

# **DICKEY COUNTY ZONING ORDINANCE AND SUBDIVISION REGULATIONS**



**Effective Date: April \*\*, 2026**  
**Revised:**

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Public Draft

## **SECTION 1 INTRODUCTION**

### **1.1 Title**

The ordinance, its regulations, and the District Zoning Map shall be known and cited as the Dickey 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 2024 Dickey County Comprehensive Plan.

### **1.3 Purpose**

The purpose of the Ordinance is to promote health, safety, morals, 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, morals, 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 communities 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;
- f. Discouraging development that places an excessive financial burden on the County government; and
- g. Our intent is if it is not in the current provisions, it is not permitted.

## **1.5 Interpretation**

The provisions of this Ordinance shall be the minimum requirements necessary to protect public health, safety, and general welfare, and to implement the comprehensive plan. Wherever the requirements of this Ordinance 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 standard shall govern.

## **1.6 Repeal**

All regulations or parts of regulations, ordinances, districts, district zoning maps, or resolutions previously adopted by Dickey County pursuant to the 1994 Comprehensive Plan are hereby repealed upon adoption of this Ordinance. Dickey County has previously passed singular ordinances that may or may not be affected by this Ordinance. If a previously adopted ordinance is not referenced in this Ordinance, such ordinance shall remain in full force and effect and not be superseded by this Ordinance, unless it is later repealed by the County 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 6<sup>th</sup> day of May, 2026, and, unless otherwise excepted 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 Dickey 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 number shall include the plural number, and words in the plural number shall include the singular number.
- c. Reference to the masculine gender shall include reference to the feminine and neutral genders, and vice versa.
- d. Person – The word “person” includes individuals or 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 involves the discretion of the County, its officials, employees, or agents.

### 2.2 Definitions

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

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

**ADJACENT/AFFECTED LANDOWNERS:** Landowners whose property is located within one (1) mile of the parcel or location of the subject property identified in the zoning application or is otherwise affected by the application of this Ordinance as provided herein.

**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 purposes related to agriculture, farming, ranching, dairying, pasturage, horticulture, floriculture, viticulture, and animal and poultry husbandry, and not used as a place of human habitation or for the use by the public.

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

**AGRICULTURE EQUIPMENT SALES AND SERVICE:** Sales, service, and storage of agricultural 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 of 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 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 in any 12-month period 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 accommodation for a charge to the public, with seven lodging units or less, in which not 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:** Three to five 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 overseeing 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 accounted for.

**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 Dickey County Land Use Administrator or Dickey County Auditor before and as a prerequisite to construction, erection, reconstruction, alteration, repair, or enlargement of any building or structure otherwise subject to this Ordinance and applicable state law.

**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 recreational vehicles, campers, travel trailers or tents not to exceed 45 days of occupancy in any consecutive six-month period.

**CERTIFICATE OF SURVEY:** A land survey prepared by a professional land surveyor registered in the State of North Dakota and who has complied with the requirements set forth in NDCC Chapter 43-19.1, that contains the required certification that the information on the land survey is accurate. The Certificate of Survey shall follow the "Recommended Guidelines for the Practice of Land Surveying in North Dakota".

**CHEMICAL PROCESSING PLANT:** An industrial processing 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 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 premises used for normal business transactions, including the buying and selling of goods and services. carrying on or conducting any business, trade or profession, or any work in connection with, or incidental or ancillary to, any business, trade or profession, 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.

**CONDITIONAL USE PERMIT:** A conditional use permit may be issued by the 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.

**CONSERVATION DISTRICT:** The area designated by the 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 Board of County Commissioners as part of the 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.

**DATA CENTER:** A building, structure, complex or group of buildings and/or structures, facility, or

dedicated space within a building, structure, complex, or facility that houses IT infrastructure, including, but not limited to, computer systems, networks, servers, applications, appliances, services, and other associated components or facilities used for the remote storage, processing, or transmission of digital data associated with those computer systems, networks, servers, applications, appliances, services, and other associated components or facilities. Associated components and facilities may also include air handlers, water cooling and storage facilities, utility substations, and other associated utility infrastructure to support operations. This definition also includes cryptocurrency mining, which involves the use of blockchain technology to verify and secure cryptocurrency transactions, as the terms “cryptocurrency”, “cryptocurrency mining”, “blockchain”, and “blockchain technology” are defined by any applicable State law or, if no applicable State law, by generally accepted industry standards.

**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 the 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 the 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:** Any building or portion thereof used and intended for use for residential purposes on a permanent basis.

**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, an in-law apartment, or a basement/attic apartment.

**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 that projects onto any portion or part of adjacent property.

**EVENT PERMITS:** Permits that are required 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.

**FEEDER LINES:** The power lines between a wind energy facility's collector stations and the region's 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 include the Loyal Order of the Moose, Elks, and Knights of Columbus, among others.

**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 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:** The County defines Hazardous Waste as outlined in NDAC Article 33.1-24, Hazardous Waste Management, and Chapter 33.1-24-02, Identification and Listing of Hazardous Waste.

**HEARING:** A public meeting held before the Planning and Zoning Commission or the 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, etc.

**INDUSTRIAL DISTRICT:** The area designated by the 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 the 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 applicable state law and the provisions of this Ordinance.

**LAND USE ADMINISTRATOR:** The officer appointed by the Board of County Commissioners to administer the zoning affairs of the County and to administer the State Building Code in the County. This term is also used interchangeably in this Ordinance with Planning and Zoning Department. The Planning and Zoning Department shall consist of the Planning and Zoning Commission and the Land Use Administrator, if one is appointed.

**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 the 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:** The County will include “man camp” under the more inclusive term, crew housing facilities.

**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 the requirements of this definition except the size requirements, and with respect to which a certification is 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 involved 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 meteorological data on wind and weather conditions for weather services or for wind energy facilities.

**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 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, mean 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 system-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 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 to 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(1) 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 that extends below ground level

and is set on footings of concrete or gravel, depending on soil conditions.

**PERMITTED USE:** Any use that complies with the requirements of a Zoning District. Uses that 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 wellhead/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, wellhead, 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 that 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 Dickey County Recorder.

**PUBLIC ACCESS ROAD:** Any road available to the general public, commercial traffic, or emergency vehicles, whether maintained by the government or a 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 that they are not generally used by government officials or employees for interaction with the public as part of their duties. Examples include services such as water or sewage treatment plants, municipal waste facilities, or recreational swimming pools, parks, and 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, trees or other landscaping, as may be required in a developer's agreement.

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

**RECREATIONAL ACTIVITIES:** Activities that one does for the 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 that 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 sales or "sale at retail" include 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 a 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) employ aerated lagoons. Lagoons utilize 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 that 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 a place of business on a temporary or permanent basis.

**SOLAR ENERGY CONVERSION FACILITY (SOLAR FARM):** For the purpose of this ordinance, a 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 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 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 Dickey County Recorder.

**TRANSLOAD/TRANSMISSION FACILITY:** A facility designed and constructed for the collection and temporary storage of crude oil while awaiting transfer to a 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 greater than 15kV.

**TRANSMISSION PIPELINE:** A gas or liquid transmission facility that includes any one or more of the following: a. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, hydrogen, or carbon dioxide. This does not apply to: (1) An oil or gas pipeline gathering system; (2) A natural gas distribution system; (3) Carbon dioxide storage facility underground equipment, including a flow line, subject to chapter 38-22; (4) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less which will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or (5) A pipeline that is less than one mile [1.61 kilometers] long. For purposes herein, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant. b. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility. (NDCC Section 49-22.1-01(7)).

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

**USE:** The term refers 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, 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:** Dickey County will utilize the definitions set forth in the NDCC and NDAC:

1. **COMMERCIAL WASTE:** means solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, exclusive of household waste, industrial waste, and special waste.
2. **HAZARDOUS WASTE:** has the meaning as set forth in NDAC Chapters 33.1-24-01 and 33.1-24-02.
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:** means solid waste, which is not a hazardous waste regulated under NDCC Chapter 23.1-04, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
5. **HIGHLY RADIOACTIVE WASTE:** means highly radioactive material resulting from the reprocessing of spent nuclear fuel, and other highly radioactive material, containing fission products in sufficient concentrations to require permanent isolation, including liquid waste produced directly in reprocessing and any solid material derived from the liquid waste; or highly radioactive material that the commission, consistent with existing law and rules, determines requires permanent isolation.
6. **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:
  - Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
  - 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:** means solid waste that is not a hazardous waste regulated under chapter 23.1-04 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste 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, meeting the requirements of this Ordinance and the NDCC. This term is inclusive of the terms “man camp” or “crew housing facilities. **YARD:** The minimum amount of open space on a lot that 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 Dickey County Comprehensive Plan.

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

## **SECTION 3 ADMINISTRATION**

### **Section 3.1 Administrative Entities**

The Dickey County Zoning Ordinance shall be administered and enforced by the Dickey County Board of County Commissioners (hereafter “the Board of County Commissioners”), the Dickey County Planning and Zoning Commission (hereafter “the Planning and Zoning Commission”), the Dickey County Auditor, the Dickey County Land Use Administrator, and the Dickey 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 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, 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 Dickey 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, amend, supplement or repeal any part of this Ordinance after public notice and hearing.

3.2.4 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.

3.2.5 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.

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

3.2.7 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.

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

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

3.2.10 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.

3.2.11 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. (NDCC Section 11-13-16)

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 therefore, 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 Dickey County Planning and Zoning Commission**

The Planning and Zoning Commission shall consist of nine 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 five 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 Dickey County Auditor**

The duties of the Dickey 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 Planning and Zoning Commission, unless otherwise delegated to the Land Use Administrator.

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

Zoning Commission, unless otherwise kept in the office of the Planning and Zoning Department.

3.4.6 The County Auditor shall prepare the agenda for meetings and public hearings held by the Board of County Commissioners.

3.4.7 The County Auditor shall maintain the official Dickey 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 for applications, permits, fees, and bond related to the enforcement of this Ordinance to be credited to County general fund.

3.4.10 The County Auditor shall file all enactments or amendments adopted by the Board of County Commissioners to this Ordinance with the Dickey 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.

### **Section 3.5 Dickey 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 Dickey County Auditor with the administration, execution, or enforcement of their respective duties. The duties of the Land Use Administrator/Planning and Zoning Department shall include:

3.5.1 Attending 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 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 Verify all applications for completeness in accordance with this Ordinance.

3.5.4 Provide all notices to affected or adjacent landowners and/or townships as required by this Ordinance.

3.5.5 Update and maintain the Dickey County Zoning Register.

3.5.6 Assist the County Auditor in preparing the agenda and all paperwork for all Planning and Zoning Commission meetings or public hearings.

3.5.7 Issue all zoning and building permits that do not require a hearing as approved and directed by the Board of County Commissioners.

3.5.8 Maintain a record of all zoning and building applications, permits, minutes, meetings, public hearings, notifications, and publications that are not otherwise prepared or maintained by the County Auditor.

3.5.9 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 as required by law and/or this Ordinance. Public hearings will normally be held on the first and/or third Tuesday of each month, but may be rescheduled based on conflicts with other events or public holidays. Specific rules for public hearings include:

3.6.1 Notice of the public hearing will be published for two consecutive weeks in the official newspaper as designated by the Board of County Commissioners. 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.

3.6.2 The Planning and Zoning Department will notify all affected landowners no later than 10 days prior to the date set for the public hearing. The Planning and Zoning Department 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 pending amendments of the Ordinance, 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 Planning and Zoning Department and County Auditor. Links for forms are also available under the "Planning and Zoning" section under the "County Offices" section of the official Dickey County website located at [www.dickeynd.com](http://www.dickeynd.com).

### 3.7.1 General Application Process

- a. Any construction, alteration, substantial improvement, activity, or land use that is not expressly allowed by the Ordinance shall require an application and review by the Planning and Zoning Department consisting of the Land Use Administrator and/or the Planning and Zoning Commission.
- b. All applications must be completed and submitted to the Planning and Zoning Department no later than the first business day of each month in order to be considered during the regularly scheduled monthly hearing date.
- c. Application fees are due at the time the application is submitted to the Planning and Zoning Department. Applications without the appropriate fees will not be accepted. Any fees collected shall be credited to the County general fund as required by NDCC Section 11-33-18.
- d. The Planning and Zoning Department shall review the application and inform the applicant at the time of submission or by written notice if it is complete. Incomplete applications will be returned to applicant and will not be scheduled for a public hearing until it is deemed to be complete.
- 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 first and/or third Tuesday of each month. The Planning and Zoning Department shall inform the applicant in writing of the time and date of the public hearing. Scheduled public hearing dates will also be posted on the calendar on the County website.
- g. The Planning and Zoning Department 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 kept by the County for safekeeping.
- h. The Planning and Zoning Department shall publish appropriate notice in the official newspaper for the County detailing the applications to be taken up at any public hearing.
- i. The Planning and Zoning Department shall prepare copies of each application, along with a Permit Application Review, to be addressed and reviewed by the County at the public hearing.
- j. The order of business at each public hearing will be based on the sequence of acceptance of the completed application and required fee in the office of the

Planning and Zoning Department, unless the order is modified at the discretion of the Planning and Zoning Commission during the public hearing.

- k. The Planning and Zoning Commission will take up each application individually at the scheduled public hearing. The applicant shall present their proposal for the conditional or temporary use of the subject property. Adjacent/affected landowners, Township supervisors, and the general public may comment for or against any application at the time of the public hearing or may submit written comments prior to the public hearing to be taken into consideration by the Planning and Zoning Commission. At the conclusion thereof, 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 any one or more of the following: further investigation by the County; additional information to be provided by the applicant; upon the absence or request of the applicant; or for 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. The Planning and Zoning Department shall forward the application, along with the Planning and Zoning Commission's recommendations and all required permits, to the Board of County Commissioners in advance of its next regularly scheduled bi-monthly meeting.
- n. The Board of County Commissioners, after receiving the Planning and Zoning Commission's recommendations, shall consider the application at one of its regularly scheduled bi-monthly meetings, 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 any one or more of the following: its own investigation; additional information to be provided by the applicant; upon

the absence or request of the applicant; or for any other reason deemed necessary by the County.

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, the Planning and Zoning Department shall provide applicant with a copy of the approved permit and file a copy with the original application packet kept by the County.
- p. If the application is denied by the Board of County Commissioners, the Planning and Zoning Department shall immediately notify the applicant of the denial and the reason for the 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. As part of the application process, the applicant shall be required to state whether the building or structure is reasonably anticipated to have a significant impact on the transportation system. A structure is deemed to have significant impact on the transportation system if, over a period of one year, it will have an average daily usage of at least twenty-five motor vehicles whose gross weight exceeds sixty thousand pounds [27215.54 kilograms]. If the building or structure is found to have or will have a significant impact on the transportation system, the director of the department of transportation shall be notified by the Planning and Zoning Department and be given an opportunity to comment on the application. However, approval of the director of the department of transportation of the proposed structure is not required. (NDCC Section 11-33-18(2)).
- c. 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.
- d. 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 3.7.1 and shall be subject to a public hearing as required by Section 3.7.1.
- e. Application fees are due at the time of application. Applications without the appropriate fees will not be accepted. Any fees collected shall be credited to the County general fund as required by NDCC Section 11-33-18.

- f. The Planning and Zoning Department shall review the application and inform the applicant in writing, or at the time of submission, if it is complete.
- g. 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, the Planning and Zoning Department may issue the building permit without the requirement of a public hearing.
- h. 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 taken up for consideration.
- i. The Planning and Zoning Department shall prepare a folder with the original application and all related documentation. Upon the completion of the application process, this folder shall be kept with the County for safekeeping.
- j. Upon issuance, the building permit shall be immediately posted in a conspicuous place at the building site until the building project is complete, 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 solely for use by an individual applicant and is not transferable.

- a. Any request for a conditional use permit shall follow the application procedures set forth in Section 3.7.1.
- b. A conditional use permit shall be subject to any restrictions imposed by the Board of County Commissioners at the time of permit approval.
- c. The County has the following conditional use permit applications:
  - 1) Application for Conditional Use Permit;
  - 2) Application for a Conditional Use Permit Mining: Scoria, Gravel, Sand, Rock, Stone and Clay; and
  - 3) Application for Conditional Use Permit for Crew Housing Facilities (the requirements and restrictions for which are listed in section 7.2 of this Ordinance).

d. Conditional uses shall be subject to the following requirements:

- 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 a 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 aside, 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 Dickey County Comprehensive Plan.
- 12) State and federal design and performance standards, which may include but not necessarily be limited to those imposed by the State Health Department, Department of Transportation, State Water Commission, State Industrial Commission, State Fire Marshall, State Department of Environmental Quality, State Department of Mineral Resources, Federal Aviation Administration, and the Army Corps of Engineers.

f. The Planning and Zoning Department may, as it deems necessary, request the following additional information to be submitted with a Conditional Use Permit application:

- 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 professional

land surveyor.

- 3) A boundary line survey of the site prepared by a North Dakota professional 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 start and completion dates.
- 9) Written approval of respective highway authorities for access roads and/or highway approaches, or any other modifications.
- 10) Copies of all plans and specifications that have been submitted to other federal, state, or local governmental departments and agencies relative to the subject matter in the permit application.
- 11) Written documentation of approved waste collection and/or disposal for waste generated at the site.
- 12) Any additional information deemed necessary to make an informed decision on the application.
- 13) Failure to submit any required documentation may delay the application process.

**3.7.4 Application for Zoning Change:** If zoning on a parcel of land is inconsistent with the use proposed by landowner, the landowner may apply for a change to the Zoning District Map. Unlike a conditional use in an existing zoning district, a zoning change is a permanent change from one zoning district type to another for the particular parcel(s). If approved, the Zoning District Map will be modified as to the specific parcel(s), and the permitted and conditionally permitted uses of the new zoning district shall then apply.

- a. Any request for a zoning change shall follow the application procedures set forth in Section 3.7.1.
- b. However, the Board of County Commissioners may also, on its own accord, amend or repeal any provision(s) relating to the Zoning District Map as permitted under NDCC Chapter 11-33.

**3.7.5 Application for Amendments to Ordinance:** an application under this section is intended for changes requested to the entire zoning ordinance or any provision(s) thereof and are not intended for changes to 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 3.7.1.
- b. However, the Board of County Commissioners may also, on its own accord, amend or repeal any provision(s) of the Ordinance as permitted under NDCC Chapter 11-33.

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

- a. Any request for a variance shall follow the application procedures set forth in Section 3.7.1.
- b. No application for a variance shall be approved unless the Board of County Commissioners finds that all of the following are present: 1) that special conditions and circumstances exist which are peculiar to the premises and which are not applicable to other premises in the same zoning district; 2) That literal interpretation of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district; 3) that the special conditions and circumstances have not resulted from actions of the applicant; and 4) that granting the variance requested will not confer upon the applicant any special privileges that are denied by this Ordinance to other premises.
- c. In considering whether the requested variance is justified, the Board of County Commissioners shall determine whether: 1) the reasons set forth in the application justify granting the variance; 2) the variance is the minimum variance, which would make possible a reasonable use of the premises; 3) granting of the variance will be in harmony with the general purpose of this Ordinance and will not be injurious to the surrounding premises, neighborhood or the County and will not be contrary to the land use plan and the purposes of this Ordinance; 4) there is practical difficulty or unnecessary hardship in the use of the premises if the strict application of the regulations were to be carried out.
- d. A variance cannot be utilized to authorize a use which is otherwise prohibited by this Ordinance.
- e. 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 a specific period of time to be determined by the Board of County Commissioners.
- b. Applications for an event permit shall be submitted to the Planning and Zoning Department and 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 consent 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 attending the event.
  - 8) Hours of operation and duration of the event.
  - 9) Plans for sanitation, emergency medical services, security, and transportation.
  - 10) Written proof of liability insurance in the names of all necessary parties, if deemed a requirement by the Board of County Commissioners.
- c. The Planning and Zoning Department 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 approved by the Board of, notwithstanding the permitted uses and conditional uses enumerated in Section 5 of this Ordinance.

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

Pursuant to NDCC Section 11-33-10, or any amendment thereto, any person aggrieved by any provision of a resolution adopted by the Board of County Commissioners 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 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 about 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 its next regular meeting, shall rescind or affirm such a 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 or any citizen.

### **3.9 Right to Appeal**

Pursuant to NDCC Section 11-33-12, 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 in NDCC Section 28-34-01.

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

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, the proper county authorities or any affected citizen or property owner may file a verbal or written complaint with the Planning and Zoning Department, the County Auditor, any member of the Planning and Zoning Commission, or any member of the Board of County Commissioners. Such a complaint shall state fully the cause and the basis of the complaint.

3.10.1 The Planning and Zoning Department 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.

3.10.2 When, upon investigation, the Planning and Zoning Department determines that a violation has occurred, it shall give written notice to the owner and/or occupant of the property that is the subject of the violation and order that the violation be abated and brought into compliance with this Ordinance or the permit or variance issued. No less than five (5) nor more than forty-five (45) days shall be allowed for compliance.

3.10.3 Each violation of this Ordinance constitutes the maintenance of a public nuisance, which is a Class B misdemeanor pursuant to NDCC Section 11-33-21 and subjects a person or organization to the maximum possible sentence as follows:

- 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 (\$1,500.00) per violation. (NDCC Section 12.1-32-01(6))
- b. Any organization that violates, causes, or, with knowledge, permits a violation of this Ordinance may, upon conviction, be subject to a fine of twenty thousand dollars (\$20,000.00) per violation. (NDCC Section 12.1-32-01.1(5))
- c. Any person who is convicted of a violation of this Ordinance in a criminal action may, in addition to the fines reference above, be subject to a term of imprisonment not to exceed thirty (30) days per violation. (NDCC Section 12.-32-01(6))

3.10.4 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.

3.10.5 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, reconstruction, 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 any illegal act, conduct, business or use in or about such premises.

3.10.6 Each violation of this Ordinance may also subject a person or organization to the civil penalties as provided by law.

3.10.7 A person or organization shall be deemed to have committed a separate violation for each and every day the public nuisance continues without being abated.

3.10.8 Violations of this Ordinance may be enforced through any criminal, civil, administrative, or other proceeding as provided herein or by law. The remedies contained in this Ordinance are non-exclusive and may be imposed separately or in conjunction with any other remedy allowed by law.

3.10.9 The owner and/or occupant of any building, structure, premises, or part thereof, or any architect, engineer, builder, contractor, agent, or other person who commits, participates in, assists in, maintains, or with knowledge permits a violation of this Ordinance may each be subject to the penalties and remedies provided herein and/or as allowed by law.

3.10.10 Nothing herein shall be construed so as to limit the remedies available to the County relative to the enforcement of any provision of this Ordinance.

## **SECTION 4 GENERAL PROVISIONS**

### **Section 4.1 Jurisdiction**

The restrictions and regulations found within this Ordinance shall govern all property, whether real or personal, over which the Board of County Commissioners is empowered by law to regulate.

4.1.1 This Ordinance does not prevent organized townships from making regulations as provided by law, but such townships may, pursuant to NDCC Chapter 54-40.5, enter into a mutual agreement with Dickey County to transfer its authority, or any portion thereof, to enact zoning regulations under NDCC Chapter 58-03, which subjects said property to this Ordinance.

4.1.2 This Ordinance shall apply to all unorganized townships and any organized townships in the County that have not adopted their own zoning ordinances pursuant to the authority granted to them under NDCC Chapter 58-03.

4.1.3 Any city in the County may, by ordinance, extend the application of its zoning regulations to any quarter-quarter section of unincorporated territory if a majority of the quarter-quarter section is located within one mile of the corporate limits of said city. Any city in the County that has exercised its authority under NDCC 40-47-01.1 shall have sole zoning and subdivision regulation jurisdiction within one-half mile of its corporate limits and joint zoning and subdivision regulation jurisdiction from one-half mile to one mile with any other political subdivision who also has such authority. In such instances where the County has joint jurisdiction with a city as herein provided, the provisions of this Ordinance shall govern.

4.1.4 This Ordinance may not be construed to affect any property, real or personal, located within the zoning or planning authority of any city within the County, except that pursuant to NDCC Chapter 54-40.5, a city may enter into a mutual agreement with the County to transfer its authority, or any portion thereof, to enact zoning regulations under NDCC Chapter 40-47, which subjects to property to this Ordinance.

4.1.5 Pursuant to NDCC Section 54-40.5-04, a township or city that unilaterally transferred its zoning authority to the County as referenced in Section 4.1 of this Ordinance, may reacquire that zoning authority by mutual agreement between the Board of County Commissioners and the Board of Township Supervisors or City Council, whichever is applicable.

### **4.2 General Zoning Regulations**

4.2.1 The location and boundaries of the zoning districts are hereby established as shown on the zoning map on file in the office of the Planning and Zoning Department and County Auditor. The Planning and Zoning Department shall regularly update the zoning map to

show any changes to the zoning district boundaries resulting from amendments to the map. The following rules apply with respect to the boundaries of the zoning districts as shown on the zoning map:

- a. Where zoning district boundary lines follow highways, streets, roads, alleys, railroad rights-of-way or extensions thereof, the boundary shall be the centerline of said easements unless clearly shown on the zoning map to the contrary.
- b. Where any uncertainty exists as to the exact location of a zoning district boundary line, the Planning and Zoning Department shall determine the location of such boundary line. Any person who disputes the Planning and Zoning Department's determination may appeal to the Board of County Commissioners.

4.2.2 Permitted Uses. A permitted use is a use or development that is specifically listed as a permitted in a zoning district enumerated in this Ordinance. Permitted uses are those that do not involve any variables or components that may affect the health, safety, or welfare of the general public. Land uses listed as permitted in a zoning district are allowed in compliance with this Ordinance upon the verification of zoning compliance.

4.2.3 Conditional Uses. A conditional use is any use that may represent a potential hazard to the health, safety, and welfare of County residents. A conditional use requires a conditional use permit, to which the Board of County Commissioners typically attaches specific conditions. A conditional use permit only applies to those uses specified as conditional uses in this Ordinance. Conditional use permits shall only be issued to an individual applicant and not to the use of land. Any change of ownership shall require a new application.

4.2.4 Prohibited Uses. Any uses, activities, buildings, or structures that are not listed as permitted or a conditionally permitted use in a zoning district shall be prohibited and not be allowed any permit or variance. Prohibited uses may be considered only through a proposed amendment or zone change to make the use a permitted or conditional use.

4.2.5 Evaluation of Land Uses. It is the intent of this Ordinance to group similar and compatible land uses into specific districts, either as permitted or conditional uses. Evaluation of whether specific uses not explicitly listed as an approved, permitted or conditional use, shall be as follows:

- a. The Planning and Zoning Department shall determine if a use not listed is materially similar to an approved use within that district. Determinations may be appealed to the Board of County Commissioners. Materially similar means the use provides similar function, occurs within a similar structure or setting, and has a similar scale to an approved use listed in that district.
- b. A land use deemed not to be materially similar to an approved permitted or conditional use shall be considered prohibited but may be considered through review of a variance request or as a proposed amendment or zone change to make the use an approved use permitted or conditional use.

4.2.6 Land Uses Preempted by State Law. Land uses that are under the exclusive authority and jurisdiction of the State of North Dakota or the federal government, and for which a specific state or federal law or regulation preempts this Ordinance, shall be permitted only to the extent required by state or federal law whether or not the use is included in this Article.

4.2.7 Zoning Districts. A zoning district is a geographic area within which development of certain uses are allowed upon zoning compliance verification and certain other uses may be allowed upon approval of a conditional use permit. The zoning districts and their boundaries have been made with reasonable consideration to, among other qualities, the character of the districts and their peculiar suitability for particular uses. Any parcel of land that does not have a specific zoning designation on the zoning map shall be designated as Agricultural.

4.2.8 Standards. The zoning districts include standards such as lot sizes and setbacks. All required lot sizes and setbacks are subject to consideration of recommendations by the Dickey County Health District and/or State of North Dakota during project reviews.

4.2.9 Recorded Lots. Existing lots of record at the time of adoption of this Ordinance are exempt from the minimum lot size requirements established in this Ordinance of the zoning district where the lot is located, but no new lots shall be created that do not comply, and no lots shall be altered to increase the degree of nonconformity with this Ordinance.

4.2.10 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.

4.2.11 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.

4.2.12 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.

4.2.13 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.

4.2.14 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 principal 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.

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

4.2.16 No application for a building permit, other permit, or license, and no certificate of occupancy or compliance, shall be approved by the Planning and Zoning Department 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.

4.2.17 Any future use, activity, building, or structure that is not 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.

#### **4.3 Compliance**

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

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

Any building, structure, or use that 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 shall be deemed 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 or occupancy 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 Dickey 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.

4.4.4 If the State acquires title to any land or premises, all further use or occupancy thereof shall be a conforming use or occupancy. (NDCC Section 11-33-13)

#### **4.5 Variance**

A relaxation of the terms of this Ordinance by the Board of County Commissioners in a specific case where strict application of the regulations would result in practical difficulties, undue hardship, or an injustice. A variance cannot authorize a use which is otherwise prohibited by this Ordinance.

#### **4.6 Bonding/Financial Security**

Bonds and other means of providing financial security may be required by this Ordinance or as directed by the Board of County Commissioners for certain projects and uses. While the County cannot reasonably foresee all situations where financial security may be required to be provided, some examples would be: 1) to assure performance and completion of an improvement or project; 2) to assure that a non-conforming use or other public nuisance is abated and the property brought back into compliance; 3) to assure that any required reclamation and restoration measures have been taken; 4) to account for other clean-up that may be required; and 5) to assure compliance with local, state and federal laws. Any bond or financial security that may be required as provided herein shall be in addition to any state-required bond, unless otherwise waived by the County.

##### **4.6.1 Reclamation/Restoration Bonds**

- a. A reclamation/restoration bond may be required for some allowed uses (as required specifically in certain zoning districts), many conditional use permits (as outlined in section 5.1 of this Ordinance), temporary site plans (as outlined in sections 3.7 and 7), or such other applications as determined by Planning and Zoning Department.
- b. Any bond required herein shall be in an amount that is one hundred and fifty percent (150%) of applicant's choice of a licensed engineer's estimate of the cost of reclamation and restoration required relative to the proposed use of the subject property, or of an engineer hired by the Planning and Zoning Commission. The Planning and Zoning Commission shall have the discretion to decide which engineer's estimation of costs to use.
- c. The engineer's estimate of the reclamation and restoration costs shall be submitted with the application for the permit being requested.
- d. The bond shall thereafter be procured by applicant and provided to the County within thirty (30) days of the following events, whichever occurs last:
  - The Board of County Commissioners' approval of the permit for which the bond is required.

- If any other county, state, or federal permit, certificate or determination is needed in order for the applicant to commence construction, the date of the last approval required for such permit, certificate or determination. Applicant shall notify County within a reasonable time (not to exceed 14 days) of when such approval is secured.
- e. No construction or other activity may commence prior to presenting the bond to the County, and any permit conditioned thereon 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.

## SECTION 5 ZONING DISTRICTS

### Section 5.1 General

The 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 and protect the majority of the County for farming, ranching, and rural tourism and to minimize the scale and impact of any other development in the zoning district.
- b. Permitted Uses – The following uses are allowed in the Agricultural District with no permit requirements.
  - 1) Agricultural buildings or structures
  - 2) Agricultural production
  - 3) Churches and cemeteries
  - 4) Farm residence
  - 5) Accessory Dwelling
  - 6) Greenhouses and nurseries
  - 7) Home occupations
  - 8) Vineyard
- 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 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) Construction services
- 15) Crew housing facilities
- 16) Data centers
- 17) Electric power generation
- 18) Electrical power transmission lines
- 19) Fertilizer plants
- 20) Fuel storage and fuel tank terminals
- 21) Game farm
- 22) Gas stations and convenience stores
- 23) Government facilities
- 24) Grain elevators and grain storage facilities
- 25) Hazardous liquid pipeline
- 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) Public and parochial schools
- 39) Public facilities and utilities
- 40) Railroad yard or spur
- 41) Recreational activities and associated structures
- 42) Recycling facilities, salvage, and junkyards
- 43) Resorts
- 44) Restaurants
- 45) Saltwater storage tank facilities
- 46) Solar Energy Facility
- 47) Temporary Met Tower
- 48) Transmission Pipeline
- 49) Veterinary facilities
- 50) Water reservoirs, storage tanks, and pumping stations
- 51) Welding shops
- 52) Wind Energy Facility
- 53) Winery

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

### 5.1.2 Commercial/Industrial 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. Encourage the use of land in industrial districts 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 Commercial/Industrial District with no permit requirements.
  - 1) Agricultural production
  - 2) Greenhouses and nurseries
  - 3) 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 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) Campgrounds/RV parks
  - 12) Chemical Processing Facility
  - 13) Churches and cemeteries
  - 14) Coal gasification plants
  - 15) Commercial and retail establishments
  - 16) Commercial feedlots
  - 17) Commercial storage
  - 18) Communication towers
  - 19) Compassion Center, Medical Marijuana Manufacturing Facility
  - 20) Construction services
  - 21) Crew housing facilities
  - 22) Driving Range/miniature golf
  - 23) Dry-cleaning and laundry
  - 24) Electric Power
  - 25) Fertilizer plants
  - 26) Food processing facilities
  - 27) Fuel storage and fuel tank terminals
  - 28) Gas stations/convenience stores
  - 29) Go-kart track

- 30) Government facilities
  - 31) Grain elevators and grain storage facilities
  - 32) Greenhouses and nurseries
  - 33) Hazardous or special waste plants
  - 34) Hotels and motels
  - 35) HVAC services
  - 36) Indoor recreation facilities
  - 37) Kennels
  - 38) Licensed daycare
  - 39) Liquor stores
  - 40) Lumber yards/home improvement stores
  - 41) Manufacturing or processing plants
  - 42) Mechanical repair services
  - 43) Mobile home park
  - 44) Oil and/or Gas transload/transmission facility
  - 45) Petroleum/natural gas products processing facilities
  - 46) Professional services
  - 47) Public and parochial schools
  - 48) Public facilities and utilities
  - 49) Railroad yard or spur
  - 50) Recreational facilities and associated structures
  - 51) Recycling facilities, salvage, and junk yards
  - 52) Resort
  - 53) Restaurants
  - 54) Retirement and group homes
  - 55) Saltwater storage tank facilities
  - 56) Sewage Disposal/RV dumping
  - 57) Sewage treatment facility
  - 58) Solid waste facility
  - 59) Solid waste management facilities
  - 60) Transmission Pipelines
  - 61) Trucking terminal
  - 62) Truck stop
  - 63) Veterinary facilities
  - 64) Warehouses
  - 65) Water reservoirs, storage tanks, or pumping stations
  - 66) Welding shops
  - 67) Wholesale establishments
- d. Prohibited Uses – All uses not specifically listed as a permitted use or a conditional use.

#### 5.1.3 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 to preserve and protect the character of unincorporated areas in the County.
- b. Any individual planning a residential development for real property within the zoning and subdivision regulation jurisdiction of 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.
  - 1) Agricultural 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 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 that does not directly access a dedicated public right-of-way.

#### 5.1.4 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) Agricultural 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 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-kart 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 Dickey County Zoning District Map**

The location and boundaries of the various existing zoning districts within 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 Planning and Zoning Department 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 offices of the Planning and Zoning Department and County Auditor, or online in GIS format at <https://www.dickeynd.com/>.

## SECTION 6 STANDARDS AND REGULATIONS

### Section 6.1 Building Construction

The Board of County Commissioners has adopted the State Building Code (<http://www.communityservices.nd.gov/government/state-building-code/>) as the standard for the County. All buildings and structures erected, constructed, converted, altered, enlarged, placed, or reconstructed within the County must meet the standards and requirements established in the State Building Code. The Board of County Commissioners is responsible for the 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 that 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 County Road Department or the Township Board for the road being accessed.

#### 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 the side and 30 feet for the 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 are 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/Industrial District:**

- a. Commercial/Industrial facilities with an individual septic system will be situated on a parcel of 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.

### **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 that 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 to any structure.

6.4.2 Adjacent to county roads – 200 feet from the center of the road to any structure.

6.4.3 Adjacent to rural or township roads – 200 feet from the center of the road to any structure.

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

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 to any structure in a rural residential district shall be a minimum of thirty-five (35) feet.

6.4.8 All industrial structures must be situated at 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 governing 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 that is to utilize a private water and sewer system shall, prior to final approval and hookup, have said system inspected by the Dickey County Health District 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 Dickey County Health District 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 follows:

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 billboards, monuments, 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, in addition to those deemed to be a public nuisance by mere violation of this Ordinance, shall be prohibited. (NDCC Title 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 the 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 the noise-generating property line shall not exceed:

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

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 80 dB levels at the source, the level cannot exceed 55 dB at the property line of the closest residence.

6.10.5 General provision; tests for unlawful noise. The standards that 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 example, 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 10:00 PM and 6:00 AM.
- 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 State Health Department, 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. The 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 Planning and Zoning Commission shall be subject to the approval of the Dickey County Weed Board. The Planning and Zoning Commission will adhere to the restrictions made to the Dickey County Weed Board regarding applications made to the Dickey County Planning and Zoning Commission. Applications may require approval from the Dickey County Weed Board for any of the parameters established by the Dickey County Weed Board, including but not limited to the geographical area within Dickey County and the type of application that the applicant is seeking approval from the Planning and Zoning Commission. 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 Dickey County Weed Board, the applicant shall have approval prior to the application being reviewed by the Planning and Zoning Commission. An applicant may be required to prepare a plan on how they are going to control any noxious weeds as established by Dickey 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 Dickey County Weed Board shall be provided by the applicant at the time the application is submitted to the Planning and Zoning Commission prior to any application being reviewed.

6.13.2 A condition of the application or approval from the County shall be to comply with any and all the requirements of the Dickey County Weed Board. Should any applicant not comply with the parameters established by the Dickey County Weed Board, the County shall have the authority to revoke and terminate any permit that was approved by the County after the applicant has been notified and a hearing has been held on the alleged violation. The County shall have the authority to suspend any activity that was previously allowed on the applicant's property if 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 shall not limit the Dickey County Weed Board from 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 Crew Housing Facilities**

7.2.1 Definitions. "Temporary Crew Housing Facilities", "Temporary Housing Facility", "Construction Camp" or "Man Camp" means a facility designed and intended to be used for a temporary period of time to house a variety of field-related workers, including oil field, construction, etc., and is composed of 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 N.D.C.C. section 57-02-04.

7.2.2 Skid units, temporary modular housing, mobile homes as defined in N.D.C.C. section 57-55-01, and park model homes as defined in N.D.C.C. Section 57-55-10 are the only permissible units in a Crew Housing Facility. "Skid Unit" means 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 on a temporary or permanent basis. Recreation vehicles, campers, trailers, and tents are specifically prohibited.

7.2.3 Crew Housing Facilities may be permitted as a conditional use only in those zoning districts designated in Section 5 of this Ordinance.

7.2.4 A conditional use permit Crew Housing Facilities granted in accordance with this Ordinance shall expire two years from the date of issuance, unless an earlier date is imposed by the County at the time of issuance. The permit may only be extended by the County upon written application of the original permit holder for the same site and will be subject to the same application process as the initial permit. Any term of renewal shall be for a period of two consecutive years or less. If, at the time of renewal, the original permit holder is not in compliance with the terms and conditions specified in the original permit, any application for extension shall be automatically denied unless specifically waived by the County.

7.2.5 State Requirements: Entities considering the 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 State Health Department prior to construction. Water systems that qualify as public water systems must meet specific monitoring/reporting requirements under the Safe Drinking Water Act. Plans and specifications for the wastewater system must be approved by the Dickey County Health District and the State Health Department prior to construction.
- d. Storm Water, Wastewater Discharges, Underground Injection Control (UIC), Wastewater Hauling. A construction activity permit issued by the State Health Department, which includes a stormwater pollution prevention plan, is required for construction projects that disturb 1 or more acres. A direct discharge permit from the State Health Department is required for any proposed wastewater discharge to surface drainage. An Underground Injection Control 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 State Health Department.
- 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 State Health Department, Division of Food and Lodging. Lodging establishments include lodging facilities, mobile home parks, trailer parks, campgrounds, and crew housing facilities.
- g. NDCC Section 43-09-22 provides that the state electrical board has jurisdiction over and shall provide inspection for all electrical installations.
- h. NDCC Section 43-18-17.3 provides that the state plumbing board has jurisdiction over and shall make provision for inspection of plumbing installations in newly constructed dwelling units, except that the County may provide for inspection of plumbing work done within its jurisdictional limits.

#### 7.2.2 Prohibited Activities

- a. No alcoholic beverages, firearms, illegal substances, or animals are allowed on the premises of a crew 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.

7.2.3 Termination of Crew Housing Facilities Conditional Use Permit. A Crew Housing Facilities 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.

#### 7.2.4 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. If applicant is an entity, it shall provide a certificate of good standing from the state of origin. If applicant is a partnership, the required information and consents shall be furnished for all of the partners. If applicant is a corporation or limited liability company, information shall be provided as to applicant's status as a subsidiary, if any, of any other corporation or limited liability company, the purposes for which applicant was organized, and the name and addresses of all officers, directors, managing agents, and all stockholders or interest holders owning more than five percent (5%) of the capital stock of such corporation.
- e. The name and address of the onsite manager and contact information.
- f. A copy of the 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 is 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 temporary modular house.

- 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 fees as follows:
  - 1) An annual crew housing facility fee in the amount of \$400 per bed, multiplied times the total occupancy rate, regardless of whether the bed is actually occupied or not, shall be assessed for any “crew housing facilities” as that term is defined in NDCC Section 57-02.4-01 (1) and in the Definitions Section of this Ordinance. This fee shall not be assessed against mobile or manufactured homes as defined under NDCC Section 57-55-01, nor any park model trailers for which the owner has paid a park model trailer fee under NDCC Section 39-18-03.2. The annual fee shall be for a calendar year, to commence on January 1st and expire on December 31st. This fee shall be prorated facilities commencing operation subsequent to the first of the year.
  - 2) For any lot in a crew housing facility that permits 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 “crew housing”, a “crew housing facility” fee shall not be assessed. However, an annual fee of \$0.10 per square foot of the area of the legal description. In the event there are multi-storied crew housing units, the annual fee shall include another \$0.10 per square foot of the stories after the ground story.  
Example: Site 200' x 400' = 80,000SF → 80,000SF x \$0.10 = \$8,000
  - 3) The fees due hereunder payable prior to the final approval of the crew housing facilities conditional use permit.
- r. A copy of plans for closing the crew housing facility and cleaning up and reclaiming of the real property.
- s. A surety bond for closure/reclamation and clean-up purposes in the amount applicable below, which will be forfeited should the area not be restored to its original condition:
  - 0-100 total occupancy, a bond of \$50,000;
  - 101-200 total occupancy, a bond of \$100,000;
  - 201-300 total occupancy, a bond of \$150,000;
  - 301-400 total occupancy, a bond of \$200,000;
  - 401-500 total occupancy, a bond of \$250,000.

This bond shall be based upon the number of occupants allowed under the Crew Housing Facilities 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 \$150,000 would still be required under this provision.

- t. Any additional information deemed necessary by the Planning and Zoning Department 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 that are regulated and licensed by the State pursuant to NDCC Chapter 23-10 and other applicable law.

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, playgrounds, 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 Dickey 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 and consist of three or more lots intended for occupancy by mobile homes.
- 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 and 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. One or more common mailbox facilities shall be provided to serve the residents of the park, unless otherwise specified by the United States Postal Service.
- o. The applicant must demonstrate compliance with NDCC Chapter 23-10 and rules and regulations of the State Health Department regulating mobile home parks, unless such authority is conferred by the State to a local political subdivision as provided for in NDCC Section 23-10-02.1.

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. The owner shall also be required to follow the procedures provided for under NDCC Sections 39-05-35, 39-05-22, and 47-10-27 if not previously done.

#### **Section 7.4 Recreational Vehicle Park and Campground**

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

7.4.1 Recreation vehicle 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.

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. Applications under this section shall require the submittal of the same information that is required to be submitted to the State Health Department, which shall be in addition to those set out in Section 5.

7.4.3 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.

7.4.4 Occupation of recreational vehicle parks and campgrounds is for recreational

purposes only on a temporary basis of not more than ten (10) day, unless a seasonal pass is purchased from the Dickey County Park Board. Permanent occupancy is not permitted.

7.4.5 The Dickey 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.

#### 7.4.6 Pets

- a. **Animals at Large Prohibited:** Dickey 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 are prohibited. Pet owners can receive a citation for a 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.
- b. **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.
- c. **Noise:** Pet owners have a responsibility to keep their pets from disturbing their neighbors. Continual barking, howling, or other noises that 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.
- d. **Penalties:** Fines for violations of this section shall be established as follows:
  - First Offense – Written warning
  - 2<sup>nd</sup> Offense - \$50.00
  - 3<sup>rd</sup> or Greater Offense - \$100.00
  - Habitual Offender – in addition to the above-referenced fines, a habitual offender may be charged criminally with a Class B Misdemeanor – Public Nuisance in accordance with NDCC Section 11-33-21.

### Section 7.5 Animal Feeding Operations

Dickey County previously adopted a Zoning Ordinance for Animal Feeding Operations on April 3, 2006 (hereinafter referred to as the 2006 AFO Ordinance). The 2006 AFO Ordinance has been recorded with the Dickey County Recorder's Office as Document No. 172432. The 2006 AFO Ordinance has also been filed with the State Department of Environmental Quality as required by law. The 2006 AFO Ordinance shall continue to govern all animal feeding operations in the County

and this Ordinance shall in no way supersede or repeal the 2006 AFO Ordinance. Reference to the 2006 AFO Ordinance in this Ordinance is solely for reference purposes only and shall in no way affect the validity thereof.

## **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 shall be allowed with 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 sets out the 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, which specifically excludes 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 A home occupation is incidental to the use of the premises. The main activity of the dwelling place remains a dwelling and such home occupation does not alter the character or appearance of the existing residence.

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

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

7.7.6 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 limited as to location and shall be restricted so as 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 required to be conducted herein 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. Mining operation activities shall not result in undue damage to roads, bridges, or right-of-way in the County or to any public or private property.

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, as well as a reclamation bond on the terms set forth in Section 4.9.2. Reclamation of the site shall be completed within one (1) year of the resource being exhausted, abandoned or closure of the operation of the site. Reclamation of the site shall be in accordance with NDCC Title 38, unless such stricter requirements are imposed by the County.

7.8.4 Mining operation activities must be in compliance with all County, State, and Federal regulations and to specifically include section 6.13 of this Ordinance regarding noxious weeds.

7.8.5 Any sand pit, gravel pit, underground or surface mine, or injection well that has been vacated for 3 or more years shall be deemed abandoned, and the operator must reapply for a conditional use permit before commencing any operations typical of such sites.

7.8.6 Approval of a conditional use permit for mining and mineral extraction DOES NOT authorize any form of crew housing facilities or any other dwelling units on site.

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

- a. Evidence of a written notarized agreement between 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 notarized 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 specifically waived by the affected landowner in the agreement.
- c. Data Submission Requirements:
  - 1) A site plan for operation and reclamation of the mined land, including maps showing the specific parameters of the area to be mined, location of haul roads and points of access to the site, adjacent residences within one mile of the site, maps showing the existing and proposed contours after the land is mined, and a timetable for operation of the site. All mining and excavation sites must have at least a 3:1 slope and shall not exceed 160 acres in area per permit.
  - 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 groundwater resources and compliance with all county, state and federal regulations.
- d. 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.
- e. All crushing and screening operations/plants must have an approved permit for Rock, Sand, and Gravel Plants from the State Health Department Division of Air Quality and any other permits required by the State before starting and during all operations.

#### 7.8.8 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 those imposed by this Ordinance for applications for a conditional use permit:

- a. All coal mining operations shall comply with NDAC Chapter 43-02-01.
- b. Provide a copy of all information submitted to the State concerning site reclamation.
- c. Provide evidence of approval by the State for operation of the coal mining operation, if such approvals are 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 the reclamation of strip-mined lands.

#### 7.8.9 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 State of all permits required by NDAC Chapter 43-02-02 for subsurface mineral mining.
- b. Provide copies of all non-confidential information that was submitted to the State concerning site operations, location, and ownership patterns.
- c. Provide a copy of all information submitted to the State concerning site reclamation.
- d. Provide written evidence of approval by the State for the mining operation, if such approvals are 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 the reclamation of strip-mined lands.

#### 7.8.10 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.

### Section 7.9 Pipelines

7.9.1 Any pipeline proposed to be sited in the County shall require a conditional use permit, in an addition to any other permitting required by State and Federal law. Routing of pipelines shall be done so as 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 an ESRI shape file that depicts the route through the County.

## 7.9.2 Hazardous Liquid Pipelines

7.9.2.1 No person or property owner shall use land in any area or district in this jurisdiction for purposes of transporting hazardous liquid through a hazardous liquid pipeline except under the conditions and restrictions enumerated herein. For purposes of this Ordinance, "hazardous liquid" and "hazardous liquid pipeline" shall have the meanings as defined herein. A hazardous liquid pipeline may be permitted in an agricultural district upon approval for special use, provided the criteria and submittal requirements are met.

### 7.9.2.2 Definitions

- a. Affected person means any Person with a legal right or interest in the property, including but not limited to a landowner, a contract purchaser of record, a Person possessing the property under a lease, a record lienholder, and a record encumbrancer of the property.
- b. Applicant means a Pipeline Company or a Property Owner who applies for a Conditional Use Permit for a Hazardous Liquid Pipeline pursuant to this Section.
- c. Application means the documents and information an Applicant submits to the County for purposes of obtaining a Conditional Use Permit, as well as the related process and procedures for considering the application pursuant to this Section.
- d. Blast Zone means the geographic area in the County that would be subject to a shock wave from rupture of a Hazardous Liquid Pipeline, including a Carbon Dioxide Pipeline, that could harm or kill persons or animals due solely to physical trauma, for example, from flying debris or the physical impact of a pressure wave resulting from a rupture.
- e. Conditional Use Permit means a use or use of limitation authorized and approved by the Board of Dickey County Commissioners, in the manner and according to the standards provided in this Ordinance.
- f. County or the County means Dickey County, North Dakota.
- g. Emergency means a condition involving clear and immediate danger to life, health, or essential services, or a risk of a potentially significant loss of property.
- h. Facility is any structure incidental or related to the Hazardous Liquid Pipeline and any space, resource, or equipment necessary for the transport, conveyance, or pumping of a Hazardous Liquid through a Hazardous Liquid Pipeline located in the County, including all related substations.
- i. Fatality Zone means the geographic area in the County in which residents of the County would face a significant risk of loss of life due to a rupture

of a Hazardous Liquid Pipeline.

- j. Hazard Zone means, in the case of a Hazardous Liquid Pipeline, the geographic area in the County in which residents of the County would likely become intoxicated or otherwise suffer significant adverse health impacts.
- k. Hazardous Liquid means the same as crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, coal slurries, and/or other products that may be considered quantifiable as a hazardous liquid.
- l. Hazardous Liquid Pipeline means a Pipeline intended to transport Hazardous Liquids, and also includes Class 3, Class 6, Class 8, or Class 9 hazardous materials, as defined by 49 C.F.R. § 173.120, et seq., with any portion proposed to be located within the County.
- m. High Consequence Area is any area within the Hazard Zone, the Fatality Zone, or the Blast Zone where a single rupture would have the potential to adversely affect 10 or more persons or a facility with 100 or more livestock.
- n. In-service date is the date any Hazardous Liquid is first transported through any portion of a Pipeline located in the County.
- o. Landowner means a Person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and includes a farm tenant.
- p. Level of Cultivation means depth of pipe 6' (six) feet minimum, unless the landowner and Pipeline Company agree on a greater depth.
- q. Line Location means the location or proposed location or route of a Pipeline on a Landowner's property.
- r. NDCC means North Dakota Century Code.
- s. NDDMR means North Dakota Department of Mineral Resources.
- t. Occupied Structure means a Building or Structure that has been inhabited or used for residential, commercial, industrial, at any time during the twelve (12) months preceding an application for a Conditional Use Permit as provided in this section.
- u. PSC means the North Dakota Public Service Commission.
- v. PHMSA means the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation.
- w. Person means an individual, a corporation, a limited liability company, a government or governmental subdivision or agency, a business trust, an estate, a trust, a partnership or association, or any other legal entity.
- x. Pipeline means an intrastate pipe or pipeline and necessary appurtenances with pressures greater than 1,000 PSIA and 4" or greater in diameter used for the transportation or transmission of hazardous liquids.

- y. Pipeline Company means any Person engaged in or organized for the purpose of owning, operating, or controlling Pipelines for the transportation or transmission of any Hazardous Liquid or underground storage facilities for the underground storage of any Hazardous Liquid.
- z. Pipeline Construction means activity associated with installation, relocation, replacement, removal, or operation or maintenance of a pipeline that disturbs agricultural land, but shall not include work performed during an emergency, tree clearing, or topsoil surveying completed on land under easement with written approval from the landowner.
- aa. Property Owner means the owner or owners, together with his, her, its or their heirs, successors and/or assigns, of the land or property over, under, on, or through which, a Pipeline, or any part of it, including any related facilities, may be located and which is subject to the regulations and restriction of this Ordinance. Property Owner includes a Landowner and also includes a Person with whom a Pipeline Company negotiates or offers to execute an Independent Agreement with respect to a Pipeline.
- bb. Reclamation means the restoration and repair of damaged real property, personal property, land, or other areas through which a Pipeline is constructed or from where it is removed as close as reasonably practicable to the condition, contour, and vegetation that existed prior to the construction or prior to the removal of the Pipeline, as applicable.
- cc. Reclamation Cost means the cost of Reclamation and includes the cost to restore or repair roads, bridges, or county property, as well as the cost to restore or repair all real and personal property of Property Owners and Affected Persons.
- dd. SHPO means State Historical Preservation Office.
- ee. USGS means United States Geological Survey.
- ff. Zoning Ordinance or the Zoning Regulation means the collection of land use and zoning regulations known as the Dickey County Zoning Ordinance and Subdivision Regulations

#### 7.9.2.3 Purposes

The purposes of this ordinance are:

- a. To lawfully regulate the use of land in the County for the transport of Hazardous Liquid through a Hazardous Liquid Pipeline in a manner that is in accordance with the County's current comprehensive plan and that is designed to (1) to secure safety from fire, flood, panic, and other dangers; (2) to protect health and the general welfare; (3) to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirement.

- b. To set forth with regard to the County's legal obligation to engage in emergency response and hazard mitigation planning, including furthering the comprehensive plan's goals and objectives for assessing ongoing mitigation, evaluating mitigation alternatives, and ensuring there is a strategy for implementation, and including the need to protect the health and welfare of both residents and emergency response personnel.
- c. To set forth in a manner that treats all Hazardous Liquid Pipelines in a similar manner, to the extent they are similarly situated, and to utilize to the greatest extent feasible the land use and zoning regulations and processes already utilized in the County.

#### 7.9.2.4 Use Limitations Imposed on Hazardous Liquid Pipelines

As provided in Article I, Section I of this Ordinance, all land within the jurisdiction of the County must be used in accordance with this Ordinance. As provided in this Ordinance, the County may create a class of uses that have conditions or other special use limitations attached to approval. Such conditions are established in order to protect the health, safety, and welfare of the public and to preserve property values. The County hereby establishes a conditional use for Hazardous Liquid Pipelines, and no land or property interest in this County, regardless of the zone or area, shall be used for purposes of a Hazardous Liquid Pipeline except in conformity with this Ordinance.

#### 7.9.2.5 Conditional Use Permits Required

- a. A Pipeline Company that has filed a verified petition with the PSC asking for a permit to construct, maintain, and operate a new Pipeline along, over, or across land in the jurisdiction of this County shall apply to the Planning and Zoning Department for a Conditional Use Permit. The Pipeline Company shall submit the application for a Conditional Use Permit within seven (7) days of filing the petition with the PSC, unless the petition was filed with the PSC prior to the effective date of this Article in which case the Pipeline Company shall apply and make application for a Conditional Use Permit under this Article within seven (7) days of the effective date of this Ordinance.
- b. Upon receiving an Application for a Conditional Use Permit from a Pipeline Company or from a Property Owner, the Planning and Zoning Department and the Board of County Commissioners shall consider the Application according to the process and standards set forth in this Article.

#### 7.9.2.6 Separation Requirements

- a. The use of land for purposes of transporting Hazardous Liquids through Pipelines poses a threat to the public health, safety, and welfare, to the productivity of agricultural lands, and to the property values of residential, commercial, and industrial property in the County. The separation requirements

of this section are designed to further the goals and objectives of the County's comprehensive zoning plan, including to protect public health and welfare, to preserve existing infrastructure and future development, and to maintain property values.

- b. A Hazardous Liquid Pipeline shall not be constructed, used, sited, or located in violation of the separation requirements listed below. All distances shall be measured from the centerline of the proposed Hazardous Liquid Pipeline to the portion of the existing use nearest the centerline of the proposed Hazardous Liquid Pipeline.
- c. The minimum Separation Distance for Hazardous Liquid pipelines is:
  - 1) From the extraterritorial line of an incorporated city, not less than five (5) miles.
  - 2) From a church, school, nursing home, long-term care facility, or hospital, not less than four (4) miles
  - 3) From a public park or public recreation area, not less than two (2) miles.
  - 4) From any Occupied Structure, not less than two (2) miles.
  - 5) From a confined animal feeding operation or facility, not less than one (1) mile.
  - 6) From an electric power generating facility with a nameplate capacity of 5MW or more, an electric transmission line operating at 69kV or higher, an electric transmission substation, or a public wastewater treatment plant, not less than 1,000' (feet).
  - 7) Setback from James River: Pipeline shall be set back not less than one (1) mile parallel to the ordinary high-water mark, unless a non-development flood plain permit is required.
  - 8) From a public drinking water treatment plant, not less than five (5) miles.
  - 9) Level of Cultivation must be adhered to as defined in the definition.

#### 7.9.2.7 Permit Application Requirements for Pipeline Companies

A Pipeline Company applying for a Conditional Use Permit for a Hazardous Liquid Pipeline pursuant to this Article shall submit the following documents and information to the Planning and Zoning Department.

- a. The application and material typically needed for a Conditional Use Permit, including all required forms prescribed by the Planning and Zoning Department, in addition to any easement requirements prepared by a professional land surveyor or attorney licensed in this State.
- b. A complete copy of the application for a permit filed with the PSC pursuant to or within applicable provisions in NDCC, including any amendments or changes to said application, as well as the USGS Hazard Inventory, Class 3 Cultural Resource Study, NDDNR Reports, and SHPO Archeology Reports.
- c. A map identifying each proposed crossing of a county road or other county property.
- d. A map and a list containing the names and addresses of all affected persons, to

include governmental agencies and political subdivisions, in the County. The map and list shall include all Property Owners who have executed an Independent Agreement or who have been or will be contacted about the execution of an Independent Agreement with the Pipeline Company relative to the proposed pipeline.

- e. A set of plans and specifications showing the dimensions and locations of the Pipeline, including plans and specifications for all related facilities, and above-ground structures, such as pumps, valve sites, and shutoff valves, located approximately 26,400 lineal feet or as determined by access from a public ROW, with fracture arrestors approximately halfway between each shutoff valve.
- f. An Emergency Response and Hazard Mitigation Plan.
- g. All applicable fees required pursuant to this Ordinance.
- h. A statement identifying any Confidential Information in the Application and a request, if any, to withhold such information from public examination or disclosure as provided in, and to the extent permitted pursuant to or within applicable state law. A failure to identify Confidential Information in the Application may result in the County treating such information as a public record.
- i. Insurance Requirement. The Pipeline Owner must provide proof of liability insurance at the time of application. Dickey County shall be listed as a certificate holder. Certificates shall provide not less than thirty (30) calendar days' notification to the certificate holder prior to cancellation or material change in coverage. Throughout the duration of the conditional use permit, the owner/operator of a pipeline or facility agrees to provide evidence of insurance coverages not less than the types and amounts specified below:

1) Workers' Compensation:	Statutory
2) Employer's Liability Each Accident:	
\$1,000,000	
Disease, Policy Limit:	
\$1,000,000	
Disease, Each Employee:	\$1,000,000
3) General Liability	
General Aggregate:	
	\$2,00
0,000 Each Occurrence	
(Bodily Injury and Property Damage)	
	\$1,00
0,000 Excess Umbrella Liability	
Each Occurrence:	\$5,000,000
General Aggregate:	\$5,000,000

4) Automobile Liability:

- Combined Single Limit (Bodily Injury and Property Damage)  
Each Accident: \$1,000,000

5) Construction Bonding

- Provide a Surety Bond for the protection against disruptions or financial loss due to a contractor's failure to complete a project or failure to meet project specifications in the amount of the final construction cost.

6) Other Conditions (specify):

- A Commercial General Liability Policy shall be endorsed to add the County, its employees, officers, agents, and contractors as additional named insureds.
- Excess umbrella liability shall follow the form of the underlying insurance.
- Certificates evidencing required insurance coverages shall be provided to County upon approval of the conditional use permit and prior to commencement of construction.
- Escalation: A fee and assessment escalation provision to largely offset the rising costs of insurance coverage.

- j. Contact Information. The applicant must provide a local contact authorized by the applicant to receive service and respond to all notices, demands, complaints, concerns, or other requests. Local contact information must include the name of the local representative, local phone number, and physical address. Said contact information must be filed with the County prior to the commencement of construction of the pipeline facility.

7.9.2.8 Fees and Assessments

The following fees and assessments apply to a Conditional Use Permit for a Hazardous Liquid Pipeline pursuant to this Article:

- a. An application fee for the conditional use permit in the amount of \$1,400.00 per mile of pipeline. This shall be in lieu of any fee typically required for other conditional use permits.
- b. An annual assessment fee in the amount of \$152.00 per mile of pipeline constructed, operated, and maintained in the County, or an amount equal to the operator user fee assessment for the most current fiscal year to the operators of

Hazardous Liquid Pipelines by PHMSA, whichever is greater. This assessment shall be due each year on the anniversary of the Pipeline's In-service Date, and the County shall apply this assessment towards its emergency planning and hazard mitigation costs, including expenses for law enforcement and emergency response personnel.

- c. All other applicable user or permit fees required for crossing County roads or using the public right-of-way in the County.

#### 7.9.2.9 Public Hearing Requirements and Permit Approval

Upon receipt of an application for a Conditional Use Permit by a Pipeline Company, the Planning and Zoning Department shall verify that the Pipeline Company permit application requirements are met. Upon the verification and report of the Planning and Zoning Department, a date shall be set for one or more public hearings in the County on the question of granting a Conditional Use Permit to the Pipeline Company. Once the public hearing dates have been set, the Planning and Zoning Department shall publish notice in the official county newspaper and send notice of each scheduled public hearing to all affected persons and political subdivisions within a minimum of 1,250 ft. of the proposed pipeline, including each person identified in the Application, by first class mail.

- a. Once all required material have been received and interested parties heard, the Board of County Commissioners shall consider each application for a Conditional Use Permit according to the standards set forth in this Ordinance and issue a permit if it finds that all applicable standards have been met. The burden of establishing that all applicable standards have been met shall be on the Pipeline Owner prior to the issuance of the Conditional Use Permit.
- b. A Conditional Use Permit granted to a Pipeline Company is not transferable to any other person or entity. In the event a Pipeline Company materially changes its organizational structure through merger, bankruptcy, or some other event, or the hazardous liquid pipeline transfers hands or its use materially or substantially changed or altered, a new conditional use permit shall be applied for and the process for obtaining such permit followed.
- c. Access Roads and Protection of Agricultural Operations. The location and construction of access roads and other infrastructure shall, to the extent reasonably possible, not disrupt farming, agricultural operations, or the landscape within the County. In order to preserve the integrity of fields and capacity for efficient tilling, planting, and harvesting, the Pipeline Company shall work with the landowner to determine the most appropriate routing of access road locations.
  - 1. Access roads shall be low-profile roads with in-slopes and backslopes of 1:1 or flatter so that farming equipment can cross them, and roadway surfacing shall consist of Class 5 gravel or similar material, unless otherwise agreed to by the landowner.

2. A plan outlining the location and design of all access roads shall be provided to the County for determination as to whether the plan conforms to the other terms of this section.
3. If the Pipeline Company wishes to build an access road on a section line, in accordance with NDCC Chapter 24-07, the applicant shall first petition the township or the Board of County Commissioners (in unorganized townships). If permission is granted by the appropriate governing body, the Pipeline Company shall build up the access road in accordance with the standards and direction of the governing body having said authority.
4. The Pipeline Company must protect and segregate topsoil from subsoil on all lands unless otherwise negotiated with the affected landowner. The Pipeline must minimize soil compaction of all agricultural lands during all phases and confine soil compaction to as small of an area as possible.
5. The Pipeline Company shall, during all phases of construction, abide by the County's approved soil erosion control measures.
6. Fence and Gate Repair. The Pipeline Company shall promptly repair or replace all fences and gates removed or damaged during all phases of the pipeline's life unless otherwise negotiated with the affected landowner.
7. Repair to Subsurface Water Management Systems. The Pipeline Company take into consideration the location of all subsurface water management systems when siting its pipeline and attempt to avoid any areas where such systems may be disturbed. Should the Pipeline Company build where such systems exist, the Pipeline Company shall be responsible during all stages of the life of the project for repairing and replacing subsurface water management systems disturbed or damaged by the actions of the Pipeline Company, its agents, successors, or assigns, unless otherwise negotiated with the affected landowner.
8. Road Repair (Private Roads). The Pipeline shall promptly repair any damage to private roads, driveways, or lanes caused by the Pipeline Company, its agents, successors and assigns, to a condition at least equal to the condition prior to construction of the installed pipeline, unless otherwise negotiated with the affected landowner.
9. Hazardous Waste. The Pipeline Company shall be responsible for compliance with all applicable federal, state, and local laws relative to the generation, storage, transportation, clean up, and disposal of hazardous wastes generated during any phase of the pipeline's existence.
10. Chemicals. The use of chemicals is limited to those herbicides and methods approved by the State Department of Agriculture and the State Health Department. The Pipeline Company must contact the affected landowners prior to application.
11. Temporary Staging Areas. The Pipeline Company shall negotiate with landowners to locate sites for temporary equipment staging or lay-down areas during the construction phase of the project or for any major repairs

to the pipeline. Reclamation and clean-up of said sites shall occur within a reasonable time after the need for the temporary staging area(s) has concluded.

12. Tree Removal. The Pipeline Company shall minimize the removal of trees and shall not remove groves of trees or shelter belts without the prior written and notarized approval of the affected landowner. Trimming or removal of trees within the public right-of-way to allow for safe construction of power lines shall be allowed.
13. Waste Removal. The Pipeline Company shall remove all waste and scrap that is the product of construction, operation, restoration, and maintenance from the site and properly dispose of it upon completion of each task. Personal litter, bottles, and paper deposited by site personnel shall be removed on no less than a daily basis.
14. Land Restoration. The Pipeline Company shall, as soon as practicable following construction of the pipeline, considering the weather and preferences of the affected landowner, restore the area affected by any construction activities to the condition that existed immediately before construction began. The time period for restoration shall not exceed eight (8) months after completion of construction of the pipeline. Restoration shall be compatible with the safe operation, maintenance, and inspection of the pipeline and or pipeline facility.
15. Complaints. Prior to the commencement of construction, the Pipeline Company shall submit to the County the company's procedures to be used to receive and respond to complaints. Pipeline Company shall provide to the County the name and contact information for the internal individual or individuals tasked with receiving and handling complaints made to or by the County relative to the Pipeline Company.
16. Public Safety Plan. The Pipeline Company is to provide educational materials to landowners within the site boundaries and, upon request, to interested persons, about the project and any restrictions or dangers associated with the project. The Pipeline Company is encouraged to also provide any necessary safety measures, such as warning signs and gates for traffic control or to restrict public access to pipeline access roads. The Pipeline Company shall comply with the provisions outlined in their public safety plan and any other requirements imposed on them by local, state or federal agencies.
17. Road Use Arrangements. The Pipeline Company shall make satisfactory arrangements (including obtaining permits) with the appropriate road authorities for road use, access road intersections, maintenance, and repair of damages. Notice of such arrangements shall be provided to the County prior to the commencement of construction or as they are agreed upon, if the timing of such arrangement comes after construction has already started.
18. Overweight Load Permits. The Pipeline Company is responsible for abiding

by the state and local overweight load permitting processes in accordance with NDCC Chapter 39-12. A conditional use permit issued under this Ordinance to install a hazardous material pipeline does not negate a contractor's obligation to obtain any required overweight load permits prior to moving materials associated with the construction of the pipeline across local, state or federal highways.

19. Approach Permits. The Pipeline Company is responsible for obtaining any required approach permit(s) from the appropriate governing body for any new or reconstructed approach.
20. Road Repair (Public Roads). Any road damage caused by the Pipeline Company, its independent contractor, employee, agent, contractor, or subcontractor shall be promptly repaired at the Pipeline Company's expense to the current standards set out in the North Dakota Department of Transportation's (NDDOT) Standard Specifications for Road and Bridge Construction. If it is reasonably foreseeable that continued use of the roads will make prompt repair to this standard unreasonable, intermediary measures must be taken by the Pipeline Company, if approved by the governing body in charge of the road, to ensure the public road remains passable and usable as has been the tradition in the community. Final repairs must be made to the prescribed standards promptly after the completion of the construction of the pipeline.

#### 7.9.2.10 Appeals and Variances

A Pipeline Company or a Property Owner may appeal an adverse determination on a Conditional Use Permit under this section or may seek a special exception or variance from the Board of County Commissioners, as prescribed in this Ordinance.

#### 7.9.2.11 Applicability and Compliance

- a. The permit requirements set forth herein shall not apply to a Hazardous Liquid Pipeline that is already permitted, constructed, and placed in service on or before the effective date of this Ordinance.
- b. If a Property Owner has executed an Independent Agreement with the Pipeline Company prior to the effective date of this Ordinance and the Independent Agreement does not meet the separation requirements of this Ordinance, then, notwithstanding the Independent Agreement, the Pipeline Company shall comply with the separation requirements as set forth in this Ordinance
- c. If a Property Owner has executed an Independent Agreement with the Pipeline Owner prior to the effective date of this Ordinance and the Independent Agreement provides for separation requirements that are greater than the separation requirements of this Ordinance, then the Pipeline Company shall comply with the more strict terms of the Independent Agreement.

#### 7.9.2.12 Emergency Response/Hazard Mitigation Plans for Hazardous Liquid Pipelines

The County requires Hazardous Liquid Pipelines Companies to provide information to assist in emergency response and hazard mitigation planning pursuant to this section.

- a. If PHMSA has adopted regulations specifically related to emergency preparedness, emergency response, and hazard mitigation planning for the Hazardous Liquid Pipeline, then the Pipeline Company operating the Hazardous Liquid Pipeline shall submit a copy of the emergency response and hazard mitigation plan to Dickey County Emergency Management.
- b. If PHMSA has not adopted regulations specifically related to emergency preparedness, emergency response, and hazard mitigation planning for Hazardous Liquid Pipelines, then the Pipeline Company operating the Hazardous Liquid Pipeline shall submit a plan that meets the requirements of this section. A plan submitted in compliance with this section shall include the following:
  - i. A map and legal description of the proposed route for a Hazardous Liquid Pipeline showing all human-occupied structures and animal husbandry facilities, by type, within two miles of the centerline of the proposed route, including addresses.
    1. An estimate of the worst-case discharge of hazardous liquid released in metric tons and standard cubic feet from a rupture of a pipeline, considering the interior volume of the pipeline, the location of emergency valves that limit release of hazardous liquid, the location of crack arrestors, operating pressures, operating temperatures, and other relevant factors.
    2. A rupture dispersion modeling report containing the results of computational fluid dynamic computer model estimates of the maximum geographic ranges of the Fatality Zone and Hazard Zone for the Hazardous Liquid Pipeline in the event of its rupture in a range of weather conditions and representative topography in County, as well as in low elevation areas of the County where released hazardous liquid may settle.
    3. A computer model report showing the Blast Zone for the Hazardous Liquid Pipeline.
    4. A list of structures and facilities within the Hazard Zone, Fatality Zone, and Blast Zone for the proposed route of a Hazardous Liquid Pipeline that in the preceding year, have contained humans or livestock, and an estimate of the numbers of persons and livestock in each structure and

facility.

5. A list of High Consequence Areas. A High Consequence Area is any area within the Hazard Zone, the Fatality Zone, or the Blast Zone where a single rupture would have the potential to adversely affect 10 or more persons or a facility with 100 or more livestock.
6. A description of the potential adverse impacts of a rupture of a Hazardous Liquid Pipeline on humans, livestock, and other real and personal property within the Hazard Zone, the Fatality Zone, and the Blast Zone for the route of a Carbon Dioxide Pipeline.
7. Identification of alternative routes through the County designed to minimize risks to humans and animals from a rupture of the Hazardous Liquid Pipeline within the County, and an analysis of the risks of these alternative routes relative to the proposed route.
8. All information needed by county first responders, emergency response personnel, and law enforcement personnel in order to engage in local emergency management and hazard mitigation planning, equipment, and training needs. Such information includes, but is not limited to:
  - a. A material data safety sheet for the materials transported in the Hazardous Liquid Pipeline;
  - b. agency-specific response plans for law enforcement, emergency medical responders, and other response agencies;
  - c. gas detectors and evacuation plans for each human-occupied structure; response equipment needs for emergency response personnel, such as chemical detectors, respirators, personal protective equipment, communications equipment, road barriers and traffic warning signs, and noninternal combustion engine evacuation vehicles;
  - d. Hazardous Liquid Pipeline rupture emergency response training program to ensure safe and effective response by county and municipal law enforcement, emergency medical services, and other responders during the operational life of the Hazardous Liquid Pipeline.
  - e. Identification of residential and business emergency response needs, including but not limited to: mass notification and emergency messaging system; evacuation plans; evacuation equipment needs,

especially for mobility-impaired individuals; gas detectors, and respirators.

7.9.2.13 Abandonment - Discontinuance and Removal of Hazardous Liquid Pipelines

- a. In addition to the requirements set by state and federal law, a Hazardous Liquids Pipeline in the County that is abandoned shall comply with the requirements of this section. A Hazardous Liquid Pipeline shall be deemed abandoned for purposes of this section when the Pipeline Company has received approval from the regulator(s) to cease providing a particular service (e.g. to permanently shut down operation of a particular pipeline or facility) under that regulatory agency's jurisdiction. Abandonment also refers to the process and actions taken by the Pipeline Company at the end of the useful life of a pipeline or pipeline facility to gain approval from the regulator(s). This process requires that the Pipeline Company follow strict guidelines regarding how to prepare the pipeline or facility for permanent cessation of operation.
- b. A Pipeline Company granted a Conditional Use Permit pursuant to this Article shall, by certified mail, notify the County and all affected persons and political subdivisions in the County of the Pipeline Company's intent to discontinue the use of the Pipeline. The notification shall state the proposed date of the discontinuance of use and any requirements set forth by the regulator(s) having jurisdiction over the pipeline relative to the decommissioning of the pipeline.
- c. Upon abandonment or discontinuance of use, the Pipeline Company shall refer to any Independent Agreements it has with a landowner to determine its obligations upon abandonment. If the Agreement is silent on this issue, then the Pipeline Company shall offer to each Property Owner the option to have the Pipeline and all related facilities wholly or partially physically dismantled and removed, or otherwise mitigated through filling, segmenting, or other forms of mitigation, including both the below and above ground facilities or to permanently fill the below ground pipeline with suitable flowable fill material. If a pipeline regulator requires more strict or aggressive action to be taken upon abandonment of a pipeline than that chosen by the landowner or as required by an Independent Agreement, then such measures required to be taken by the regulator shall dictate. The removal or permanent filling of the pipeline and other pipeline facilities and the related Reclamation and Reclamation Costs shall be the Pipeline Company's responsibility and shall be completed within one hundred eighty (180) days from the date of abandonment or discontinuation of use unless a Property Owner agrees to extend the date of removal. Such an extension must be by written notarized agreement between the Pipeline Company and the Property Owner, and the agreement shall be filed at the Dickey County Recorder's office with a copy delivered to the County by the Pipeline Company.

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

7.10.1 A petroleum/natural gas processing facility 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 wellhead/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, wellhead, or natural gas.

7.10.2 Petroleum/natural gas processing plants shall only be permitted in an Industrial District with a conditional use permit. The application process for these types of facilities shall be the same as that required for a conditional use permit, in addition to the other requirements set forth in this section.

7.10.3 Any applicant shall provide evidence of compliance with all OSHA, EPA, Federal Energy Regulatory Commission, State Department of Health, State Industrial Commission and State Public Service Commission regulations and requirements upon request from the Planning and Zoning Commission or the Board of County Commissioners.

7.10.4 No petroleum/natural gas processing facility shall be located within one mile of an existing rural residence without a written notarized agreement with any owner and occupants of the residence over the age of 18.

## **Section 7.11 Chemical Processing Plant**

7.11.1 Chemical processing plants shall only be permitted in an Industrial District with a conditional use permit. The application process for these types of facilities shall be the same as that required for a conditional use permit, in addition to the other requirements set forth in this section.

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 any owner and occupants of the residence over the age of 18.

## **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 with a conditional use permit. The application process for these types of facilities shall be the same as that required for a conditional use permit, in addition to the other requirements set forth in this section.

7.12.2 The Board of County Commissioners shall take into consideration the impact on 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 from 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 the County that will preserve the safety and well-being of residents and property within Dickey County while facilitating orderly development.

7.13.1 Definitions: The following definitions shall apply to this section:

- 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 for the 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 the County without a conditional use permit and without complying with all requirements of this Ordinance. This does not preclude solar monitoring, soil testing, or survey work prior to obtaining a conditional use permit.

7.13.3 This Ordinance 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. Rather this provision 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 or farming and ranching purposes in the County.

7.13.4 Regulations Applicable to Commercial Solar Energy Conversion Facility:

- a. A Commercial Solar Energy Conversion Facility shall not obtain a building or conditional use permit until evidence is provided that an investor-owned utility company or rural electric cooperative has a signed an interconnection agreement or any other required agreements with the Applicant.
- b. Agricultural land or land with scenic, cultural, or recreational significance, and land that is identified as future growth areas as determined by the Planning and Zoning Commission, shall not be used for a Solar Energy Conversion Facility.
- c. Any Commercial Solar Energy Conversion Facility must meet or exceed the standards and regulations of federal, state and local agencies with the authority to regulate such facilities.
- d. 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 on how to safely respond to on-site emergencies. A request for a Commercial Solar Energy Conversion Facility shall not be granted until the Planning and Zoning Commission is satisfied that the emergency services are adequate in the proposed area.
- e. The Land Use Administrator, or any other party designated by Board of 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.
- f. Repair of panels. Panels shall be repaired or replaced when either non-functional or in visible disrepair. The Planning and Zoning Department shall be informed of any repairs or upgrades being made to any panels prior to such repairs or upgrades being made. Signage shall identify the facility owner, provide a 24-hour emergency contact phone number, and conform to the requirements set forth in this Ordinance.

#### 7.13.5 Fencing

- a. Any Commercial Solar Energy Conversion Facility shall be fenced around the perimeter with a fence that shall be at least eight (8) feet in height and have at least three (3) strands of barbed wire run above the lower eight (8) feet.
- b. The fencing shall be constructed to substantially lessen the likelihood of unauthorized entry to the Solar Energy Conversion Facility.
- c. 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 the County.
- d. The fencing requirements shall remain in place until the Commercial Solar Energy Conversion Facility is dismantled and removed from the premises.

#### 7.13.6 Gates and locks

- a. Any gate structures used in conjunction with the perimeter fencing of the Commercial Solar Energy Conversion Facility shall be at least eight (8) feet in height with at least three strands of barbed wire running above the lower eight

- (8) feet.
- b. All gates shall be equipped with locks and shall remain locked at all times except for those times when the owner, operator, or their agents are accessing the property and are present in the Solar Energy Conversion Facility.
- c. The gates shall be constructed to substantially lessen the likelihood of unauthorized entry to the Commercial Solar Energy Conversion Facility.
- d. The gates and locks shall be maintained in good order. Failure to maintain the gates and locks shall constitute a violation of this ordinance.
- e. The gate and locks requirements shall remain in place until the Commercial Solar Energy Conversion Facility is dismantled and removed from the premises.

#### 7.13.7 Setbacks

- a. 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.
- b. Every Commercial Solar Energy Conversion Facility shall be setback at least 200 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 other farming operations.
- c. 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.
- d. All setbacks shall be measured from the exterior of the fencing and gates.
- e. Setbacks from residences and farms shall be one-half ( $\frac{1}{2}$ ) mile unless otherwise waived in a written notarized agreement by the owners or occupants thereof.

7.13.8 Boundaries. The boundary of the Commercial Solar Energy Conversion Facility shall be the properties included within the land on which the Commercial Solar Energy Conversion Facility is proposed to be constructed. The specific siting of individual components of the Facility, including solar panels, supporting structures, and all other aspects which entail a complete Commercial Solar Energy Conversion Facility 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 perimeter of the Commercial Solar Energy Conversion Facility and the relocation conforms to all requirements of this Ordinance. Any relocation of individual components contrary to the approved site plan shall be identified on a revised site plan and submitted to the Planning and Zoning Commission for review and approval.

#### 7.13.9 Noxious weeds

- a. Ground cover on the site shall be native vegetation and maintained in accordance with this Ordinance.

- 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 Dickey 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.

#### 7.13.10 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 remain in effect 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 and gate requirements for such facilities in this Ordinance.

#### 7.13.11 Light and Heat Trespass:

- a. All photovoltaic panels shall be placed in such a manner 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 a significant adverse impact on neighboring or adjacent uses, either through siting or mitigation.
- b. 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 afterimage would occur towards vehicular traffic and any adjacent building.
- c. Commercial Solar Energy Conversion Facility shall not raise the ambient temperature more than 2° Fahrenheit at the boundary/perimeter of the project.
- d. 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 in the application materials and approved by the County.
- e. Decommissioning: Reclamation and restoration following the abandonment or decommissioning of a Commercial Solar Energy Conversion Facilities shall be done in accordance with industry standards or as otherwise set forth by the County. A reclamation bond shall be required as set forth in Section 4.9.2 and any other applicable provisions of this Ordinance.

## Section 7.14 Wind Energy Facilities

This Ordinance provides a framework for siting, construction, and operation of a Wind Energy Facility within the 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 the 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 lit 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 the 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 for Residential, Recreational, or Conservation.

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

- a. A certified check or money order in the amount of the base fee of \$10,000.00 per project or extension of an existing project, in addition to a \$500.00 fee for each turbine slated to be built within the project footprint.
- 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 shall be required.
- c. Evidence of the applicant's capacity to contractually bind the person seeking the permit and authority to make binding representations on behalf of the person or business for purposes of zoning, siting and construction of the Wind Energy Facility.
- d. A schedule for the proposed start and completion of construction of the facility, which shall include the applicant's proposal for final repairs to public roads.
- e. Names of property owners, identified as participating or non-participating, within 5 times the rotor diameter distance of the proposed turbine locations and copies of any easements obtained from participating property owners.
- f. A USGS topographical map of the Wind Energy Facility and properties along and within 1320 feet of the wind energy facility perimeter and internal boundaries. The following items will be clearly marked on the map:
  - 1) If relevant to the project, 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.
  - 2) 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 (both buried and above-ground), and roads.

- 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) 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.
- 6) The facility boundary.
- 7) Each public or private airstrip with an FAA identification number.
- 8) Natural terrain features.
- 9) The names of property owners inside the site and of the property owners for adjoining land are 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 with 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 in the identification of the turbine number in an emergency.
- d. Turbines shall be lit in accordance with state and federal regulations.
- 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 the mere convenience of the shortest route to a turbine unless otherwise negotiated with the affected landowner.
- f. The permittee shall promptly replace or repair all fences or gates removed during all phases of the wind energy facility's life unless otherwise negotiated with the affected landowner. When the permittee installs a gate where electric fences are present, the permittee shall provide for continuity in the electric fence circuit.
- g. The permittee shall place electrical lines, known as collectors, and communication cables underground when located on private property. Use of the public right-of-way must be in compliance with the associated governing body's criteria for use. Collectors and cables shall also be placed within or adjacent to the land necessary for wind turbine access roads unless otherwise negotiated with the affected landowner.
- 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 taller shall be lit and marked in accordance with state and federal regulations. Neither an environmental statement nor an 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 windstorms.
- k. Noxious weeds. The owner/operator of a Wind Energy Facility shall comply with the County's noxious weed control policy as found in Section 6.13 herein.

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 pedestal 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 one (1) mile from any residence.
- b. Each wind turbine must be setback the greater of 1.5 x total height or 5RD (rotor diameter) 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 1.2 x total height or 5RD from each antenna, tower, unoccupied structure, or improvement with an estimated value of 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 their own appraisal, so long as it is timely.
- c. Each wind turbine must be set back at least 2 x total height 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 that 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 the disposal of inert and municipal Solid Waste.

7.15.2 Nuclear and Radiological Waste is not permitted in the 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 that 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, unless written notarized consent 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 notarized consent 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 complies with the State Health Department requirements. Such a plan shall be filed with an application for a conditional use permit.
- g. Unauthorized entry to the site shall not be permitted. In addition, facility personnel must be on site at all times of active disposal.
- h. A chain link fence constructed to 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 written 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 require a conditional use permit from the County.

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 the 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 the 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 the Board of County Commissioners before an application for a conditional use permit is 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 picture theaters, and exotic dancing establishments.

7.17.1 An Adult Entertainment Center is permissible only with a conditional use permit

and only in commercial districts.

7.17.2 A conditional use permit granted hereunder shall be for a term not to exceed five (5) consecutive years from the date of issuance and may be for a lesser term as determined appropriate by the County, of the same. The Planning and Zoning Commission may recommend the issuance of and the Dickey 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 be issued for a greater period of time than a five (5) consecutive year period. At the expiration of the initial permit term, a new conditional use permit shall be required and the same process followed.

7.17.3 Adult Entertainment Restrictions

- a. An Adult Entertainment Center shall not be located within one (1) 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 bookstore, exotic dancing establishment, or combination thereof.
- f. No material depicting sexual activities or displaying anatomical areas shall be visible from the exterior of an Adult Entertainment Center.
- g. The building, premises, 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 in the course of the discharge of the law enforcement officer's duties.

7.17.4 Application Procedure: In addition to the process outlined in this Ordinance for obtaining a conditional use permit, an application a conditional use permit for an Adult Entertainment Center shall be signed by the applicant or authorized representative and shall include the following information:

- a. A description of the building, premises, 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 County.

#### 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 and permit 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 be twenty-one (21) years or older. 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, stimulate or touch, caress, or fondle breasts, buttocks, anus or genitals.
- c. Any person engaged as an exotic dancer, stripper, or go-go dancer shall be twenty-one (21) years of age or older. 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 County at any time and may be revoked as provided in this Ordinance.

#### 7.17.7 Definitions.

- a. "Adult bookstore" means a bookstore having as a preponderance of its publications, books, magazines, other periodicals, or novelty items 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.
- b. "Adult establishment" means either an adult bookstore, an adult motion picture

theater, an adult mini-motion picture theater, or a massage business, as defined in this subsection.

c. "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.

d. "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.

e. "Massage" means the manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.

f. "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.

g. "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.

h. "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 herein, shall contain any other kind of adult establishment.

b. No building, premises, structure, or other facility in which sexually oriented devices, as defined herein, are sold, distributed, or exhibited, may contain any other adult establishment, as defined herein.

## **7.18 MEDICAL MARIJUANA**

The 2017 North Dakota Legislature enacted Senate Bill 2344, relating to the implementation of the North Dakota Compassionate Care Act, N.D.C.C. 19-24 for the regulation of medical marijuana dispensaries and the cultivation and propagation of medical marijuana in North Dakota. Those provisions have now been moved to NDCC Chapter 19-24.1 (Medical Marijuana). All persons, entities or organizations wishing to establish a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) within the County must apply for and be granted a conditional use permit for said use.

7.18.1 Definitions. Unless specified in this Ordinance in Section 2.2, all terms defined in N.D.C.C. § 19-24.1-01 or successors to that statute shall have the definitions provided therein.

### **7.18.2 Purpose and Intent**

a. The Board of County Commissioners 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.

b. The Board of County Commissioners intends to regulate the use, acquisition, cultivation, manufacturing, and distribution of usable medical marijuana in a manner that is consistent with NDCC Section 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.

c. To the extent that Medical Marijuana Manufacturing Center(s) or Distribution Center(s) are registered and authorized by the State to operate in the County, this Board of County Commissioners desires to provide for their licensing and regulation to protect the public health, safety, and general welfare of the citizens of the County.

d. 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 a medical marijuana facility in the County.

e. 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.

f. 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 distributing 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 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 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 its successor, or 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

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). The County shall be listed as an additional named 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-censored fence, Drawing Code STD 872-90-03.
- b. Each Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must be located at 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 Planning and Zoning 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. These provisions 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 of the Ordinance shall be null and void if any determination is made after the adoption of the Ordinance by a court of competent jurisdiction that NDCC Chapter 19-24.1 or any provision thereof is invalid, but such nullity shall only apply to those sections found to be invalid or unconstitutional.

### Section 7.19 Electrical Distribution and Transmission Lines

7.19.1 Electrical distribution and transmission lines shall be setback from residential buildings at a minimum as follows (unless some other provision of law requires a more strict setback than what is set forth herein):

- a. Transmission lines carrying from 15 kV to 115 kV shall be setback 2.5 times the height of the structure.
- b. Transmission lines carrying greater than 115 kV or more shall be set back 700 feet.

7.19.2 Any other setback, pole and wire height, or other requirements relative to electrical distribution and transmission lines not specifically referenced and set forth herein shall be done in compliance with applicable local, state and federal law.

7.19.3 The County has previously passed a Consent for Utility Company to Cross a Public Road or Section Road that sets forth various requirements of investor-owned utility companies and rural electric cooperatives relative to the crossing of roads by electrical distribution and transmission lines. Those provisions of that Consent shall continue to govern and shall be in no way superseded by the adoption of this Ordinance.

## **Section 7.20 Data Center**

### **7.20.1 Siting Requirements**

a. Data Centers shall comply with the following requirements:

- 1) Fencing: A six (6) foot sight-obscuring screening fence shall be required along the entire perimeter of the facility. Such fence shall comply with all other requirements of the this Ordinance.
- 2) Yard requirements: The entire perimeter of the facility shall be screened from adjoining properties by a buffer yard. The side and rear buffer yards shall be a minimum of fifty (50) feet, and the minimum front buffer yard shall be one hundred fifty (150) feet.

b. All equipment and structures shall be a minimum of fifty (50) feet from the property boundary of the facility as delineated on the site plan and one-half mile (2,640 feet) from any church, school, or occupied residence.

### **7.20.2 Utility Notification**

a. No grid-connected data center shall be issued a conditional use permit until evidence has been provided by the operator that installation of the system has been approved by an investor-owned utility or rural electric cooperative. In some instances, an order granting a certificate of public convenience and necessity from the Public Service Commission may be required to satisfy this condition. Off-grid systems shall be exempt from this requirement. Written verification from the Electric Utility provider shall state the following:

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

7.20.3 Noise. All proposed data centers that are within one mile (5,280 feet) of a residence, church, or school shall submit a noise mitigation plan in accordance with the following:

- a. Name and qualifications of the person who measured the decibel levels.
- b. Equipment used.
- c. Location of the noise measurements depicted on a scaled site plan. The points of measurement shall be at all property lines and other noise receptors (residences, etc.).
- d. A list of all sound sources that contribute to the overall sound emissions from the site, and the following for each source;
  - i. Peak sound levels, in decibels, emitted by each source; and,

- ii. Sound levels, in decibels, for sound continuously emitted by each source for a duration exceeding thirty (30) minutes; and,
  - iii. The frequencies of the sound emissions from each source;
  - iv. A site diagram showing the location of each sound source.
- e. A description of any and all methods, systems, devices, or structures intended to be used to mitigate sound emissions, including technical specifications, descriptions of materials, and/or engineering specifications.
- f. A certification, signed by the preparer of the document, certifying the accuracy of the materials contained within the noise mitigation plan and that the plan will effectively reduce sound emissions to levels required by the County.
- g. The County reserves the right to require independent verification of noise measurements and/or to request additional measurements at different points on the property.
- h. The maximum sound level allowed as measured from the receiving physical structure of any occupied residence, church, or government building is sixty-five (65) dBA after any applicable adjustments provided for herein are applied. This level may be exceeded during short-term events such as outages and/or severe windstorms.
  - i. Between the hours of 10:00 p.m. and 7:00 a.m., the maximum sound level allowed as measured from the receiving physical structure of any occupied residence, church, or government building is forty-five (45) dBA after any applicable adjustments provided for herein are applied.
  - ii. At any hour of the day or night, the applicable noise limitations in (h) and (i) above may be exceeded for any receiving property by no more than:
    - 1. 5 dBA for a total of 15 minutes in any one-hour period; or
    - 2. 10 dBA for a total of 5 minutes in any one-hour period; or
    - 3. 15 dBA for a total of 1.5 minutes in any one-hour period.

#### 7.20.4 Signage

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

#### 7.20.5 Structural Requirements.

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

#### 7.20.6 Access

- a. All roads shall be of sufficient width to accommodate emergency vehicle access as

determined by the Dickey County Emergency Manager.

#### 7.20.7 Discharge and Recycling.

- a. If more than 2,000 gallons of hazardous materials are used or stored, expected to be used or stored at the site of the Data Center, or within the Data Center, an environmental study shall be completed regarding such hazardous material and its possible effects on the local environment if containment were to fail. The environmental study shall be provided to the Board of County Commissioners.
- b. Any hazardous material and/or discharge, including any contaminated water, coming from or being removed from the Data Center shall be disposed of in/at a disposal site approved for such material.
- c. If any hazardous material is used within the Data Center or located on the site of the Data Center, a containment system for the hazardous material shall be put into place.
- d. Any electrical equipment, including computers, hard drives, servers, and components thereof, shall be disposed of at a certified recycling center.
- e. The Data Center Owner and/or Operator shall notify the Dickey County Emergency Manager at least twenty-four (24) hours in advance of any hazardous material and/or discharge being removed from the Data Center.

#### 7.20.8 Emergency Response Plan

- a. The Data Center Owner and/or Operator shall provide a copy of the project description, site plan, and any other pertinent documentation and/or information to the Dickey County Emergency Manager, local fire department(s), law enforcement agencies having jurisdiction, and any other local first responder organization(s). The Data Center Owner and/or Operator shall coordinate with such local entities in the development of an Emergency Response Plan.
- b. The Emergency Response Plan shall include a description of the numbers, locations, and training of personnel necessary to respond to a worst-case emergency in the County. The plan shall also include all Material Safety Data Sheets for all hazardous materials and/or substances that are located within the Data Center.
- c. All necessary training and equipment for a worst-case emergency in the County for local fire departments, law enforcement, first responder organizations, and the Dickey County Emergency Manager shall be paid for by the Data Center Owner and/or Operator.
- d. The Emergency Response Plan shall be submitted to the Board of County Commissioners or its designee not less than sixty (60) days before construction is to commence.
- e. The Emergency Response Plan shall include a list of all specialized response equipment, showing the type and capability of said equipment, as well as the equipment's location.
- f. All response equipment shall be accessible by the Dickey County Emergency Manager, local fire department(s), law enforcement agencies having jurisdiction, and any other local first responder organization(s).

#### 7.20.9 Decommissioning, Restoration, or Abandonment of a Data Center

- a. The Owner and/or Operator of a Data Center shall be responsible for decommissioning a Data Center, including all related facilities, and for all costs associated with decommissioning a Data Center and for all related facilities.
- b. At least thirty (30) days prior to commencing construction, the Applicant shall provide a plan to the Planning and Zoning Department regarding the action to be taken upon the decommissioning and removal of the Data Center and all related facilities. Estimates of monetary costs and the site condition, including any land irretrievably committed after decommissioning, shall be included in the plan.
- c. At least six (6) months prior to the commencement of decommissioning, Data Center Owner and/or Operator shall give notice, in writing, to the Planning and Zoning Department of the date decommissioning is to begin.
- d. Data Center Owner and/or Operator shall physically dismantle all below and above-ground components of the Data Center within three hundred and sixty-five (365) days from the date decommissioning is to begin.
- e. Such removal and dismantling period can be extended upon written agreement between Data Center Owner and/or Operator and the County. However, in no event can this period extend beyond two (2) years from the date decommissioning is set to begin. Any agreement to extend removal and dismantling shall be filed at the Dickey County Recorder's office, and a copy thereof shall be delivered by the Data Center Owner and/or Operator to the Board of County Commissioners or its designee.
- f. A Data Center shall be deemed abandoned if it is out of service or no longer operating for its intended purpose or twenty-four (24) consecutive months.
- g. If a Data Center is deemed abandoned:
  - 1) The Planning and Zoning Department, or its designee, shall issue a written Notice of Abandonment by certified mail to the Data Center's Owner and/or Operator. The Data Center's Owner and/or Operator shall have the right to respond to the Notice of Abandonment within thirty (30) days from the date of receipt of such notice to present evidence that the Data Center has not been abandoned.
  - 2) The County shall review any such response to determine if the Data Center has or has not been abandoned.
  - 3) If it is determined that the Data Center has not been abandoned, the Notice of Abandonment shall be withdrawn, and notice of same shall be provided to the Data Center Owner and/or Operator.
  - 4) If, after review of the Data Center's Owner and/or Operator's response, it is determined that the Data Center has been abandoned, notice of such finding shall be provided by certified mail to the Data Center's Owner and/or Operator.
  - 5) If the Data Center is deemed to have been abandoned, the Data Center's Owner and/or Operator shall have three hundred and sixty-five (365) days from the date of receipt of such notice to dismantle all above and below-ground components of the Data Center. If the Data Center's Owner and/or Operator fails to dismantle the Data Center within the prescribed time period, such shall be considered a violation of this Ordinance and shall be subject to any and all legal remedies available to the

County.

#### 7.20.10 Construction Related Debris.

Construction-related debris and material that is not an integral part of the Data Center will be promptly removed from the Property Owner's property at the Data Center Owner and/or Operator's expense. Such material to be removed includes all litter generated by the Data Center Owner and/or Operator's employees, agents, contractors, or invitees, including construction crews. Following the completion of the Data Center, the Data Center's Owner and/or Operator shall keep the Property Owner's property clean and free of all trash and litter which may have been produced or caused by the Data Center or its employees, agents, contractors, invitees, or its operations on the property. Under no circumstances shall the Data Center's Owner and/or Operator, or its employees, agents, contractors, or invitees, bury or burn any trash, debris, or foreign material of any nature on the property where the Data Center is located.

#### 7.20.11 Reclamation Obligations.

Following the completion of the Data Centers construction, or upon removal of the Data Center, at the expiration, termination, abandonment, or surrender of the Data Center, the Data Center's Owner and/or Operator shall restore the area disturbed by construction as best as practicable to its original preconstruction topsoil, vegetation, elevation, and contour at the Data Center's Owner and/or Operator's expense. Reclamation and restoration of the site shall be done in accordance with industry standards or those set by the County. A reclamation bond as provided herein may be required with the application for conditional use permit materials.

#### 7.20.12 Submittal Requirements.

- a. A narrative describing the proposed data processing facility, including an overview of the project;
- b. A site plan showing the proposed location and dimensions of all equipment, existing and proposed structures, screening, fencing, property lines, access roads, turnout locations, ancillary equipment, and the location of any church, school, or residence within one mile (5,280 feet) of the perimeter of the facility.
- c. A study prepared by an acoustical engineer that describes the anticipated noise level of the facility and any proposed mitigation efforts such as sound walls, baffles, ventilation silencers, additional separation from surrounding uses, etc.
- d. Other relevant studies, reports, certifications, and approvals as may be reasonably requested by the County to ensure compliance with this Ordinance.
- e. Signature of the Property Owner(s) and the Data Center Owner and/or Operator (if different than the property owner).
- f. The Board of County Commissioners shall, by resolution, establish a Data Center Conditional Use Permit Application fee. This fee shall be reviewed and may be adjusted

on an annual basis. This fee shall be payable to the County to be credited to the county's general fund and paid at the time the Data Center Conditional Use Permit Application is submitted. This fee shall be sufficient to offset County review of the application, organization, third-party consulting, holding of public hearings, and other additional costs incurred by the County relative to the Data Center project.

- g. The Data Center Owner and/or Operator agrees that as a condition of any permit issued hereunder, it shall reimburse the County upon presentment of proof by the County of any additional expenses incurred by the County in excess of the Conditional Use Permit Application Fee directly related to the processing of the application.

## **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 Resubdivisions, in order to further the orderly layout and use of land and to ensure proper legal descriptions and documentation 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 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. Within all of the County outside of any municipal or extra territorial boundary, no subdivision of any lot, tract, or parcel of land shall be made; no street, road easement, sanitary sewer, water main, or other improvements in connection therewith shall be laid out, constructed, opened, or dedicated for public use or travel, or for the common use of occupants of buildings abutting thereon, except in accordance with a plat as finally approved by the Board of County Commissioners (NDCC 11-33.2-12(1)).
- b. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger from floods, 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 waste, 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, the existence of wetlands, and 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 are such that they constitute 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 stormwater 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 existing highways 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, the Dickey County Health Department, or other applicable regulations/regulatory agencies.
- 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 this Ordinance. A proposed Subdivision shall be deemed inconsistent with the Comprehensive Plan and this Ordinance when the proposed Subdivision is inconsistent with the purposes, objectives, and/or recommendations of the adopted Comprehensive Plan and this 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 the 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 on the acreage calculation of the legal description of the property.
  - 2) The portion of the property that 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 and 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 Dickey County Comprehensive Plan, the Dickey 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 at which 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 Dickey 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 out lots 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, wells, 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 that divide or border the lots must be shown on the plat.
- b. Proposed uses, stormwater 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 Dickey County Comprehensive Plan and the 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, 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 a 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 transferable 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 that 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 that 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 and 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 and 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 the 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 Dickey 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 Dickey County Recorder's Office.

## **8.9 FORM AND CONTENT**

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

## **8.10 RECORDING**

The subdivider shall record the approved final plat within the Office of the Dickey 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-BUILT PLANS**

After final plat approval by the Board of County Commissioners, the subdivider shall submit to the Planning and Zoning Commission 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 ADMINISTRATIVE 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 are 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 additional lots or parcels and the resulting lots or parcel(s) comply with the requirements of this Ordinance.
- d. The platting of County road rights-of-way.

### **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 is granted for the erection of a building or structure on a 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 a certificate of survey, showing:

- a. Name and address, including telephone number of the 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 the distance of those buildings or structures closest to the 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 Dickey 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 Dickey 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 a 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 the 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 with 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. A 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 right-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 turnarounds 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 turnaround 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 Dickey 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

Dickey 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 the stormwater 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 stormwater 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 stormwater that currently runs onto the Subdivision site. The subdivider shall dispose of all stormwater through the approved stormwater and drainage way system as set forth in the stormwater 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, inspected during construction, and approved by the County Engineer. Building permits for all buildings 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 the 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 Dickey County Health District. 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 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 installs 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 thirty (30) day 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**

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 NDCC Chapter 22-03.

#### **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 on 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 the 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 the maintenance of public improvements or snow removal. In addition, the County will not Be responsible for enforcing any private protective covenants or restrictions, and neither shall the County be compelled to do so.