County Planning and Zoning board is satisfied that the emergency services are adequate in the proposed area.
- v. The Land Use Administrator, or any other party designated by county commissioners, shall be allowed to enter the property at any reasonable time, and with proper notice, to check for compliance with the provisions of this permit.
- vi. Repair of panels. Panels shall be repaired or replaced when either nonfunctional or in visible disrepair. The Land use Administrator shall be informed of any repairs being made to any panels and any upgrades to the panels as well. 120 days.
- vii. Signage shall identify the facility owner, provide a 24-hour emergency contact phone number, and conform to the requirements set forth in the Zoning Ordinance.

##### b. Fencing

- i. Any Commercial Solar Energy Conversion Facility shall be fenced around the exterior with a fence that shall be at least eight (8) feet in height and shall have at least three (3) strands of barbed wire run above the eight (8) feet.

- ii. The fencing shall be constructed to substantially lessen the likelihood of unauthorized entry to the Solar Energy Conversion Facility.
  - iii. The fence shall be maintained in good order. Failure to maintain the fencing shall constitute a violation of this ordinance and any Conditional Use Permit issued by Divide County.
  - iv. The fence requirements shall continue notwithstanding the fact that the Solar Energy Conversion Facility is no longer operational. The fencing requirement remains until the Commercial Solar Energy Conversion Facility is dismantled and removed from the parcel of land upon which it was constructed.
- c. Gates and locks
- i. All gates in the fences of the Commercial Solar Energy Conversion Facility shall be at least eight (8) feet in height with at least three strands of barbed wire run above the eight (8) feet.
  - ii. All gates shall be equipped with locks and shall remain locked at all times except for those times the owner, operator, or their agents are accessing the property and are present in the Solar Energy Conversion Facility.
  - iii. The gates shall be constructed to substantially lessen the likelihood of unauthorized entry to the Commercial Solar Energy Conversion Facility.
  - iv. The gates and locks shall be maintained in good order. Failure to maintain the gates shall constitute a violation of this ordinance.
  - v. The gate requirements shall continue notwithstanding the fact that the Commercial Solar Energy Conversion Facility is no longer operational. The requirement remains until the Commercial Solar Energy Conversion Facility is dismantled and removed from the parcel of land upon which it was constructed.
- d. Setbacks
- i. Every Commercial Solar Energy Conversion Facility shall be setback at least 185 feet from adjacent property lines of the parcel upon which the Commercial Solar Energy Conversion Facility is located.
  - ii. Every Commercial Solar Energy Conversion Facility shall be setback at least 185 feet from the centerline of any township road, at least 200 feet from any county road, and 250 feet from any state or federal highway to allow for chemical application and ag operations to protect green barrier requirements and adjacent crops.
  - iii. Every Commercial Solar Energy Conversion Facility shall be setback at least 100 feet from the high-water mark of any lake and the stream banks of any navigable stream.
  - iv. All setbacks shall be measured from the exterior of the fencing and gates.
  - v. Setback from residences and farms are set at a ½ mile unless participating individual applies for a conditional use permit and signs a waiver with the company requesting a setback variance.
- e. Boundaries
- The location of all of the following:
- a. Existing buildings, structures, homes within ½ mile of the project boundary, b.

- b. Electrical transmission lines and facilities, utilities, utility easements, underground pipelines, and underground utilities within the project boundary;
- c. Property lines for each property under separate ownership included within the proposed CSECS and/or CSEF boundaries with key identifying each owner;
- d. Location of all collectors, substations connecting power lines, transmission lines, and other structures to be used as part of the operation.

The "boundary" of the project shall be the properties included within the "leased lands" on which the CSECS and/or CSEF is proposed to be constructed. The specific siting of individual components of the CSECS and/or CSEF, including solar panels, supporting structures, and all other aspects which entail a complete CSECS and/or CSEF as recognized within the industry, may be included conceptually within the development plan and are permitted to be moved and adjusted as necessary during the design and construction process without modifications to the approved development plan, so long as new lands are not added to the original "boundary" of the CSECS and/or CSEF and the relocation conforms to all requirements of Article 7. Any relocation of individual components contrary to the approved site plan shall be identified on a revised site plan and submitted to the Divide County Planning and Zoning Board for review and approval.

f. Noxious weeds

- a. Ground cover on the site shall be native vegetation and maintained in accordance with established performance measures or permit conditions.
- b. The owner/operator of the Commercial Solar Energy Conversion Facility shall ensure that no noxious or invasive weeds are present on the parcel or capable of spreading to adjacent property.
- c. The operator may use mechanical, chemical or biological methods to control weeds within the Commercial Solar Energy Conversion Facility. No chemical or biological methods may be employed that are not approved for use in North Dakota.
- d. The Divide County Weed Board is the determining authority as to whether or not weed control is adequate to protect adjacent land from invasive or noxious weeds.

g. Vegetative buffer

- a. A continuous evergreen vegetative buffer shall be maintained at all times around the exterior perimeter of the fencing to screen the facility from ground level view.
- b. The evergreen vegetative buffer shall be composed of evergreen trees or shrubs which at planting shall be a minimum of four (4) feet in height and which shall be maintained at maturity at a height of not less than six (6) feet.
- c. The vegetative buffer shall be carefully planted and maintained in good condition. Failure to maintain the vegetative buffer shall constitute a violation of this ordinance.
- d. The evergreen vegetative buffer requirements shall continue notwithstanding the fact that the Commercial Solar Energy Conversion Facility is no longer operational. The requirement remains until the Commercial Solar Energy

Conversion Facility is dismantled and removed from the parcel of land upon which it was constructed.

- e. The vegetation barrier shall be no more than twenty (20) feet from the fence as required by section 7.13.3.
- h. Light and Heat Trespass:
  - i. All photovoltaic panels shall be placed such that concentrated solar radiation or glare does not project onto nearby structures, roadways or airfields. The applicant has the burden of proving that any glare produced does not have significant adverse impact on neighboring or adjacent uses either through siting or mitigation.
  - ii. Anti-reflection coatings. Exterior surfaces of the collectors and related equipment shall have a nonreflective finish and solar panels shall be designed and installed to limit glare to a degree that no after image would occur towards vehicular traffic and any adjacent building.
  - iii. Commercial Solar Energy Conversion Facility shall not raise the ambient temperature more than 2° Fahrenheit at the edge of adjacent property lines.
  - iv. Lighting shall use fixtures as approved by the county to minimize off-site glare and shall be the minimum necessary for safety and security purposes. Any exceptions shall be enumerated on the concept plan and approved by the zoning administrator.
- h. Decommissioning: The following requirements shall be met: (See section 4.9.2 on the Divide County Planning and Zoning Ordinances)

### **Section 7.14 Wind Energy Facilities**

This Ordinance provides a framework for siting, construction, and operation of a Wind Energy Facility within Divide County that will preserve the safety and well-being of residents and property while facilitating orderly development.

7.14.1 No wind energy generating facilities shall be constructed in Divide County without a conditional use permit issued by the Board of County Commissioners and without complying with all requirements of this Ordinance. This does not preclude wind monitoring, soil testing, or survey work prior to obtaining a conditional use permit. MET Towers must be lighted and marked if set up for wind monitoring.

7.14.2 The requirements established in this Ordinance apply to a Wind Energy Facility or any portion of one erected or constructed in Divide County if that facility contains any wind turbine rated at 50 kilowatts or more of name plate capacity. No wind turbines shall be located or permitted in any area zoned in a Residential, Recreational, or Conservation.

7.14.3 Application Process – The permit application shall include the following:

- l. A check or money order for the permit fees. The fees include a \$1000 base fee for each site as well as a \$1000 fee for each turbine planned or erected, whichever is greater.
  - m. The name, business address, and phone number of the person in whose name the permit is to be issued. If the authorized agent for service of process is different than the prospective permit holder, the name and North Dakota address of the person authorized to receive service of process on the person's behalf.
  - n. Evidence of the applicant's capacity to contractually bind the person seeking the permit and authority to make binding representations on the person's behalf for purposes of zoning, siting, and construction of the Wind Energy Facility.
  - o. A schedule for the proposed start and completion of construction of the facility which includes the applicant's proposal for final repairs to public roads.
  - p. Information describing the applicant's wind rights within the boundaries of the proposed site.
  - q. A USGS topographical map of the Wind Energy Facility and 1320 feet of adjoining land, not participating land, contiguous with any proposed host property. The following items will be clearly marked on the map:
    - 9) Each existing wind turbine, Wind Energy Facility fixture, accessory structure or building, including substation, MET tower, electrical infrastructure, and collector line or transmission line regardless of ownership.
    - 10) Each of the applicant's proposed improvements for the Wind Energy Facility or accessory structure or building, including each wind turbine, MET tower, electrical line, and access road.
    - 11) Each occupied structure, improvement, public road, private road, utility line, and public facility.
    - 12) All section lines and boundaries between abutting parcels, tracts or lots owned by different parties.
    - 13) Boundaries of any easement for section line, public road or highway that is within 5 times the rotor diameter (5RD) of any envisioned or probable wind turbine site.
    - 14) The site boundary.
    - 15) Each public or private airstrip with FAA identification number.
    - 16) Natural terrain features.
    - 17) The names of property owners inside the site and of the property owners for adjoining land noted on the map or via a key.
- 7.14.4 Appearance, Lighting, Sound, Agricultural Operations, Roads and Power Lines
- a. Wind turbines shall be painted a non-reflective coating and in a non-obtrusive color.
  - b. Turbines shall not display any advertising.
  - c. Each turbine shall be marked with an identification number large enough to assist identification of the turbine number in an emergency.

- d. Turbines shall be lighted to the extent advised by the FAA in FAA Advisory Circulars 47CFR 17.21 – 17.58.
- e. The location and construction of access roads and other infrastructure shall, to the extent possible, not disrupt farming, agricultural operations, or the landscape. In order to preserve the integrity of fields and capacity for efficient tilling, planting, and harvesting, access roads should be built parallel or perpendicular to existing roads and not diagonally across fields for mere convenience of the shortest route to a turbine.
- f. The permittee shall promptly replace or repair all fences or gates removed during all phases of the wind energy facilities life unless otherwise negotiated with the affected landowner. When the permittee installs a gate where electric fences are present, the permittee shall provide for continuity in the electric fence circuit.
- g. The permittee shall place electrical lines, known as collectors, and communication cables underground when located on private property. Use of public right-of-way must be in compliance with the associated governing body's criteria for use. Collectors and cables shall also be placed within or adjacent to the land necessary for wind turbine access roads unless otherwise negotiated with the affected landowner.
- h. The permittee shall place overhead feeder lines on a public right-of-way if a public right of way exists or the permittee may place feeder lines on private property. A change of routes may be made as long as the feeder line remains on the public right-of-way and approval has been obtained from the government responsible for the affected right of way. When placing a feeder line on private property, the permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.
- i. MET towers 100 feet or more tall shall be lighted and marked in a way that satisfies FAA advice set forth in FAA Advisory Circulars 47 CFR 17.21-17.58 or their successors. Neither an environmental statement nor assessment is required. The concern addressed by this requirement for a light is aviation safety and that concern must be sensibly balanced with residential privacy. Operators are to avoid using high intensity white lighting at night and use common sense in making lighting selections suitable for the area.
- j. The noise level caused by the operation of the project shall be measured at 5 feet above ground level at the property line coincident with or outside the project boundary and shall not exceed 65 decibels (A-weighted). If it is determined that a pure tone noise is generated by the project, the noise level shall not exceed 50 decibels (A-weighted). This level may be exceeded during short term events such as utility outages and/or severe wind storms
- k. Noxious weeds
  - i. The owner/operator of a wind farm shall comply with section 6.13, the county noxious weed control policy.

7.14.5 **Setbacks** apply to all wind turbines in a Wind Energy Facility. Setbacks are measured from the vertical or near vertical surface of the wind turbine's tower at ground level to the closest near vertical surface of the occupied or unoccupied structure, or the

nearest point of a boundary, bridge, line, or outside edge of the improved surface of a roadway or airstrip.

- a. Each wind turbine must be setback at least 3 miles from any residence.
- b. Each wind turbine must be set back the greater of 1700 feet or 5RD from any occupied building, public road or bridge, rail line, or above ground electrical or communication line. Turbines must be set back the greater of 1700 feet or 5RD from each antenna, tower, unoccupied structure, or improvement with an estimated value more than \$25,000. The Planning and Zoning Commission can estimate the value without an appraisal, subject to a final valuation approved by the Board of County Commissioners, but interested parties may submit a timely appraisal.
- c. Each wind turbine must be set back at least 5RD from the boundary between the host property and any property that adjoins the host property.

### **Section 7.15 Waste Disposal Sites**

Solid Waste disposal facilities as regulated by this section shall include all facilities for the incineration or disposal of solid waste residue which are required to be permitted under statute or rule by the State Health Department and Consolidated Laboratories.

7.15.1 Sites shall be restricted to disposal of inert Solid Waste and municipal Solid Waste.

7.15.2 Nuclear and Radiological Waste is not permitted in Divide County or the State of North Dakota.

7.15.3 A public hearing shall be conducted by the Planning and Zoning Commission concerning site location, type of waste planned, needs of the facility, size and location of construction crews, permanent employees, and road impact.

7.15.4 A Solid Waste disposal facility may be allowed in an Industrial District as a conditional use following the final public hearing and approval by the Board of County Commissioners.

7.15.5 Waste which is classified as hazardous, is hazardous in nature, or exhibits hazardous waste characteristics shall not be permitted for disposal in the County.

- a. Containers having hazardous waste in excess of normal household quantities, shall be dated and marked to designate the content as toxic, explosive, or otherwise hazardous.
- b. No person engaged in the operation of solid waste landfills, resource recovery or solid waste processing facilities may knowingly store, treat, handle, or dispose of hazardous waste in amounts in excess of quantities normally found in household waste unless approved by the State Health Department.
- c. No person shall place Hazardous Waste in municipal Solid Waste or dispose of Hazardous Waste without approval of the County.

- d. Asbestos waste shall be disposed of in accordance with the applicable rules and regulations of the State Health Department and the Hazardous Waste requirements of this ordinance.
- e. Any person who handles surplus agricultural pesticides and pesticide containers shall comply with applicable rules and regulations of the State Health Department.
- f. Surplus pesticides may not be discarded in any manner, including land filling, which endangers humans, animals, and the environment.

7.15.6 Industrial/Special Waste: All waste disposal sites are regulated by the State Health Department which shall review all applications and issue any operating permits. Special Waste disposal sites may be approved as a conditional use only in an Industrial District.

- a. Applications for Industrial/Special waste disposal sites shall require a request for a zoning change and a request for a conditional use permit.
- b. Once notified by the State Health Department of a draft permit, the Board of County Commissioners may call for a special election by the voters to approve or disapprove the permit application.

7.15.7 Standard conditions for any type of commercial waste disposal site within the County:

- a. It shall be located at least one mile from any and all residences, or unless written approval is obtained from the owner of any residence within this area.
- b. It shall be located at least one-half (1/2) mile from any private well or stock dam, or unless written approval is obtained from the owner of that well or stock dam.
- c. It shall be continuously licensed and approved by the State Health Department as to location and operation.
- d. There shall be no evidence that the facility will endanger the public health or the environment.
- e. All excavations and actual disposal areas shall maintain a minimum setback of one hundred fifty feet (150') from all property lines.
- f. The facility shall develop a comprehensive plan for controlling surface water drainage which is in compliance with the State Health Department requirements. Such plan shall be filed with application for a conditional use permit.
- g. Unauthorized entry to the site shall not be permitted. In addition, facility personnel must be on site during all times of active disposal.



- h. A chain link fence constructed to of a minimum of six feet (6') high shall completely enclose the boundaries of the active disposal area.

7.15.8 Solid Waste materials shall not be stored on public or private property for more than two weeks without approval of the County.

7.15.9 Any person selling lead-acid batteries at retail or wholesale is required to accept and dispose of, at his own expense, lead-acid batteries from customers who purchase new lead-acid batteries. Disposal of lead-acid batteries shall be in accordance with state law.

7.15.10 Waste tire collectors and processors shall obtain a conditional use permit from the county. Waste tire collectors and processors shall meet all the requirements of this Ordinance and the State Health Department. Waste tires shall be stored in a manner that will not create a public nuisance, blight, health hazard, or fire hazard.

7.15.11 A private Solid Waste disposal site used exclusively by and only for the landowner or tenant engaged in farming may be conditionally permitted on the basis of one per landowner. A private Solid Waste disposal site shall only be used for refuse generated by personal farming operations and shall comply with Farm Service Agency (FSA) regulations.

- a) Private waste disposal sites shall avoid low or steep areas and shall be a minimum of two hundred fifty (250) feet from any lake or stream.

## **Section 7.16 Junk or Salvage Yards and Recycling Plants**

7.16.1 All sites for junk or salvage yards, and recycling plants must be approved for conditional use permits by the Board of County Commissioners.

7.16.2 No junkyards, automobile graveyards, or scrap metal processing facilities shall be established and maintained within one thousand (1000) feet of the nearest edge of the right-of-way of a highway on the state highway system without written permission of the NDDOT. (NDCC Section 24-16-03)

7.16.3 No junkyards, automobile graveyards, or scrap metal processing facilities shall be established and maintained within five hundred (500) feet of the nearest edge of the right-of-way of a County or Township road.

7.16.4 Salvage, junk yards, and recycling facilities shall be screened from public view by plantings and/or fences at least ten (10) feet in height and approved by the Board of County Commissioners. Material shall not be stored higher than the height of screening.

7.16.5 The facility shall not abut residential and public uses.

7.16.6 Burning of salvaged material or junk is prohibited.

7.16.7 The facility shall develop and maintain a pest control plan that is approved by the Board of County Commissioners.

7.16.8 Any information deemed necessary shall be provided to the Planning and Zoning Commission and to the Board of County Commissioners before an application for a permit will be approved.

7.16.9 The above conditions are in addition to all applicable state law requirements.

### **Section 7.17 Adult Entertainment**

An Adult Entertainment Center is any building, premise, structure, or other facility which provides the opportunity to view materials, live or recorded performances of activities of a sexual nature which are characterized by an emphasis on matters depicting, describing, or related to specified sexual activities or specified anatomical areas such as genitals, breasts, or buttocks, or any performance by go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers. Adult entertainment includes but is not limited to adult bookstores and novelty shops, adult motion picture theaters, adult mini-motion pictures theaters, and exotic dancing establishments.

7.17.1 An Adult Entertainment Center Permit authorizes a conditional use of property for the purpose of allowing an Adult Entertainment Center as the term is defined above, the issuance of which is subject to the procedures contained within Section 4 of the Divide County Zoning Ordinance and those provided for in Section 7.18.3 below. An Adult Entertainment Center is allowable as a conditional use only in Commercial Districts.

7.17.2 An Adult Entertainment Center Permit shall issue for a period not to exceed five (5) years consecutive years from the date of the issuance of the same. The Planning and Zoning Board may recommend the issuance of and the Divide County Commission may approve and issue an Adult Entertainment Permit for a period of less than five (5) consecutive years, but in no event shall an Adult Entertainment Permit issue for a greater period of time than the said five (5) consecutive year period. At the expiration of the five (5) year period, a new (or renewal) application for an Adult Entertainment Permit may be made by the same applicant for the same project and shall be subject to a recommendation by the Planning and Zoning Board and approval by the Divide County Commissioners.

#### **7.17.3 Adult Entertainment Restrictions**

- a. An Adult Entertainment Center shall not be located within one half (1/2) mile of any religious institution, cemetery, school, park, recreation area or an established residence.
- b. An Adult Entertainment Center shall not be located within one quarter (1/4) mile of any establishment that dispenses alcohol on-premises.

- c. An Adult Entertainment Center shall not be located within one thousand two hundred eighty (1,280) feet of any other Adult Entertainment Center.
- d. An Adult Entertainment Center must prohibit entrance by persons less than eighteen (18) years of age.
- e. An Adult Entertainment Center may not display any signs visible from the exterior of the Adult Entertainment Center, except for signs identifying it as an Adult Entertainment Center, adult book store, exotic dancing establishment, or combination thereof.
- f. No material depicting specified sexual activities or specifying anatomical areas shall be visible from the exterior of an Adult Entertainment Center.
- g. The building, premise, structure, or facility of an Adult Entertainment Center which are generally open to the public are open equally at the same time to members of any law enforcement agency (without charge) who may wish to enter thereon provided the entry is in the course of the discharge of the law enforcement officer's duties.

7.17.4 Application Procedure: In addition to any applicable provisions contained within Section 4 of this Ordinance, an application for an Adult Entertainment Center Permit shall be signed by the applicant or authorized representative and shall include the following information:

- a. A description of the building, premise, structure, or facility to be used in connection with the Adult Entertainment Center.
- b. A map depicting the location of the building, premise, structure, or facility to be used in connection with the Adult Entertainment Center and a physical and mailing address for the same.
- c. The name and address of the owner of the property where the Adult Entertainment Center will be located.
- d. The name and address of the applicant and contact information.
- e. The name and address of the onsite manager and contact information.
- f. List of rules, regulations, and employee policies for the Adult Entertainment Center.
- g. Security plan to be used by the licensed/permitted Adult Entertainment Center;
- h. A copy of any commercial, trade, business, or occupational license or permit required and issued by the State of North Dakota for the Adult Entertainment Center.
- i. Any additional information deemed necessary by the Zoning Administrator, the Planning and Zoning Board, or the County Commission.

7.17.5 Permittee and Dancer Responsibilities.

- a. The permittee shall be responsible for the conduct of his/her place of business and shall be required to maintain order and sobriety in such place of business, permitting no disorderly conduct on the premises. Alcoholic beverages shall not

be sold, served, consumed, or permitted upon the premises, nor shall any intoxicated person be permitted to enter or remain on the premises.

- b. The permittee and the permittee's employees shall all have attained the age of at least twenty-one (21) years. The permittee and the permittee's employees shall at all times prohibit persons within the premises from performing or simulating acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or simulate or touch, caress, or fondle breasts, buttocks, anus or genitals.
- c. Any person engaged as an exotic dancer, stripper, or go-go dancer, shall have attained at least twenty-one (21) years of age. Any person engaged as an exotic dancer, stripper, or go-go dancer shall not have any physical contact with customers or patrons on the premises. Said persons engaged as exotic dancers, strippers, or go-go dancers shall not allow customers or patrons to touch them in any way, nor shall they touch the customers or patrons. Example: no sitting on laps, no touching of breasts or genitals, either over or under clothing.
- d. Any person engaged as an exotic dancer, stripper or go-go dancer shall have in his/her possession a photo identification which establishes that person's name, date of birth, address, social security number and physical description.

#### 7.17.6 Termination of Adult Entertainment Center Conditional Use Permit

An Adult Entertainment/ Center Conditional Use Permit is subject to review by the Planning and Zoning Board at any time and may be revoked as provided in this Ordinance.

#### 7.17.7 County restriction of adult establishments - Definitions.

- e. "Adult bookstore" means a bookstore having as a preponderance of its publications, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection.
- f. "Adult establishment" means either an adult bookstore, an adult motion picture theater, an adult mini-motion picture theater, or a massage business, all as defined in this subsection.
- g. "Adult mini-motion picture theater" means an enclosed building with a capacity for less than fifty persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection, for observation by patrons of the theater.
- h. "Adult motion picture theater" means an enclosed building with a capacity of fifty or more persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection, for observation by patrons of the theater.
- i. "Massage" means the manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.

- j. "Massage business" means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors.
- k. "Sexually oriented devices" means without limitation any artificial or simulated specified anatomical area or any other device or paraphernalia that is designed in whole or in part for specified sexual activities.
- l. "Specified anatomical areas" means:
  - 1) Less than completely and opaquely covered human genitals and pubic regions, buttocks, or female breasts below a point immediately above the top of the areola.
  - 2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
  - 3) "Specified sexual activities" means:
    - a) Human genitals in a state of sexual stimulation or arousal;
    - b) Acts of human masturbation, sexual intercourse, or sodomy; or
    - c) Fondling or other erotic touching of human genitals and pubic regions, buttocks, or female breasts.

7.17.8 The Board of County Commissioners may, upon proper resolution, require that:

- a. No building, premises, structure, or other facility that contains any adult establishment, as defined in subsection 7.18.7, shall contain any other kind of adult establishment.
- b. No building, premises, structure, or other facility in which sexually oriented devices, as defined in subsection 7.17.7, are sold, distributed, exhibited, or contained shall contain any adult establishment, as defined in subsection 1.

## 7.18 MEDICAL MARIJUANA

### 7.18.1 Definitions

- a. **Cannabinoid** means a chemical compound that is one of the active constituents of marijuana.
- b. **Cannabinoid Capsule** means a small, soluble container, usually made of gelatin, which encloses a dose of a cannabinoid product or cannabinoid concentrate intended for consumption.
- c. **Cannabinoid Concentrate** means a concentrate or extract obtained by separating cannabinoid from marijuana by mechanical, chemical, or other process.
- d. **Cannabinoid Edible Product** means a food or potable liquid into which a cannabinoid concentrate or the dried leaves or flowers of the plant of the genus cannabis is incorporated.
- e. **Cannabinoid Tincture** means a solution of alcohol, cannabinoid concentrate, and other ingredients intended for consumption.
- f. **Cannabinoid Topical** means a cannabinoid product intended to be applied to the skin or hair.
- g. **Cannabinoid Transdermal Patch** means an adhesive substance applied to the skin which contains a cannabinoid product or cannabinoid concentrate for absorption into the bloodstream.
- h. **Compassion Center** means a medical marijuana manufacturing facility or dispensary.

- i. **Compassion Center Agent** means a principal officer, board member, member, manager, governor, employee, volunteer, or agent of a compassion center.
- j. **Designated Caregiver** means an individual who agrees to manage the well-being of a registered qualifying patient with respect to the qualifying patient's medical use of marijuana.
- k. **Dispensary** means an entity registered by the ND Department of Health as a compassion center authorized to dispense usable marijuana to a registered qualifying patient and a registered designated caregiver.
- l. **Marijuana** means all parts of the plant of the genus cannabis: the seeds of the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant.
- m. **Medical Marijuana:** Refers to a product intended for human consumption or use which contains a cannabinoid concentrate derived from or containing a derivative of marijuana in any form, including but not limited to plants, seeds, and resins or any medical marijuana product.
- n. **Medical Marijuana Product** means a cannabinoid concentrate or medical cannabinoid product.
- o. **Medical Marijuana Waste** means unused, surplus, returned, or out of date usable marijuana, recalled usable marijuana, unused marijuana, or plant debris of the plant of the genus cannabis, including dead plants and all unused plant parts and roots.
- p. **Medical Use of Marijuana** means the acquisition, use, and possession of usable marijuana to treat or alleviate a qualifying patient's debilitating medical condition.
- q. **Processing or Process** means the compounding or conversion of marijuana into a medical marijuana product.
- r. **Producing, Produce, or Production** means the planting, cultivation, growing, trimming, or harvesting of the plant of the genus cannabis or the drying of the leaves or flowers of the plant of the genus cannabis.
- s. **Usable Marijuana** means a medical marijuana product of the dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form. The term does not include the dried leaves or flowers unless authorized through a written certification and does not include a cannabinoid edible product.

### 7.18.2 Purpose and Intent

The 2017 North Dakota Legislature enacted Senate Bill 2344 relating to the implementation of the North Dakota Compassionate Care Act, NDCC 19-24, for the regulation of medical marijuana dispensaries and the cultivation and propagation of medical marijuana in North Dakota.

- a. The use, cultivation, manufacturing, production, distribution, possession and transportation of marijuana remains illegal under federal law, and marijuana remains classified as a "controlled substance" by both North Dakota and federal law;
- b. The county commission does not have the authority to, and nothing in this chapter is intended to, authorize, promote, condone or aid the production, distribution or possession of medical marijuana in violation of any applicable law;
- c. The county commission intends to regulate the use, acquisition, cultivation, manufacturing, and distribution of usable medical marijuana in a manner that is consistent with the North

Dakota Century Code §19.24-1. The regulations are intended to apply to all medical marijuana operations in the county by any medical marijuana business permitted under state law. Medical marijuana cultivation and production can have an impact on health, safety, and community resources, and this chapter is intended to permit state-licensed Medical Marijuana Manufacturing Center(s) or Distribution Center(s) where they will have a minimal negative impact;

- d. To the extent that Medical Marijuana Manufacturing Center(s) or Distribution Center(s) are registered and authorized by the State of North Dakota to operate in the county, this commission desires to provide for their licensing and regulation to protect the public health, safety and general welfare of the citizens of the county.
- e. This chapter is to be construed to protect the public over medical marijuana business interests. Operation of a medical marijuana business is a revocable privilege and not a right in the county. There is no property right for any individual or business to have medical marijuana in the county; and
- f. Medical marijuana is a heavily regulated industry in the state and county, and the county has a zero tolerance policy for violations of this chapter.
- g. The purpose of this chapter is to protect the public health, safety, and welfare of the residents and patients of the county by prescribing the manner in which medical marijuana businesses can be conducted in the county. Further, the purpose of this chapter is to:
  - 1) Provide for a means of cultivating, manufacturing and distribution of usable marijuana to patients who qualify to obtain, possess, and use marijuana for medical purposes as prescribed by state law.
  - 2) Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, neighborhood and patient safety, security for the business and its personnel, and other health and safety concerns.
  - 3) Impose fees to cover the cost to the county of licensing medical marijuana businesses in an amount sufficient for the county to cover the costs of the licensing program.
  - 4) Create regulations that address the particular needs of the facilities, patients and residents of the county and comply with laws that may be enacted by the state regarding medical marijuana.

### **7.18.3 Annual Permit Fee**

As authorized by the Board of County Commissioners the Planning and Zoning Commission is to establish an annual permit fee to offset costs associated with policing, site inspections, monitoring, storage of media, and/or regulating medical marijuana facilities involved in the

cultivation, propagation, manufacturing, processing, refining, distribution, delivery, supply, sale or handling of Medical Marijuana.

#### **7.18.4 Conditional Use Permit Requirements**

In addition to the requirements applicable to all Conditional Use Permit applications, an application for a Conditional Use Permit for a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must include the following:

- a. Proof of Insurance (see section 7.18.5 for insurance requirements).
- b. List of all persons and entities with an ownership interest in the Manufacturing Center(s) or Distribution Center(s) including all shareholders that hold any share in stock in the Manufacturing Center(s) or Distribution Center(s).
- c. A security plan depicting the location and configuration of security cameras and surveillance equipment.
- d. A complete description of the products and services to be produced or sold by the Medical Marijuana Manufacturing Center(s) or Distribution Center(s).
- e. A notarized statement acknowledging that the applicant understands applicable federal laws, any guidance or directives issued by the U.S. Department of Justice, the laws of the State of North Dakota and the laws and regulations of the county applicable thereto concerning the operation of a Medical Marijuana Manufacturing Center(s) or Distribution Center(s). The written statement shall also acknowledge that any violation of any laws or regulations of the State of North Dakota or of the county, or any activity in violation of any guidance or directives issued by the U.S. Department of Justice, in such place of business, or in connection therewith, or the commencement of any legal proceeding relating to such Medical Marijuana Manufacturing Center(s) or Distribution Center(s) by federal authorities, may render the license subject to immediate suspension or revocation.
- f. A notarized statement that the applicant will hold harmless, indemnify, and defend the county against all claims and litigation arising from the issuance of license and/or a conditional use permit including any claims and litigation arising from the Manufacturing Center(s) or Distribution Center(s), operation or ownership of the Medical Marijuana Manufacturing Center(s) or Distribution Center(s).
- g. A notarized acknowledgement that the applicant is seeking a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) Conditional Use Permit and that the applicant understands and acknowledges that the burden of proving qualifications to receive such a Conditional Use Permit is at all times on the applicant; that the granting of a Conditional Use Permit for a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) is at the discretion of the county commission; and that the applicant agrees to abide by the decision of the county commission.



- h. The Planning and Zoning Commission may require additional plans, documents or other information prior to deeming the application complete.
- i. A Medical Marijuana Manufacturing Center(s) or Distribution Center(s) Conditional Use Permit shall be reviewed annually by the county commission for renewal.
- j. If the State of North Dakota or its electorate repeals the Compassionate Care Act or the act is otherwise declared void, all Medical Marijuana Manufacturing Center(s) or Distribution Center(s) Conditional Use Permits issued by the county commission will be deemed to have immediately expired.
- k. Once a conditional use permit is obtained for a Medical Marijuana Manufacturing Center(s) or Distribution Center(s), any change in operation of the facility or in ownership shall require prior approval of the Board of County Commissioners.
- l. Any building modifications or alterations must be approved by the Planning and Zoning Commission.

#### **7.18.5 Medical Marijuana insurance and Bond Requirements**

- a. The minimum amount of third-person insurance coverage for a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) shall be one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) general aggregate for bodily injury and property damage arising out of licensed activities and one million dollars (\$1,000,000.00) products and completed operations aggregate, commercial automobile coverage in a minimum of one million dollars (\$1,000,000.00) and excess liability in a minimum of three million dollars (\$3,000,000.00). Divide County shall be named as an additional insured on all general liability, umbrella, and excess insurance policies required under this section.

#### **7.18.6 Medical Marijuana Design Standards**

- a. Each Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must be located in a separate, permanent, standalone structure and have a minimum six (6) foot high perimeter fence encompassing the parcel boundary. The fence shall be of chain link construction meeting the standards of the US Army Corps of Engineers FE6 Chain Link Security Fence Details for non-sensored fence, Drawing Code STD 872-90-03.
- b. Each Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must be located a minimum of 1000 feet from a public or private preschool, kindergarten, elementary, secondary or high school, public park, public community center, dependent care facility, homeless shelter, youth center, or place of worship. The distance shall be measured from the exterior fence of the Medical Marijuana Manufacturing Center(s) or Distribution Center(s) to the property line of the protected use.
- c. Each Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must be located a minimum of 500 feet from any residential district, or any residential dwelling, trailer, recreational vehicle or recreational district. The distance shall be measured from the exterior fence of the Medical Marijuana Manufacturing Center(s) or Distribution Center(s) to the property line or dwelling of the protected use.

- d. No Medical Marijuana Dispensary shall have operating hours earlier than 8:00 AM or later than 7:00 PM.
- e. The entire perimeter of a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) structure must be well lit (minimum 1 candle foot) to prevent concealment in shadows around the structure for a minimum of 15 feet around each structure that is part of the Medical Marijuana Manufacturing Center(s) or Distribution Center(s). Further, everything within the fenced area shall have 24 hour surveillance cameras depicting the entire exterior of the Manufacturing Center(s) or Distribution Center(s) as well as cameras at the property entrance depicting vehicles and license plates of each vehicle entering the parking lot.
- f. Each Medical Marijuana Distribution Center shall have at least 1 parking space per 250 sq. ft. of structure.
- g. Each Medical Marijuana Cultivation and/or Manufacturing Facility shall have at least 1 parking space for every 1000 sq. ft. of plant cultivation area and 1 parking space for each 250 sq. ft. of all other areas of the structure.
- h. With the exception of the specific Medical Marijuana Manufacturing Center(s) or Distribution Center(s) approved as part of a Conditional Use Permit, no other activity may occur within the facility or land parcel.
- i. No outdoor storage on-site shall be permitted.
- j. No drive-through, drive-up, or walk-up facilities shall be permitted.
- k. Each Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must ensure there is no emission of dust, fumes, vapors, or odors into the environment.
- l. Windows must remain unobstructed, allowing visibility into the facility. Window tint, decals or window signage of any kind shall be strictly prohibited.
- m. Each permittee shall obtain an inspection of the property from the county planning department or fire marshal prior to the annual renewal of the Conditional Use Permit.
- n. All surveillance camera locations and surveillance recording equipment including specifications must be approved by the County Sheriff.
- o. All applicable state standards and requirements shall apply in the design and operations of any Manufacturing Center(s) or Distribution Center(s).

#### **7.18.7 Serviceability, Exclusions and Exceptions**

- a. The provisions of this section do not waive or modify any other provision of this ordinance with which Medical Marijuana Manufacturing Centers or Distribution Centers are required to comply. Nothing in this section is intended to authorize, legalize, or permit the Medical Marijuana Manufacturing Center or Distribution Center operation of any facility, building, or use which violates any county ordinance or statute of the State of North Dakota regarding public

nuisances, Medical Marijuana, or any federal regulations or statutes relating to the use of controlled substances.

- b. This section shall be null and void if any determination is made after the adoption of the ordinance enacting this chapter by any court of jurisdiction, that §19.24-1 is invalid, or shall be null and void to the extent any portion of such section is held invalid.
- c. Should any section, subsection, clause or provision of this section for any reason be held to be invalid or factually unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this section, it being hereby expressly declared that this section and each and every subsection, sentence, clause, and phrase hereof would have been prepared, proposed, approved, adopted, and/or ratified irrespective of the fact that any one or more subsections, sentences, clauses, or phrases of this chapter be declared invalid or unconstitutional.

## **SECTION 8 SUBDIVISION REGULATIONS**

### **8.1 PURPOSE**

The specific purpose of these Subdivision Regulations is to:

- a. To preserve the land in tracts large enough for viable agricultural operations.
- b. To establish reasonable standards of design and procedures for Subdivisions and re-subdivisions, in order to further the orderly layout and use of land and to ensure proper legal descriptions and monumenting of subdivided land.
- c. To prevent the pollution of air, streams, and wetlands; to ensure the adequacy of drainage facilities; to protect underground water resources; and to encourage the wise use and management of natural resources in order to preserve the integrity, stability, and beauty of the County.
- d. To require new Subdivisions to provide financial support for infrastructure improvements that are necessary to support new growth.

### **8.2 PLATTING AUTHORITY**

The Board of County Commissioners shall serve as the platting authority for the County's area of jurisdiction in accordance with North Dakota Century Code chapters 11-33, 11-33.2, and 40-50.1 as may be amended. No plats, replats, or rearrangements of existing plats shall be filed or accepted for filing by the office of the County Recorder unless adopted by the Board of County Commissioners approving such plat, replat, or rearrangement.

### **8.3 POLICY**

- a. It is hereby declared to be the policy of Divide County to consider the Subdivision of land in the subsequent development of the plat as subject to the control of the County pursuant to the Divide County Comprehensive Plan for the orderly, efficient, and economic development of the County.
- b. Land to be subdivided shall be of such character than can be used safely for building purposes without danger from flood, fire, or other menace. Land shall not be subdivided unless proper provisions have been made for open spaces, drainage ways, storm water management, wetland protection, potable water, domestic wastewater, sanitary wastes, streets, alleys, other public ways, school sites, and capital improvements such as parks, playgrounds, recreational facilities, transportation facilities, storm water improvements and other necessary improvements.
- c. Each lot created under the provisions of these Subdivision Regulations must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with

severe limitations for development, severe erosion potential, steep topography, inadequate water supply, sewage treatment capabilities, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the County.

#### **8.4 RESTRICTION ON RECORDING AND BUILDING PERMITS**

No plat shall be entitled to be recorded in the Office of the County Recorder, nor shall it have any validity unless approved by the Board of County Commissioners under the provisions of these Subdivision Regulations. The County shall not issue building permits for any building or structure on any lot in a subdivision unless the Subdivision has received final plat approval by the Board of County Commissioners pursuant to these Subdivision Regulations.

#### **8.5 GENERAL PROVISIONS FOR THE SUBDIVISION OF LAND**

##### **8.5.1 Platting Required**

- a. All Subdivisions of land resulting in lots less than fifteen (15) acres per lot shall be regulated by the procedures set forth in these Subdivision Regulations.
- b. Whenever any Subdivision of land is proposed, regardless of whether the land has been previously subdivided, and before any contract is made for the sale of any part thereof, and before any building permit for the erection of a building or structure on any lots in the proposed subdivision shall be granted, the subdivider proposing the Subdivision shall meet the requirements of these Subdivision Regulations and must receive final approval for the subdivision from the Board of County Commissioners.
- c. Subdivision requests which have an existing active farmstead on the proposed lot smaller than forty (40) acres shall be provided a one-time exemption from the requirements of these Subdivision Regulations, with the exception that the administrative procedures for a single lot subdivision set forth in Section 8.12 shall still apply.

##### **8.5.2 Premature Subdivisions**

Any plat and/or development deemed premature pursuant to the criteria listed below shall be denied by the Board of County Commissioners. A Subdivision may be deemed premature should any of the following conditions exist:

- a. Lack of adequate drainage. A condition of inadequate drainage shall be deemed to exist if:

- 1) Surface or subsurface water retention and runoff is such that it constitutes a hazard resulting in flooding, loss of life, property damage, or other losses.
  - 2) The proposed Subdivision will cause pollution of water bodies or damage to other natural resources.
  - 3) The proposed site grading and development will cause damage from erosion, sedimentation, or slope instability.
  - 4) The proposed Subdivision fails to comply with the storm water management requirements of this Ordinance or as may be amended by the County Engineer.
  - 5) Factors to be considered in making these determinations may include: average rainfall for the area, area drainage patterns, the relationship of the land to floodplains, the nature of soils and subsoils and their ability to adequately support surface water runoff and waste disposal systems, and the slope and stability of the land.
- b. Lack of Potable Water Supply: A proposed Subdivision shall be deemed to lack an adequate water supply if it does not have adequate sources of water to serve the proposed Subdivision if developed to its maximum density without causing an unreasonable depreciation of existing water supplies for surrounding areas.
- c. Lack of Adequate Roads or Highways to Serve the Subdivision: A proposed Subdivision shall be deemed to lack adequate roads or highways when:
- 1) County or township roads which serve the proposed Subdivision are of such a width, grade, stability, vertical and horizontal alignment, sight distance, and paved surface condition that an increase in traffic volume generated by the proposed subdivision would create a hazard to public safety and general welfare; or seriously aggravate an already hazardous condition; or when said roads are inadequate for the intended use.
  - 2) The traffic generated by the proposed Subdivision would create or contribute to unsafe conditions on highways existing at the time of application.
- d. Lack of Adequate Waste Disposal Systems: A proposed Subdivision shall be deemed to lack adequate waste disposal systems if there is inadequate on-site sewer capacity potential to support the Subdivision if developed to the maximum permissible density allowed by this Ordinance.
- e. Lack of Public Service Capacity: The County, Township, or School District lacks necessary public service capacity when such as recreational facilities, schools, police, fire protection, and other public facilities which must be provided at public expense cannot reasonably be provided for in the next two (2) years.

- f. Inconsistency with Divide County Comprehensive Plan and Zoning Ordinance. A proposed Subdivision shall be deemed inconsistent with the Divide County Comprehensive Plan and Zoning Ordinance when the proposed Subdivision is inconsistent with the purposes, objectives, and/or recommendations of the adopted Divide County Comprehensive Plan and Zoning Ordinance.
- g. Burden of Evidence: The burden shall be upon the applicant to show evidence that the proposed Subdivision or development is not premature.

## **8.6 SKETCH PLAN**

Any subdivider seeking to subdivide land as required by these Subdivision Regulations, must, prior to application for plat approval, prepare and submit a sketch plan depicting the proposed Subdivision to the Planning and Zoning Department. The sketch plan, and accompanying required information, shall serve as the basis for discussion between the subdivider and the Land Use Administrator/Planning and Zoning Department. It is intended to provide the subdivider with an advisory review of the proposed Subdivision without incurring major costs.

8.6.1 Information Required for Sketch Plan: The sketch plan must include the following information:

- a. Name and address of the subdivider
- b. Name and address of the landowner, if different from subdivider
- c. Date of sketch plan preparation
- d. Scale of sketch plan
- e. North arrow indication
- f. Legal description
- g. Property location map illustrating the site location relative to adjoining properties and streets
- h. Scaled drawing (engineering scale only) illustrating property boundaries
- i. Scaled drawing of the proposed subdivision including street patterns and lot layout related to the natural features of the site and adjoining properties
- j. Densities:
  - 1) In all zoning districts, residential density shall be determined based upon the acreage calculation of the legal description of the property
  - 2) The portion of the property which lies within the existing or proposed road right-of-way will be included when determining compliance with the minimum lot size
- k. A generalized drawing of natural features showing wetlands, drainage ways, and topography

- l. Purpose of the proposed Subdivision, i.e., single-family residential, multi-family residential, commercial, industrial, public etc.
- m. Any required zoning changes
- n. Proposed timing and staging of development of the proposed Subdivision
- o. The Planning & Zoning Department may request the applicant to provide documentation that describes the proposed Subdivision’s potential effects or impacts on public facilities, utilities, and services including, but not limited to:
  - 1) Streets
  - 2) Law Enforcement
  - 3) Ambulance/emergency Services
  - 4) Fire Protection
  - 5) County/Township Administration
  - 6) Schools
  - 7) Utilities
- p. Additional information as required by the Planning and Zoning Department

8.6.2 The Planning and Zoning Department shall advise the subdivider as to the conformance of the proposed Subdivision with the Divide County Comprehensive Plan, the Divide County Zoning Ordinances, these Subdivision Regulations, or of any other applicable County ordinances or requirements, and shall advise the subdivider in writing as to any revisions necessary to bring the proposed Subdivision into such conformance.

8.6.3 If the subdivider decides to proceed with the Subdivision as proposed or revised, the subdivider shall proceed with the preparation of the plat as provided in Section 8.7.

## 8.7 PLATTING

After completion of the sketch plan process, the subdivider shall file an application for plat approval with the Planning and Zoning Department. The platting stage is the point in the process that all information pertinent to the proposed Subdivision is furnished by the subdivider for review by County staff, any affected township board, the Planning and Zoning Commission, the Board of County Commissioners, any other applicable agencies, and the public. The information provides a basis for approval or denial of the application. The information submitted in the application shall address both existing conditions and changes that will occur during and after development of the proposed Subdivision. The plat is a plan of how the property will be subdivided and developed.

Additional information or modifications may be required by the County staff, the affected township board, the Planning and Zoning Commission, or the Board of County Commissioners during the review process.



8.7.1 General Information: The application for plat approval shall include the following information and be subject to the following standards:

- a. The name of the proposed Subdivision. The name shall not duplicate or too closely approximate the name of any plat or Subdivision previously recorded in Divide County.
- b. The date of the application, name, address, and phone number of the landowner, subdivider, engineer, surveyor, and other principal(s) involved in making, designing, drafting, preparing, or developing the plat.
- c. Proof of ownership or legal interest in the real property for the proposed Subdivision.
- d. Existing zoning and/or zoning changes needed, or reference to any zoning or similar land use actions that have already occurred that are pertinent to the proposed Subdivision.
- e. Total acreage of the land to be subdivided.
- f. Three (3) paper copies of the proposed plat and supporting documents, plus any additional copies deemed necessary by the Planning and Zoning Department, plus one (1) reproducible copy reduced to 11" x 17" along with one (1) copy of the proposed plat and all related engineering plans in a digital format that is compatible with County requirements.
- g. If the subdivider is not an individual resident of North Dakota, the subdivider must show proof of authority to conduct business in the State of North Dakota.
- h. Any additional information as requested by the Planning and Zoning Department, the Planning and Zoning Commission, or the Board of County Commissioners.

8.7.2 Existing features to be shown on the Proposed Plat

- a. Existing property lines and property lines extending two hundred (200) feet from the exterior boundaries of the parcel to be subdivided, including the names of the adjacent property owners.
- b. Existing streets, alleys, roads, and public grounds, both public and private, showing the width of any such street, alley, road, or public grounds, type of construction, and any associated easements.
- c. The names, widths, courses, boundaries, and extent of all such existing streets, alleys, and public grounds, and giving the dimensions of all lots, streets, alleys, and public grounds.
- d. Any and all existing public and private easements including the purpose and type of the easement.
- e. All outlots or fractional lots within or adjoining the proposed Subdivision.

- f. Location and size of all existing and abandoned drainage, storm water and agricultural tiles, individual sewage treatment systems, well, and utilities including poles located on the property and to a distance of two hundred (200) feet beyond the property.
- g. Permanent buildings or other substantial land uses located on the property and to a distance of two hundred (200) feet beyond the property.
- h. Waterways, watercourses, wetlands, and one hundred (100) year flood elevations as designated by the State Water Commission or Flood Insurance Rate Maps (FIRM) shall be so designated on the proposed plat and the mean sea level of the one hundred (100) year flood, if available, shall be denoted on the proposed plat to datum as reference on the FIRM map.
- i. Existing topography.
- j. Boundary line survey and legal description.
- k. North arrow and scale of one to two hundred (1/200) to one to fifty (1/50) depending upon the size of the plat and detail of the information to be shown.
- l. A vicinity map.
- m. Location by section, township, range, county, and state.

#### 8.7.3 Proposed Features to be shown on the Proposed Plat

- a. Proposed lot and block lines, dimensions, and gross soil acreage of all lots. All lots and blocks, however designated, must be numbered in progressive numbers and their precise length, width, and area must be stated on the plat. The streets, alleys, or roads which divide or border the lots must be shown on the plat.
- b. Proposed uses, storm water retention areas, and areas of common ownership.
- c. Location, grade, and width of proposed streets, roads, alleys, or other public ways, and provision for extending streets, roads, alleys, or other public ways to serve adjacent areas. Access and street classifications shall be consistent with the Divide County Comprehensive Plan and County Engineer's requirements.
- d. Proposed street or road names.
- e. Proposed easements for drainage, flood protection, and protection of wetlands, including storm water retention areas and easements for installation of utilities.
- f. Proposed topography.

#### 8.7.4 Additional Information Required

- a. Documents outlining the content of proposed conservation easements, restrictive covenants, deed restrictions, and establishment of homeowners or owners associations for review by the Planning and Zoning Department.

- b. Elevation contour information shall be required by the Planning and Zoning Department, the Planning and Zoning Commission, or the Board of County Commissioners.
- c. Proposed title declarations for residential lots adjoining potential future development open spaces notifying the prospective homeowner of the intent to have the open space developed in the future.
- d. Plans and specifications, certified by an engineer licensed in the State of North Dakota, regarding road construction, drainage, storm water management, and all other public improvements for the proposed Subdivision.
- e. One (1) copy of the development agreement including signature lines for the subdivider and the County. The development agreement shall conform to the County's formatted agreement.
- f. In replats or rearrangements, the lot and block arrangement of the plat of record along with its original name shall be indicated by dotted or dashed line. Any revision or vacated roadway on the original plat shall be so indicated.
- g. Abstract report for the property.
- h. Proof of legal transferrable acres.
- i. Property owners within three hundred (300) feet of the boundary line.
- j. Homeowners/Owners Association agreements for maintenance of all interior roads, streets, alleys, and other public ways, grounds, or areas.
- k. Any additional information as requested by the Planning and Zoning Department, the Planning and Zoning Commission, or the Board of County Commissioners.

## **8.8 FILING AND REVIEW OF THE APPLICATION**

The plat application shall be officially filed when the Planning and Zoning Department has received and examined the application and has determined that the application is complete.

**8.8.1 SIMPLE SUBDIVISION PROCEDURE:** This procedure shall apply to Subdivisions which create, from an existing parcel, one lot which is 15 acres or less, where the remaining parcel is 15 acres or more and not adjacent to a lot that is 15 acres or less.

- a. Sketch plan/Pre-application meeting: Prior to submittal of a plat application, the subdivider must submit a sketch plan, along with the additional information required by Section 8.6.1 to the Planning and Zoning Department. After this submittal, the Planning and Zoning Department shall schedule a meeting with the subdivider to discuss and determine if the proposed Subdivision is in accordance with Section 8.6..

- b. Application for Plat Approval: After the subdivider has received verification from the Planning and Zoning Department that the proposed Subdivision is in accord with Section 8.6, the subdivider may apply for plat approval to the Planning and Zoning Department. The completed application shall include a graphic and written description of the information requirements outlined in section 8.7.
- c. A certificate of survey containing the information in Section 8.7 may be substituted for a plat drawing for recording purposes.
- d. The Planning and Zoning Department shall review the application and give approval or denial to the request. A subdivider may appeal any approval or denial by the Planning and Zoning Department to the Planning and Zoning Commission and then the Board of County Commissioners.

8.8.2 STANDARD SUBDIVISION PROCEDURE: This procedure shall apply to Subdivisions which create one or more lots that do not meet the definition of a simple Subdivision

- a. Sketch Plan/Pre-application Meeting: Prior to submittal of a plat application, the subdivider shall submit a sketch plan, along with the additional information required by Section 8.6.1 to the Planning and Zoning Department. After this submittal, the Planning and Zoning Department shall schedule a meeting with the subdivider to discuss and determine if the proposed Subdivision is in accordance with Section 8.6..
- b. Application for Plat Approval: After the subdivider has received verification from the Planning and Zoning Department that the proposed Subdivision is in accord with Section 8.6, the subdivider may apply for plat approval to the Planning and Zoning Department. The completed application, and all other information required under Section 8.7, shall be submitted to the Planning and Zoning Department no later than the 1<sup>st</sup> business day of the month. The application shall address the informational requirements and issues identified through the sketch plan review procedure.
- c. A complete plat application shall include:
  - 1) A graphic and written description of the information requirements outlined in Section 8.7.
  - 2) Supporting information described by the Planning & Zoning Department during the sketch plan review and pre-application meeting. Applications must be accompanied by an application fee established by the Board of County Commissioners.
- d. The Planning & Zoning Department shall forward copies of the proposed plat, and additional information, to the board of township supervisors of the township in

which the proposed Subdivision is located, and other staff, departments, committees, consultants, or agencies as appropriate.

- e. The Planning and Zoning Department, on behalf of the Board of County Commissioners, shall, by certified mail, notify the chairman of the affected board of township supervisors that an application for plat approval has been initiated, before the Planning and Zoning Commission, and that the board of township supervisors is requested to make a recommendation on the application.
- f. A written recommendation for application approval or denial from the board of township supervisors shall be forwarded to the Planning & Zoning Department. The township board's recommendation will be forwarded to the Planning and Zoning Commission for their consideration of the application at a public hearing.
- g. The Planning and Zoning Department shall prepare a report, to include the recommendations and comments from other staff, departments, committees, consultants, or agencies, and refer the application to the Planning and Zoning Commission for consideration at the public hearing.
- h. A public hearing on the application shall be held by the Planning and Zoning Commission. Notice of the time, place, and purpose of the hearing shall be published once each week for two consecutive weeks in the official newspaper of the County. In unincorporated areas, the property owners of record within three hundred (300) feet of the subject property shall be notified in writing of the plat application and the date and time for the scheduled public hearing. The failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply has been made.
- i. The applicant, or his agent, shall appear before the Planning and Zoning Commission in order to answer questions concerning the proposed Subdivision and plat.
- j. The Planning and Zoning Commission shall have the authority to request additional information from the applicant concerning the proposed Subdivision and plat. Said information is to be declared necessary to establish performance conditions in relation to all pertinent sections of this ordinance. Failure of the applicant to supply all required information may be grounds for denial of the request.
- k. The Planning and Zoning Commission shall make a recommendation on the application and this recommendation shall be forwarded to the Board of County Commissioners for consideration..
- l. The applicant shall be notified in writing of the Planning and Zoning Commission's recommendation to be given to Board of County Commissioners for final approval.

- m. The Board of County Commissioners shall take action on the application in a reasonable timeframe after receiving the Planning and Zoning Commission's recommendation, but in no case prior to receipt of approval from the respective board of township supervisors or the passage of 60 days from the date of notification to the board of township supervisors, whichever occurs first, pursuant to N.D.C.C. Section 11-33.22-12(2)
- n. The recommendations by either the Planning or Zoning commission or the board of township supervisors shall not be binding on the Board of County Commissioners.
- o. The applicant or his agent shall be notified by mail of the decision of the Board of County Commissioners.
- p. After a plat has been approved by the Board of County Commissioners, it shall be filed for recording with the Office of the Divide County Recorder within ninety (90) days after approval. One (1) copy shall be filed with the Planning and Zoning Department.
- q. No building permit for any structure within the Subdivision shall be issued until the plat is recorded at the Divide County Recorder's Office.

## **8.9 FORM & CONTENT**

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

## **8.10 RECORDING**

The subdivider shall record the approved final plat within the Office of the Divide County Recorder within ninety (90) days after the date of approval, otherwise the plat shall be considered void and the Subdivision process must be re-initiated.

## **8.11 AS BUILTS PLANS**

After final plat approval by the Board of County Commissioners, the subdivider shall submit to the Planning and Zoning Department for review and approval all proposals to change the original plans and specifications regarding road construction, drainage, storm water management, and other public improvements. The subdivider must obtain written approval by the Board of County Commissioners prior to changes to the plans and specifications. The subdivider shall submit one (1) set of record plans indicating all changes in the work, including accurate as-built locations, dimensions, elevations, grades, slopes and all other pertinent information concerning the completed work.

## **8.12. ADMINISTRATIVE SUBDIVISION**

### **8.12.1 APPLICATION OF PROVISIONS**

Notwithstanding the requirements of Section 8, the provisions of Section 8.12 shall apply only to those Subdivisions classified as administrative Subdivisions.

### **8.12.2 ADMINSTRATIVE LOT ADJUSTMENTS**

The following shall be considered administrative lot adjustments:

- a. The exchange of abutting land between owners.
- b. The addition of land to an existing lot.
- c. Lot or boundary line adjustments, which is the relocation of the lot or boundary line between two abutting, existing parcels or lots, provided such exchange, addition, or relocation shall not cause the creation of an additional lots or parcels and the resulting lots or parcel(s) comply with the requirements of this Ordinance.
- d. The platting of County road right-of-ways.

### **8.12.3 FILING AND REVIEW OF APPLICATION**

- a. Whenever any administrative lot adjustment is proposed, the subdivider shall file an application for an administrative Subdivision with the Planning and Zoning Department and secure that Department's approval before any contract is made for the sale of any part thereof, and before any permit if granted for the erection of a building or structure on lot or parcel of property affected by the Subdivision.
- b. The administrative Subdivision application shall be considered officially filed when the Planning and Zoning Department has received the application, and additional required information, and has determined that the application is complete.

### **8.12.4 INFORMATION REQUIRED FOR ADMINISTRATIVE LOT ADJUSTMENT**

In addition to the application, the subdivider shall submit a map or sketch, drawn to scale or certificate of survey, showing:

- a. Name and address, including telephone number of legal owner of the lot(s) or parcel(s) of property for the proposed administrative Subdivision.
- b. Location and record landowners for all adjacent property.
- c. Location and names of all roads, streets, alleys, or other public ways within or adjacent to the affected lot(s) or parcel(s).
- d. Existing and proposed lot or parcel boundary lines, with dimensions noted.

- e. If applicable, proposed driveway location and location of existing driveways on the same side of the road.
- f. Location of any existing and proposed legal rights-of-way or public and private easements encumbering the property.
- g. Proposed legal description of the lot(s) or parcel(s) affected by the proposed Subdivision.
- h. Location, purpose, and dimensions of all existing buildings and structures. Location shall note distance of those buildings or structures closest to lot or parcel boundary lines from the existing and proposed lot or parcel boundary lines.

#### 8.12.5 PROCEDURE

The Planning and Zoning Department shall review the application and supporting documents and may approve the administrative lot adjustments when it complies with the Divide County Comprehensive Plan and this Ordinance.

The land exchanged, added to, or relocated and combined to a property pursuant to this Section 8.12 shall be combined under one (1) Tax Parcel Identification Number (P.I.D.) and one (1) deed.

### 8.13. DESIGN STANDARDS

#### 8.13.1 CONFORMITY WITH THE LAND USE PLANNING AND ZONING ORDINANCE

A proposed Subdivision shall conform to the Divide County Comprehensive Plan, this Ordinance, these Subdivision Regulations, and applicable state or federal laws, rules, regulations, or orders.

#### 8.13.2 LAND REQUIREMENTS

- a. Land shall be suited to the purpose for which it is to be subdivided. No Subdivision shall be approved if the proposed property is not suitable for the purposes proposed by reason of potential flooding, topography, adverse soil conditions, rock formations, or wetlands.
- b. Proposed Subdivisions shall be coordinated with surrounding properties and/or neighborhoods, so that the County and any affected township(s) as a whole may develop efficiently and harmoniously.

#### 8.13.3 LOTS

- a. Area: The minimum lot area, width and depth, shall not be less than that established by this Ordinance.



- b. Corner Lots: Corner lots for residential use shall have additional width to permit appropriate building setback from both streets as required by this Ordinance.
- c. Side Lot Lines: Side lines of lots shall be approximately at right angles to street lines or radial to curved street lines.
- d. Width: Every lot must have the minimum width measured at the front yard setback extending to the location of the principal building.
- e. Setback Lines: Setback or building lines shall be shown on the plat for all lots intended for residential use and shall not be less than the setback required by this Ordinance.
- f. Lot Remnants: All remnants of lots below minimum lot size left over after the Subdivision of a larger lot or parcel must be added to adjacent lots.
- g. Frontage on Two Streets: Double frontage, or lots with frontage on two (2) parallel streets, shall not be permitted except where lots back on major collector or arterial streets, County or State Highways, or where topographic or other conditions render the Subdivision otherwise unreasonable.
- h. Irregular Shaped Lots: On single family residential lots determined to be irregular in shape (e.g., triangular), the subdivider shall demonstrate to the County an ability to properly place principal buildings and accessory structures upon the property which are compatible in size and character to the surrounding area.

#### 8.13.4 STREETS

- a. Streets, Continuous: Except for cul-de-sacs, streets shall connect with streets already dedicated in adjoining or adjacent Subdivisions, or provide for future connections to adjoining un-subdivided tracts, or shall be a reasonable projection of streets in the nearest subdivided tracts. The arrangement of thoroughfares and collector streets shall be considered in their relation to the reasonable circulation of traffic, to topographic conditions, to runoff of storm water, to public convenience and safety, and in their appropriate relation to the proposed uses of the area to be served.
- b. Temporary Cul-de-sac: In those instances where a street is terminated pending future extension in conjunction with future Subdivision and more than four hundred (400) feet between the dead-end and the nearest intersection, a temporary cul-de-sac must be placed inside a temporary roadway easement if it is located outside street right-of-way. Financial guarantee will be required for removal or restoration as determined by the County Engineer, engineering consultant, or Road Superintendent.
- c. Provisions for Re-Subdivision of Large Lots and Parcels: When a tract is subdivided into larger than normal building lots or parcels, such lots or parcels shall be so

arranged as to permit the logical location and openings of future streets and appropriate re-Subdivision, with provision for adequate utility connections for such re-Subdivision.

- d. Street Intersections: Under normal conditions, streets shall be laid out so as to intersect as nearly as possible at right angles, except where topography or other conditions justify variations. Under normal conditions, the minimum angle of intersection of streets shall be eighty (80) degrees. Street intersection jogs with an offset of less than three hundred (300) feet shall be avoided.
- e. Subdivisions Abutting Major Rights-of-Way: Wherever the proposed Subdivision contains or is adjacent to the right-of-way of a U.S. or State highway, or a County arterial or collector road, provisions may be made for a local street. The design shall include proper circulation, setbacks from an intersection on the major rights-of-way, minimum distance required for approach connections to future grade separations, and for lot depths.
- f. Cul-de Sacs/Dead End Streets:
  - 1) Dead end streets (temporary or permanent) without cul-de-sac turn arounds shall be prohibited.
  - 2) Permanent cul-de-sacs shall only be allowed in cases where proper interconnectivity of local streets will be provided or where topography or environmental constraints preclude interconnection of local streets.
  - 3) Minimum outside roadway diameter of any cul-de-sac or turn-around shall be sixty (60) feet with the right-of-way diameter of one hundred forty (140) feet.
- g. All roads within the Subdivision shall be centered on the roadway right-of-way and be a minimum of twenty (20) feet wide. Minimum top of roadway elevation shall be three (3) feet above original ground line with side slopes of 3:1 unless otherwise approved by the County Engineer. Roadbed shall be excavated to clay and road constructed from clay packed with a pneumatic roller and topped with a minimum of five (5) inches of Class 13 Gravel or asphalt paving. Ditch bottoms shall be three (3) feet in width and have positive drainage to an adequate outlet.
- h. The plat shall show all accesses of public roads or highways including the size of culverts to be used. Where access is from a State Highway, written approval for the access, including culvert size, from the North Dakota Department of Transportation shall be submitted with the plat. Where access is off a County or township Road, written approval from the Divide County Water Resource District Board or County Highway Department as to culvert size for all private drives as well as the public access shall be submitted with the plat. Access spacing from a County or township road shall be consistent with the standards set forth in the

Divide County Comprehensive Plan and subject to Township approval, to related policies adopted by the County, and to this Ordinance.

#### 8.13.5 EASEMENTS

- a. Drainage and utility easements shall be required over any storm water management facilities, natural drainage ways, and wetlands. The size and location of the necessary easements shall be reviewed and approved by the Planning and Zoning Department.
- b. In all zoning districts, except agricultural districts, any Subdivision shall provide easements for utilities and drainage at least ten (10) feet wide along lot lines. If necessary for the extension of utilities, easements of greater width may be required along lot lines or across lots.
- c. Minimum right-of-way or easement width for a private roadway within the Subdivision shall be sixty-six (66) feet.
- d. Easements and right-of-way, when approved shall not thereafter be changed without the approval of the Board of County Commissioners upon the recommendation of the Planning and Zoning Commission.

#### 8.13.6 STORM WATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL

All Subdivisions shall comply with storm water management standards of this Ordinance and the following requirements.

- a. The subdivider shall submit a storm water drainage management plan, certified by a licensed engineer, and subject to approval by the County, which will identify the drainage of this development and specify the manner in which storm water, drainage and runoff will be accommodated. The storm water management plan for the Subdivision shall include hydrology, hydraulic structure sizing for the Subdivision, and downstream drainage control structures.
- b. The subdivider shall accept and make provisions to accommodate any storm water that currently runs onto the Subdivision site. The subdivider shall dispose of all storm water through the approved storm water and drainage way system as set forth in the storm water management plan. The design and construction of the storm water detention or retention basin, if required by the County for the Subdivision, shall be in compliance with the County's current storm water management ordinances and policies.
- c. The subdivider shall have a duty to continue the drainage across the property and, in no event, shall the subdivider create an undue hardship on the adjoining property owners in the manner in which storm water runoff and drainage is managed.

## **8.14. PUBLIC IMPROVEMENTS**

### **8.14.1 RESPONSIBILITIES**

All required public improvements shall be installed and furnished by the subdivider including all costs of inspection by the County, at the sole expense of the subdivider and at no expense to the County.

### **8.14.2 STANDARDS AND REQUIREMENTS**

Engineering requirements, standards for plans, the required public improvements, and the standards for design and installation shall conform to such standards and specifications as adopted by the County.

### **8.14.3 STREET IMPROVEMENTS**

- a. Streets and roads within the Subdivision shall be constructed prior to development and inspected during construction and approved by the County Engineer. Building permits for all building or structures within the Subdivision shall not be issued until such streets and roads are approved.
- b. Culverts shall be installed under all streets and roads within the Subdivision. Culvert size shall match the larger of upstream or downstream culvert with a minimum diameter of twenty-four (24) inches. All culverts shall be constructed of new riveted corrugated metal pipe with aprons.

### **8.14.4 SANITARY SEWER AND WATER DISTRIBUTION IMPROVEMENTS**

- a. All sewage and water systems shall conform to the provisions of this Ordinance and the North Dakota State Health Department and the Upper Missouri District Health Unit. Soil analysis and percolation tests shall be performed to determine the type of septic system to be used. No building permit shall be issued until percolation tests have been performed.
- b. All unsafe wells and/or abandoned wells within and in the immediate vicinity of the Subdivision shall be closed and capped.

### **8.14.5 DEVELOPER'S AGREEMENT**

Prior to or at the time of final plat approval by the Board of County Commissioners, the subdivider shall enter into an agreement in writing with the County requiring the subdivider to make and install the required public improvements at the subdivider's sole expense and cost and in accordance with the plans and specifications approved by the County. Further, the agreement shall make provisions, if necessary, for restrictions,

covenants, easements, signage, park, or other conditions of the approved plat , and shall provide for the proper execution, recording or other action required.

The development agreement shall also be subject to the following:

- a. It shall require the subdivider to provide a financial security to ensure the timely and proper completion of all public improvements required by the County.
- b. The time for completion of the work, and the several parts thereof, shall be set forth in the development agreement upon recommendation of the Planning and Zoning Department after consultation with the subdivider and shall be reasonable in relation to the work to be done, the seasons of the year, and proper coordination with construction activity in the Subdivision.
- c. The development agreement signed by the subdivider and the County shall be filed in the Office of the County Recorder simultaneously with the filing of the approved final plat. In addition, one (1) copy of the executed development agreement shall be submitted to the Planning and Zoning Department at the time the plat is recorded.

#### **8.15. FINANCIAL SECURITY**

The development agreement requires the subdivider to provide financial security to ensure that the subdivider install the public improvements required by the County. The required financial security shall be the sum equal to 150% of the total cost as estimated by the Planning and Zoning Department of all of the public improvements to be furnished and installed by the subdivider pursuant to the development agreement.

If all the financial security is insufficient to pay the cost of installing or making repairs or corrections to all public improvements covered by the security, the Board of County Commissioners may draw upon the financial security to complete or repair any such public improvements, in all or part, and may institute appropriate legal or equitable action to recover the money necessary to complete the remainder of such public improvements.

The County shall determine the appropriate type of financial security which shall take one of the forms set forth in this Section.

##### **8.15.1 IRREVOCABLE LETTER OF CREDIT**

- a. The subdivider may furnish the County with a letter of credit from a financial institution, authorized to do business and operating in the State of North Dakota, providing authorization and guarantee that the County may draw on the subdivider's account, amounts not to exceed the required financial security.

- b. The letter of credit shall be irrevocable, and shall provide that any change, amendment, or termination shall require a thirty (30) days' notice to the County and approval of the Board of County Commissioners.
- c. The letter of credit shall provide for an automatic annual renewal for as long as is required by the development agreement.

#### 8.15.2 CONTRACT SURETY BOND

- a. The subdivdee shall provide a surety bond from a surety company licensed to conduct business in the State of North Dakota. The surety bond shall conform to all requirements of Chapter 22-03 of the NDCC.

### 8.16. COMPLETION OF IMPROVEMENTS

- a. Governmental Units: Governmental units to which these guarantee and agreement provisions apply may file, in lieu of said agreement or financial guarantee, a certified resolution or ordinance from the officers or agencies authorized to act in their behalf, agreeing to comply with the provisions of this section.
- b. Failure to Complete Improvement: In those cases where financial security has been posted and required public improvements have not been installed in accordance with the terms of the development agreement, the County may draw upon the financial security to complete the public improvements regardless of the extent of the building development at the time.
- c. Release of Financial Security - Certification of Satisfactory Completion: The County shall not release the financial security for the required public improvements until the Planning and Zoning Department has inspected the public improvements and has certified that all required public improvements have been satisfactorily completed pursuant to this Ordinance, the plans and specifications for the Subdivision, and the development agreement.
- d. 25% of financial security will be held back as a one (1) year warranty on public improvements completed by subdivider

### 8.17. MAINTENANCE OF IMPROVEMENTS

The subdivider shall be required to maintain all public improvements in the Subdivision or on the individual subdivided lots and provide for snow removal and maintenance of streets and roads unless or until a homeowner or owner association has been set up to maintain the public improvements, and the subdivider records a document transferring such responsibility in the Office of the County Recorder. The County is not liable for maintenance of public improvements or snow removal. In addition, the County will not

be responsible to enforce any private protective covenants or restrictions, and neither shall the County be compelled to do so.

