

Mountrail County

Zoning Ordinance

Amended March 16, 2010

PREAMBLE

**AN ORDINANCE ESTABLISHING COMPREHENSIVE ZONING
REGULATIONS FOR MOUNTRAIL COUNTY**

The intent is to:

Promote the health, safety, moral and general welfare of the county residents and the orderly development of land within the county;

Preserve and maintain agricultural lands for farm use;

Encourage nonfarm growth to locate within existing communities or community-served districts;

Promote a healthy and visually attractive environment;

Promote the development of utility corridors which utilize the least productive agricultural land;

Regulate development in the flood plain areas so as to reduce flood damages and protect stream flows;

Discourage development which places an excessive financial burden on county government.

THIS ORDINANCE IS HEREBY ADOPTED EFFECTIVE THIS 15TH DAY OF MAY, 1982.

THIS ORDINANCE IS HEREBY AMENDED AND ADOPTED ON MARCH 26, 1986 BY THE MOUNTRAIL COUNTY PLANNING COMMISSION AND ON APRIL 1, 1986 BY THE BOARD OF MOUNTRAIL COUNTY COMMISSIONERS.

THIS ORDINANCE IS HEREBY AMENDED AND ADOPTED ON MAY 26, 1993 BY THE MOUNTRAIL COUNTY PLANNING COMMISSION AND BY THE BOARD OF MOUNTRAIL COUNTY COMMISSIONERS.

THIS ORDINANCE IS HEREBY AMENDED AND ADOPTED ON JUNE 13, 2005 BY THE MOUNTRAIL COUNTY PLANNING COMMISSION AND ON JUNE 21, 2005 BY THE BOARD OF MOUNTRAIL COUNTY COMMISSIONERS.

THIS ORDINANCE IS HEREBY AMENDED AND ADOPTED ON FEBRUARY 17, 2006 BY THE MOUNTRAIL COUNTY PLANNING COMMISSION AND ON FEBRUARY 21, 2006 BY THE BOARD OF MOUNTRAIL COUNTY COMMISSIONERS.

THIS ORDINANCE IS HEREBY AMENDED AND ADOPTED ON JUNE 22, 2009 BY THE MOUNTRAIL COUNTY PLANNING COMMISSION AND ON AUGUST 4, 2009 BY THE BOARD OF MOUNTRAIL COUNTY COMMISSIONERS.

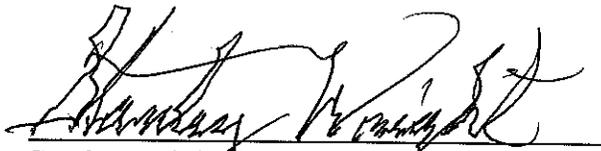
THIS ORDINANCE IS HEREBY AMENDED AND ADOPTED ON FEBRUARY 22, 2010 BY THE MOUNTRAIL COUNTY PLANNING COMMISSION AND ON MARCH 16, 2010 BY THE BOARD OF MOUNTRAIL COUNTY COMMISSIONERS.

ATTEST:


David J. Hynek, Chairman
Board of Mountrail County Commissioners


Joan M. Hollekim
Mountrail County Auditor

ATTEST:


Stanley Wright, Chairman
Mountrail County Palnning & Zoning Board

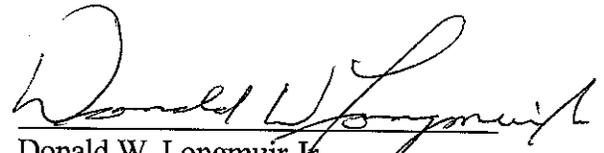

Donald W. Longmuir Jr.
Mountrail County Zoning Administrator

TABLE OF CONTENTS

ARTICLE I	-	INTRODUCTION	Page 1
I	-	Title.....	1
II	-	Purpose.....	1
III	-	Repeal	1
IV	-	Severability	1
V	-	Authority	1
VI	-	Effective Date	1
ARTICLE II	-	GENERAL PROVISIONS	1
I	-	Jurisdiction.....	1
II	-	Compliance	1
III	-	Agriculture Exempted.....	1
IV	-	Interpretation.....	2
V	-	Nonconforming Uses	2
VI	-	Utilities.....	2
VII	-	Mineral Exploration and Mineral Production	3
VIII	-	Sanitary Regulations	3
IX	-	Waste Disposal Sites.....	3
X	-	Animal Feeding Operations	5
XI	-	Wind Turbine Zoning	26
ARTICLE III	-	DISTRICT REGULATIONS.....	38
I	-	Classes of Districts.....	38
II	-	Location of District Boundaries.....	38
III	-	Official Zoning Map	38
IV	-	Ag – Agricultural District	38
V	-	Re – Residential District	40
VI	-	Co – Commercial District	41
VII	-	In – Industrial District.....	42
VIII	-	R-Rec – Rural Recreational District	43
ARTICLE IV	-	ADMINISTRATION AND ENFORCEMENT.....	47
I	-	Duties	47
II	-	Building Permit.....	49
III	-	Amendments	49
IV	-	Conditional Use	50
V	-	Variance	52
VI	-	Certificate of Compliance	53
VII	-	Schedule of Fees and Charges	53
VIII	-	Penalties	54
ARTICLE V	-	DEFINITIONS OF TERMS USED IN THIS ORDINANCE	54
I	-	Rules	54
II	-	Definitions.....	55

**ARTICLE I
INTRODUCTION**

- Sec. I Title: This ordinance shall be known as the “Zoning Ordinance of Mountrail County”.
- Sec. II Purpose: The purpose of this ordinance is to preserve the agricultural use of the land, promote the health, safety, morals, general welfare, and orderly development of Mountrail County.
- Sec. III Repeal: All other ordinances of Mountrail County in conflict with this ordinance are hereby repealed.
- Sec. IV Severability: If any provision or section of this ordinance is adjudged invalid by a court of competent jurisdiction, the remainder of the ordinance shall not be affected.
- Sec. V Authority: This ordinance is adopted under the authority granted in Chapter 11-33 of the North Dakota Century Code.
- Sec. VI Effective Date: This ordinance shall become effective after a public hearing and adoption by the Mountrail County Board of County Commissioners.

**ARTICLE II
GENERAL PROVISIONS**

- Sec. I Jurisdiction:
- A. The jurisdiction of this ordinance shall include all incorporated and unincorporated areas within Mountrail County.
 - B. Any incorporated area or unincorporated area may, by request, be excluded from the Mountrail County Zoning Ordinance upon presentation of a zoning ordinance of their own.
- Sec. II Compliance: Except as hereinafter provided, no building, structure or land shall be erected, repaired or used except in conformance with these regulations.
- Sec. III Agriculture Exempted: Nothing in this ordinance shall be applied for the purpose of preventing or restriction the use of land or buildings for agriculture or any of the normal incidents of agriculture.

Sec. IV Interpretation: In the interpretation and application of this ordinance, the provisions of this ordinance shall be held to the minimum requirements. Where this ordinance imposes a greater restriction than existing law, the provisions of this ordinance shall govern.

Sec. V Nonconforming Uses:

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

Sec. VI Utilities:

- A. All new utilities shall be considered as a conditional use and, as such, shall conform to all requirements put on them by the Planning Commission.
- B. No conditional use permit shall be issued unless satisfactory provisions for the following has been made:
 - 1. Underground utilities shall be placed a minimum depth of four (4) feet so as not to constitute a hazard to normal farming or general county maintenance.
 - a. Above ground utilities shall be placed in a manner which will not place undue hardship on normal farming operations.
 - b. Shall conform with section lines, highway (state and federal) and railroad right-of-ways.
 - 2. The activities will not result in undue damage or injury to roads, bridges, rights-of-way in the county or to any county, public, or private property.
 - 3. Excavation costs for purposes of construction or maintenance of a utility shall be borne by the contractor or owner of said utility.

Sec. VII Mineral Exploration and Mineral Production:

- A. All mineral exploration and mineral production or exploration, production of sand, gravel, scoria, clay activities shall be considered as a conditional use and, as such, shall conform to all requirements put on them by the Planning Commission.
- B. No conditional use permit shall be issued unless satisfactory provision for the following has been made:
 - 1. The activities will not result in undue damage or injury to roads, bridges, rights-of-way in the county or to any county, public, or private property.
 - 2. Evidence of a reclamation agreement with the surface owner.
 - a. Reclamation of project shall be finished within one (1) year of completion of the mineral exploration and/or production activities.
 - 3. Evidence of compliance with all county, state and federal regulations.
 - 4. Evidence that the activity is in compliance with distance requirements in relation to adjacent residents, property owners and water sources as set by the Planning Commission.

Sec. VIII Sanitary Regulations: All residential, commercial or industrial structures shall conform to the North Dakota health regulations as they refer to wells, irrigation, and septic and sanitary systems.

Sec. IX Waste Disposal Sites: At a minimum the following described waste disposal sites shall comply with all applicable state, federal, local laws, rules and ordinances. In addition, the Planning Commission may require compliance to other conditions.

- A. Private Waste Disposal Sites – A solid waste disposal site used exclusively by and only for the landowner engaged in farming. Sites shall be limited to one per landowner and used only for refuse generated from personal farming operation; in addition these sites must comply with Agricultural Stabilization & Conservation (ASC) regulations.
 - 1. Private waste disposal sites shall avoid low and steep areas and be a minimum of two hundred fifty (250) feet (76M) away from waterways.
- B. Commercial Waste Disposal Sites – A solid waste disposal site or facility permitted pursuant to the laws of the State of North Dakota. Waste which is transported to a disposal site shall be by a waste hauler licensed by the State of North Dakota.

1. The site, operation, or facility must meet or exceed all applicable federal, state and local laws, rules, and ordinances.
2. The site, operation, or facility shall be limited to inert solid waste and municipal solid waste. Waste that is deemed hazardous in nature or exerts hazardous characteristics or nuclear waste, sewage sludge, and incinerator ash are not permitted.
3. All areas for excavation and filling operations shall maintain a minimum setback of 150 feet from all property lines.
4. No fires shall be permitted, except by permission of the Board of Mountrail County Commissioners. Any smoldering flame or spontaneous combustions at the site shall be immediately extinguished.
5. The premises shall be kept neat and clean at all times, no loose paper or debris shall be allowed on the site, except on areas where active filling operations are taking place.
6. Entrance to the site shall be controlled at all times to prevent improper dumping on the site.
7. For facilities that manage municipal solid waste, a chain link fence six (6) feet high shall be installed along the boundaries of the area developed or the area of active filling operations and provided with gates of the same construction as the fence.
8. For other facilities, other than a municipal solid waste site, a four-wire barbed wire fence, suitable to restrain livestock, shall be placed around the boundary of the permitted site.
9. Provisions, approved by the Planning Commission, shall be made for the management of surface and storm water falling on or crossing the site at all times, during and after the completion of the operation. Surface and storm water management also shall comply with all applicable federal, state, and local laws, rules, and ordinances. These provisions shall be accomplished through the use of an independent professional engineer that is registered by the State of North Dakota.
10. The depth of excavation and the materials to be used for fill shall not have any adverse effect on the supply or quality of ground water.
11. Operators of a commercial waste disposal facility or site may have an environmental inspector on site. Provisions shall be made for the cost to be paid by the operator to the State Health Department or County as may be negotiated with the State Health Department.

12. Facilities other than ones that manage municipal solid waste would be required to have nonsudden and sudden liability insurance and closure and postclosure insurance payable to the State Health Department.

Sec. X Animal Feeding Operations

A. General Provisions

1. Definitions terms used in this ordinance have the same meaning as given by the laws and rules of the state of North Dakota, specifically chapter 33-16-03 of the North Dakota Administrative Code. The definitions for these terms and for additional terms are:
 - a. Animal feeding operation means a place where: livestock have been, are, or will be confined, concentrated and fed for 45 or more days in any 12 month period; pasture, crops, or other vegetation are not normally managed or sustained for grazing during the normal growing season; and, animal waste or manure accumulates. This term does not include an animal wintering operation. Adjoining animal feeding operations under common ownership are considered to be one animal feeding operation, if they use common areas or systems for manure handling.
 - b. Animal wintering operation means the confinement of cattle or sheep used or kept for breeding purposes in a feedlot or sheltered area at any time between October 15 and May 15 of each production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing. The term includes the weaned offspring of cattle and sheep, but it does not include (1) breeding operations of more than 1,000 animal units or (2) weaned offspring which are kept longer than 120 days and that are not retained for breeding purposes.
 - c. Batch Process. A batch process is a process that generates wastewater in an intermittent time period where the facility can be operating normally and not generate wastewater for extended periods of time. A batch process means that the facility can continue to operate without generating wastewater, except for contaminated storm water. For example, a dry manure system that only generates wastewater as a result of contaminated storm water runoff can be considered a “batch process” because the wastewater is only generated during a storm event.
 - d. Bedding material means an absorbent substance applied to dirt or concrete flooring systems, including wood shavings, wood chips, sawdust, shredded paper, cardboard, hay, straw, hulls, sand, and other similar, locally available materials.

- e. Class I (Waste Classification): Wastes and wastewaters, including storm water, contained or suspecting to contain pollutants at concentrations and volumes which could be deleterious to humans, aquatic life, wildlife, or the beneficial use of the environment if discharged to ground and/or surface water and are generated by a batch or continuous process. Examples include but are not limited to, mobile metals, dissolved salts (>2000ppm), soluble hydrocarbons, nitrogen compounds (>500 ppm), biochemical oxygen demand (BOD) (>1000 ppm), or pH (<4 or >9) or most wet manure systems.
- f. Class II (Waste Classification): Wastes and wastewater, including storm water, containing pollutants listed in Class I but at either significantly less concentration or significantly less volume and/or containing wastes not listed in Class I, in concentrations that may, if discharged to ground and/or surface water may cause degradation of the beneficial use of the water or harm the environment. Examples include but are not limited to, nitrogen compounds (<500 ppm), total dissolved salts (<2000 ppm), temperature, biological and chemical oxygen demands (<1000 ppm), phosphorus, and suspended solids or most dry manure systems.
- g. Concentrated animal feeding operation (CAFO) means an animal feeding operation that is defined as a large concentrated animal feeding operation (Definition p) or as a medium concentrated animal feeding operation (Definition s), or is a small or other type of animal feeding operation designated as a concentrated animal feeding operation in accordance with North Dakota Administrative Code Chapter 33-16-03.1-04 (Designation of concentrated animal feeding operations). For purposes of determining animal numbers, two or more feeding operations under common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.
- h. Continuous Process. A continuous process is a process that generates wastewater on a regular basis where the facility can be operating normally and expect to generate wastewater either daily or weekly regardless of the generation of contaminated storm water. A continuous process means the facility would have to shut down partially or totally in order to prevent the generation of wastewater. For example, a wet manure system at a swine facility generates wastewater on a daily basis and must discharge to the treatment system on a regular basis.
- i. Dry Manure Systems. Waste management that utilizes the dry manure system includes those CAFOs that provide areas for generation and collection of feces and urine on open ground, partially covered area, concrete floors, or other surfaces that does not utilize or otherwise allow liquid to transport the waste from the generation site to the treatment site,

except as storm water runoff (e.g., dairy or beef cattle raised on dirt or concrete feedlot, poultry dry litter systems, other animals corralled on dirt or concrete feedlot).

- j. Due Process involves two essential elements; (1) notice and (2) an opportunity for a hearing. The notice must adequately describe the potential action that might affect the person(s) being notified and it must provide the person(s) a reasonable time to respond. If the person(s) request(s) a hearing, the hearing must be fair and allow the person(s) to present relevant evidence and arguments.
- k. Earthen storage pond or pond means an earthen pond used to store manure, process wastewater and runoff from the production area of a livestock facility.
- l. Existing means in place and operating on the date this ordinance is effective.
- m. Facility or livestock facility has the same meaning as animal feeding operation (Definition a) or concentrated animal feeding operation (Definition g).
- n. Ground water means waters beneath the earth's surface between saturated soil and rock that supplies wells and springs.
- o. High risk environment.
 - i) Surface water with sandy soil, high risk environment based on close proximity (less than one (1) mile) to alluvial terrace deposits, sand dunes, and other highly permeable subsurface environments.
 - ii) Large watershed. High risk environment based on high volume storm water runoff potential based on surface topography, proximity to streams and creeks, erosion potential, and size of watershed up gradient from disposal area, especially if downstream users of surface water for private and/or public drinking water supply and agricultural water supply.
 - iii) Unconfined aquifer, shallow, private/public water supply, high risk environment based on shallow depth to ground water that is or could be locally used for private and/or public drinking water.
 - iv) Health/Property. High risk environment based on less than one (1) mile proximity to existing neighboring business, residences, agricultural work areas, or other highly used structure, public or private, that would be adversely impacted by air or water pollutants

generated by the facility, including but not limited to chemicals, sulfur compounds, nitrogen compounds, dusts, pollens, airborne disease, and malodorous odors.

- p. Large concentrated animal feeding operation means any animal feeding operation that stables or confines an animal unit capacity of 1,000 or more animal units. For livestock numbers see p.10, equivalent animal numbers.
- q. Livestock means any animal raised for food, raw materials or pleasure, including, but not limited to, beef and dairy cattle, bison, sheep, swine, poultry and horses. Livestock also includes fur animals raised for pelts.
- r. Manure means 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.
- s. Medium animal feeding operation means any animal feeding operation that stables or confines an animal unit capacity between 300 and 999 animal units. For livestock numbers see p.10, equivalent animal numbers.
- t. Medium concentrated animal feeding operation means a medium animal feeding operation that meets either one of the following conditions:
 - i) Pollutants are discharged into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or
 - ii) Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
- u. Open lot means livestock pens, feeding or holding areas at the production area of an animal feeding operation which are outside and not under roof, and where rain can fall directly on the lot area.
- v. Operator means an individual or group of individuals, a partnership, a corporation, a joint venture, or any other entity owning or controlling one or more animal feeding operations or animal wintering operations.
- w. Pollutants mean “wastes” as defined in subsection 2 of North Dakota Century Code Section 61-28-02, including dredged soil, solid waste, incinerator residue, garbage, sewage, sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharge into water.

- x. Production area means those areas of an animal feeding operation used for animal confinement, manure storage, raw materials storage, and waste containment. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milking rooms, milking centers, cattle yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment area includes, but is not limited to, settling basins, area within berms, and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of mortalities.
- y. Runoff means rainwater or snow melt that comes in contact with manure at an open lot or open manure storage area and, therefore, is defined as manure.
- z. Runoff pond means an earthen storage pond that is used to collect and store runoff from an open lot or from a manure storage area.
- aa. Shall means that the requirement is mandatory, rather than optional.
- bb. Small animal feeding operation means any animal feeding operation that stables or confines less than the numbers of animals specified for a medium animal feeding operation (Definition s).
- cc. Small concentrated animal feeding operation means any animal feeding operation that stables or confines less than the number of animals specified for a medium animal feeding operation (Definition s) and is designated as a CAFO in accordance with North Dakota Administrative Code 33-16-03.1-04.
- dd. Surface water means waters of the state located on the ground surface such as lakes, reservoirs, rivers and creeks.
- ee. Waters of the state means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on or under the surface of the earth, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, except those private waters that do not combine or effect a junction with natural surface or underground waters just defined.

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

B. Equivalent Animal Numbers

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

Livestock Type	Animal Unit Equivalent	Equivalent Numbers of the Livestock (hd) for Four Sizes (a.u.) of Animal Feeding Operations			
		300 a.u.	1,000 a.u.	2,000 a.u.	5,000 a.u.
1 horse	2.0	150 hd	500 hd	1,000 hd	2,500 hd
1 dairy cow	1.33	225	750	1,500	3,750
1 mature beef cow	1.0	300	1,000	2,000	5,000
1 beef feeder-finishing	1.0	300	1,000	2,000	5,000
1 beef feeder-backgrounding	0.75	400	1,333	2,667	6,667
1 mature bison	1.0	300	1,000	2,000	5,000
1 bison feeder	1.0	300	1,000	2,000	5,000
1 swine, >55 lbs	0.4	750	2,500	5,000	12,500
1 goose or duck	0.2	1,500	5,000	10,000	25,000
1 sheep	0.1	3,000	10,000	20,000	50,000
1 swine, nursery < 55 lbs	0.1	3,000	10,000	20,000	50,000
1 turkey	0.0182	16,500	55,000	110,000	275,000
1 chicken	0.01	30,000	100,000	200,000	500,000

C. Environmental Protection

The operator of a new facility for animal feeding is expected to locate, construct, operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. The operator of an existing facility is expected to operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. Each operator shall comply with applicable state laws and rules, including the laws and rules administered by the North Dakota Department of Health and with any permits granted by that department.

1. Enforcement

In the event of a violation of this ordinance or a judgment on a civil action by the North Dakota Department of Health, the local unit of government, after due process, can order cessation of a facility for animal feeding within a reasonable period of time and until such time as the operator corrects or abates the cause(s) of the violation. If the cause(s) of the violation are not remedied within a reasonable period of time as set by the local unit of government, the permit may be revoked.

2. Severability

If any paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this ordinance.

D. Setback Requirements

1. Water Resources Setbacks

The operator of a new animal feeding operation that has more than 1,000 animal units shall not locate or establish that operation:

- a. Within a delineated source water protection area for a public water system. The source water protection areas for water supply wells include the entire wellhead protection area. For the surface-water intakes of public water systems, source water protection areas include all or portions of the surface water that supplies the water for the public water system, including all or portions of the surface-water's shoreline.
- b. Within 1,200 feet (365.6 meters) of a private ground water well which is not owned by the operator or within 1,500 feet (457.1 meters) of a public ground water well which does not have a delineated source water protection area.
- c. Within 1,000 feet (304.7 meters) of surface water which is not included in a source water protection area.

2. Odor Setbacks

The operator of a new facility for an animal feeding operation shall not locate that operation within the extra territorial zoning jurisdiction of an incorporated city.

An owner of property shall locate and establish a residence, business, church, school, public park or zone for residential use so as to provide a separation distance from any existing animal feeding operation. The separation distances, or setbacks, are listed in the following table. An owner of property who is an operator may locate the owner’s residence or business within the setbacks. The Planning & Zoning Commission, upon approval of the County Commissioners may vary the setback distance after review of the permitting process.

Setback Distances for Animal Feeding Operations			
	Number of Animal Units	Hog Operations	Other Animal Operations
Established Residences	5-50	0.50 mi	Not Applicable
	51-299	2.00 mi	0.50 mi
	300 – 1000	2.00 mi	0.50 mi
	1001 or more	2.00 mi	0.50 mi
	2001 or more	2.00 mi	0.75 mi
	5001 or more	2.00 mi	1.00 mi
Churches, Businesses, Commercially Zoned Areas, Recreational Areas, Schools	5-50	0.50 mi	Not Applicable
	51-299	2.00 mi	0.50 mi
	300 – 1000	2.00 mi	0.50 mi
	1001 or more	2.00 mi	0.50 mi
	2001 or more	2.00 mi	0.75 mi
	5001 or more	2.00 mi	1.00 mi
Incorporated City Limits, Unincorporated Platted Limits, and Exterior Boundary of City Zoning Limits	5-50	0.50 mi	Not Applicable
	51-299	2.00 mi	0.50 mi
	300 – 1000	2.00 mi	0.50 mi
	1001 or more	2.00 mi	0.50 mi
	2001 or more	2.00 mi	0.75 mi
	5001 or more	2.00 mi	1.00 mi
Federal or State Highway ROW	Fewer than 300	0.25 mi	0.25 mi
	300 – 1000	0.25 mi	0.25 mi
	1001 or more	0.25 mi	0.25 mi
	2001 or more	0.25 mi	0.25 mi
	5001 or more	0.25 mi	0.25 mi
County & Township Road ROW and Adjacent Property Lines	Fewer than 300	150 Feet	150 Feet
	300 – 1000	150 Feet	150 Feet
	1001 or more	150 Feet	150 Feet
	2001 or more	150 Feet	150 Feet
	5001 or more	150 Feet	150 Feet

The operator of a new animal feeding operation shall locate the site of that operation from existing residences, businesses, churches, schools, public parks and areas of property that are zoned residential so as to exceed the corresponding listed setback from these places.

If notified in writing by an operator of a planned future expansion of an animal feeding operation, the local unit of government may implement the corresponding odor setback for a temporary time period not to exceed two years, after which time the setback will remain in effect only if the expansion was completed.

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

E. Conditional Uses

1. Permit Procedures

a. Applicability

The operator of a new livestock facility or an existing livestock facility, which meets the definition of an animal feeding operation and which is a conditional (or special) use of land as listed below, shall apply for and obtain a conditional (or special) use permit.

- i) A new animal feeding operation that would be capable of handling, or that expands to handle, more than 50 animal units is a conditional (or special) use of land.
- ii) An existing animal feeding operation that expands to handle more than 50 animal units is a conditional (or special) use of land.
- iii) Whenever the capacity of an animal feeding operation is expanded to handle more than 2,000 or 5,000 animal units, the operator shall apply for a new conditional (or special) use permit.

b. Procedure

The local unit of government may practice any or all of the provisions in the following subparagraphs in harmony with the permitting process of its general zoning regulations.

- i) Application for a conditional use (or special use) permit shall be submitted to the local unit of government for tentative approval. The local unit of government shall notify the Department of Health that it has received such application.
 - ii) A fee of \$500.00 shall be paid by the applicant upon filing an application for a conditional use (or special use) permit for a animal feeding operation.
 - iii) The local unit of government shall notify by certified mail all property owners having property within the corresponding odor setback distance of a proposed new animal feeding operation. This notification must occur within 21 days of receiving the application. The approval process utilized by the local unit of government may include at least one advertised public hearing.
 - iv) Following tentative approval or denial of the application by the local unit of government, the applicant shall be notified by letter of the decision, including conditions imposed, if any.
 - v) The applicant shall then forward its application for a conditional (or special) use permit, together with the tentative approval by the local government, to the North Dakota Department of Health.
 - vi) Following a review by the Department of Health of the operator's application for a state permit, the Department of Health will notify the local unit of government of its decision.
 - vii) The conditional (or special) use permit will become final following the granting of a permit by the Department of Health.
 - viii) A conditional (or special) use permit granted to the operator of a new animal feeding operation shall be put into use within twenty-four (24) months, or the permit shall lapse and the operator may re-apply.
- c. Application Requirements

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

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

2. Ownership Change

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

3. Operating Change

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

F. Closure and Financial Assurance Instruments

The Mountrail County Commissioners shall establish by rule the conditions and standards for proper closure of a concentrated animal feeding operation upon cessation of operations. These shall address at a minimum lagoon draining, cleaning and filling, removal of waste handling facilities and equipment, and other conditions to assure public health and safety.

Financial assurance instruments (irrevocable letter of credit, cash surety bonds or cash bonds) shall be posted in an amount sufficient to ensure proper closure. The exact amount shall be site-specific and shall be determined by a study conducted by a professional engineer or consultant licensed by the state. The cost of the engineer's or consultant's study will be paid for by the developers (posting entity).

Upon proper closure, as determined by an inspection by the Health Department and/or County Representative the financial assurance instrument shall be returned to the posting entity.

If upon inspection by the Health Department and/or County Representative it is determined that conditions exist that do not comply with the closure rules, funds shall be acquired from the financial assurance instrument to achieve such compliance. Any unspent portion of such financial assurance instrument shall be returned to the posting entity.

If the County Commissioners determine that an emergency situation requiring immediate corrective action exists, they can utilize the financial assurance instrument to correct the emergency situation. The financial assurance instrument will be reimbursed to the original amount by the duly signed person(s) on the permit or registration application within ninety (90) days of the emergency or as agreed upon by the County Commissioners. The County Commissioners must sign on the bond between the facility and the bonding company. If there is any change in the bond, security, or surety, the County must be immediately notified in writing.

1. Closure Requirements

The following closure requirements are intended for all new CAFOs located in Mountrail County that have an animal unit capacity of 1000 animal units or more. Existing facilities may use these closure regulations voluntarily as a part of their environmental program. The county reserves the right to require closure of any impoundment using these requirements that is shown to pose imminent and substantial harm to human health or the environment.

- a. Notice of termination The owner, operator or permittee (if permitted) shall provide the county with a minimum of thirty (30) days written notice prior to permanent cessation or abandonment of the animal feeding operation or any part of the wastewater treatment system. Written notice shall contain, at a minimum, the following information:
 - i) Name, address, and title of person(s) who is in charge or will remain in charge of or otherwise have continuing management responsibility of the facility or site and who will retain an ownership interest in personal or real property affected by the permitted action.
 - ii) A detailed schedule of proposed closure activities of the operation and/or any part of the abandoned wastewater treatment system.
 - iii) Forwarding addresses and names of each present owner and/or operator and the forwarding addresses and names of any other person listed in a County Permit for the facility, in the case of closure of the operation.
- b. Requirements are mandatory. It shall be a violation of these rules to permanently cease the use or abandon any facility or site or any part of the

wastewater treatment system, including but not limited to pits, lagoons, impoundments, piping, disposal areas, storage areas, and land application sites without complying with notice and closure requirements.

- c. Correction of environmental damage. The county may require such continuing monitoring, sampling, reporting, or other remedial measures as deemed appropriate and necessary to correct environmental damage resulting from the activities subject to the requirements of these rules. Appropriate and necessary remediation measures shall be reviewed and approved and/or determined by the county on a case-by-case basis as allowed by this regulation and other applicable rules and laws. The county may require that the permittee or person(s) responsible for proper closure of the facility to provide such information to the county as is necessary to determine what remedial measures are appropriate and necessary.
- d. Conditions requiring closure and time for closure. When any part of a wastewater treatment system, including but not limited to concrete pits, surface impoundments, sludge disposal areas, carcass disposal areas, and land application sites, is to be permanently taken out of the intended service or if the contents of the system or use of the system poses an direct, imminent, or substantial risk to the health and environment or irreparable harm to waters of the state, the owner or operator or permittee (whichever is applicable) shall be required to properly close the part of the wastewater treatment system within six (6) months, unless a longer amount of time is granted by the county.
 - i) Imminent harm. The county may order or otherwise require closure within a shorter period of time as allowed by law in appropriate circumstances, such as in cases where it is necessary to protect human health and welfare or to protect wildlife or beneficial uses of waters of the state.
 - ii) Waiver of closure requirements. The county may waive some or all closure requirements if the surface impoundments or other aspects of the wastewater treatment system must be closed under federal (e.g., Resource Conservation & Recovery Act (RCRA) regulations) or state regulations (e.g. N.D. regulations), if such regulations provide equivalent protection of the health and environment as provided by these county regulations.
 - iii) Prevention of formation of nitrates. The closure of surface impoundments that contained wastes and wastewaters generated by a wet manure system shall be considered a priority in order to prevent the formation of nitrates by any accumulation of ammonium-saturated soils that when environmentally conditions change may be biologically changed to nitrates.

- iv) Empty surface impoundments. At no time shall a surface impoundment be placed into operation if allowed to dry to the point of erosion and cracking of the soil liner system without physical improvement to the liner system, a new assessment of the liner permeability and seepage, and approval by the county to utilize the lagoon as part of the wastewater treatment system for a wet manure system.
- v) Liner integrity. The partial or total closure of surface impoundments shall be required if the liner integrity has been jeopardized beyond reasonable repair, including but not limited to the following situations:
 - 1) Flexible membrane liner bubbles. If the flexible membrane liner develops bubbles that push the liner material from the sub grade material. A partial closure may be required to remove the liquid in the lined lagoon prior to remedying the problem area. A total closure may be required, if the integrity of the liner has been jeopardized beyond reasonable repair.
 - 2) Soil or clay liner erosion. If the soil or clay liner has eroded beyond reasonable repair causing the potential for leakage into the subsurface, a partial or total closure may be required.
- vi) Closure requirements. The following closure requirements apply to any animal feeding operation wastewater treatment system which is permitted by the county or contains or has contained wastes regulated by the county:
 - 1) Pre-closure site investigation. Prior to submitting a closure plan to the county, the owner or operator or permittee, whichever is appropriate, shall perform a pre-closure site investigation after the county has approved the pre-closure site investigation and sampling plan.
 - a. Plan submittal. A pre-closure site investigation and sampling plan shall be prepared and submitted to the county for approval at least thirty (30) days prior to any pre-closure sampling, monitoring, or other site investigation. The plan shall including the following:
 - i. Narrative description of the proposed pre-closure site investigation including a list of all systems, impoundments, appurtenances, structures, disposal areas, and other areas of environmental concern will be evaluated for potential sites

for sampling, monitoring, or other names of investigation used to determine closure activities.

- ii. A detailed description of any ground water, surface water, and/or soil sampling including a facility map showing intended sites for sampling; description of sampling methods, list of analytical parameters including EPA method, detection limit, and units of reporting; and intended purpose for each type of sampling and analysis.
- b. Monitoring plan. Any monitoring plan shall include the applicable requirements as listed by the state and this ordinance.
 - c. Approval of plan. The county will review the pre-closure site investigation and sampling plan within thirty (30) days of submittal to the county and respond to the submitter with either a list of deficiencies or an approval of the plan. If deficiencies are identified by the county, the submitter shall promptly correct such deficiencies and submit a revised plan.
 - d. Site investigation and reporting. The owner or operator or permittee, whichever is applicable, shall perform the site investigation and report to the county the results of all ground water, surface water, and soil analyses, as well as prepare a brief summary of all critical environmental problems that will be addressed in the closure plan.
- 2) Closure procedure. The following procedure shall be used for proper closure of animal feeding operation wastewater treatment systems:
- a. Plan submittal. A written closure plan shall be submitted to the county at least ninety (90) days prior to commencing closure, unless a lesser amount of time is granted by the county.
 - b. Closure action. Closure activities shall occur as specified in the closure plan.
 - i. The county shall be notified at least five (5) working days prior to the commencement of closure in order to facilitate on-site inspection or other site visit.
 - ii. If the wastewater treatment system contained Class I or Class II wastewater or is located in a high risk environment, the closure activities shall be overseen by a

professional engineer registered in the State of North Dakota or if approved by the county, by an environmental specialist with formal training in wastewater treatment and ground water pollution controls.

- c. Amendments. Any amendments to the closure plan shall be submitted in writing to the county for review and approval before any closure activity is altered, replaced, or deleted. Arrangements may be made with county for verbal approval of changes during closure activities, when necessary for safe and effective closure, providing that the changes are immediately submitted in writing for inclusion in the public file.
 - d. Commence activities. Closure activities shall not commence until the closure plan and all amendments thereto have been evaluated by the county and the county has issues a written determination that, based upon information provided to the county, the closure plan or the amended closure plan meets the requirements of the county and these regulations.
 - e. Certification of closure. A closure shall not be considered complete until the county has received written certification of closure, which shall include the following:
 - i. A statement that all activities listed in the county-approved closure plan was performed.
 - ii. A list of all closure activities that were performed (e.g., filed notes from the attending engineer) and a narrative discussion of all inspections, sampling and analysis, and other pertinent information as may be required by the county.
 - iii. If the wastewater treatment system contained a Class I or Class II wastewater, the certification shall be prepared and signed by a professional engineer registered in the state of ND, or if approved by the county, by an environmental specialist with formal training in wastewater treatment and ground water pollution controls.
- 3) Closure plan content requirements. At a minimum, the written closure plan shall include the following information, as well as information as requested by the county:
- a. General information. The following general information shall be provided in all closure plans:

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

soil maps from the Soil Conservation Service and/or recent aerial photographs shall be included.

- ii. Ground water information. Identify major and minor ground water aquifers, recharge areas, depth to ground water for both shallow and drinking water sources, local and regional direction of flow, and estimated or actual background water quality of the shallow and drinking water source. Topographic, geologic, hydrologic, and other maps shall be used to indicate location and extent of ground water at the site, including local and regional direction of ground water flow.
 - iii. Surface water information. Identify surface water bodies that may be hydraulically connected to the ground water or are immediately down gradient of the drainage area around the waste management system, including the land application area to be closed. Trace the drainage to the nearest major watercourse on a topographic map of appropriate scale.
 - iv. Plans and specification. Provide the engineering plans and specification that details the “as-built” conditions of the waste management system to be closed indicating the dimensions of the impoundments, location of and materials used for piping and appurtenances, location of inflow and outflow piping, location and thickness of sludge, and depth of wastewater in each impoundment.
 - v. Land application area. Provide records that state the amount and type of wastewater land applied to the land application area, the type of crops grown, number of crops grown using wastewater, annual volumes of wastewater applied, wastewater analysis(es), and soil tests.
- c. Waste characterization. The following minimum information about the wastes currently contained and historically contained in the waste management system shall be provided in the closure plan.
- i. Historically contained wastewater. Provide an inventory of wastes and other records that indicate the types and concentration of wastes and wastewaters that are contained in the waste management system to be closed. Indicate the frequency and volume of each type of waste that was or may have been contained or otherwise placed in the system,

including but not limited to pesticides, rat and fly bait, pharmaceuticals, manure and urine, disinfectants, feed additives (e.g., metals, nutrients, and other conservative materials) and any solid waste, such as dead animals, placentas, waste feed, and sharps. Include spill response data sheets.

- ii. Currently contained wastewater. Provide a wastewater analysis of the waste or wastewater currently contained in the waste management system using composite samples for overall characterization and grab samples that are representative of the most concentrated portions of the waste to determine areas of priority clean-up.
- d. Sampling, analysis, and monitoring plans. Sampling, analysis, and monitoring used before, during, and after closure shall be proposed to the county in a written plan as follows:
- i. Sampling and analysis plan. All sampling and analysis of the currently contained wastewater shall be performed according to a pre-approved written sampling and analysis plan developed using regulations for “pre-closure sampling”.
 - ii. Monitoring plan. All monitoring shall be performed according to a pre-approved written monitoring plan developed using regulations for “monitoring plan”.
 - iii. Sampling and monitoring locations. All sampling and monitoring locations shall be clearly indicated on a facility map accompanied with a description of the location of each site, purpose of each sampling and monitoring site, and duration of sampling and monitoring at each site.
- e. Treatment, removal, and disposal. The closure plan shall include the following minimum discussion of treatment, removal, and disposal activities, as well as any additional information required by the county or deemed necessary for clarification:
- i. Treatment. Describe all treatment methods to be used to treat or reduce any wastewater and/or sludge in the impoundment (e.g., chemical or physical treatment, phase separation, waste stabilization, or other method). Provide a written rationale for each treatment method to be used, the

anticipated outcome of that treatment, and sufficient evidence of its effectiveness.

- ii. Removal. Describe all removal activities for all wastes, wastewaters, sludges, liner materials, and contaminated subsoils (e.g., volume to be removed, equipment used, dust control, spill response, containers, transport, and other activities).
 - iii. Backfill. If the waste management system, part or in whole, is to be closed by backfilling with soil, estimate the volume of soil needed considering compaction and settling. Include discussion of the material used as backfill, its source, method of compaction, and other activities.
 - iv. Disposal. Provide the name and location of all off-site facility(ies) to be used to dispose of materials removed from the site, including but not limited to piping and fittings, tanks, concrete, liner materials, appurtenances, construction debris, contaminated subsoils, wastes and wastewaters (both treated and raw waste), and provide the name of the issuing agency (if disposal permit is required), permit number or other information necessary to determine proper authorization can and will be obtained for such disposal.
- f. In-place closure requirements. In addition to the other requirements listed in these closure regulations, the following additional requirements shall apply for “in-place closure”:
- i. Pollutants of concern. List the types and potential concentrations of the pollutants of concern that are or may be present in the wastes and wastewaters, sludges, and contaminated subsoils.
 - ii. Alternatives. If the pollutants cannot be physically removed in total or must otherwise be closed in place, the closure plan shall include a discussion or remediation alternatives evaluated prior to the decision to use “in-place closure” (ie., closing with some portion of the pollution in-place). Typical alternatives include: clean closure, waste reduction, or chemical, physical, or biological treatment and documentation as to the effectiveness of each alternative.
 - iii. Containment. Include a discussion of containment alternatives (e.g., waste stabilization, impervious cap, or

other system of protecting waters of the state, public health and the environment) and documentation as to the effectiveness of the containment measure.

- iv. Partial remediation. Include a proposal of which remediation and/or containment alternative(s) will be implemented for each portion of the waste management system to be closed. Include sampling and analysis plan that will provide information about the type and concentration of pollutants left in the closed facility and portions thereof that are part of the waste management system closed.
- v. Post-closure activities. Include discussion of all post-closure activities, such as ground water monitoring, surface water monitoring, water or land use restriction, or deed restrictions.
- g. Clean closure requirements. In addition to other requirements listed in these closure regulations, the following additional requirements shall apply for “clean closure”:
 - i. Pollutants of concern. List the types and potential concentrations of the pollutants of concern that are or may be present in the wastes and wastewaters, sludges, and contaminated subsoils.
 - ii. Alternatives. Provide an evaluation of the feasibility of “clean closure” (ie., complete removal all wastes and wastewaters, contaminated subsoils, liner materials, equipment, piping, concrete, etc. and insuring contaminated subsoils are at a level similar to background concentration or at a level that will not adversely impact the environment, waters of the state, or public health). Include a discussion of available technology to be used, extent of contamination, effectiveness of technology, and other decision factors.
 - iii. Full remediation. Include a proposal of which remediation and/or containment alternative(s) will be implemented for each portion of the waste management system to be closed. Include sampling and analysis plan that will provide information about the type and concentration of pollutants left in the closed facility and portions thereof that are part of the waste management system closed.

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

Sec. XI Wind Turbine Zoning:

A. Purpose

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

B. Regulatory Framework

A wind energy facility may only be constructed in the County if the applicant first obtains a permit and complies with the conditions of this ordinance.

C. Applicability

The requirements of this ordinance apply to a wind facility, or any portion of one, erected in this County after the effective date of this ordinance if the facility contains any wind turbine rated at 50 kilowatts or more nameplate capacity. No wind turbines shall be located or permitted in any area zoned Residential or Rural Recreational.

D. Definitions

1. Adjoining land is real property that has a different owner than the host property and is either contiguous to the host property at any point or segment, or is separated from the host property by an intervening fee simple interest that is less than 5RD.
2. Airstrip is a takeoff and landing area for fixed wing aircraft, whether publicly or privately owned, that was given an FAA numerical designation sometime before March 1, 2009.
3. Applicant is a person who filed an application for a conditional use permit.

4. Facility owner means person(s) having an equity interest in the wind energy facility.
5. Feeder lines are power lines between a wind energy facility's collector stations or substations and the region's high voltage transmission lines.
6. Gross weight means the weight of a vehicle without a load plus the weight of any load on it.
7. Host party is the very lot on which a wind turbine is located. A wind energy facility may contain several host properties. The fact that adjoining properties having various respective owners are covered by related options, leases, or easements to a single facility owner does not cause the various land owners to be a single host property. Each parcel containing a turbine is a host property even if an abutting property belonging to another property contains a turbine belonging to the same facility owner.
8. Hub height means the distance measured from the surface of the tower foundation to the height of the axis of the wind turbine hub.
9. MET Tower means a meteorological structure used to collect data on wind and/or weather conditions.
10. Occupied structure is manmade shelter in which people either live, meet, conduct business, or gather, in addition it includes but is not limited to a residence, dwelling, apartment house, condominium, or residential setting; any structure open to the public for business that regularly conducts business including but not limited to a hotel, motel, campground, stable, mall, school, hospital, church, public library, store, manufacturing facility, or sport venue; or other structure that is either legally inhabited, in use or under substantial construction (e.g. surface has been improved in preparation for construction) at the time the permit application is submitted for use as one of the above.
11. Operator means the person responsible for the day-to-day operation and maintenance of a wind energy facility. A facility owner may contract with or hire a person to operate it.
12. Permittee is the person holding the conditional use permit. Permittee may include the subsidiaries, agents, subcontractors, independent contractors, and employees of the person holding the permit; i.e. for purposes of liability for road damage caused in erection or maintenance.
13. Person means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

14. Public road means every way or place generally open to vehicle travel, even though it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair or maintenance. NDCC 57-43.1-01 A section line is a public road NDCC 27-07-03.
15. RD is an abbreviation for “rotor diameter” which is the distance of a line segment that bisects the center of the hub and terminates at the circle that encompasses the tips of each rotor blade that are farthest from the hub. For example “RD” means a distance equal to five times the rotor diameter or ten times the radius and on a turbine with rotor blades 70 meters long (measured from the center of the hub) the rotor diameter will be 140 meters.
16. Site is a contiguous tract or group of parcels for which one operator and/or facility owner or a group acting in concert has option agreements, easements, and/or leases acquired to operate a turbine, wind energy facility or accessory thereto.
17. Site perimeter is the outside boundary of the contiguous parcels all having either an option, easement, and/or lease agreement for a wind energy facility accessory to the same facility owner.
18. Turbine height means the distance measured from the ground level surface of the tower foundation to the highest point of the turbine rotor plane.
19. Wind turbine (also known herein as turbine) captures kinetic energy from the wind to drive an electrical generator. Its typical components include blades, tower, accelerator platform or nacelle body.
20. Wind energy facility means an electric generating facility, the main mechanical or electrical purpose of which is to supply electricity. It consists of one or more wind turbine and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

E. County Zoning Administrator

Wind turbine zoning shall be administered by the Mountrail County Commission with supervisory assistance from the Mountrail County Zoning and Planning Commission, the County Zoning Administrator, and supplemental Assistance from other county departments.

The Zoning Administrator shall have the following duties:

1. Conduct preliminary administrative review of each permit application, variance request and other information as required by this Ordinance and

forward recommendations for disposition to the County Zoning and Planning Commission or the County Board.

2. Schedule meetings and hearings that are required by law or by this ordinance, providing notice to the board members, the press, and the party who sought the hearing.
3. If there is cause to believe work is being done or a condition exists that is contrary to this provisions of the Ordinance, the Zoning Administrator shall in his discretion decide whether to investigate personally or with the assistance of the Sheriff's office and whether to recommend to the County Planning and Zoning Commission that a stop work order be issued. Any stop work order shall be served upon the owner and/or operator in accord with the provisions of Rule 4 of the North Dakota Rules of Civil Procedure, service upon the permittee's named agent for service of process is satisfactory.
4. Mail notice of authorization to proceed to the owner and/or operator after the County Planning and Zoning Commission has determined that a violation of this Ordinance, for which a stop work order was issued, has been remedied.
5. Conduct in depth appraisal of applications for conditional use or variances to ensure they satisfy the criteria for the benefit sought.
6. Mail any permit issued by the Planning and Zoning Commission to the facility owner.
7. Maintain records and permits as required by this Ordinance. Any records required to be maintained by the State shall be provided by the Zoning Administrator upon request.
8. Provide open records to requestors concerning this Ordinance in accord with the open records law.
9. Inspect wind energy facilities to insure compliance with the standards of this Ordinance. The Zoning Administrator is to rely on the Sheriff's office and its trained investigators for detailed investigations. The Zoning Administrator should consider requesting the Sheriff's assistance if there is cause to believe there is a violation of this ordinance that may require issue of a stop work notice.

F. Conditional Use Permit Availability by Zone

A wind energy facility or part of one will be conditionally permitted or not permitted based on the generating capacity and land use district as established in the table below:

Zoning District	Not Permitted	Conditional Use Permit
Agricultural (Ag)		Yes
Commercial (Co)		Yes
Industrial (In)		Yes
Residential (Re)	XXX	
Rural Recreational (R-Rec)	XXX	

G. Conditional Use Permit Application Process

Work may commence to construct a wind energy facility only after county conditional use permit has been issued by the County Board. This does not preclude wind monitoring, soil testing, or survey work prior to obtaining a permit, however, even prior to applying for or receiving a conditional use permit for a wind energy facility, MET towers must be lighted and marked (aka painted) according to this Ordinance.

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

1. A check or money order for the \$25,000 permit fees. The fees include \$1,000 for each turbine planned and/or erected, whichever is greater, plus a base fee of \$1,000 for each site.
2. The name, business address and phone number of the person in whose name the permit is to be issued and if the authorized agent for service of process is different than the permit holder, the name and North Dakota address of the agent of the person authorized to receive service of process on the person’s behalf.
3. Evidence of the applicant’s capacity to contractually bind the person seeking the permit and authority to make binding representations on the person’s behalf to municipalities for purposes of zoning, siting, and construction of a wind-energy facility.
4. A schedule for the proposed start and completion of construction of the facility which includes the applicant’s proposal for final repairs to public roads.
5. The applicant shall include in the application information describing the applicant’s wind rights within the boundaries of the proposed site.
6. The applicant shall provide a registered professional engineer’s report as described below in road protection

7. A USGS topographical map of the wind energy facility and 1,320 feet of adjoining land, not-participating land, contiguous with any proposed host property. The following shall be clearly marked on the map:
 - a. Each existing: wind turbine, wind energy facility fixture, regardless of ownership, accessory structure or building, including substation, meteorological tower, electrical infrastructure, and collector line or transmission line;
 - b. Each of the applicant's proposed improvements for the wind energy facility or accessory structure or building, including each wind turbine, MET tower, electrical line, and access road;
 - c. Each occupied structure, improvement, public road, private road, utility line, public facility;
 - d. All section lines and any boundaries between abutting parcels, tracts, or lots owned by different parties;
 - e. Boundaries of any easement for section line, public road, highway, that is within 5RD of any envisioned or probable wind turbine site;
 - f. Boundaries of any filed lease, easement, or option for wind energy facilities, whether they benefit the applicant, the applicant's probable operator, or an unrelated party;
 - g. The site boundary;
 - h. Each public or private airstrip with FAA identification number see http://www.faa.gov/airports_airtraffic/airports/airport_safety/airportdata_5010/;
 - i. Natural terrain features; and
 - j. Either noted on the map and/or via key, the names of the property owners inside the site and of the property owners for adjoining land.

H. Public Hearing

After receipt of the application, the Zoning Commission will review the application and will hold at least an initial public hearing on the application within 45 days of receiving the application. The Zoning Administrator shall publish notice of the meeting in the official newspaper of the County at least 14 days prior to the hearing.

I. Deliberation and Decision

If the Zoning Commission finds that the application satisfies the application criteria and is satisfied the prospective permittee will satisfy the conditions in this Ordinance, then it shall issue a conditional use permit within 60 days of making that finding. The County Board stands as the Board of Adjustment and Appeals.

J. Demonstration of Compliance

The Permit issued pursuant to this Ordinance is conditioned on the Permittees's final demonstration of compliance with the requirements of the Ordinance following completion of construction of the facility. Within 90 days of facility construction completion, the Permittee shall submit to the Zoning and Planning Commission an updated and final USGS topographical map, or survey if available, providing all information pursuant to F and demonstrating actual compliance with the requirements and conditions of the permit.

K. Appearance, Lighting, Sound, Agricultural Operations, Roads, and Power Lines

1. Wind turbines shall be painted a non-reflective coating and in a non-obtrusive color.
2. Turbines shall not display any advertising.
3. Each turbine will be marked with an identification number large enough to assist identification of the turbine number in an emergency.
4. Turbines are to be lighted to the extent advised by the FAA in FAA Advisory Circulars 47CFR§§17.21-17.58 or their successors.
5. At wind energy facilities, the location and construction of access roads and other infrastructure shall, to the extent reasonably 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 building parallel or perpendicular to existing roads, not diagonally across fields for mere convenience of the shortest route to a turbine.
6. The Permittee shall promptly replace or repair all fences or gates removed or damaged during all phases of the Wind Energy Facility's life, unless otherwise negotiated with the affected landowner. When the Permittee installs a gate where electric fences are present, the Permittee shall provide for continuity in the electric fence circuit.
7. 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. Feeder lines are excepted from the requirements in this paragraph.

8. The Permittee shall place overhead feeder lines on public right-of-way, if a public right-of-way exists, or the Permittee may place feeder lines on private property. A change of routes may be made as long as the feeder remains on public right of way and approval has been obtained from the government responsible for the affected right-of-way. When placing a feeder line on private property, the Permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.
9. MET towers 100 feet or more tall must be marked and lighted in a way that satisfies FAA advice set out in FAA Advisory Circulars 47 CFR §§ 17.21-17.58 or their successors. <http://wireless.fcc.gov/antenna/documentation/faadocs/7460-1K.pdf>. Neither an environmental statement nor assessment is required. The concern addressed by this requirement for a light is aviation safety and that concern must be sensibly balanced with residential privacy. Operators are to avoid using high intensity white lighting at night use common sense in making a lighting selection suitable for the area.
10. The noise level caused by the operation of the project, measured at five (5) feet above ground level at the property line coincident with or outside the project boundary, shall not exceed 65 decibels(A-weighted) and shall not exceed 50 decibels (A-weighted) if it is determined that a pure tone noise is generated by the project. The level, however, may exceed during short-term events such as utility outages and/or severe wind storms.

L. Setbacks

These setbacks apply to all wind turbines in a wind energy facility.

Setbacks are measured from the vertical or nearly vertical surface of the wind turbine's tower at ground level to the closest near vertical surface of the occupied or unoccupied structure, improvement, or the nearest point of a boundary, bridge, line, or outside edge of the improved surface of a road or airstrip.

1. Each wind turbine must be set back at least 5RD from any occupied structures.
2. Each wind turbine must be set back at least 1.5 times the turbine height from any public road or bridge; rail line; above ground electrical or communication line. Turbines must be setback at least 1.5 times the turbine height RD from each antenna, tower, unoccupied structure, or improvement with an estimated

value over \$25,000. The Planning and Zoning Commission can estimate the value without appraisal, but interested parties may timely submit an appraisal.

3. Each wind turbine must be set back at least 5RD from the boundary between the host property and any property that adjoins the host property. Public roads are excepted from the 5RD setback requirement but have an applicable setback above.

M. Variance to Setback

A variance to a setback related to private property may be granted if the Permittee and the affected party sign a waiver agreement.

The Planning and Zoning Commission may issue a variance from a setback requirement regarding an occupied structure if that structure has not been used as an occupied structure in a year or more prior to submission of the permit application or request for variance. The act of providing this particular example of one reason a variance to a setback can be issued does not limit the Commission to issuing variances for only that reason.

N. Notice of Hearing on Application for Variance to a Setback

It is the obligation of the party seeking the variance to the setback requirement to serve notice of the initial hearing on the application, in accord with the ND Rules of Civil Procedure, all property owners having an occupied structure, boundary, unoccupied structure, road bridge, antenna, tower, or an improvement located inside the setback area sought to be diminished. Proof of service must be filed with the Zoning Commission prior to the hearing. The Zoning Commission can authorize notice by publication according to the Rules of Civil Procedure.

O. Waiver of Setback

Where the provision for variances on wind turbines differs from general variance provision in Article IV Section V of this Ordinance, this wind turbine's special provision governs for wind turbine issues.

A permit applicant, permittee, or host property owner may apply for a variance from a setback requirement involving an occupied structure, unoccupied structure, improvement, antenna, tower, road, or bridge.

P. Contents of Setback Waiver

The party seeking the variance from the setback must attempt to obtain from the affected property owner and should provide to the Planning and Zoning Commission a waiver executed by each affected owner sought to be removed from the applicable setback protection. The waiver should be for a period of time

equal to or greater than the greatest period of time granted to the operator in the lease, easement, option or the greatest combination thereof given by the host property owner.

The setback waiver signed by the affected property owner must contain a notice to the property owner of the setback required by this Ordinance, describe how the proposed wind turbine location is not in compliance with the setback, and clearly state that consent is granted for the wind turbine or accessory to the owner's property than allowed by the Ordinance. The waiver must also contain the following notice.

“A wind turbine absorbs energy from a stream of wind. Once the stream of wind passes through the rotors of a turbine, it loses energy, becomes disarrayed, and until the wake is calmed and the stream reinvigorated, is less useful to another turbine set up downwind from the first. Wind wakes can extend more than 5 rotor diameters downwind from a turbine. So, if your neighbor has a turbine upwind from you and within 5 rotor diameters of your boundary, it will probably be unfeasible for you to place a turbine on your property close to the boundary in the wake of your neighbor's turbine. To protect you from having a neighbor and a power company place a turbine so close to your property that it saps the potency of the wind before it arrives over your land, Mountrail County passed a setback requiring all turbines to be placed at least 5 rotor diameters (5RD) from any property boundary. You may waive that setback protection. You may want to strike an agreement with a neighbor and a power company that gives you part of the proceeds of the turbine in exchange for allowing your neighbor to place the turbines less than 5RD from your property. You may wish to charge the neighbor or the power company for your waiver. You probably ought to contact a private attorney before you sign a setback waiver.”

Q. Required Dignities of Valid Variance

A setback variance is only valid if granted by duly passed motion of the Planning and Zoning Commission, issued in writing, and signed by either the chairman of the Planning and Zoning Commission or the Zoning Administrator.

R. Minimum Ground Clearance

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

S. Restoration of Property

Within one hundred and eighty (180) days of termination or abandonment of leases or easements for a wind energy facility in the County, the Permittee shall

cause, at its expense, removal of all structures to a depth of four (4) feet below preconstruction grade.

T. Road Protection

The permittee is responsible for abiding by the State and local overweight load permitting process. See NDCC Chapter 39-12 and Mountrail County Road and Bridge Department. A conditional use permit issued under the Ordinance to erect a wind energy facility does not negate a hauler's obligation to obtain an overweight load permit prior to hauling.

Any road damage caused by the permittee, its independent contractor, employee, agent, contractor, or subcontractor shall be promptly repaired at the permittee's expense to current standards set out in the NDDOT's Standard Specifications for Road and Bridge Construction <http://www.dot.nd.gov/dotnet/supplspecs/StandardSpecs.aspx>. If reasonably foreseeable that the continued trips will make prompt repair to this standard absurd, the intermediary measures must be taken by the operator, if approved by the political subdivision in charge of the road to ensure the public road remains passable and useable as has been the tradition in the community. Final repairs to these standards must be made promptly after the completion of the construction of the wind energy facility.

U. Engineer's Report

The applicant shall identify, by map, each public road in Mountrail County that the permittee may or will travel on with a gross weight of over 80,000 lbs.

The applicant will at its own expense, supply to the County a pre-construction road condition reports both a pre and post-construction/haul inspections. The report must be approved by a civil engineer registered as a professional engineer under NDCC Chapter 43-19.1. The report shall objectively verifiable, generally accepted means of non destructive testing to catalogue the condition of any public road or bridge in Mountrail County that the permittee may or will use to carry, cross, or traverse with a gross weight over 80,000 lbs.

The report will describe the gross weight the permittee anticipates running for certain classes of jobs; a rough estimate of the number of extreme (over 150,000 lbs) gross weight trips; what general damage or wear the engineer expects to see; and what places the engineer expects the entire pavement entirely fail, failure, nearly entire pavement failure or substantial damage to an unpaved public road. The report will supply the planned methods for addressing pavement failure and near pavement failure during the construction process that will ensure roads remain passable. Also, methods will supplied for addressing road damage that obstructs vehicular travel on unpaved roads. The report will lay out the time line for final repair or replacement of roads damaged or destroyed.

Both the pre-haul inspection and the post haul inspection must address the following:

1. Video recording of the haul road(s) from start to finish taken from a vehicle driven 25 mph.
2. Use straight edge to check for rutting every 0.10 miles.
3. Use still photography with notation re: location and length to record breakups and yielding aka alligator aka checkerboard.
4. Record round (steel) and joint alignment (concrete) on major centerline culverts.
5. Record width of traveled way and depth of pavement or gravel every 0.10 miles of completion of the construction of the wind energy facility, at its own expense, obtain and submit to the Zoning Administrator a post construction assessment of any Mountrail County or Township road the permittee traveled with greater than 80,000 lbs gross weight. The report must be approved by a registered engineer.

Any damage caused or thought to be exacerbated by the permittee's loads or work that has not been repaired or remedied at the time of the report will be identified and a time line for repairing each will be identified along with an explanation of the repair or replacement proposed.

V. Surety Required

A \$250,000 cash bond or surety bond is required for each project.

W. Transfer of Wind Energy Facility Siting Permit

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

X. Term of Permit

A conditional use permit granted under this ordinance for operating a wind energy facility is, unless revoked or suspended, effective for twenty-five (25) years from the date of its issue is approved by Mountrail County. The permittee may at any time in the eighteen (18) months prior to the expiration of the twenty-five (25) year period, apply for renewal of the permit.

**ARTICLE III
DISTRICT REGULATIONS**

Sec. I Classes of Districts: For the purpose of this ordinance, Mountrail County is hereby divided into the following classes of districts: Agricultural (Ag); Commercial (Co); Industrial (In); Residential (Re); and Rural Recreational (R-Rec).

Sec. II Location of District Boundaries:

- A. Where the district boundary lines on the official zoning map are indicated to follow highway, road or railroad right-of-way, such boundary lines shall be construed to be the centerline of said right-of-way unless clearly shown to the contrary.
- B. Where any uncertainty exists as to the exact location of the zoning district boundary line, the Planning Commission shall determine the location of such boundary line.

Sec. III Official Zoning Map: The boundaries of these districts are established as shown on the map entitled the “Official Zoning Map of Mountrail County”. This map and any attached map sections are made part of this ordinance; and it shall be on file with the county auditor.

Sec. IV Ag – Agriculture District:

- A. Purpose: To establish and preserve areas of agriculture and low intensity development which do not significantly change the existing character of the area.
- B. Permitted Uses: Agriculture and agriculture-related buildings and farm dwellings (provided that such uses are maintained in connection with a farming operation where fifty (50) percent or more of the operator’s income is derived from farming); park and outdoor recreational facilities and related buildings for outdoor recreations; churches and facilities related to religious activities; and public and parochial schools.

C. Conditional Uses:

1. Mineral extractions including sand, gravel, scoria and clay operations (in accordance with Article II, Section VII); mobile home parks, animal feeding operations (in accordance to Article II Section X), junk yards, radio or TV towers, utility lines, and substations (in accordance with Article II, Section VI).
2. Junk yards and automobile salvage operations provided all operations are conducted within an area enclosed on all sides with a solid fence or wall not less than 8 feet (2.4M) in height.
3. Private waste disposal sites.

D. Shelterbelts: No shelterbelts or major tree planting shall be established closer than seven rods (115 feet) for planting on the windward side (generally north and west) and six rods (99 feet) for planting on the south and east. This is to be measured from all section lines and the centerlines of all township and county roads.

E. Residential Development: The following regulations shall be applied to the construction on nonfarm dwelling units:

1. Density: There shall be no more than one (1) nonfarm dwelling for each forty (40) acres (16Ha) on prime farm land classes #2, 3, 4 according to the Soil Conservation System Survey. Development to be confined to Classes 5, 6, 7 as defined by the SCS Survey with the highest and best use of land to prevail.
2. Lot Size: Not less than three (3) acres (1Ha). (Note: The terms of density and lot size shall exclude the immediate family of the surface owner.)

F. Dimensional Standards:

1. Setbacks:

- a. One hundred fifty (150) feet (46M) from all section lines and the centerline of all township and county roads.
- b. Two hundred fifty (250) feet (76M) from the centerlines of all state and federal highways.

G. Special Provisions:

1. Any activity within 100 feet (30.5M) of nonfarm residential dwelling that is noxious or offensive by reason of dust, odor, chemical spray, or noise shall not be permitted unless it is considered essential to normal farming operations.

2. The keeping of livestock (provided such uses are maintained and operated when less than fifty (50) percent of the operator’s income is derived from farming operations) shall not exceed two (2) head of livestock for the first acre (.4Ha) of land and one (1) head of livestock for each acres (.4Ha) thereafter.

Sec. V Re – Residential District:

- A. Purpose: To establish and preserve general residential neighborhoods which allow for varied types of residential development.
- B. Permitted Uses: Single-family dwelling, parks, churches, public and parochial schools, hospitals, clinics, and customary accessory uses associated with the permitted uses.
- C. Conditional Uses: Mobile homes, mobile home parks, multi-family residences and home occupations.
- D. Minimum Lot Dimensions:

1. Setback and Lot Coverage:

	Existing Lots less than 100 feet in width	Lots greater than 100 feet in width
a. Front Yards	- 25 feet (7.6M)	25 feet (7.6M)
b. Rear Yard	- 10 feet (3.1M)	30 feet (9.1M)
c. Side Yard	- 7 feet (2.1M)	7 feet (2.1M)
		Building coverage not to exceed 50% of lot

All measurements shall be made from the roof line of the building.

2. Lot:
 - a. Lot Width - 75 feet (22.9M)
 - b. Area of Lot - 7500 sq. feet (697 Sq.M) per single family dwelling
- 3000 sq. feet (278 Sq.M) per family for a multi-family unit

- E. Maximum Dimensional Standards:

1. Building Height - 35 feet (10.7M)
2. Any accessory building will be limited to 10% of the lot size, not exceeding 25 feet in height.

F. Mobile Home Regulations:

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

G. Parking Requirements:

1. Two parking places for each single-family residence; two (2) parking places for each additional multi-family unit.
2. Institutional establishments or places of assembly – one for each four (4) seats or beds or one (1) for each three (3) employee of the maximum shift.

Sec. VI Co – Commercial District:

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

B. Permitted Uses: Any commercial business or service including, but not limited to, grocery, drugs, hardware, clothing, bakeries, eating and drinking places, professional offices, hotels, motels, public utilities, and transportation and communication facilities.

C. Conditional Uses:

1. Storage facilities for building materials, such as lumber, steel, concrete blocks, or pipe, provided that these materials are either:
 - a. Enclosed by a wall or fence not less than 5 feet (1.5M) high
 - b. Stored in an enclosed structure
2. Sleeping rooms, apartments or owner-occupied residences housed within commercial businesses or service establishments provided that the above uses are secondary to the main commercial use of the building and occupy less than 50 percent of the total floor area.
3. Sand, gravel, scoria, and clay storage sites.

4. Skid Shacks will be allowed for two (2) years with the following setbacks:
 - a. Front setback 25 feet minimum from front of property line.
 - b. Rear setback 10 feet from a commercial lot or 30 feet setback if adjoining residential district.
 - c. Side setback 10 feet.
 - d. There must be a minimum of fourteen (14) feet between skid units or any other structures on the property. No parking will be allowed between units.

D. Minimum Lot Dimensions:

1. Yards:

- a. Front – None
- b. Rear – 10 feet (3.M) except where adjoining a Re – District, then same as Re – District.
- c. Lot Size – No minimum

2. Setbacks – 60 feet (18.3M) from right-of-way

E. Maximum Dimensional Standards:

1. Building Height – 45 feet (13.7M)

Sec. VII In – Industrial District:

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

B. Permitted Uses: All Co – District uses excluding hotels and motels. Other uses include grain elevators, lumber yards, truck terminals, warehouses, feed mills and dry fertilizer plants/storage facilities, and non-agricultural or municipal water well sites. Also, storage facilities for building materials, such as lumber, steel, concrete blocks, or pipe provided that these materials are either enclosed by a wall or fence not less than 5 feet (1.5M) high or stored in an enclosed structure.

C. Conditional Uses:

1. Junk yards and automobile salvage operations provided all operations are conducted within an area enclosed on all sides with a solid fence or wall not less than 8 feet (24M) in height.

2. Oil storage and loading facilities, gas holding, processing and distribution facilities.
3. Anhydrous storage and loading facilities.
4. Private waste disposal sites.
5. Commercial waste disposal sites.
6. Salt water disposal sites.
7. Sand, gravel, scoria, and clay storage sites.

D. Minimum Lot Dimensions:

1. Yard: All industrial uses must be situated at a minimum of 100 feet (30.5M) from any residential property line.
2. Front Yard: 45 feet (13.7M)

E. Maximum Dimensional Standards:

1. Building Height – 90 feet (27.4M)
2. Lot Coverage – 75%

F. Set Backs

1. 60 feet (18.3M) from right-of-way.

Sec. VIII R-Rec – Rural Recreational District:

A. Purpose: The R-Rec – Rural Recreational District is established for the purpose of protection general farm operations and permitting small rural vacation or seasonal residence developments, recreational vehicle parks for short term or seasonal parking and the uses that serve them by restricting and regulating density, land coverage and land use.

B. Permitted Uses:

1. General farm operations.
2. Single family lake cabins, cottages and mobile homes, intended for seasonal use.
3. Utility facilities necessary to serve the area.

4. Golf courses, miniature golf courses and driving tees operated for commercial purposes.
5. Park, playground or community building.
6. Customary accessory uses and structures located on the same tract with the principal use, including barns, sheds, barbecue ovens, fireplaces, private boat docks (located on streams, rivers, lakes, reservoirs or other water areas) and similar uses.
7. Any public building erected or land used by any department of the city, county, state or federal government.
8. Churches.
9. Cemetery.

C. Conditional Uses:

1. Commercial lake resort.
2. Boat livery, including boat docks, sales, rental, construction and repair and sale of bait and fishing equipment, fuel, etc.
3. Commercial campgrounds (tent and/or recreational vehicle).
4. Manufactured homes or mobile homes.
5. Camps and campgrounds operated by nonprofit, charitable institutions.
6. Permit to owner and operator of mobile home park.

D. General Requirements:

1. The tract to be used for a rural recreation district shall not be less than five (5) acres in area.
2. The applicant for a zoning change to permit a rural recreation district shall follow the procedure under Article IV, Section III of the Mountrail County Zoning Ordinance, and must satisfy the Planning Commission that all development to occur within this District shall not extensively alter natural grade of land or permit extensive alteration, removal or destruction of natural vegetation in order to prevent erosion or pollution.
3. Applicant shall assume, and be liable, for any and all damages resulting as a consequence of any changes from the original topography. Such changes may

include, but not necessarily be limited to, damages resulting from any change in the rate of flow, or directing the flow of surface or subsurface waters.

4. The applicant for a rural recreation district shall have a registered engineer make soil percolation tests to determine soil permeability to meet minimum State Health Department requirements for public health and safety. The results of the tests and recommendations of the engineer shall be the basis for Planning Commission requirements for either a public approved sanitary sewer system, sanitary sewerage holding tanks or septic tanks and lateral field to be allowed in this District. The applicants shall bear the expense of the tests made by the registered engineer.
5. The applicant for a rural recreation district shall prepare or cause to be prepared an application for rezoning and a development plan and shall present three copies of the plan for review and approval by the Planning Commission. The development plan shall show topography at two (2) foot intervals and the size of
 - a. Residential lots.
 - b. Recreational Vehicle Park, mobile home parks, and sites, if applicable.
 - c. Recreational Vehicle Park and mobile home park service buildings, if applicable.
 - d. Water lines, if applicable to the development.
 - e. Water outlets, if applicable to the development (mandatory for recreational vehicle park.)
 - f. Sewer lines, if applicable to the development.
 - g. Recreational vehicle holding tanks, if applicable.
 - h. Recreational areas.
 - i. Landscaped areas and walls or fences.
 - j. Roadways.
6. The approval of the application for rezoning and the development plan in no way obligates the County to the provision, development or maintenance of access, required or otherwise, to the property concerned.

7. A minimum setback of 300 feet from the 1855' elevation on Lake Sakakawea is required provided, however, that boathouses, ramps, docks and retaining walls are excepted from the operation of this requirement on Lake Sakakawea.
8. Roadways shall not be less than 30 feet in width for two-way traffic systems.
9. The applicant or property owner shall be responsible for the construction and maintenance of all access roads between the property and all township or county roads.
10. Upon approval of the preliminary development plan by the Planning Commission, the applicant shall prepare or cause to be prepared a final development plan, which shall incorporate any changes or alternations requested. The final development plan and the Planning Commission recommendation shall be forwarded to the County Commissioners for review and final action.

E. Intensity of Use Regulations:

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

7. One (1) sanitary flushing station shall be provided for every one hundred (100) campsites.
8. Each campsite shall be at least thirty five (35) feet wide and clearly defined. The principal and accessory structure shall cover, not more, than 30% of the lot area.

F. Dimensional Standards:

1. Height Regulation: No structure shall exceed thirty five (35) feet in height from the lowest ground level of structure.

2. Yard Requirements:

Setback and Lot Coverage:

	Existing Lots less than 100 feet in width	Lots greater than 100 feet in width
a. Front Yards	- 25 feet (7.6M)	25 feet (7.6M)
b. Rear Yard	- 10 feet (3.1M)	30 feet (9.1M)
c. Side Yard	- 7 feet (2.1M)	7 feet (2.1M)
		Building coverage not to exceed 50% of lot

All measurements shall be made from the roof line of the building

- G. Pesticides and Fertilizers: The use of inorganic fertilizers or DDT or any other chemical considered detrimental to wildlife by the North Dakota Game and Fish Department, the U.S. Department of Agriculture, or the U.S. Department of the Interior, or any of their various branches, departments, bureaus, agencies or services shall be prohibited.

ARTICLE IV ADMINISTRATION AND ENFORCEMENT

Sec. I Duties: The administration and enforcement of this ordinance is hereby invested in the Planning Commission and County Commissioners, Mountrail County, North Dakota.

A. Planning Commission:

1. Authority and Duties: The Planning Commission shall have the following duties:
 - a. Issue all building permits and certificates of compliance.
 - b. Conduct inspections of building for compliance with zoning ordinances and other applicable codes or ordinances.
 - c. Maintain records of the regulations and permits.
 - d. Interpret district boundaries on the zoning district map.
 - e. Establish rules, regulations and procedures for the purpose of administering this ordinance.
 - f. Report the following to the county commissioners: All complaints stemming from this zoning ordinance; zoning violations; applications for amendments; applications for conditional uses; and applications for variances.
 - g. The Planning Commission may request the county commissioners to officially appoint a member of the Planning Commission to act as Zoning Administrator and conduct the business of the Planning Commission from the above mentioned duties.
 - h. Conduct public hearings on conditional use permits, variance permits, ordinance amendments, and any other business pertaining to the zoning ordinance which requires a public hearing
- B. County Commissioners: For the purpose of this ordinance, the county commissioners are hereby designated as the Board of Adjustment.
 1. Authority, Duties, and Appeals:
 - a. Any person who feels they have been aggrieved by a decision of any official, department or board of the county may petition for a hearing to the county commissioners.
 - b. The appeal shall be presented in writing to the county commissioners and it shall specify the grounds for appeal.
 - c. The hearing shall be held within a reasonable time of the filing of the appeal.
 - d. Within fifteen (15) days after the hearing, the county commissioners shall take action and send their decision by registered mail to the petitioner.

- e. It requires a concurring vote of two (2) to reverse any order, requirement or decision made by any official, department or board of the county.

Sec. II Building Permit:

- A. No land within the jurisdiction of this ordinance shall be built upon and no structure or building shall be structurally altered or moved until a permit has been obtained from the Planning Commission.
- B. Any building permit issued must be in accordance with this ordinance.
- C. No permit is required for maintenance of any building or structure which does not structurally alter the building.
- D. If no construction takes place in a year from the issuance of a building permit, the permit shall expire.
- E. The building permit process is outlined below:
 - 1. All applicants who wish to build or alter any structure as defined in this ordinance must apply to the Planning Commission for a permit.
 - 2. If the applicant's plans meet district regulations as prescribed in this ordinance, the Planning Commission or designated Zoning Administrator collects the fees and issues the building permit.
 - 3. If the applicant's plans do not comply with district regulations, the amendment, variance, conditional use or the appeals procedures shall be implemented.

Sec. III Amendments:

- A. Should the need arise for an amendment to the zoning ordinance or zoning district map, the applicant submits the proposed zoning change to the Planning Commission (the Planning Commission itself may wish to change the ordinance text or map).
- B. The Planning Commission will publish a notice for a public hearing in the official county newspaper once a week for two (2) successive weeks prior to the set time for said hearing. A notice shall also be posted in a conspicuous place of a public building, such as the post office, as well as on the property in question.
- C. If the zoning map is proposed to be changed, the applicant must notify by registered mail adjoining property owners at least fifteen (15) days prior to the public hearing. Adjacent property owners are all property owners fronting or within 150 feet (46M) of the property in question.

- D. At the hearing, the applicant presents his proposal for amending the zoning ordinance or zoning map. Also, at the hearing the public may comment and the adjacent property owners may state their opinions for the record.
- E. The Planning Commission then presents its findings and recommendations to the county commissioners. A second public hearing is held by the county commissioners. The county commissioners may either approve or disapprove the amendment to the zoning ordinance or zoning map. If the county commissioners disapprove, the applicant may appeal to a court of law.
- F. If there is a protest to the amendment by more than twenty (20) percent of the adjacent property owners, a two-thirds vote of approval is required by the county commissioners prior to passing the amendment.

Sec. IV Conditional Use: A conditional use may be approved by the Planning Commission only after finding that such conditional use would not be detrimental to the Comprehensive Zoning Plan, the purposes of this ordinance, the surrounding property inhabited residences in the surrounding area. A conditional use permit shall state the terms and conditions of the permit which may include, but is not limited to, conditions that will further the Comprehensive Zoning Plan and the purposes of this regulation and will minimize any adverse impact upon the surrounding property and inhabited residences in the surrounding area.

- A. Applications for conditional use permits shall be submitted in writing in the same manner as for an amendment to the Comprehensive Zoning Ordinance. Upon receipt of such application, a time and date shall be set for the hearing on such application before the Planning Commission Board and notice of such hearing shall be published in the official newspaper of the County fifteen (15) days prior to the date of the hearing. The applicant is responsible for notifying the adjacent property owners by certified mail, return receipt request at least fifteen (15) days prior to the public hearing and providing proof of such notification to the Zoning Administrator before action can be taken by the Planning Commission. Adjacent property owners are all property owners fronting or within 150 feet (46M) of the property in question.
- B. The application for a conditional use permit shall be in writing and shall be made by the owner of the property for which the conditional use permit is sought. The application shall be signed by the owner of the property and shall be accompanied by a sum as set forth in Article IV Section VII Paragraph B.
- C. An application for a conditional use permit shall be considered within one (1) year of the final action of the Planning Commission upon a prior application of the same owner concerning the same use or the same buildings on the same land.
- D. Every application for a conditional use shall include:

1. A plot plan showing:
 - a. Legal dimensions of the tract to be used.
 - b. Location of all structures and all existing and proposed improvements.
 - c. Building setback from all property lines.
 - d. Location and type of planting, screening or walls.
 - e. A timing schedule indicating the anticipated starting and completion dates of the development.
 - f. Names and addresses of adjacent property owners.
 - g. Any additional information the Planning Commission deems necessary to review the application.
 2. An accurate legal description of the property and also a specific description including a drawing or diagram, if appropriate, of the proposed use for which the permit is sought.
 3. Payment of any fee required under this ordinance.
- E. Before the Planning Commission may approve an application for a conditional use permit, it shall find that the use for which a conditional use permit is sought:
1. Has received all regulatory and statutory permits and approvals.
 2. Meets any other conditions required by the Planning Commission.
 3. Will not affect the health or safety of persons residing or working in the county.
 4. Will not be detrimental to the public welfare or injurious to property or improvements in the county.
 5. Will be in accordance with the purposes of this ordinance and the Rural Development Plan.
 6. The Planning Commission may issue the conditional use permit provided that all other provisions of law and ordinances shall be complied with. In granting such conditional use permit, the Planning Commission may designate such conditions in connection therewith as will, in its opinion, assure that the use will conform to the foregoing requirements and that it will continue to do so.

- F. The issuance of a conditional use permit shall not be deemed to be a change in zoning and the zoning of the property prior to the conditional use permit shall remain unchanged. In the event the use of any property, as permitted by a conditional use permit, is terminated for any reason, the conditional use permit shall expire.
- G. Any conditional use permit granted in accordance with this section shall expire in one year unless the use authorized by said conditional use permit shall have commenced. The Planning Commission may, upon issuance of a conditional use permit, establish a specific termination date for such permit; the permit may be extended by the Planning Commission upon written application of the owner of the property provided that such extension is for the same use as specified in the original permit.

Sec. V Variance:

- A. The applicant applies to the Planning Commission for a building permit.
- B. The Planning Commission shall hold a public hearing upon such application.
- C. The Planning Commission must find that the granting of a variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable or unusual hardship or difficulty that was not self-created. The following conditions must also exist:
 - 1. The property has exceptional, unique or special characteristics different from the other property, particularly adjacent property.
 - 2. Enforcement of the ordinance with regard to properties having said characteristics results in unnecessary and undue hardship.
 - 3. Granting of a variance would have no adverse effect on the public interest, safety, health, and welfare.
 - 4. Granting of a variance would have no adverse effect on adjacent property owners.
 - 5. The owner cannot otherwise obtain a reasonable return on the property.
- D. Every application for a variance shall include:
 - 1. A plot plan showing:
 - a. Legal dimensions of the tract to be used.
 - b. Location of all structures and all existing and proposed improvements.

- c. Building setback from all property lines.
 - d. Location and type of existing planting, screening or walls.
 - e. A timing schedule indicating the anticipated starting and completion dates of any development.
 - f. Names and addresses of adjacent property owners.
 - g. Explanation and/or description of reason(s) a variance is needed.
 - h. Any additional information the Planning Commission deems necessary to review the application.
- E. The applicant is responsible for notifying the adjacent property owners by certified mail, return receipt request at least fifteen (15) days prior to the public hearing and providing proof of such notification to the Zoning Administrator before action can be taken by the Planning Commission. Adjacent property owners are all property owners fronting or within 150 feet (46M) of the property in question.

Sec. VI Certificate of Compliance:

- A. A certificate of compliance is required before any structure, building or land can be occupied which has been built or structurally altered such that it requires a building permit.
- B. The certificate of compliance process is outlined below:
 - 1. Upon completion of any work requiring a building permit, a member of the Planning Commission conducts an onsite inspection of the work specified on the building permit.
 - 2. If the completed work is found to be in accordance with the zoning ordinance, the Planning Commission will issue a certificate of compliance.
 - 3. Reasons for refusing to issue a certificate of compliance must be stated by the Planning Commission in writing within fifteen (15) days after the request of the applicant for the certificate.

Sec. VII Schedule of Fees and Charges:

- A. A fee of \$500.00 shall be paid by the applicant upon filing an application for any amendment to the zoning ordinance or zoning map.
- B. A fee of \$250.00 shall be paid by the applicant upon filing an application for a conditional use or variance permit.

- C. A fee of \$500.00 shall be paid by the applicant upon filing an application for animal feeding operation.
- D. The following schedules shall be used for issuing building permits. The fee shall be paid by the applicant to the Planning Commission prior to receiving the permit. The fee is determined by the estimated current market values of the property.

Values of construction or improvements:

	<u>Fee</u>
Less than \$5,000.00	\$50.00
\$5,001.00 or more	\$100.00
Moving or demolition permit.....	\$25.00

- E. Tipping Fee: Owners of commercial waste disposal sites shall pay a reasonable quarterly tipping fee which shall be established by the Planning Commission. The tipping fee shall be paid to a waste disposal impact fund which shall be used to offset the costs attributable to the administration, enforcement, review, and monitoring of a commercial waste disposal site in this ordinance and to provide a source of funds for any other costs attributable to a commercial waste disposal site incurred by the Planning Commission.
- F. Wind turbine conditional use permit \$25,000. The fee includes \$1,000 for each turbine planned and/or erected, whichever is greater, plus a base fee of \$1,000 for each site.

Sec. VIII Penalties:

- A. Anyone who violates the provisions of this ordinance or fails to comply with any of its requirements shall be charged with a Class B misdemeanor and shall be fined accordingly.
- B. All fees and penalties established by this ordinance shall be credited to the General Fund of Mountrail County, North Dakota.

**ARTICLE V
DEFINITIONS OF TERMS USED IN THIS ORDINANCE**

Sec. I Rules:

- 1. Words used in the present shall include the future; the singular number shall include the plural.
- 2. The word “person” includes a firm, partnership, association, corporation, or individual.

3. The word “shall” is mandatory.

Sec. II Definitions: For the purpose of this ordinance, the following list of definitions is adopted.

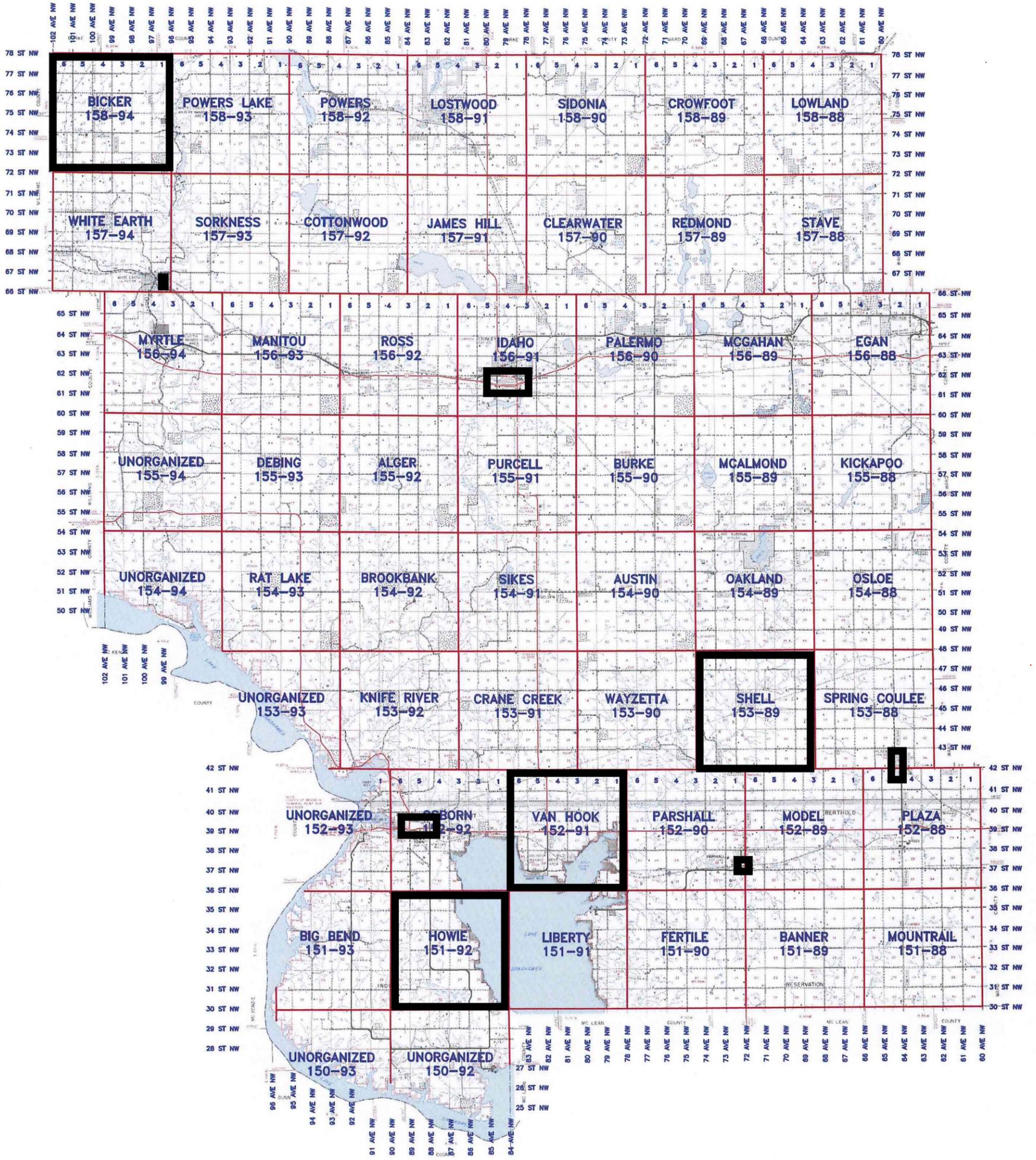
1. Accessory Use or Accessory Structure: A use or structure incidental and subordinate to the main use of the property and located on the same lot as the main use, such as a garage or tool shed.
2. Agriculture: The use of land for agriculture purposes, including the necessary buildings or structures for farm or farm labor use. Agriculture shall include farming, dairying, pasturage, horticulture, animal and poultry husbandry, and accessory uses and buildings for packing, treating, or storing product: providing accessory uses are secondary to normal agricultural activities.
3. Animal Feeding Operation: A place where: livestock have been, are, or will be confined, concentrated and fed for 45 or more days in any 12 month period; pasture, crops, or other vegetation are not normally managed or sustained for grazing during the normal growing season; and, animal waste or manure accumulates. This term does not include an animal wintering operation. Adjoining animal feeding operations under common ownership are considered to be one animal feeding operation, if they use common areas or systems for manure handling.
4. Building: Any structure used for shelter or enclosure of persons, animals or chattels.
5. Conditional Use: A use conditionally permitted in order to reduce any adverse effects on surrounding property.
6. County: The County of Mountrail, North Dakota.
7. Dwelling: A building or portion thereof occupied exclusively for the purposes of residing, but not including mobile recreational vehicles.
8. Dwelling – Farm: A single family dwelling or mobile home located on a farm which is occupied by the farm’s owner or person employed thereon.
9. Dwelling – Nonfarm: A single family dwelling or mobile home located on a farm or otherwise of which the occupant does not derive at least 50 percent of his income from agricultural activities.
10. Family: A group of one or more persons occupying a single premise and living as a single housekeeping unit. (Immediate family shall be limited to the sons and daughters of the head of the household.)

11. Farm: Any aggregate area operated by one person, family, partnership, corporation, or joint venture for agriculture or farming purposes.
12. Ha: Hectare
13. Home Occupation: Any occupation (1) which is carried on solely by members of the family residing on the premise, (2) is clearly secondary to the use of the dwelling for residential purposes, and (3) does not create excess noise, traffic or other disturbances.
14. Junk Yard: Any land or building used for the storage, sale or dismantling of obsolete vehicles, junk and other machinery.
15. Km: Kilometer
16. Livestock: Any animal raised for food, raw materials or pleasure, including, but not limited to, beef and dairy cattle, bison, sheep, swine, poultry and horses. Livestock also includes fur animals raised for pelts.
17. Lot: A parcel of land sufficient to provide the yard requirements of the regulations.
18. M: Meter
19. Mineral Exploration: Use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal, oil, potash, sand, gravel, scoria, clay and/or rock, or other subsurface minerals as defined in North Dakota Century Code 38-12.
20. Mineral Production: Any activity when applied to the surface of land will produce coal, oil, gas, potash, sand, gravel, scoria, clay and/or rock, or other subsurface minerals as defined in North Dakota Century Code 38-12.
21. Mobile Home: A mobile home is a dwelling unit designed for transport after construction. A recreational travel trailer is not to be considered a mobile home.
22. Mobile Home Park: Any park, court, camp, parcel, or tract of ground upon which mobile home sites are leased or used, whether for compensation or not, including all accessory uses.
23. Multi-Family Unit: Residential dwelling designed for occupancy by two or more families. Each separate building shall be considered one (1) multi-family unit regardless of how many families the building has been designed for.

24. Nonconforming Use: Any structure, land or building existing at time of adoption or amendment of this ordinance which does not conform to the provisions of the regulations.
25. Planning Commission: The Mountrail County Planning/Zoning Commission.
26. Setback: The open space extending the full width of a lot between a building and a public right-of-way line, easement or front property line.
27. Shelterbelt: Barrier of trees and shrubs that is used to protect crops, farmsteads and nonfarm dwellings from wind and storms.
28. Skid Shack: A building on a steel frame that is self contained, is temporary unit with no wheels, or axles attached. In can be used as living quarters and/or office.
29. Structure: Anything constructed or erected the use of which requires permanent location on the ground or attachment to something having permanent location on the ground, but not including fences.
30. Structural Alteration: Any change in the supporting members or any substantial change in the roof or exterior walls of a building.
31. Subdivision: The division of a tract or parcel of land into lots or parcels of land for the purpose, whether immediate or in the future, of sale or of building development.
32. Utilities: For the purposes of this ordinance, the definition of utilities shall be limited to electrical transmission lines, oil pipelines and natural gas pipelines. This definition shall exclude electrical distribution lines as a utility.
33. Variance: The grant of relief from the requirements of the ordinance where it can be shown that due to unusual conditions of the property, strict application of the regulations would result in undue hardship.
34. Waste Disposal Sites:
 - a. Private – A solid waste disposal site used exclusively by and only for the landowner engaged in farming.
 - b. Public/Commercial – A solid waste disposal site used by public entities or commercial waste haulers for the temporary or permanent storage or reclamation of solid waste generated through medical, industrial, municipal or household collection.

35. Yard: A space on the same lot with the principle building or structure; open, unoccupied and unobstructed by buildings or structure from the ground upward.
- a. Front – A yard that extends across the full width of the lot. The depth is measured as the least distance between the front lot line and the front building line.
 - b. Rear – A yard that extends across the full width of the lot. The depth is measured as the least distance between the rear lot line and the rear building line.
 - c. Side – The yard between the front and rear yards. The depth is measured as the least distance from the side lot line and the side of the principle building.
36. Zoning Administrator: Person or persons designated by the Board of County Commissioners to administer the zoning ordinance.

MOUNTRAIL COUNTY NORTH DAKOTA



Area Not Under County
Zoning Ordinance

DRAWING NOT
TO SCALE

**Kadmas
Lee &
Jackson**
Engineers, Surveyors
and Planners