

RESOLUTION

WHEREAS, Flickertail Wind, LLC submitted an application for certain amendments ("Amendment Application") to the Eddy County ("County") Zoning Ordinance ("Ordinance").

WHEREAS, after review of the Amendment Application, certain additional amendments to the Ordinance were proposed ("Additional Amendments").

WHEREAS, on February 9, 2026, the Eddy County Zoning Commission ("Zoning Commission") held a special meeting at which they scheduled a public hearing on the Amendment Application and the Additional Amendments.

WHEREAS, on March 6, 2026, the Zoning Commission and the County Board of County Commissioners ("County Commission") held a joint special meeting at which they conducted a joint public hearing on the Amendment Application and the Additional Amendments.

WHEREAS, at the March 6, 2026 special meeting, following the public hearing, the Zoning Commission recommended approval and adoption of the amendments attached as Exhibit A ("Amendments").

WHEREAS, at the March 6, 2026 special meeting, following receipt of the Zoning Commission's recommendation, the County Commission considered the information presented and the recommendation of the Zoning Commission.

WHEREAS, all requirements of North Dakota Century Code Chapter 11-33 and the Ordinance have been satisfied.

NOW, THEREFORE, BE IT RESOLVED by the County Commission as follows:


1. That the Amendments in Exhibit A are approved and adopted.
2. That the Ordinance is hereby amended as set forth in the Amendments in Exhibit A.

Dated this 10th day of March, 2026.

APPROVED BY EDDY COUNTY BOARD OF COUNTY COMMISSIONERS

By: 

 Dave Gehrtz, Chair
 Eddy County Board of County Commissioners

ATTEST 
 By: _____
 Becki Schumacher, Eddy County Auditor

**EDDY COUNTY
NORTH DAKOTA**

**ZONING ORDINANCE
(ECZO)**

2017

**ADOPTED MARCH 21, 2017
AMENDED MAY 2, 2017
AMENDED MAY 1, 2018
AMENDED AUGUST 1, 2023
AMENDED NOVEMBER 18, 2024
AMENDED MARCH 6, 2026**

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1 ARTICLE I INTRODUCTION

1.1. Title

This ordinance, its regulations, and the County Zoning Map shall be known and cited as the Eddy County Zoning Ordinance (ECZO).

1.2. Purpose and Intent

- 1.2.1 To protect public health, safety, morals, comfort, convenience, prosperity and general welfare of Eddy County, ND.
- 1.2.2 To secure safety from fire, panic, noxious fumes, and other dangers.
- 1.2.3 The purpose of this ordinance is to promote the health, safety and welfare of the people of Eddy County. It is intended that the establishment of this ordinance will promote orderly and non-conflicting uses of land and property, protect property rights, ensure the provisions of adequate public services and promote conservation of land, water and other natural resources.
- 1.2.4 To promote orderly development of the County's resources including, but not limited to, land, wind, and water resources, and to prevent conflict among land uses and structures.

1.3. Authority

This Eddy County Zoning Ordinance is developed and enacted under authority granted to Eddy County in Chapter 11-33 of the North Dakota Century Code (NDCC).

1.4. Jurisdiction

1.4.1 General

This ordinance shall affect all unincorporated territory over which the Board of County Commissioners have jurisdiction in Eddy County, ND. This ordinance shall *not* affect any property, real or personal, which is located within the authority of any township having lawfully enacted regulations as provided in NDCC §58-03-11 through §58-03-15, *except* where such township supervisors relinquish to the County their powers or any portion thereof, to enact zoning regulations. Copies of said Releases will be filed with the County Auditor and County Tax Director.

1.5. Interpretation

These regulations shall be held to be minimum requirements adopted for promotion of purposes cited in ECZO §1.2. Whenever the requirements of these regulations are at variance with the requirements of other lawfully adopted rules, regulations, ordinances,

deed restrictions or covenants, the most restrictive shall govern unless otherwise specifically stated.

1.6. Severability

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

1.7. Effective Date

These regulations shall be effective upon adoption by the Board of County Commissioners as provided by the North Dakota Century Code.

1.8. Non-restriction of farming

No regulation or restriction contained in this ordinance shall be construed to prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming.

1.9. Disclaimer

This ordinance shall not create liability on the part of Eddy County, any officer or employee thereof, or the Federal Insurance Administration for any damage that results from reliance on this ordinance or any administrative decision lawfully made there under.

2 ARTICLE 2 RULES AND DEFINITIONS

2.1. Rules

In construction of these regulations, the rules and definitions contained in this section shall be observed and applied except when the context clearly indicates otherwise.

2.1.1 Words used in present tense shall include the future.

2.1.2 Words used in singular number shall include the plural number, and the plural, the singular.

2.1.3 Shall is a mandatory word and not discretionary.

2.1.4 May is a permissive word.

2.2. Definitions

The definitions of specific terms used in this ordinance are:

2.2.1 Accessory building and uses: A subordinate building or portion of the main building the use of which is clearly incidental to and serves exclusively the principal building or principal use. The accessory building or use shall be located on the same zoning lot and it is established to contribute to the comfort, convenience or necessity of occupants of the principal building or principal use.

- 2.2.2 Agriculture: The process of producing food and fiber including, but not limited to the land, facilities, structures, and buildings for operation and maintenance thereof. It includes all types of general farming, crop and vegetable farming, dairying, livestock and poultry raising, apiaries, fur farming, horticulture, pasturing, tree farming, and related land based food and fiber producing facilities.
- 2.2.3 Agriculture (farming, ranching): The art or science of cultivating the soil and activities incidental thereto; cultivating land for production of agricultural crops or livestock; raising, feeding, or producing livestock, poultry, milk, or fruit. The term shall include incidental retail selling by the producer of products raised on the premises, provided that space necessary for parking of vehicles of customers shall be furnished off the public right-of-way. The term does not include producing timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies, provides grain, harvesting grain, or other farm services. Also see NDCC §11-33-02.
- 2.2.4 Airport: Any area designated for the landing and takeoff of aircraft and any appurtenant areas which are used or intended for use for airport buildings and structures including runways, taxi-ways, aircraft storage and tie down areas, hangars, and other related facilities and open spaces other than landing strips used for family purposes.
- 2.2.5 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; and pasture, crops, or other vegetation not normally managed or sustained for grazing during the normal growing season where animal waste or manure accumulates. This term does not include an animal wintering operation. Two or more feeding operations under common ownership shall be considered a single animal operation if they use a common system for manure handling.
- 2.2.6 Animal feeding operation structure: A lagoon, formed manure storage, wash water storage structure, earthen manure storage basin, or other animal confinement building.
- 2.2.7 Animal hospital or kennel: A building or premises set up for treatment and boarding of domestic animals including veterinary facilities.
- 2.2.8 Animal wintering operation: 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 breeding operations of more than 1,000 animal units or weaned offspring that are kept longer than 150 days and are not retained for breeding purposes.

- 2.2.9 Applicant: An individual, a corporation, a group of individuals, a partnership, joint venture owners, or any other business entity having charge or control of one or more animal feeding operations.
- 2.2.10 Aquifer: A geologic formation, group of formations, or part of a formation capable of storing and yielding ground water to Eddy County and springs.
- 2.2.11 Building: Any structure designed or intended for shelter, housing, business, office, and accommodation of persons, animals, chattels or property.
- 2.2.12 Building area: The portion of the zoning lot that can be occupied by the principal use, excluding the front, rear, and side yards.
- 2.2.13 Building height: Vertical distance from the grade to the highest point of the roof.
- 2.2.14 Building line: A line establishing the minimum distance that structures may be placed from the lot lines or highway right-of-ways. For the purposes of these regulations the building line is the same as the setback line.
- 2.2.15 Building, principal: A building, the principal use of which is single or multi-family dwellings, offices, shops, stores, or other uses.
- 2.2.16 Certificate of site compatibility: A certificate of site compatibility within the meaning of NDCC §49-22 or successor statute.
- 2.2.17 Channel: A natural or man-made watercourse for conducting the flow of water.
- 2.2.18 Closure: Taking actions to close and reclaim a feedlot. Closure actions may include, but are not limited to, cleaning of buildings, disposal of manure, and demolition and/or removal of all manure storage structures.
- 2.2.19 Club or lodge: A private club or lodge which is a nonprofit association of persons for the purpose of gatherings and entertaining members including consumption of food and beverages.
- 2.2.20 Commission: The [County Zoning](#) Commission.
- 2.2.21 Conditional use: Use of a special nature not automatically permitted in a zoning district and which requires review and approval by the [Zoning County Commission](#) after public hearing [by the Zoning Commission](#).
- 2.2.22 Conforming building or structure: A building or structure that complies with all requirements of these regulations and other regulations adopted by the County.
- 2.2.23 County: Eddy County.
- 2.2.24 Development: Any man-made change to improved or unimproved real estate, including but not limited to the construction of buildings, structures, or accessory

structures, the construction of additions or alternations to buildings or structures, ditching, lagooning, dredging, filling, grading, paving, excavation, and drilling operations.

- 2.2.25 Development plan: A document including maps and data for physical development of an area as provided by these regulations.
- 2.2.26 District: A section or sections of the County for which regulations governing the use of buildings and premises, building heights, size of yards, lot areas, and lot width are uniform.
- 2.2.27 Due process: Involves notice and an opportunity for a hearing. The notice must adequately describe the potential action that might affect the person(s) being notified and 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.
- 2.2.28 Dwelling: Any building or portion thereof, used exclusively for human habitation including single family and multiple family units but not including hotels or motels.
- 2.2.29 Dwelling, multiple family: A single building or portion thereof, containing two or more dwelling units.
- 2.2.30 Dwelling, single family: A building containing one dwelling unit only.
- 2.2.31 Earthen manure storage basin: An earthen cavity, either covered or uncovered, which on a regular basis, receives waste discharges from an animal feeding operation and from which accumulated wastes are removed at least once a year.
- 2.2.32 Encroachment: Any fill, building, structure, or use, including accessories used, projecting into another area of public or private property.
- 2.2.33 Established residence: Any residence established by a personal presence, in a fixed and permanent dwelling with intent to remain there.
- 2.2.34 Establishment: A place of business for processing, production, assembly, sales, and service of goods and materials.
- 2.2.35 Existing: An animal unit handling facility in place on the date this ordinance is effective.
- 2.2.36 FAA: Federal Aviation Administration.
- 2.2.37 Farm: A tract of land of not less than five acres that is devoted to agricultural activities.
- 2.2.38 Farming: See 2.2.3 Agriculture (farming, ranching).

- 2.2.39 Feedlot: A parcel of land which contains a commercial operation for feeding or raising of 1000 or more animals which is operated as a separate activity and not incidental to farming.
- 2.2.40 Flood plain: Lowland and relatively flat areas adjoining inland and coastal waters that are inundated by a 100-year flood.
- 2.2.41 Frontage: The front part of a lot abutting a public right-of-way, road, or highway.
- 2.2.42 Grade: The land elevation at the horizontal intersection of the ground and the building.
- 2.2.43 Ground water: Water below the land surface in a geological unit in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.
- 2.2.44 Home occupation: Any occupation carried on in a dwelling unit by a member or members of a family which is conducted within the principal building and not in an accessory building; where no stock-in-trade is kept or commodities sold other than those produced on the premises; and where no more than 25% of the floor area of the dwelling is devoted to such home occupation.
- 2.2.45 Hotel or motel: A building in which lodging accommodations, with or without meals, are provided for compensation.
- 2.2.46 Junk or salvage yard: An open area where waste or scrap material, including parts of used motor vehicles, appliances, and farm implements are bought, sold, exchanged, stored, baled, parked, disassembled, or handled.
- 2.2.47 2Kennel, animal: Any premises where dogs, cats, and other household pets are boarded, bred, and maintained for compensation.
- 2.2.48 Lagoon: An impoundment made by excavation or earth fill for biological treatment of animal or other agricultural wastes. Lagoons can be aerobic, anaerobic, or facultative, depending on their loading and design.
- 2.2.49 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.
- 2.2.50 Lot: A piece, parcel, lot, or area of land of continuous assemblage established by survey, plat, or deed.
- 2.2.51 Lot lines: The property lines binding the lot.
- 2.2.52 Lot width: The horizontal distance between the side lot lines of a lot measured at the front building setback line.

- 2.2.53 Lot, zoning: A single lot, parcel, or tract of land within a zoning district that is developed or to be developed.
- 2.2.54 Manure: Fecal material and urine from livestock, as well as animal-housing wash water, bedding material, rainwater, or snow melt that comes in contact with fecal material or urine.
- 2.2.55 Marijuana: Any species in the genus *Cannabis*, including but not limited to *Cannabis sativa*, *Cannabis indica*, and *Cannabis ruderalis*. It includes all parts of the plant of the genus *cannabis*; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant.
- 2.2.56 Medical Marijuana: A product intended for human consumption or use which contains cannabinoid concentrate containing or derived from a derivative of Marijuana in any form, including but not limited to plants, seeds, resins, or any Medical Marijuana Product.
- 2.2.57 Medical Marijuana Distribution Center: An entity or facility registered with the North Dakota Department of Health to engage in the acquiring, possession, storage, delivery, transfer, transport, sale, supply, or dispensing of Medical Marijuana or related products to a Medical Marijuana Qualifying Patient or Medical Marijuana Registered Designated Caregiver as dictated by state law.
- 2.2.58 Medical Marijuana Manufacturing Center: An entity or facility registered with the North Dakota Department of Health for the cultivation, growing, cloning, manufacturing, acquiring, possession, storage, delivery, transfer, transport, sale, or supply of Medical Marijuana or related products to a North Dakota registered Medical Marijuana Distribution Center.
- 2.2.59 Medical Marijuana Registered Designated Caregiver: An individual who is registered with the North Dakota Department of Health who agrees to manage the well-being of a Medical Marijuana Qualifying Patient with respect to the Medical Marijuana Qualifying Patient's medical use of Marijuana.
- 2.2.60 Medical Marijuana Qualifying Patient: A person who has been diagnosed with a debilitating medical condition by a physician licensed to practice medicine in the State of North Dakota and who has in that person's possession a current, valid photo identification issued by the State of North Dakota or the United States of America and a current, valid document issued by the North Dakota Department of Health to that person and authorizing that person to possess and use Medical Marijuana.
- 2.2.61 Mobile home: A manufactured trailer intended for family residential occupancy.
- 2.2.62 Mobile home park: A parcel of land for which a detailed plan indicating the location of lots, blocks, streets, facilities, and utilities exists.

- 2.2.63 Nonconforming building: Any building that does not comply with any or all of these regulations.
- 2.2.64 Nonconforming use: Any principal use of land or building that does not comply with any or all of these regulations.
- 2.2.65 Nursing home or convalescent home: A home for the aged or infirm in which unrelated persons are accommodated for compensation.
- 2.2.66 Occupied structures and facilities: Any occupied dwelling, commercial building, or publicly used structure or facility.
- 2.2.67 Operator: An individual or group of individuals, partnership, corporation, joint venture, or other entity owning or controlling one or more animal feeding operations or animal wintering operations.
- 2.2.68 Permitted uses: Those uses, buildings, or structures that comply with the provisions of specific zoning districts because of the similarities in nature and relationship to each other. Permitted uses are distinct from conditional uses that are authorized only if certain requirements of these provisions are met after a public hearing [by the Zoning Commission](#) and approval by the [Zoning County Commission](#).
- 2.2.69 Person: Any individual, firm, corporation, partnership, or legal entity.
- 2.2.70 Planned development: A grouping of buildings and structures on a site of five or more acres in single ownership which is not limited by the yard or building height limitations but is based on a detailed development plan and recorded in the office of the County Tax Director upon approval by the County Commission.
- 2.2.71 Pollution, air: The presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property, animal or plant life, or which unreasonably interferes with the enjoyment of life or property.
- 2.2.72 Pollution, water: Manmade or man-induced alterations to the physical, chemical, or biological integrity of any waters in the State.
- 2.2.73 Public roadway or public way: Any dedicated and recorded right-of-ways including alleys, sidewalks, streets, roads, or highways.
- 2.2.74 Regional flood: A flood determined by the State and Federal Emergency Management Agency which is representative of large floods known to have occurred in the County.
- 2.2.75 Septic facility: Any structure or area designed to dispose of any wastewater or sewage.

- 2.2.76 Service station: Any building or premises where automotive fuels, automotive related services, lubricants, parts, and supplies are made available to the motorist.
- 2.2.77 Shall: The requirement is mandatory, rather than optional.
- 2.2.78 Site plan: A detailed plan for making improvements to parcel(s) of land for the purpose of building and development as provided in these regulations.
- 2.2.79 Source-water protection area: A boundary that defines the surface and subsurface area surrounding a water well or a well field, which supplies a public water system and through which contaminants are likely to move toward and reach such water well or field.
- 2.2.80 Stream: Any running body of surface water that ordinarily flows within a channel. This includes both perennial and intermittent streams.
- 2.2.81 Structural alteration: Any change in the supporting elements of a building or structure including bearing elements, partitions, columns, beams, girders, roofs, exterior walls, and embankments.
- 2.2.82 Structure: Anything constructed or erected, the use of which requires permanent location on the ground including advertising signs and billboards.
- 2.2.83 Substantial improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either before the improvement or repair is started; or if the structure has been damaged and is being restored, before the damages occurred. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.
- 2.2.84 Surface water: Water of the State located on the ground surface such as lakes, reservoirs, rivers, and creeks.
- 2.2.85 Utilities: Installations for conducting water, sewage, gas, electricity, television, storm water, and similar facilities providing service to and used by the public.
- 2.2.86 Variance: The relaxation of the terms of the zoning regulations in relationship to building height and size of the front, rear, and side yards, where the literal enforcement of these regulations could create unreasonable hardship.
- 2.2.87 Waters of the State: All waters within the jurisdiction of this State, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, 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.

2.2.88 Yard: An open space on the zoning lot that is unoccupied or unobstructed by any portion of a structure from the ground upward.

2.2.89 Zoning Commission: The Zoning Commission shall consist of seven (7) members: one (1) member of which must be City Commissioner of New Rockford and one (1) County Commissioner. The remaining members shall be appointed by the County Commissioners from the County at large.

NDCC §11-33-04

3 ARTICLE 3 GENERAL PROVISIONS

3.1. Compliance

Applications for a building permit shall be made to the County Tax Director, who may issue said “permitted use” permits. Permits other than “permitted use” shall be brought to the Zoning Commission for action. No building permit shall be issued if the actions described in the application would constitute a violation of this ordinance. Building permits shall be deemed necessary for “new” rural residential buildings or structures added to *taxable* property only as listed in the Permit Fee Schedule.

If, for any reason, a “permitted use” building permit is initially denied by the County Tax Director, the applicant shall be informed within seven days of the date of application. The applicant may then request a hearing before the Zoning Commission to appeal for a reversal of such denial or may reapply after making all changes in the application deemed necessary by the County Tax Director. If, for any reason, a building permit is initially denied by the Zoning Commission, the applicant shall be informed within seven days of the date of application. The applicant may then reapply after making whatever changes in the application deemed necessary by the Zoning Commission or appeal to a court of law. Fees for building permits are listed under the Permit Fee Schedule.

3.1.1 No building shall exceed the height or occupy a larger part of a lot area, and no lot shall be created smaller than the requirements of these regulations.

3.1.2 All existing lots at the date of adoption of these regulations shall be deemed buildable unless for the reasons of land suitability, flooding and other physical limitations contrary to the purpose of these regulations.

3.2. Amendments

The County Commission may, from time to time, amend, supplement or repeal any part of these regulations after a public notice and hearing. The hearing must be held by the Zoning Commission.

3.3. Non-conforming Uses

The lawful use of a building or premises existing at the date of adoption of these regulations may be continued. Where a non-conforming use is discontinued for a period of more than twelve consecutive calendar months, any subsequent use or occupancy of such premises shall conform to these regulations. Whenever a building is destroyed or damaged by fire or other casualty to the extent of more than 60% of its market value, it shall not be restored unless said building shall conform to the provisions of the district in which it is located. Non-conforming uses shall not be expanded to occupy a larger area of land than existed at the date of adoption of these regulations unless approved by the Zoning Commission after a public hearing.

3.4. Land Suitability

No land shall be used for a purpose which is held unsuitable for the reason of flooding, soil limitations, inadequate drainage, incompatibility with adjoining uses or any condition likely to be harmful to the health, safety or welfare of the people in the area. The County Zoning Commission may require information and data to determine the land suitability. The County may consult with County and State agencies to assist in its determination.

3.5. Conditionally Permitted Uses

Where a use is classified as a conditional use under these regulations and exists at the date of adoption of these regulations, it shall be considered a permitted use. Where a use is not allowed as a conditional use or permitted use, under these regulations, and exists at the date of adoption of these regulations, it shall be considered non-conforming and shall be subject to the non-conforming buildings and use provisions.

3.6. Road and Highway Access

A permit for access to the County roads is required by the County Commission. In granting the access permit to the County roads, the County Commission may adopt rules and regulations as to the number of access points per mile, the width, construction and other features of the access to the adjoining properties. The County Commission may place conditions when granting a road access permit. Farm driveways and field access points are exempt from these provisions.

3.7. Road and Highway Setbacks

All buildings and structures shall be placed at least 100 feet from County and township right-of-ways and at least 100 feet from the County road right-of-ways for the purpose of preventing hazardous accumulations of snow and to allow for future widening of public right-of-ways. Tree plantings and shelterbelts shall be planted in accordance with the USDA-NRCS-North Dakota Field Office Technical Guide recommendations.

4 ARTICLE 4 ZONING BOUNDARIES AND MAP

4.1. Zoning District

In order to carry out the purposes and provisions of these regulations, the following zoning districts are hereby established.

- 4.1.1 A - Agricultural Zone
- 4.1.2 RR - Rural Residential Zone
- 4.1.3 RC - Residential Community Zone
- 4.1.4 C - Commercial Zone
- 4.1.5 I - Industrial Zone
- 4.1.6 R/O - Recreation/Open Space Zone

4.2. Zoning District Map

4.2.1 Zoning districts

Eddy County, in its entirety, is zoned Agricultural except organized cities and those townships enacting their own zoning regulations pursuant to NDCC 58-03.

4.2.2 Public roads and highways as boundary

Where zoning district boundary lines are indicated as following roads and highways or extensions thereof, such boundary lines shall be construed to be the center line of said roads and highways or extension thereof unless clearly shown to the contrary.

4.2.3 Property line as boundary

Where a zoning district boundary line coincides approximately but not exactly with the property line, the zoning boundary shall be construed to be the lot line at that location. All section lines, quarter section lines and quarter-quarter section lines may be construed as the property lines.

4.2.4 District description for unsubdivided lands

For unsubdivided property, zoning district boundaries are determined by metes and bounds descriptions or by a legal description as deemed necessary.

4.2.5 Vacated areas

Where a public road or highway is vacated by the official action of the County Commission, the zoning district boundaries shall be extended to the center of the vacated public road or highway.

4.2.6 Zoning district boundary interpretation

Where any uncertainty exists as to the exact location of the zoning district boundary lines, the County Commission shall determine the location of such boundary lines.

5 ARTICLE 5 ZONING REGULATIONS

5.1. A – Agricultural Zone

5.1.1 Purpose

The purpose of this zone is to provide for preservation and protection of agricultural lands and to discourage uses incompatible with agricultural operations or detrimental to agricultural lands utilization.

5.1.2 Permitted uses

5.1.2.1 All types of farming and ranching operations including dairying, livestock and poultry raising, apiaries, fur farming, harvesting and selling crops and forest products.

5.1.2.2 Accessory buildings and structures.

5.1.2.3 Cemeteries.

5.1.2.4 Churches.

5.1.2.5 Grain elevators and accessory structures.

5.1.2.6 Home occupations.

5.1.2.7 Parks, playgrounds, and conservation/recreation areas.

5.1.2.8 Public and private schools.

5.1.2.9 Public buildings and facilities including County garages.

5.1.2.10 Single family non-farm residential units subject to the details in these regulations.

5.1.2.11 Stock piling of sand and gravel for road construction and maintenance.

- 5.1.2.12 Veterinary clinics, animal hospitals and domestic animal kennels more than 500 feet from any residence except the residence of the owner or operator.
- 5.1.3 Conditionally permitted uses
 - 5.1.3.1 Livestock sales arenas, livestock feedlots and slaughterhouses as previously defined, provided that no livestock sales arena, feedlot or slaughterhouse shall be located within 2,640 feet of any natural surface water body that contains water on an average of more than two months of any given year.
 - 5.1.3.2 Commercially operated air landing strip and accessory buildings.
 - 5.1.3.3 Feedlots, subject to these regulations.
 - 5.1.3.4 Voltage transmission lines and accessory structures.
 - 5.1.3.5 Manufacturing and processing of agricultural products produced in the area.
 - 5.1.3.6 Radio, TV stations and towers.
 - 5.1.3.7 Sales and services of agricultural equipment and machinery.
 - 5.1.3.8 Salvage and junk yards subject to provisions of ECZO §6.4.
 - 5.1.3.9 Sanitary landfills subject to the provisions of ECZO §6.3.
 - 5.1.3.10 Sewage lagoons and wastewater treatment facilities.
 - 5.1.3.11 Golf courses.
 - 5.1.3.11 Storage of farm related chemicals.
 - 5.1.3.12 Mining of sand and gravel subject to provisions of ECZO §6.2.
 - 5.1.3.13 Mobile homes.
 - 5.1.3.14 Public and non-profit wildlife management areas.
 - 5.1.3.15 Skeet, trap and rifle ranges if more than 1,000 feet from any residence.
- 5.1.4 Lot area and lot width
 - 5.1.4.1 For non-farm residential uses the lot area shall not be less than five acres.
 - 5.1.4.2 For non-residential uses the lot area shall not be less than five acres.

5.1.4.3 The lot width for any use in an agricultural district shall not be less than 250 feet.

5.1.5 Yard requirements

Minimum setback of non-farm structure shall be 100 feet from any public road right-of-way and 50 feet from any lot line of any lot of record.

5.2. RR – Rural Residential Zone

The intent and purpose of the RR Zone is to allow the development of moderate-density residential areas in a manner that does not interfere with normal farming and business activities and is not unduly destructive to the infrastructure or environment of Eddy County.

5.2.1 Permitted uses

5.2.1.1 Agricultural.

5.2.1.2 One and two family residences.

5.2.1.3 Schools, churches and cemeteries.

5.2.1.4 Public parks, playgrounds and open spaces.

5.2.1.5 Community meeting halls.

5.2.2 Conditional uses

5.2.2.1 Medical care facilities and nursing homes.

5.2.2.2 Mobile home courts.

5.2.2.3 Animal hospitals or clinics.

5.2.2.4 Commercial dog kennels.

5.2.2.5 Government administrative, maintenance or research facilities.

5.2.2.6 Campgrounds.

5.2.2.7 Water treatment facilities, sewage lagoons and sediment ponds provided that written proof meet or exceed the approval criteria set forth by any and all North Dakota State agencies or officials or shall be required prior to approval of a conditional use permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative.

5.2.3 RR Zone regulations

- 5.2.3.1 The minimum size of a RR Zone shall be 10 acres.
- 5.2.3.2 Minimum lot size shall be 20,000 square feet for lots served by public water or sewer and one acre for lots not served by public water or sewer.
- 5.2.3.3 Minimum setback of any structure shall be 100 feet from any right-of-way & 50 feet from any lot line.
- 5.2.3.4 Any structure exceeding 35 feet in height shall require a conditional use permit, with the exception of metal towers such as windmills and antennas.
- 5.2.3.5 The maximum intensity of buildings or other structures on any lot shall be 30% of the lot area.
- 5.2.3.6 Any two family residential structures shall include off-street parking space for at least two full size automobiles.
- 5.2.3.7 Points of ingress and egress from any public road shall be limited to one per 1/4 mile in or from any RR Zone properties. A frontage road shall be constructed as necessary to allow access to public roads via the allowable points of ingress and egress.
- 5.2.3.8 Minimum setback of any non-farm vegetation exceeding 48 inches in height which is left standing after November 1st of any year shall be 100 feet from any public right-of-way.

5.3. RC – Residential Community Zone

The intent and purpose of the RC Zone is to preserve the integrity and character of rural residential areas and incorporated or unincorporated cities and small towns in Eddy County.

5.3.1 Permitted uses

- 5.3.1.1 Agriculture.
- 5.3.1.2 Single-family residences.
- 5.3.1.3 Multi-family residences containing four units or less.
- 5.3.1.4 Public parks, playgrounds and open spaces.

5.3.2 Conditional uses

- 5.3.2.1 Campgrounds.
- 5.3.2.2 Keeping of livestock on lots of 30,000 square feet or more.

5.3.2.3 Water treatment facilities, sewage lagoons and sediment ponds provided that written proof meet or exceed the approval criteria set forth by any and all North Dakota State agencies or officials or shall be required prior to approval of a conditional use permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative.

5.3.3 RC Zone regulations

5.3.3.1 The minimum size of an RC Zone shall be 40 acres.

5.3.3.2 Minimum lot size shall be 5,000 square feet for lots served by public water or sewer and 20,000 square feet for lots not served by public water or sewer.

5.3.3.3 Minimum setback of any structure shall be 25 feet from any public right-of-way and 10 feet from any lot line.

5.3.3.4 Any structure exceeding 35 feet in height shall require a conditional use permit with the exception of metal towers such as windmills and antennas.

5.3.3.5 The maximum intensity of buildings or other structures on any lot shall be 40% of the lot area.

5.3.3.6 Any two or more family residential structures shall include off-street parking space for at least one full-size automobile per housing unit.

5.4. C – Commercial Zone:

The intent and purpose of the C Zone is to provide areas in the County in which commercial sales and service establishments may be situated such that they complement the surrounding land uses, economy and social structure.

5.4.1 Permitted uses

5.4.1.1 Agriculture, including any permitted use in an A Zone, as listed in ECZO §5.1.

5.4.1.2 Retail business.

5.4.1.3 Auction houses or stores, excluding livestock sales.

5.4.1.4 Automobile, motorized vehicle, boat, motor home and implement sales, including repair and storage facilities.

5.4.1.5 Business, professional and government offices.

- 5.4.1.6 Repair shops, upholstery shops, auto body shops and equipment retail shops.
 - 5.4.1.7 Hotels, motels and seasonal campgrounds less than one acre in size.
 - 5.4.1.8 Lodges, clubs, fraternal and community meeting halls.
 - 5.4.1.9 Warehousing, not to include any outside storage.
 - 5.4.1.10 Fabrication and manufacturing enterprises occupying not more than 100,000 square feet of floor space.
 - 5.4.1.11 Commercial eating and drinking establishments.
 - 5.4.1.12 Race tracks, drive-in theaters, movie houses, gun clubs, carnivals, circuses and other similar entertainment enterprises.
 - 5.4.1.13 Animal hospitals or clinics.
 - 5.4.1.14 Governmental research or maintenance facilities.
 - 5.4.1.15 Communication towers, lines, equipment, maintenance facilities and offices.
- 5.4.2 Conditional uses
- 5.4.2.1 Residential dwellings of not more than four housing units.
 - 5.4.2.2 Commercial dog kennels.
 - 5.4.2.3 Medical care facilities and nursing homes.
 - 5.4.2.4 Water treatment facilities, sewage lagoons and sediment ponds provided that written proof meet or exceed the approval criteria set forth by any and all ND State agencies or officials or shall be required prior to approval of a conditional use permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative.
- 5.4.3 C Zone regulations
- 5.4.3.1 Minimum lot size shall be 20,000 square feet for lots served by public water and sewer and one acre for lots not served by public water and sewer.
 - 5.4.3.2 Minimum setback of any structure shall be 100 feet from any public road right-of-way and ten feet from any lot line.

- 5.4.3.3 Any structure exceeding 35 feet in height shall require a conditional use permit, with the exception of metal towers such as windmills and antennas.
- 5.4.3.4 Off-street parking shall be provided at the minimum rate of two spaces per management employee on the premises.
- 5.4.3.5 All loading docks, truck bays, etc., shall be located in such a manner that no public right-of-way is wholly or partially blocked during normal cargo loading or unloading procedures.
- 5.4.3.6 Minimum setback of any non-farm vegetation exceeding 48 inches in height which is left standing after November 1st of any year shall be 33 feet from any public road right-of-way.

5.5. I – Industrial Zone

The intent and purpose of the I Zone is to allocate specific locations for large-scale manufacturing, processing and/or related enterprises where such enterprises may utilize natural and manmade resources to their benefit while imposing minimal adverse effects on surrounding uses.

5.5.1 Permitted uses

- 5.5.1.1 Agriculture.
- 5.5.1.2 Processing of food, fiber, agricultural products, petroleum and mineral resources.
- 5.5.1.3 Manufacturing and fabrication enterprises.
- 5.5.1.4 Railroad yards, including maintenance, storage, repair facilities, and offices.
- 5.5.1.5 Communication towers, lines, equipment, maintenance facilities, and offices.
- 5.5.1.6 Water treatment facilities, sewage lagoons and sediment ponds provided that written proof meet or exceed the approval criteria set forth by any and all North Dakota State agencies or officials or shall be required prior to approval of a conditional use permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative.
- 5.5.1.7 Rock, sand or gravel excavation, crushing and handling.
- 5.5.1.8 Truck and freight terminals, warehousing and bulk terminals involving dry, liquid and gaseous substances.

- 5.5.1.9 Concrete and concrete product plants.
- 5.5.2 Conditional uses
 - 5.5.2.1 Single-family residential dwellings.
 - 5.5.2.2 Temporary work camps provided that such camps shall provide occupancy only for those persons directly involved in the construction of industrial facilities during such construction. No such camp shall be in existence for more than 18 months.
 - 5.5.2.3 Electrical generation facilities with greater than five megawatt rate output.
 - 5.5.2.4 Livestock slaughter and meat processing operations, provided that written proof shall be provided to the Eddy County Planning and Zoning Commission that they meet or exceed State Health Department standards.
 - 5.5.2.5 Wrecking, junk and salvage yards.
- 5.5.3 I Zone regulations
 - 5.5.3.1 All enterprises in the I Zone shall comply with all regulatory and legislative requirements set forth by any and all Federal, State and local government agencies and offices. Written verification of such compliance shall be submitted to the Eddy County Planning and Zoning Commission prior to commencement of operations in the I zone.
 - 5.5.3.2 Minimum lot size shall be 25,000 square feet.
 - 5.5.3.3 Minimum setback shall be 50 feet from any lot line and 100 feet from any public road right-of-way.
 - 5.5.3.4 Minimum setback of any non-farm vegetation exceeding 48 inches in height which is left standing after November 1st of any year shall be 100 feet from any public road right-of-way.

5.6. R/O – Recreation/Open Space Zone

The intent and purpose of the R/O Zone is to encourage the conservation of public and private lands to be used for outdoor recreation and to preserve natural features and wildlife habitat.

- 5.6.1 Permitted uses
 - 5.6.1.1 Agriculture.

- 5.6.1.2 Harvesting of natural crops.
- 5.6.1.3 Raising of game animals, fowl and fish.
- 5.6.1.4 Public parks, recreation areas, playgrounds, picnic areas and natural preserves.
- 5.6.1.5 Flood water management structures.
- 5.6.1.6 Historical structures and monuments.
- 5.6.1.7 Structures and facilities used directly for the administration and/or management of lands in the R/O Zone.
- 5.6.2 Conditional uses
 - 5.6.2.1 Residential dwellings, either seasonal or permanent.
 - 5.6.2.2 Commercial retail businesses related to recreation, such as marinas, bait shops and souvenir shops.
 - 5.6.2.3 Private docks, ramps and boat houses.
 - 5.6.2.4 Campgrounds.
- 5.6.3 Building height
 - 5.6.3.1 The building height for residential buildings shall not exceed two and one half stories or 35 feet except for farm buildings and structures.
 - 5.6.3.2 The building heights for manufacturing of agricultural products and for construction and maintenance of livestock/ag waste systems shall be determined by the County Commission.
 - 5.6.3.3 The building height, excepting the radio and TV towers and church steeples for all other uses shall not exceed 35 feet.

6 ARTICLE 6 SPECIAL PROVISIONS

6.1. Additional Use Provisions, Restrictions and Requirements

No use, whether permitted or conditional, shall be permitted if the use is deemed, by the Zoning Commission, to be dangerous, obnoxious or offensive to persons residing in the vicinity thereof, or impair the use, enjoyment or value of any property.

6.2. Mining of Sand, Gravel and Excavation

6.2.1 Purpose

The purpose of these provisions is to provide for mining and extraction of sand and gravel for commercial uses, and to protect and preserve agricultural land by guiding such operations, and to minimize the traffic, noise, dust, fume and vibration impact on the adjoining uses and the road network.

6.2.2 Site approval requirements

All sand and gravel excavation sites shall require approval of the County excepting those related to farming and County road maintenance.

6.2.3 Data submission requirements

All sand and gravel excavation sites shall provide the County with the following data:

6.2.3.1 A site plan for operation and reclamation of the mined land including maps showing location of the land to be mined, location of roads and points of access to the site, maps showing the existing and proposed contours after the land is mined and a time table for operation of the site.

6.2.3.2 A guarantee that the reclamation of the site be completed within one year of the closure of the operation of the site.

6.2.3.3 Proof of compatibility with the existing land form including the vegetation, surface and ground water resources.

6.2.4 Proximity to existing uses

The operation of sand and gravel sites shall be more than 500 feet from any residential uses and more than 300 feet from non-residential uses.

6.3. Sanitary Landfills and Solid Waste Sites

6.3.1 Compliance with North Dakota State Laws and Rules

Any person who operates sanitary landfills or solid waste sites shall comply with all North Dakota State laws and administrative rules set forth by the State agencies.

6.3.2 Compliance with County ordinances and procedures

Where a County solid waste ordinance exists, any person who operates a sanitary landfill or solid waste site shall comply with the County ordinance, rules and procedures.

6.3.3 County ordinance and procedures

The County hereby adopts the solid waste provisions as provided for under statute and the rules of the ND State Department of Health and Consolidated Laboratories.

6.3.4 Purpose

The purpose of these provisions is to protect public health, ground and surface water, conflict with present land uses and preservation and protection of natural resources in the County.

6.3.5 Site approval requirements

All solid waste sites require the approval of the County Zoning Commission.

6.3.6 Locational standards

6.3.6.1 No landfill incinerator shall be located within 1,000 feet of residential use and 500 feet of commercial buildings and structures.

6.3.6.2 No landfill shall be located in areas which, due to high water table, flooding or soil conditions, may affect the quality of surface and ground water.

6.3.6.3 No landfill operation shall be located nearer than 200 feet of all road and highway right-of-ways.

6.3.7 Data submission requirements

All sanitary landfills and solid waste sites shall provide the County with the following data:

6.3.7.1 Maps of the area showing existing features such as roads, highways, vegetation cover, water courses, drainage ways, soils, topography, depth of water tables, wet lands, sloughs, existing uses, buildings, structures and the existing utility lines.

6.3.7.2 A plan for operation of the site including a descriptive text explaining consistency or inconsistency with the natural or man-made environment.

6.3.7.3 Eddy County requires a copy of the State of North Dakota's permit.

6.3.7.4 The Zoning Commission may require additional information as it deems necessary.

6.3.8 Statement of findings

Upon the public notification and a public hearing, the [Zoning County](#) Commission shall determine whether the proposed site meets the requirements of these

regulations. The [Zoning County](#) Commission may place conditions for approval of the site.

6.4. Junk or Salvage Yards

6.4.1 Purpose

The purpose of these requirements is to preserve and protect the visual and other environmental amenities of the rural areas while allowing the salvage or junk yards as business places.

6.4.2 Site approval requirements

All sites for salvage and junk yards require approval by the County [Zoning](#) Commission.

6.4.3 Locational standards

6.4.3.1 No salvage or junk yard shall be located within 500 feet of a residential district and 200 feet of commercial buildings and structures.

6.4.3.2 No salvage or junk yard shall be located in areas which, due to high water table, flooding or soil conditions, may affect the quality of surface and ground water.

6.4.3.3 No salvage or junk yard shall be located nearer than 200 feet of all road and highway right-of-ways.

6.4.3.4 All salvage yards and operations shall be screened from the public view unless the salvage material is placed 500 feet away from any highway right-of-ways and screened by natural vegetation, building and land form.

6.5. Public and Non-Profit Wildlife Management Areas

6.5.1 Purpose

These provisions are designed to address the need for public wildlife management areas and at the same time preserve and protect the interest of the County for its tax lease and investment in construction and maintenance of public roads.

6.5.2 General requirements

6.5.2.1 All publicly owned and non-profit wildlife management areas established after adoption of these regulations require a conditional use permit subject to the provisions of ECZO §8.2.

6.5.2.2 If the area is leased for this purpose, the public agency is required to provide a road maintenance agreement specifying the duties and

responsibilities of the owner/lessee for access to through roads as well as providing the duties and responsibilities of the owner/lessee for the control of noxious weeds in the wildlife management area.

6.5.2.3 If the land is purchased by a public agency for such a purpose, the public agency shall arrange for compensating the County for the loss of the property tax.

6.5.2.4 When a County road provides access to the wildlife management area, a road maintenance agreement specifying the duties and responsibilities of the public agency shall be a part of the conditional use permit.

6.6. Animal Feeding Operations

6.6.1 Purpose

These regulations are designed to allow commercial feedlots for the feeding of livestock, fur bearers and poultry and at the same time protect the adjoining uses against odor, run off and other incompatible characteristics associated with feedlots.

6.6.2 Equivalent animal numbers

An animal unit equivalent is a unitless 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 1000 animal units (a.u.), and so forth, are listed in the following table:

| Livestock Type | Animal Unit Equivalent | Equivalent numbers of 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 mature dairy cow, whether milking or dry | 1.33 | 225 | 750 | 1,500 | 3,750 |
| 1 dairy cow, heifer or bull, other than above | 1.0 | 300 | 1,000 | 2,000 | 5,000 |
| 1 weaned beef /bison animal, whether a calf, heifer, steer or bull | 0.75 | 400 | 1,333 | 2,667 | 6,667 |
| 1 cow-calf pair | 1.0 | 300 | 1,000 | 2,000 | 5,000 |
| 1 swine weighing 55 pounds or more | 0.4 | 750 | 2,500 | 5,000 | 12,500 |

| | | | | | |
|--------------------------------------|--------|--------|---------|---------|---------|
| 1 swine weighing less than 55 pounds | 0.1 | 3,000 | 10,000 | 20,000 | 50,000 |
| 1 horse | 2.0 | 150 | 500 | 1,000 | 2,500 |
| 1 sheep or lamb | 0.1 | 3,000 | 10,000 | 20,000 | 50,000 |
| 1 turkey | 0.0182 | 16,500 | 55,000 | 110,000 | 275,000 |
| 1 chicken, other than a laying hen | 0.008 | 37,500 | 125,000 | 250,000 | 625,000 |
| 1 laying hen | 0.012 | 25,000 | 83,333 | 166,667 | 416,667 |
| 1 duck | 0.033 | 9,091 | 30,303 | 60,606 | 151,515 |

For any livestock not listed above, 1.0 animal unit equals one thousand pounds [453.59 kilograms] whether single or combined animal weight.

6.6.3 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, rules and permits administered by the North Dakota Department of Health.

6.6.4 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.

6.6.5 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.

6.6.6 Water resource setbacks

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

- 6.6.6.1 Within a delineated water source protection area for a public water system. The source water protection areas for water supply Eddy

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.

6.6.6.2 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.

6.6.6.3 Within 1,000 feet (304.7 meters) of surface water which is not included in a source water protection area.

6.6.7 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.

| Setback Distances for <i>Animal Feeding Operations</i> | | |
|---|-----------------------|--------------------------------|
| Animal Units | Hog Operations | Other Animal Operations |
| Less than 300 | none | none |
| 300 - 1000 | 0.50 mi (0.805 km) | 0.50 mi (0.805 km) |
| 1001 or more | 0.75 mi (1.207 km) | 0.50 mi (0.805 km) |
| 2001 or more | 1.00 mi (1.609 km) | 0.75 mi (1.207 km) |
| 5001 or more | 1.50 mi (2.414 km) | 1.00 mi (1.609 km) |

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.

The County may 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.

6.6.8 Conditional uses

6.6.8.1 Permit procedure and 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.

6.6.8.1.1 A new *animal feeding operation* that would be capable of handling, or that expands to handle, more than 1,000 animal units is a conditional (or special) use of land.

6.6.8.1.2 An *existing animal feeding operation* that expands to handle more than 1,000 animal units is a conditional (or special) use of land. 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.

6.6.8.2 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.

6.6.8.2.1 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.

6.6.8.2.2 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.

6.6.8.2.3 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.

6.6.8.2.4 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.

6.6.8.2.5 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.

6.6.8.2.6 The conditional (or special) use permit will become final following the granting of a permit by the Department of Health.

6.6.8.2.7 A conditional (or special) use permit granted to the operator of a new animal feeding operation shall be put into use within 24 months, or the permit shall lapse and the operator shall re-apply.

6.6.8.3 Application requirements

The application for a conditional use (or special use) permit to operate a facility for an animal feeding operation shall include a plat 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:

6.6.8.3.1 Proposed number of animal units.

6.6.8.3.2 Total acreage of the site of the facility.

6.6.8.3.3 Existing and proposed roads and access ways within and adjacent to the site of the facility.

6.6.8.3.4 Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.

6.6.8.3.5 A copy of the permit application submitted by the applicant to the Department of Health.

6.6.9 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.

6.6.10 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.

6.7. Geophysical Exploration Requirements

Geophysical Exploration Requirements shall be governed by the NDCC.

6.8. Septic Facility

In accordance with the authority granted in NDCC 62-03.1-03, Eddy County Zoning Commission hereby provides minimum standards and criteria for design, location, installation, use and maintenance of on-site sewage treatment systems; and

6.8.1 Lake Region District Health Unit (LRDHU) Environmental Health Division “Onsite Sewage Treatment Rules and Regulations”.

7 ARTICLE 7 ADMINISTRATION AND ENFORCEMENT

7.1. Organization

To administer this code, Eddy County is hereby invested in ~~two~~ three offices, that being the County Tax Director, ~~and~~ the Zoning Commission, and the County Commission.

7.2. County Tax Director

The County Tax Director is a duly appointed county official authorized by the County Commission and is responsible to administer this code and to assist the Zoning Commission and the County Commission on any matter related to Zoning for and development of the County pursuant to NDCC 11-33-16.

7.2.1 Duties and responsibilities

7.2.1.1 Issue all “permit uses” permits and maintain records thereof.

7.2.1.2 Issue all “new” residential building and moving permits.

7.2.1.3 Maintain zoning related records and zoning district map including records of all amendments, conditional uses and variances.

7.2.1.4 Receive, file and forward to the Zoning Commission all applications for zoning amendments and conditional uses.

7.2.1.5 County Auditor to serve as secretary for the Zoning Commission.

7.2.2 Interpretation of Regulations

All questions of interpretation of this code shall be presented to the Tax Director.

7.2.3 Building Permit Applications Done by Tax Director

BUILDING PERMIT: A permit issued by the Eddy County Tax Director before and as a prerequisite to construction or erection of any “new” rural residential building subject to Eddy County Zoning Ordinance and NDCC Chapter 11-33.

Any person or persons intending to construct a “new” residential structure shall obtain a permit from the Tax Director before proceeding with the work or commencing any excavation in connection with it. These provisions shall also apply to mobile homes and manufactured homes as required to comply with the manufactured housing and building code and are required to obtain a permit from the Tax Director for placement and relocation thereof.

7.2.3.1 Each application for a building permit shall be accompanied by a legal description and a map showing the actual dimension of the lot to be built upon, the size and location.

7.2.3.2 The application shall specify the type of the residential structure, material of which it is composed, the part or portion of the lot to be occupied by the residential structure and the probable building cost, together with additional plans and specifications as may be required by the County Tax Director.

7.2.4 Building Permits

The Tax Director shall issue a building permit if the proposed building or structure conforms to zoning and building provision of this code.

Replacement of roofs, siding, windows, and decks do not require a building permit. Agland buildings do not require a building permit.

7.2.5 Fees

The County Tax Director shall charge and collect a fee according to the resolution of fees and schedules established by Eddy County.

7.2.6 Conditional Use and Site Approval Permits

The County Tax Director shall issue a conditional use or ~~site approval~~ siting permit upon approval of the application by the ~~Zoning Commission and~~ County Commission subject to the applicable provisions of the ordinance Section 8.2.

7.2.7 Variances

The County Tax Director shall issue a variance upon the approval of the application by the ~~Zoning Commission and~~ County Commission subject to the applicable provisions of ~~Section 8.3~~ the ordinance.

7.3. Zoning Commission

The Zoning Commission shall consist of seven (7) members: one (1) member of which must be City Commissioner of New Rockford and one (1) County Commissioner. The remaining members shall be appointed by the County Commissioners from the county at large.

7.3.1 Duties and Responsibilities

7.3.1.1 The Zoning Commission shall be specifically responsible for the interpretation and enforcement of this ordinance.

7.3.1.2 To hear and act on all applications for amendments to zoning districts and ~~take action~~ make recommendations for approval, denial or approval with modification.

7.3.1.3 To hear and act on all applications for conditional uses and site approvals in the manner prescribed in this code and make recommendations to the County Commission.

7.3.1.4 The action of the Zoning Commission is advisory to the County Commission and all final decisions rest with the County Commission.

7.3.1.5 The Zoning Commission may serve as the building official and serve at the discretion of the County Commission.

7.3.1.6 To study, examine and make changes to these regulations for the future development of Eddy County.

7.3.2 Notice of Hearings

Any notice of hearing shall be given at least once per week for two consecutive weeks prior to the hearing in the official newspaper of the County. ~~The Zoning Commission shall fix a reasonable date for hearing of applications for zoning district amendments, conditional use permits, site approval and plat applications and other matters before it, give public notice thereof in the official newspaper of the county and the nearest regularly published newspaper at least one week prior to the hearing.~~ The notices shall give time and place of hearing and shall state the purpose of the hearing and that the applications and supporting documents ~~for zoning district amendments and conditional use permits~~ shall be available for public inspection by the County Auditor.

7.3.3 Meetings

Meetings of the Zoning Commission shall be held at a regular time and date at the call of the Chairperson and at such other times as the Zoning Commission may determine upon prior public notice. All meetings shall be open to the public and any person may testify for or against a resolution.

7.4. County Commission

The County Commission maintains the authority for review, approval, modification and denial of recommendations of the Zoning Commission.

7.4.1 Duties

7.4.1.1 The County Commission is responsible for approval, modification or denial of amendments to the text of this code.

7.4.1.2 The County Commission is responsible for approval, modification or denial of amendments to change the zoning district(s) boundaries.

7.4.1.3 The County Commission is responsible for granting zoning district amendments, conditional use permits, [siting permits](#), variances and plat approval.

7.4.1.4 The County Commission shall, in absence of a Board of Adjustment, act as the Zoning Board of Adjustment.

7.4.2 Notice of Hearing

The County Commission may hold hearing(s) as required by the county general regulations, this code and laws of the State of North Dakota.

7.5. Violation and Penalties

Violations of this ordinance may be reported to the Tax Director. Complaints referring to such violations shall be filed in written form and shall state fully the cause and basis thereof. The Tax Director shall record said complaint, notify the Zoning Commission and man an inspection of the affected site.

7.5.1 Remedies for violation shall be in accordance with NDCC 11-33-17 and 11-33-21 as follows:

11-33-17. Violation of zoning regulations and restrictions - Remedies.

If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used in violation of this chapter, the proper county authorities or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceedings:

1. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use.
2. To restrain, correct, or abate such violations.
3. To prevent the occupancy of the building, structure, or land.

4. To prevent any illegal act, conduct, business, or use in or about such premises.

11-33-21. General penalties for violation of zoning regulations and restrictions.

A violation of any provision of this chapter or the regulations and restrictions made thereunder shall constitute the maintenance of a public nuisance and shall be a class B misdemeanor.

- 7.5.2 Each day that a violation of this ordinance exists may be considered as a separate offense.

8 ARTICLE 8 PROCEDURE FOR AMENDMENTS, CONDITIONAL USES AND VARIANCES

8.1. Zoning District Amendments

8.1.1 Public hearing notice

The Zoning Commission shall hold a public hearing, a notice of which shall be published at least ~~once per one~~ week for two consecutive weeks prior to the hearing in the official newspaper of the County. The notice of hearing shall include the time and place of hearing; the description of the property by street address for platted lands and a clearly identifiable location for unplatted lands; the proposed use and requested zoning district change; and the time and place for public inspection of the documents in the County offices before the hearing.

8.1.2 Public hearing

The Zoning Commission, at the hearing, shall listen to all persons who may speak in support of or in opposition to the proposal. Upon the completion of its review, the Zoning Commission shall recommend to approve, deny or modify the petition. ~~The Zoning Commission may require additional information before it completes its findings and recommendations.~~

8.1.3 Data submission requirements

Petitions for zoning district changes ~~and conditional uses~~ shall be submitted with the following information:

- 8.1.3.1 A legal description of the area proposed to be rezoned and the names and addresses of all owners of property lying within such area.
- 8.1.3.2 A map showing the existing land uses and zoning district classification of the area.

8.1.3.3 A site plan showing the existing buildings and uses and the requested changes.

8.1.3.4 A fee shall be paid in accordance with the schedule established by Eddy County.

8.1.4 Deliberation and decision

Following the hearing, the Zoning County Commission, upon due deliberation, shall make a decision on the proposed amendment within 30 days after receipt of the recommendation from the Zoning Commission ~~the hearing~~. In making its finding, the Zoning County Commission shall ascertain that the proposal is consistent with this ordinance and other regulations of the County.

8.2. Conditional Use Permits

8.2.1 Purpose

The development of this ordinance is based on providing conformity, compatibility and harmonious uses of all lands in each respective district or zone. In recognizing the unique characteristics of certain uses, which cannot be properly classified as permitted uses, such unique uses, nevertheless, may be desirable in a particular district provided that due consideration is given to location, development, operation of such uses and impact on neighboring premises.

8.2.2 Public hearing notice

The Zoning Commission shall hold a public hearing, a notice of which shall be published at least ~~one~~ once per week for two consecutive weeks prior to the hearing in the official newspaper of the County. The notice of hearing shall include the time and place of hearing; the description of the property by street address for platted lands and a clearly identifiable location for unplatted lands; the proposed use ~~and requested zoning district change~~; and the time and place for public inspection of the documents in the County offices before the hearing.

8.2.3 Public hearing

The Zoning Commission, at the hearing, shall listen to all persons who may speak in support of or in opposition to the proposal. Following the public hearing, the Zoning Commission shall make a recommendation to approve, deny, or approve with conditions. Upon the completion of its review, the Zoning Commission shall approve, deny or modify the petition. The Zoning Commission may require additional information before it completes its findings and recommendations.

8.2.4 Data submission requirements

Petitions for conditional uses shall be submitted with the following information:

- 8.2.4.1 A legal description of the area proposed to be used and the names and addresses of all owners of property lying within such area.
- 8.2.4.2 A map showing the existing land uses and zoning district classification of the area.
- 8.2.4.3 A site plan showing the existing buildings and uses and the requested changes.
- 8.2.4.4 A fee shall be paid in accordance with the schedule established by Eddy County.

8.2.5 Deliberation and decision

Following the hearing, the [Zoning County](#) Commission, upon due deliberation, shall make a decision on the proposed [amendment conditional use](#) within 30 days after [receipt of the recommendation from the Zoning Commission the hearing](#). In making its finding, the [Zoning County](#) Commission shall ascertain that the proposal is consistent with this ordinance and other regulations of the County.

8.2.6 Standards

No application for conditional use shall be recommended for approval unless the Zoning Commission finds that all of the following conditions are present:

- 8.2.6.1 That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare of the community.
- 8.2.6.2 That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.
- 8.2.6.3 That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- 8.2.6.4 That adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.
- 8.2.6.5 That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- 8.2.6.6 That the conditional use shall substantially conform to all applicable regulations of the district in which it is located.

8.2.7 Conditions and guarantees

8.2.7.1 Prior to the decision on any conditional use, the [Zoning County](#) Commission may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the conditional use as deemed necessary to promote the public health, safety and general welfare of the community, and to secure compliance with the standards and requirements specified in ECZO §8.2.6. In all cases in which conditional uses are granted, the [Zoning County](#) Commission shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therein are being and will be complied with.

8.2.7.2 No alteration of a conditional use shall be permitted unless approved by the [Zoning County](#) Commission. Where the [Zoning County](#) Commission has approved or conditionally approved an application for a conditional use, such approval shall become null and void within 12 months of the date of the [Zoning County](#) Commission action unless the use is commenced, construction is underway or the current owner possesses a valid building permit.

8.3. Variances

Variance from the terms of this ordinance shall be granted provided that the applicant establishes proof of practical difficulty or undue hardship.

8.3.1 Public hearing notice

The Zoning Commission shall hold a public hearing, a notice of which shall be published at ~~least one~~ once per week for two consecutive weeks prior to the hearing in the official newspaper of the County. The notice of hearing shall include the time and place of hearing; the description of the property by street address for platted lands and clearly identifiable locations for the unplatted lands; the proposed ~~use and requested zoning district change~~ variance; and the time and place for public inspection of the documents in the County Offices before the hearing.

8.3.2 Public hearing

The Zoning Commission at the hearing shall listen to all persons who may speak in support of or in opposition to the proposal. Following the public hearing, the Zoning Commission shall make a recommendation to approve, deny, or approve with conditions. Upon the completion of its review, the Zoning Commission will approve, deny or modify the proposal. The Zoning Commission may require additional information before it completes its findings and decision.

8.3.3 Data submission requirements

Petitions for variances ~~or special use permits~~ shall be submitted with the following information:

8.3.3.1 A legal description of the area ~~proposed to be rezoned subject to the variance request~~ and the names and addresses of all owners of property lying within such area.

8.3.3.2 A map showing the existing land uses and zoning district classification of the area.

8.3.3.3 A site plan showing the existing buildings and uses, along with a description of ~~and~~ the requested ~~changes~~ variance.

8.3.3.4 A fee shall be paid in accordance with the schedule established by Eddy County.

8.3.4 Deliberation and decision

Within 30 days of receipt of the recommendation from the Zoning Commission, the County Commission shall make a decision on the variance petition and may approve, deny, or approve with conditions. In making its finding, the Zoning County Commission shall ascertain that the request for variance is consistent with the County land use plan and meets all requirements of this ordinance and other regulations of the County.

8.3.5 Standards

No application for variances ~~or special use permits~~ shall be approved unless the Zoning Commission finds that all of the following are present:

8.3.5.1 That special conditions and circumstances exist which are peculiar to the premises and which are not applicable to other premises in the same zoning district.

8.3.5.2 That literal interpretation of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district.

8.3.5.3 That the special conditions and circumstances have not resulted from actions of the applicant.

8.3.5.4 That granting the variance requested will not confer upon the applicant any special privileges that are denied by this ordinance to other premises.

8.3.6 Justification

- 8.3.6.1 That the reasons set forth in the application justify granting the variance.
- 8.3.6.2 That the variance is the minimum variance, which would make possible a reasonable use of the premises.
- 8.3.6.3 That the granting of the variance will be in harmony with the general purpose of this ordinance and will not be injurious to the surrounding premises, neighborhood or the County and will not be contrary to the land use plan and the purposes of this ordinance.
- 8.3.6.4 That there is practical difficulty or unnecessary hardship in the use of the premises if the strict application of the regulations were to be carried out.

8.3.7 Authorized Variances

A variance shall not be granted for any yard or setback less than the yard or setback required by this ordinance.

- 8.3.7.1 To reduce not by more than 20% of the applicable requirements for lot area and lot width.
- 8.3.7.2 To reduce the applicable off-street parking or loading facilities by no more than 50% of the requirements.
- 8.3.7.3 To permit the use of the lot of record if it is smaller than the minimum size required by this ordinance.
- 8.3.7.4 To permit roof alterations to provide additional windows, headroom or area for occupancy of a third level.
- 8.3.7.5 To permit conversion of an existing building to a permitted residential use provided that it shall not conflict with the above standards cited in ECZO §8.3.5 or 8.3.6.

8.3.8 Hardship Variances

In addition to the five (5) authorized variances in Section 8.3.7, the [Zoning County Commission](#) may consider an application for variance for any other reason after taking into consideration the following matters:

- 8.3.8.1 Strict compliance would result in extraordinary hardship to the landowner, or adversely affect the public welfare, or obstruct the goals and objectives of the Eddy County Zoning Ordinances.
- 8.3.8.2 The hardship, which motivates the request for variance, must be related to the size, shape, or topography of the lot or tract or some other

physical feature that deprives the landowner of a reasonable use of the property.

8.3.8.3 The hardship is unique to the property in question and not a common condition experienced by other landowners in the area.

8.3.8.4 Granting the variance will not give any special rights or privileges to the applicant that are not already enjoyed by other landowners in the area.

8.3.8.5 The hardship has not been created by the applicant or by anyone acting on the applicant's behalf.

8.3.8.6 Granting the variance will have no adverse effect on the neighbors of the property in questions or Eddy County in general.

8.3.8.7 Any variance granted shall be no more than a minimum easing of the regulation necessary to alleviate the hardship.

8.4. ~~Action of the Zoning Commission~~ Zoning Ordinance Amendments

8.4.1 Initiation of amendment

Amendments may be proposed by the Zoning Commission or any person, firm, corporation or organization which has a freehold interest or contractual interest in a building, structure, lot or parcel of land.

8.4.2 Application for amendment

Applications for amendments shall be filed with the Tax Director who shall forward all such applications to the Zoning Commission.

8.4.3 Notice of public hearing

Notice of hearing shall include time, place and purpose of such hearing and shall be published at least ~~once per one~~ week for two consecutive weeks before the hearing in the official newspaper of the County.

8.4.4 Public hearing

At the public hearing before the Zoning Commission, any person may express opposition or support for the amendment at such hearing. Following the public hearing, the Zoning Commission shall make a recommendation to approve, deny, or modify the proposed amendment.

8.4.5 ~~Denial of application~~ Deliberation and decision

~~An application for an amendment to the zoning district map or conditional use permit which has been denied by the Zoning Commission shall not be made for a~~

period of one year from the date of such denial, unless the new application is substantially different from the denied application. Upon receipt of the recommendation from the Zoning Commission, the County Commission shall make a decision within 30 days to approve, deny, or approve with modifications the proposed amendment in accordance with NDCC Ch. 11-33.

9 ARTICLE 9 PERMIT FEE SCHEDULE

| | |
|---|-------------------------------|
| Application for “new” rural residential building or structure | \$10 |
| Application for conditional use permit | \$50 |
| Application for zoning amendment | \$100 <u>\$500</u> |
| Application for variance | \$100 |
| Application for medical marijuana center | \$5,000 min. per center |

9.1 Application Withdrawal

Any application filed under Sections 8, 10, or 11 may be withdrawn upon written request by the applicant at any time prior to the submission of any public hearing notice for advertisement; provided, that the request for withdrawal shall be honored only with the consent of either the Zoning Commission or the Board of County Commissioners, whichever body has advertised the hearing. If an application is withdrawn in this time frame, the applicant shall receive all of their application fee back except \$500.

10 ARTICLE 10 WIND ENERGY FACILITIES

10.1. Wind Energy Facilities

10.1.1 Purpose

The purpose of the wind energy facilities ordinance (WEF Ordinance) is to provide a regulatory framework for the siting, construction and operation of wind energy facilities in the County, subject to reasonable restrictions, which will preserve the safety and well-being of the residents, while allowing equitable and orderly development of wind energy facilities.

10.1.2 Regulatory framework

10.1.2.1 Zoning

Wind energy facilities may be constructed within the Agricultural Zoning District of the County, subject to the restrictions and conditions of this WEF Ordinance.

10.1.2.2 Principal or accessory use

A different existing use or an existing structure on the same parcel shall not preclude the installation of a wind energy facility or a part of such facility on such parcel. Wind energy facilities that are constructed and installed in accordance with the provisions of this [WEF Ordinance](#) shall not be deemed to constitute expansion of a nonconforming use or structure.

10.1.2.3 [Definition](#)

[For purposes of this WEF Ordinance, a wind energy facility is a set of devices whose primary purpose is to produce electricity by means of any combination of collecting, transferring, or converting wind-generated energy. A wind energy facility generally includes one or more wind turbine\(s\) and other associated facilities, including but not limited to electrical collection lines, communication lines, access roads, meteorological towers, aircraft detection lighting systems and related equipment, operations and maintenance facility, substation, facilities to enable interconnection to the electric grid, including but not limited to a transmission line, and other associated facilities.](#)

10.1.2.4 [Applicability](#)

The requirements of this [WEF Ordinance](#) shall apply to all wind energy facilities with one or more wind turbines rated at 100 kilowatts nameplate capacity or larger constructed after the effective date of this ordinance. No operation of an existing wind energy facility shall be allowed without full compliance with this ordinance and ~~a its~~ wind energy facility siting permit, and no modification or alteration of an existing wind energy facility shall be allowed without issuance of a new wind energy facility siting permit pursuant to 10.1.3. [For avoidance of doubt, a siting permit pursuant to this WEF Ordinance is the only zoning permit required for a wind energy facility and the conditional use permit and variance provisions of Sections 8.2 and 8.3 do not apply, except standards in 8.2.6.1 through 8.2.6.6 and 8.3.5.1 through 8.3.5.4.](#)

10.1.3 [Wind energy facility siting permit](#)

10.1.3.1 [Application for permit](#)

No work, except for wind monitoring, soil testing and other survey work, may commence to construct a wind energy facility until a County wind energy facility siting permit (“permit”) has been issued by the County Commission. The prospective permittee shall submit an application for said permit to the County Zoning Commission. The application shall be signed by an authorized representative of the prospective permittee, include ~~a fee of \$1,000 plus \$250 for each~~

~~proposed wind turbine up to a total amount of no more than \$10,000, and~~ the following information:

10.1.3.1.1 The complete name, legal address and phone number of the prospective permittee and responsible contact person.

10.1.3.1.2 A USGS topographical map of the wind energy facility and 500 feet of all adjoining properties along the wind energy facility perimeter, which map shall show all existing features, including property boundaries, structures, improvements, roads, utility lines, public facilities and natural features. The map shall also show location of all proposed improvements for the wind energy facility, including wind turbines, MET towers, electrical lines and roads. Each proposed wind turbine shall be numbered and fully described in technical details, including rotor diameter, model, manufacturer and distances measured in feet from property lines and from existing improvements for each proposed wind turbine.

10.1.3.1.3 Details as to how the prospective permittee will comply with each item in 10.1.4.

10.1.3.1.4 A schedule for the proposed start and completion of construction of the wind energy facility.

10.1.3.1.5 Copies or signed summaries of all leases and easements for wind turbines, associated equipment and infrastructure to be sited within the County and any written agreements between the prospective permittee and affected parties holding associated wind rights on adjoining properties established for the purpose of seeking a setback variance(s) pursuant to 10.1.5.3.

10.1.3.1.6 A fee of \$1,000 plus \$250 for each proposed wind turbine up to a total amount of no more than \$10,000.

10.1.3.2 Public hearings

Upon receipt of the application, the Zoning Commission and any experts it may retain, shall review the application, and in its discretion, may hold a public hearing on the application within 45 days from receipt of the application, providing at least 15 days published notice once per week for two consecutive weeks prior to the hearing in the official newspaper of Eddy County and mailing written notice to property owners within 500 feet of the proposed wind energy facility. The Zoning Commission shall listen to all persons who may speak in support of or in opposition to the application. At the conclusion of the

public hearing, the Zoning Commission shall make a recommendation to approve, deny, or approve with conditions.

10.1.3.3 Deliberation and decision

Upon receipt of the recommendation from the Zoning Commission, the County Commission shall make a decision on the siting permit application within 30 days and may approve, deny, or approve with conditions and issue a permit. If the Zoning Commission finds that the prospective permittee will comply with all requirements, it may, within 30 days after the hearing, issue a permit.

10.1.3.4 Demonstration of compliance

The permit issued pursuant to 10.1.3.3 shall include the following condition: be contingent upon the permittee's final demonstration of compliance with the requirements of the permit following completion of construction of the wind energy facility. Within 90 days of completion of wind energy facility construction, the permittee shall submit to the Zoning Commission an updated and final USGS topographical map, or survey if available, providing all information pursuant to 10.1.3.1.2 and demonstrating actual compliance with the requirements and conditions of the permit.

10.1.4 General requirements for wind energy facilities

The appearance, lighting, facility footprint, agricultural operations, roads and power lines must meet the following requirements:

10.1.4.1 Wind turbines shall be painted a non-reflective, non-obtrusive color.

10.1.4.2 Wind Turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.

10.1.4.3 Each wind turbine shall be marked with a visible identification number to assist with provision of emergency services, and the permittee shall file with local fire departments, law enforcement and the County emergency management coordinator a wind energy facility map identifying wind turbine locations and numbers.

10.1.4.4 Wind turbines shall not be artificially lighted, except to the extent required by the FAA or other applicable authority.

10.1.4.5 At wind energy facility sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, and location that will blend the wind energy facility to the natural setting and existing environment.

- 10.1.4.6 At wind energy facility sites, the location and construction of access roads and other infrastructure shall, to the extent reasonably possible, minimize disruption to farmland, the landscape and agricultural operations within the County.
- 10.1.4.7 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.
- 10.1.4.8 The permittee shall ensure that, following completion of construction of a wind energy facility, County roads will be repaired or restored to a condition at least equal to the condition prior to construction of such facility.
- 10.1.4.9 The permittee shall place electrical lines, known as collectors, and communication cables underground when located on private property. 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. (This paragraph does not apply to feeder lines.)
- 10.1.4.10 The permittee ~~shall~~ may place overhead feeder lines on public right-of-ways, if public right-of-ways exist, or the permittee may place feeder lines on private property. A change of routes may be made as long as the feeders remain on public right-of-ways and approval has been obtained from the governmental unit responsible for the affected right-of-ways. When placing feeders on private property, the permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.

10.1.5 Setbacks

The following setbacks and separation requirements shall apply to all wind turbines in a wind energy facility:

Areas less than one and one-tenths times the height of the turbine from the property line of a nonparticipating landowner and less than three times the height of the turbine or more from an inhabited rural residence of a nonparticipating landowner, must be excluded in the consideration of a site for a wind energy conversion area, unless a variance is granted. The County Commission may grant a variance if an authorized landowner, and affected parties with associated wind rights file a written agreement expressing the support of all parties for a variance to reduce the setback requirements in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in

NDCC Chapter 17-04. For purposes of this subsection, “height of the turbine” means the distance from the base of the wind turbine to the turbine blade tip when it is at its highest position.

~~10.1.5.1 Each wind turbine shall be set back from the nearest occupied dwelling, commercial building or publicly used structure or facility at a distance not less than 1,400 feet.~~

~~10.1.5.2 Each wind turbine shall be set back from the nearest public road or above ground communication or electrical line at a distance not less than 200 feet, determined at the center of the existing right of way.~~

~~10.1.5.3 Each wind turbine shall be set back from the wind energy facility perimeter at a distance not less than two and one half times the rotor diameter of the wind turbine. A variance may be granted if an authorized representative or agent of the permittee and those affected parties on adjoining properties with associated wind rights sign a formal and legally binding agreement expressing all parties’ support for a variance that waives or reduces the setback requirement.~~

~~10.1.6 Minimum ground clearance~~

~~The blade tip of any wind turbine shall, at its lowest point, have ground clearance of no less than 75 feet.~~

10.1.6 Restoration of property

Within 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, the removal of all structures to a depth of four feet below pre-construction grade and to replace the surface.

10.1.7 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 shall comply with the requirements and conditions of such permit for the duration of operation of a wind energy facility. Within 30 days of such change in ownership or controlling interest of any entity owning a wind energy facility, the parties to the transaction shall notify the Commission in writing and provide information pursuant to 10.1.3.1.1. The notification shall be signed by the authorized representatives or agents of both the original permittee and the entity to which the permit is being transferred.

11 ARTICLE 11 MEDICAL MARIJUANA

11.1. Purpose and Intent

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

All persons, entities or organizations wishing to establish a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) within the County must apply for and be granted a conditional use permit for said use.

- 11.1.1 The use, cultivation, manufacturing, production, distribution, possession, and transportation of marijuana remains illegal under federal law, and marijuana remains classified as a "controlled substance" by both North Dakota and federal law.
- 11.1.2 The county commission does not have the authority to, and nothing in this chapter is intended to, authorize, promote, condone, or aid the production, distribution, or possession of medical marijuana in violation of any applicable law.
- 11.1.3 The county commission intends to regulate the use, acquisition, cultivation, manufacturing, and distribution of usable medical marijuana in a manner that is consistent with the North Dakota Century Code. The regulations are intended to apply to all medical marijuana operations in the county by any medical marijuana business permitted under state law. Medical marijuana cultivation and production can have an impact on health, safety, and community resources, and this chapter is intended to permit state-licensed Medical Marijuana Manufacturing Center(s) or Distribution Center(s) where they will have a minimal negative impact.
- 11.1.4 To the extent that Medical Marijuana Manufacturing Center(s) or Distribution Center(s) are registered and authorized by the State of North Dakota to operate in the county, this commission desires to provide for their licensing and regulation to protect the public health, safety, and general welfare of the citizens of the county.
- 11.1.5 This chapter is to be construed to protect the public over medical marijuana business interests. Operation of a medical marijuana business is a revocable privilege and not a right in the county. There is no property right for an individual or business to have medical marijuana in the county.
- 11.1.6 Medical marijuana is a heavily regulated industry in the state and county, and the county has a zero tolerance policy for violations of this chapter.
- 11.1.7 The purpose of this chapter is to protect the public health, safety, and welfare of the residents and patients of the county by prescribing the manner in which

medical marijuana businesses can be conducted in the county. Further, the purpose of this chapter is to:

- 11.1.7.1 Provide for a means of cultivating, manufacturing and distribution of usable marijuana to patients who qualify to obtain, possess, and use marijuana for medical purposes as prescribed by state law.
- 11.1.7.2 Protect public health and safety through reasonable limitations on business operations as they relate to noise, air, and water quality, neighborhood and patient safety, security for the business and its personnel, and other health and safety concerns.
- 11.1.7.3 Impose fees to cover the cost to the county of licensing medical marijuana businesses in an amount sufficient for the county to cover the costs of the licensing program.
- 11.1.7.4 Create regulations that address the particular needs of the facilities, patients, and residents of the county and comply with laws that may be enacted by the state regarding medical marijuana.

11.2. Definitions

Unless specified in this ordinance in section 2.2, all terms defined in N.D.C.C. § 19-24-02 or successors to that statute shall have the definitions provided therein.

11.3. Annual Permit Fee

As authorized by the Board of County Commissioners, the Tax Director is to establish an annual permit fee to offset costs associated with policing, site inspections, monitoring, storage of media, and/or regulating medical marijuana facilities involved in the cultivation, propagation, manufacturing, processing, refining, distribution, delivery, supply, sale, or handling of Medical Marijuana.

11.4. Conditional Use Permit Requirements

- 11.4.1 In addition to the requirements applicable to all Conditional Use Permit applications, an application for a Conditional Use Permit for a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must include the following:
 - 11.4.1.1 Proof of Insurance (see section 11.5 for insurance requirements).
 - 11.4.1.2 A list of all persons and entities with an ownership interest in the Manufacturing Center(s) or Distribution Center(s) including all shareholders that hold any share in stock in the Manufacturing Center(s) or Distribution Center(s).
 - 11.4.1.3 A security plan depicting the location and configuration of security cameras and surveillance equipment.

- 11.4.1.4 A complete description of the products and services to be produced or sold by the Medical Marijuana Manufacturing Center(s) or Distribution Center(s).
- 11.4.1.5 A notarized statement acknowledging that the applicant understands applicable federal laws, any guidance or directives issued by the U.S. Department of Justice, the laws of the State of North Dakota, and the laws and regulations of the county applicable thereto concerning the operation of a Medical Marijuana Manufacturing Center(s) or Distribution Center(s). The written statement shall also acknowledge that any violation of any laws or regulations of the State of North Dakota or of the county, or any activity in violation of any guidance or directives issued by the U.S. Department of Justice, in such place of business, or in connection therewith, or the commencement of any legal proceeding relating to such Medical Marijuana Manufacturing Center(s) or Distribution Center(s) by federal authorities, may render the license subject to immediate suspension or revocation.
- 11.4.1.6 A notarized statement that the applicant will hold harmless, indemnify, and defend the county against all claims and litigation arising from the issuance of license and/or a conditional use permit including any claims and litigation arising from the Manufacturing Center(s) or Distribution Center(s), operation or ownership of the Medical Marijuana Manufacturing Center(s) or Distribution Center(s).
- 11.4.1.7 A notarized acknowledgement that the applicant is seeking a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) Conditional Use Permit and that the applicant understands and acknowledges that the burden of proving qualifications to receive such a Conditional Use Permit is at all times on the applicant; that the granting of a Conditional Use Permit for a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) is at the discretion of the county commission; and that the applicant agrees to abide by the decision of the county commission.
- 11.4.1.8 The Tax Director may require additional plans, documents, or other information prior to deeming the application complete.
- 11.4.2 A Medical Marijuana Manufacturing Center(s) or Distribution Center(s) Conditional Use Permit shall be reviewed annually by the County Commission for renewal.
- 11.4.3 If the State of North Dakota or its electorate repeals the Compassionate Care Act or the act is otherwise declared void, all Medical Marijuana Manufacturing Center(s) or Distribution Center(s) Conditional Use Permits issued by the County Commission will be deemed to have immediately expired.

- 11.4.4 Once a conditional use permit is obtained for a Medical Marijuana Manufacturing Center(s) or Distribution Center(s), any change in operation of the facility or in ownership shall require prior approval of the Board of County Commissioners.
- 11.4.5 Any building modifications or alterations must be approved by the County Tax Director.

11.5. Medical Marijuana Insurance and Bond Requirements

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

11.6. Medical Marijuana Design Standards

- 11.6.1 Each Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must be located in a separate, permanent, stand-alone structure and have a minimum six (6) foot high perimeter fence encompassing the parcel boundary.
- 11.6.2 Each Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must be located a minimum of 2,640 feet from a public or private preschool, kindergarten, elementary, secondary or high school, public park, public community center, dependent care facility, homeless shelter, youth center, or place of worship. The distance shall be measured from the exterior fence of the Medical Marijuana Manufacturing Center(s) or Distribution Center(s) to the property line of the protected use.
- 11.6.3 Each Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must be located a minimum of 500 feet from any residential district, or any residential dwelling, trailer, recreational vehicle, or recreational district. The distance shall be measured from the exterior fence of the Medical Marijuana Manufacturing Center(s) or Distribution Center(s) to the property line or dwelling of the protected use.
- 11.6.4 No Medical Marijuana Dispensary shall have operating hours earlier than 8:00 AM or later than 7:00 PM.

- 11.6.5 The entire perimeter of a Medical Marijuana Manufacturing Center(s) or Distribution Center(s) structure must be well lit (minimum 1 candle foot) to prevent concealment in shadows around the structure for a minimum of 15 feet around each structure that is part of the Medical Marijuana Manufacturing Center(s) or Distribution Center(s). Furthermore, everything within the fenced area shall have 24-hour surveillance cameras depicting the entire exterior of the Manufacturing Center(s) or Distribution Center(s) as well as cameras at the property entrance depicting vehicles and license plates of each vehicle entering the parking lot.
- 11.6.6 Each Medical Marijuana Distribution Center shall have at least 1 parking space per 250 square feet of structure.
- 11.6.7 Each Medical Marijuana Cultivation and/or Manufacturing Facility shall have at least 1 parking space for every 1000 square feet of plant cultivation area and 1 parking space for every 250 square feet of all other areas of the structure.
- 11.6.8 With the exception of the specific Medical Marijuana Manufacturing Center(s) or Distribution Center(s) approved as part of a Conditional Use Permit, no other activity may occur within the facility or land parcel.
- 11.6.9 No outdoor storage on-site shall be permitted.
- 11.6.10 No drive-through, drive-up, or walk-up facilities shall be permitted.
- 11.6.11 Each Medical Marijuana Manufacturing Center(s) or Distribution Center(s) must ensure there is no emission of dust, fumes, vapors, or odors into the environment.
- 11.6.12 Windows must remain unobstructed, allowing visibility into the facility. Window tint, decals, or window signage of any kind shall be strictly prohibited.
- 11.6.13 Each permitted applicant shall obtain an inspection of the property from the County Tax Director or fire marshal prior to the annual renewal of the Conditional Use Permit.
- 11.6.14 All surveillance camera locations and surveillance recording equipment including specifications must be approved by the County Tax Director.
- 11.6.15 All applicable state standards and requirements shall apply in the design and operations of any Manufacturing Center(s) or Distribution Center(s).

11.7. Serviceability, Exclusions, and Exceptions

- 11.7.1 The provisions of this chapter do not waive or modify any other provision of this ordinance with which Medical Marijuana Manufacturing Center(s) or Distribution Center(s) is required to comply. Nothing in this section is intended to authorize, legalize, or permit the Manufacturing Center(s)' or Distribution Center(s)' operation or maintenance of any facility, building, or use which violates any

County ordinance or statute of the State of North Dakota regarding public nuisances, Medical Marijuana, or any federal regulations or statutes relating to the use of controlled substances.

11.7.2 This chapter shall be null and void if any determination is made, after the adoption of the ordinance enacting this chapter, by any court of competent jurisdiction, that Ch. 19-24, N.D.C.C., is invalid, or shall be null and void to the extent any portion of such section is held invalid.

11.7.3 Should any section, subsection, clause or provision of this chapter for any reason be held to be invalid or factually unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this chapter, it being hereby expressly declared that this chapter, and each and every section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, approved, adopted and/or ratified irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases of this chapter be declared invalid or unconstitutional.

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