

## ARTICLE 2

### *Section 2-101-119, inclusive. Exceptions and encroachments - general provisions.*

#### **Section 2-101. Requirement for conforming structures to height limitations.**

Any structure hereafter erected or altered shall comply with the height limitations of the district in which it is located except as specified in this article.

#### **Section 2-102. Certain appurtenances may exceed height limitations - exceptions.**

The following appurtenances may exceed the prescribed height limit provided they are normally required for use permitted in the district in which they are erected or constructed; flagpoles, chimneys, cooling towers, elevator bulkheads, belfries, penthouses for other than living purposes, grain elevators, stacks, silos, storage towers, observation towers, ornamental towers, monuments, cupolas, domes, spires, standpipes and other necessary mechanical appurtenances and their protective housing; provided, however, that any of the above, except flagpoles and chimneys when located in any district with a height limit of 40 feet or less, shall be allowed only upon a finding of the Board of Adjustment that such appurtenances will not be unduly detrimental to the surrounding property.

#### **Section 2-103. Telecommunications Towers, Antenna Support Structures, Broadcast Towers, Receiving Towers, and Similar Electronics or Meteorological Towers and Accessory Equipment.**

- A. Intent. Regulations regarding telecommunications towers, antenna support structures, broadcast towers, receiving towers, and similar electronics or meteorological towers are intended to accommodate the development of a competitive communications and broadcast marketplace while protecting the health, safety, and welfare of the public and maintaining the aesthetic integrity of the county. The regulations cover the placement, construction, and modification of towers, antenna support structures and accessory structures. The specific intent of this section is to:
1. Regulate the location of towers, antenna support structures and accessory structures;
  2. Promote and encourage shared use/co-location of telecommunications towers, antenna support structures, broadcast towers, and accessory structures;
  3. Avoid potential damage to property caused by towers, antenna support structures and accessory structures by ensuring that such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or when determined to be structurally unsound;
  4. Ensure that towers, antenna support structures and accessory structures are compatible with and do not adversely impact surrounding land uses; and
  5. Facilitate the provision of wireless communications services to residents and businesses in an orderly fashion.

6. Provide guidance to the Board of Adjustment for their deliberations regarding requests for Conditional Use Permits for towers similar in structure or purpose to those addressed herein.

The following facilities are specifically not subject to the requirements of this section: (1) antennas used by residential households solely for broadcast commercial and public radio and television reception; or (2) satellite antennas used solely for residential household purposes.

B. Equipment Design.

1. Antennas shall be mounted on a single monopole, guyed lattice, or self-support lattice tower.

**Exception:** Amateur radio antenna towers less than 100 feet in height.

2. Towers not requiring FAA painting/markings shall have a galvanized finish or be a neutral color.
3. Equipment structures shall be a neutral color.

C. Setbacks/Spacing.

1. Setbacks shall be measured from the base of the tower to the property line of the parcel on which it is located.
2. Notwithstanding other setback standards in this ordinance, the exterior base of a self support lattice, monopole, guyed lattice tower shall be separated from all residential dwellings (not located on the subject property), residential subdivisions, residential zoning districts, and public parks by a minimum distance of thirteen hundred (1300) feet. Setback requirements may be reduced if written permission is obtained from an impacted property owner.

**Exception:** Radio communications towers 100 feet or less in height shall be separated from residential dwellings not located on the subject property by a minimum of 1.1 times the height of the tower unless written permission is obtained from impacted property owner(s).

3. There shall be a minimum distance of three (3) miles between towers.

**Exception:** This separation requirement shall not apply to temporary towers 200 feet or less in height or radio communications towers 100 feet or less in height.

D. Illumination and Security.

1. Towers shall not be artificially lighted unless required by the FAA. Required safety lighting shall not exceed the FAA minimum. Flashing white lights shall not be allowed for night time lighting.
2. Security lighting on the site shall not exceed twenty (20) feet in height and be directed toward the ground to reduce light pollution, prevent off site light spillage and avoid illuminating the tower.

- E. Landscaping. The Planning Director shall have the authority to impose reasonable landscaping requirements surrounding accessory structures. Required landscaping shall be maintained by the facility owner.

F. Maintenance.

1. All telecommunications towers, antenna support structures and broadcast towers facilities shall be maintained in good condition, order, and repair so that they do not endanger the life or property of any person.
2. Telecommunications towers, antenna support structures and broadcast towers shall be maintained in compliance with Telecommunications Industries Association/ Electronic Industries Association Standard TIA/EIA 222 (latest revision), all applicable laws, and so as not to interfere with the use of other property. Upon the Planning Director's determination that a tower structure is a hazard to public safety, the owner shall be required to perform an inspection by a registered professional engineer and make all recommended corrections.
3. If an owner discontinues use of a tower, or if an owner files notice with the Federal Communications Commission of its intent to cease operating the tower, the owner shall give written notice to the Planning Director of the date of such discontinuance.

G. Signage.

1. Signage at the site is limited to non-illuminated warning and equipment identification signs.
2. Sign area shall not exceed six (6) square feet in size.

H. Co-Location/Shared Facilities.

1. The tower owner shall not exclude co-location on the same tower when co-location is structurally, technically or otherwise possible.
2. In addition to equipment proposed for the applicant's use, proposed towers and sites must be designed to accommodate co-location of a minimum of two additional providers for towers between 100-200 feet and a minimum of three additional providers for towers over 200 feet in height.

**Exception:** Temporary towers and amateur radio towers are not required to permit co-location.

3. The Planning Director may revoke a building permit when a tower is capable of co-location if:
  - a. The tower owner refuses to provide space for other providers at a fair market rate when it would not impair the structural integrity of the tower or cause interference; or
  - b. The tower owner modifies the structure in a way to make co-location impractical or impossible. If a permit is revoked, the facility must be removed at the owner's expense.

I. Abandonment.

1. Towers, antennas and equipment facilities are considered abandoned if they are unused by all providers at the facility for a period of 365 consecutive days. The Planning Director will determine if towers, antennas and equipment facilities have been abandoned. The Planning Director has the right to request documentation from the facility owner regarding tower or antenna usage. Following written notification of

a determination that a facility is abandoned, the facility owner has seventy-five (75) days to:

- a. Reuse the facility; or
- b. Dismantle the facility. If the facility is not removed within seventy-five (75) days of abandonment, the County may remove the facility at the facility and/or property owner's expense. If the facility is removed, all permits associated with the facility are revoked.

J. Application Requirements (in addition to standard requirements).

1. The facility or property owner shall file a letter with the Planning Department affirming intent to comply with all requirements of this section and specifically accepting responsibility for removal of the tower if it is abandoned.
2. The application must include a copy of the lease or letter of authorization from the property owner evidencing the applicant's authority to pursue a permit.
3. In the case of a new tower, the application must include a statement documenting why collocation cannot meet the applicant's requirements and a list of existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to (explain) technical, physical, or financial reasons. If an existing monopole or tower is listed among the alternatives, the applicant must specifically address why the modification of such structure is not a viable option.

K. Technical Issues and Expert Review. Towers, antennas and equipment facilities may involve complex technical issues that require review and input that is beyond the expertise of County staff. The Planning Director may require the applicant to pay reasonable costs for a third-party technical study of a proposed facility. Selection of expert(s) to review the proposal will be at the sole discretion of the County.

**Source:** Ord. No. 2007-08, 2007; Ord. No. 2009-01, 2009; Ord. No. 2009-03, 2009.

**Section 2-104. Restrictions on structures established by FAA or S.D. Division of Aeronautics rules.**

In any district, no structure shall be erected where prohibited or which exceeds the maximum heights permissible under the rules of the Federal Aeronautics Administration or the South Dakota Division of Aeronautics.

**Section 2-105. Certain public and semi-public and structures allowed to exceed height limitations with permission of Board of Adjustment.**

Public and semi-public buildings and structures such as hospitals, churches, sanitariums, schools and water reservoir towers may exceed the height limits of the district in which they are located, provided that such buildings and structures shall provide at least one additional foot of yard space on each side for each additional foot that such building or structure exceeds the specified height limit of the district in which it is located and further provided that a finding is made by the

Board of Adjustment that such additional height will not be materially detrimental to surrounding property.

**Section 2-106. Requirement for conforming buildings and structures to yard space regulations.**

Any building or structure hereafter erected, altered or established shall comply with the yard space requirements of the district in which it is located except as specified below: All residential structures erected or moved into the local business district shall respectively conform to the regulations governing the residential district to which the residence conforms. Any required yard space shall be open from 30 inches above the ground to the sky except as specified herein.

**Section 2-107. Allowable yard space encroachments for eaves, cornices and architectural features.**

Eaves, cornices and projecting architectural features may extend two feet into a required yard space except that eaves may encroach three (3) feet into a yard space when such yard space is seven feet or more in width.

**Section 2-108. Allowable yard space encroachments for fire escapes.**

Open fire escapes may extend into any required side or rear yard not more than five (5) feet.

**Section 2-109. Allowable yard space encroachments for chimneys.**

Chimneys when not more than 4 feet wide may extend two feet into any required yard space.

**Section 2-110. Allowable yard space encroachments for porches and terraces - other requirements.**

Open, uncovered porches or terraces no higher than the first floor above grade on the side of the building to which they are appurtenant and in no event higher than 30 inches above grade of the lot on the side of the building where such porch or terrace is located, may extend into any required yard. No railing or other barrier higher than 36 inches shall be placed around such porch or terrace. Any such porch or terrace when located on a lot at the intersection of two streets or a street and an alley shall comply with the provisions designed to insure proper sight distances as set forth in this ordinance for fences and hedges. Enclosed or covered porches shall be considered part of the building in determination of the size of yard or lot coverage.

**Section 2-111. Reserved.**

**Source:** Ord. No. 2009-01, 2009.

**Section 2-112.** Reserved.

**Source:** Ord. No. 2009-01, 2009.

**Section 2-113. Certain one-family dwelling allowed on lots smaller than yard space requirements with permission of Board of Adjustment.**

No dwelling may be erected on any lot, separately owned or under contract of sale and containing, at the time of the passage of this ordinance, an area or a width smaller than that required for a one-family dwelling, unless allowed by the Board of Adjustment.

**Section 2-114. Requirements for walls, hedges and fences to provide unobstructed view at intersections - exceptions.**

There shall be provided an unobstructed view across the triangle formed by joining points measured 60 feet distant along the property line from the intersection of two streets or 15 feet along both the street and alley line from the intersection of a street and an alley. Where there is a speed limit of 30 miles per hour or less, said distance along the property line for streets shall be twenty feet. Within said triangle, there shall be no sight obscuring or partly obscuring walls, fence or foliage higher than 30 inches above grade, excluding agricultural crops or in the case of trees, foliage lower than 8 feet. Vertical measurement shall be made at the top of the curb on the street or alley adjacent to the nearest side of the triangle or if no curb exists, from the edge of the nearest traveled way. This provision does not apply to chain link fences, on which no obstructions are attached thereto.

**Section 2-115. Power of Board of Adjustment to grant interim special use permits for certain uses.**

It is recognized that there may be extensive areas of undeveloped land upon which the planned type of development will not take place for a considerable time. It is therefore reasonable and proper that interim uses not in conformity with the land use plan be allowed.

The Board of Adjustment is authorized to grant special use permits for property within the district allowing for uses not allowed as a matter of right in said district under the following conditions:

1. The proposed use shall be an open land type of use and shall not involve the erection of permanent buildings or other permanent improvements and shall be located in an undeveloped area, provided however, that permanent buildings shall be allowed which conform with the zoning in force upon the parcel.
2. The proposed use and the placement thereof upon the land shall be such that it shall not be unsightly to the general public or interfere with the enjoyment or use of neighboring properties.

3. All permanent structures shall comply with all provisions of the district in which the proposed use is located.
4. The Board of Adjustment may append reasonable conditions to any special use permit to the end that the objectives of this ordinance may be upheld.

**Section 2-116. Procedures, conditions, and restrictions on interim special use permits.**

Before issuing any special use permit, the Board shall hold a public hearing and shall give notice hereof to all property owners within 2640 feet and to the county commission. Before approving any special use permit, the board shall request and receive the favorable recommendation of the county commission. The zoning administrator shall enforce compliance with the terms of the special use permit and shall initiate actions for renewal or cessation of the activity at the expiration of the special use permit.

No special use permit shall be issued for a period to exceed two years, provided however, that such special use permit may be renewed for additional periods not to exceed two years each, upon finding that conditions have not changed sufficiently to warrant denial of such a renewal.

No property owner or owner of other interest in the land shall have a vested right in the renewal of any special use permit.

**Section 2-117. Wind Energy Conversion Systems (WECS).**

- A. Purpose. The purpose of this section is to ensure that the placement, construction and modification of a Wind Energy Conversion System (WECS) facility is consistent with the County's land use policies, to minimize the impact of WECS facilities, to establish a fair and efficient process for review and approval of applications, to assure a comprehensive review of environmental impacts of such facilities, and to protect the health, safety and welfare of the County's citizens.
- B. Federal and State Requirements. All WECS facilities shall meet or exceed standards and regulations of the Federal Aviation Administration, the Federal Communications Commission, USF&WS, SDGF&P, SDDOT, SDPUC, SD Historic Preservation Office, South Dakota State Statutes and any other agency of federal or state government with the authority to regulate WECS facilities.
- C. Technical Issues and Expert Review. WECS and their attendant support facilities may involve complex technical issues that require review and input that is beyond the expertise of County staff. The Planning Director may require the applicant to pay reasonable costs for a third-party technical study of a proposed facility. The County will seek mutual agreement with the developer regarding selection of expert(s) to review the proposal and projected costs for the review, however final determination shall be at the sole discretion of the County.
- D. Definitions.
  1. Construction - Any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes

- needed for temporary use of sites or routes for non-utility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.
2. High Voltage Transmission Line – A conductor of electric energy and associated facilities.
  3. Large Wind Energy Conversion System or LWECS – All WECS facilities excluding Small Wind Energy Conversion Systems.
  4. Overhang Distance – the maximum horizontal extension of the WECS, including the rotor radius, measured from the centerline of the tower.
  5. Person – An individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, consumers power district, or any other entity, public or private, however organized.
  6. Route – The location of a High Voltage Transmission Line between two end points. The route may have a variable width of up to 1.25 miles.
  7. Small Wind Energy Conversion System or SWECS – A WECS facility with a single Tower Height of less than seventy-five (75) feet used primarily for on-site consumption of power.
  8. Tower Height – The height above grade of the fixed portion of the tower, excluding the wind turbine itself.
  9. System Height – The height above grade of the tallest point of the WECS, including the rotor radius.
  10. Turbine – The parts of the WECS including the blades, generator and tail.
  11. Utility – Any person engaged in the generation, transmission or distribution of electric energy in this state including, but not limited to, a private investor owned utility, a cooperatively owned utility, a consumers power district and a public or municipal utility.
  12. Wind Energy Conversion System or WECS – A commonly owned and/or managed integrated system that converts wind movement into electricity. All of the following are encompassed in this definition of system:
    - a) Tower or multiple towers, including foundations;
    - b) Generator(s);
    - c) Blades;
    - d) Power collection systems, including padmount transformers;
    - e) Access roads, meteorological towers, on-site electric substation, control building, and other ancillary equipment and facilities; and
    - f) Electric interconnection systems or portion thereof dedicated to the WECS.

E. Requirements for Siting Small Wind Energy Conversion Systems

1. Standards

A Small Wind Energy Conversion System may be permitted subject to the following requirements:

- a) Setbacks. Unless otherwise specified, all setback measurements are from the structural perimeter of a building, the edge of a right-of-way, or the structural perimeter of a tower pylon.
  - i. The minimum setback distance between each wind turbine tower and all surrounding property lines, overhead utility or transmission lines, other wind turbine towers, electrical substations, public roads and dwellings shall be equal to no less than one point one (1.1) times the system height, unless written permission is granted by each affected property owner. Such written permission is to be provided in a format specified by the Director of Planning and Zoning, and is to be recorded with the Register of Deeds.
  - ii. Contiguous property owners and planned developments may construct a SWECS for their use in common. If property held by more than one single owner is used to meet the setback requirements, a site plan establishing easements or reserved areas must be submitted for approval by the Director of Planning and Zoning. A document, suitable for recording with the Register of Deeds, establishing the easements or reserved areas, and responsibilities for ensuring compliance with the other provisions of this ordinance must also be submitted and issuance of any permit shall be contingent upon recording of said document.
- b) Access. All ground mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access, and the tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of eight (8) feet above the ground.
- c) Lighting. A SWECS shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration.
- d) Noise. SWECS facilities shall not exceed fifty-five (55) dBA, as measured at the closest neighboring inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages or wind storms.
- e) Appearance, Color, Finish. The SWECS shall remain painted or finished the color or finish that was originally applied by the manufacturer, unless approved in the building permit.
- f) Signs. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a SWECS visible from any public road shall be prohibited.
- g) Code Compliance. A SWECS shall comply with all applicable state construction and electrical codes, and the National Electrical Code.
- h) Utility Notification. No SWECS shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an

interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

## 2. Permit Requirements

- a) Building Permit. A building permit shall be required for the installation of a SWECS.
- b) The owner shall submit an application for a building permit on a form approved by the Director, Planning and Zoning. The application shall be accompanied by two (2) copies of a plot plan which includes the following:
  - i. Property lines and physical dimensions of the property;
  - ii. Location, dimensions, and types of existing major structures on the property;
  - iii. Location of the proposed SWECS;
  - iv. The right-of-way of any public road that is contiguous with the property;
  - v. Any overhead utility lines;
  - vi. Wind system specifications, including manufacturer and model, rotor diameter, tower height, and tower type (monopole, lattice, guyed);
  - vii. Tower foundation blueprints or drawings;
  - viii. Tower blueprint or drawing;
  - ix. Proof of notification to the utility in the service territory in which the SWECS is to be erected, consistent with the provisions of E.1.(h) herein; and
  - x. The status of all necessary interconnection agreements or studies.
- c) Copies of all required third party inspections/engineering inspections shall be provided to the Director of Planning and Zoning as completed.
- d) Expiration. A permit issued pursuant to this ordinance shall expire if:
  - i. The SWECS is not installed and functioning within twenty-four (24) months from the date the permit is issued; or
  - ii. The SWECS is out of service or otherwise unused for a continuous 12-month period.

## 3. Maintenance.

- a) All WECS components, support structures, and facilities shall be maintained in good condition, order, and repair so that they do not endanger the life or property of any person.
- b) Upon the determination of the Planning Director that a structure is a hazard to public safety, the owner shall be required to perform an inspection by a registered professional engineer and make all recommended corrections.
- c) If an owner discontinues use of a WECS, the owner shall give written notice to the Planning Director of the date of such discontinuance.

#### 4. Abandonment

- a) A SWECS that is out-of-service for a continuous three-hundred-sixty-five (365) day period will be deemed to have been abandoned. The Planning Director may issue a Notice of Abandonment to the owner of a SWECS that is deemed to have been abandoned. The owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from Notice receipt date. The Planning Director shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the SWECS has not been abandoned.
  - b) If the SWECS is determined to be abandoned, the owner of the SWECS shall remove the wind generator from the tower at the owner's sole expense within three (3) months of receipt of Notice of Abandonment. If the owner fails to remove the wind generator from the tower, the Planning Director may pursue legal action to have the wind generator removed at the owner's expense.
5. Violations. It is unlawful for any person to construct, install, or operate a SWECS that is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this ordinance. SWECS facilities installed prior to the adoption of this ordinance are exempt.

#### F. Requirements for Siting Large Wind Energy Conversion Systems

##### 1. Mitigation Measures

- a) Site Clearance. The permittee shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the LWECS.
- b) Topsoil Protection. The permittee shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
- c) Compaction. The permittee shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.
- d) Livestock Protection. The permittee shall take precautions to protect livestock on the LWECS site from project operations during all phases of the project's life.
- e) Fences. The permittee shall promptly replace or repair all fences and gates removed or damaged by project operations during all phases of the project's life unless otherwise negotiated with the fence owner.
- f) Roads
  - i. Public Roads. Prior to commencement of construction, the permittee shall identify all county "haul roads" that will be used for the WECS project and shall notify the county to determine if the haul roads identified are acceptable. The county shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practicable, existing roadways shall be used for all activities associated with the WECS. Where practicable, all-weather roads shall be used to deliver concrete, turbines, towers, assemble nacelles and all other heavy components to and from the

turbine sites. The permittee shall, prior to the use of approved haul roads, make satisfactory arrangements with the county for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WECS components. The permittee shall notify the Director of Planning and Zoning of such arrangements.

- ii. Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. Access roads shall avoid crossing streams and drainage ways wherever possible. If access roads must be constructed across streams and drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.
  - iii. Private Roads. The permittee shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
  - iv. Control of Dust. The permittee shall utilize all reasonable measures and practices of construction to control dust during construction.
- g) Soil Erosion and Sediment Control Plan. The permittee shall develop a Soil Erosion and Sediment Control Plan in accordance with the sediment and erosion control standards of the Hughes County Conservation District prior to construction and submit the plan to the County Zoning Office. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive re-vegetation plan that uses native plant species to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.
2. Setbacks. Unless otherwise specified, all setback measurements are from the structural perimeter of a building, the edge of a right-of-way, or the structural perimeter of a tower pylon.

LWECS shall meet the following minimum spacing requirements.

- a) Distance from currently occupied off-site residences, business and public buildings shall be not less than one thousand (1,000) feet unless written permission is granted by each affected property owner. Distance from the residence of the landowner on whose property the tower(s) are erected shall be not less than one point one (1.1) times the system height. For the purposes of this section only, the term “business” does not include agricultural uses.
- b) Distance from right-of-way (ROW) of public roads shall be not less than one point one (1.1) times the system height.

- c) Distance from any property line shall be not less than one point one (1.1) times the system height, unless appropriate easement has been obtained from adjoining property owner and recorded with the Register of Deeds.
3. Electromagnetic Interference. The permittee shall not operate the LWECS so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the LWECS or its operation, the permittee shall take the measures necessary to correct the problem.
4. Lighting. Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. Flashing white lights shall not be allowed for nighttime lighting.

This restriction shall not apply to infrared heating devices used to protect the monitoring equipment.

Security lighting on the site shall not exceed twenty (20) feet in height and be directed toward the ground to reduce light pollution, prevent off site light spillage, and avoid illuminating the tower.
5. Turbine Spacing. The turbines shall be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.
6. Footprint Minimization. The permittee shall design and construct the WECS so as to minimize the amount of land that is impacted by the WECS. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the extent practicable be mounted on the foundations used for turbine towers or inside the towers unless otherwise allowed by the landowner on whose property the LWECS is constructed.
7. Electrical Cables. The permittee shall place electrical lines, known as collectors, and communication cables underground when located on private property except when total distance of collectors from the substation require an overhead installation due to line loss of current from an underground installation. This paragraph does not apply to feeder lines.
8. Feeder Lines. The permittee shall place overhead electric lines, known as feeders, on public rights-of-way if a public right-of-way exists or immediately adjacent to the public right-of-way on private property. Changes in routes may be made as long as feeders remain on public rights-of-way or immediately adjacent to the public right-of-way on private property and approval has been obtained from the county. If no public right-of-way exists, the permittee may place feeders on private property. When placing feeders on private property, the permittee shall place the feeder in accordance with the easement(s) negotiated. The permittee shall submit the site plan and engineering drawings for the feeder lines to the Planning Director before commencing construction.
9. Height from Ground Surface. The minimum height of blade tips at their lowest possible point shall be twenty-five (25) feet above grade.
10. Towers

- a) Color and Finish. The finish of the exterior surface shall be non-reflective or matte and of a neutral color.
  - b) All towers shall be singular tubular design, unless approved by the Planning Director.
11. Noise. Noise level produced by the LWECS shall not exceed 55 dBA, average A-weighted sound pressure at the perimeter of occupied residences existing at the time the permit application is filed, unless a signed waiver or easement is obtained from the owner of the residence and recorded with the Register of Deeds.
12. Permit Requirements.
- a) Individual building permits shall be required for each tower in a multiple tower system.
  - b) The permit shall become void if no substantial construction has been completed within two (2) years of issuance.
  - c) Building permit information and reporting requirements shall be, at a minimum, the same as those identified for SWECS.
  - d) Multiple tower systems shall require a Conditional Use Permit and, at a minimum, the following additional information:
    - i. Boundaries of the site proposed for LWECS and associated facilities on United States Geological Survey Map or other map as appropriate.
    - ii. Map of easements for LWECS.
    - iii. Map of occupied residential structures, business and public buildings within one half mile of the proposed LWECS site boundaries.
    - iv. Preliminary map of sites for LWECS, access roads and utility lines. Location of other LWECS within five (5) miles of the proposed LWECS site.
    - v. Project-specific environmental and cultural concerns (e.g. native habitat, rare species, and migratory routes). This information shall be obtained by consulting with the following agencies:
      - a) Federal Communications Commission
      - b) Federal Aviation Administration
      - c) South Dakota Department of Game, Fish and Parks;
      - d) U.S. Fish and Wildlife Service; and
      - e) South Dakota Public Utilities Commission
      - f) South Dakota State Historical Society
 Evidence of such consultation shall be included in the application.
    - vi. Project schedule.
    - vii. Mitigation measures.
    - viii. Decommissioning Plan.

- ix. Status of interconnection studies/agreements.
- x. Pre-construction Filing. At least forty-five (45) days prior to commencement of construction, the applicant/permittee shall submit final maps depicting the approximate location of the proposed wind turbines, access roads and collector and feeder lines. Upon completion, the applicant shall also supply an “as-built” ALTA survey indicating that the proposed facilities are in compliance with the setbacks in the permit.

13. Maintenance.

- a) All WECS components, support structures, and facilities shall be maintained in good condition, order, and repair so that they do not endanger the life or property of any person.
- b) Upon the determination of the Planning Director that a structure is a hazard to public safety, the owner shall be required to perform an inspection by a registered professional engineer and make all recommended corrections.
- c) If an owner discontinues use of a WECS, the owner shall give written notice to the Planning Director of the date of such discontinuance.

14. Decommissioning

- a) Cost Responsibility. The owner or operator of a LWECS is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities. The decommissioning plan shall clearly identify the responsible party.
- b) Useful Life. A LWECS is presumed to be at the end of its useful life if the facility generates no electricity for a continuous period of three-hundred-sixty-five (365) days. The presumption may be rebutted by submitting to the Planning Director for approval of a plan outlining the steps and schedule for returning the LWECS to service within twelve (12) months of the submission.
- c) Decommissioning Period. The facility owner or operator shall begin decommissioning a LWECS facility within eight (8) months after the time the facility or turbine reaches the end of its useful life, as determined in 14(b). Decommissioning must be completed with eighteen (18) months after the facility or turbine reaches the end of its useful life.
- d) Decommissioning Requirements. Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of forty-two (42) inches; and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the LWECS. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine. Disturbed earth must be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained.

- e) Decommissioning Plan. Prior to commencement of operation of a LWECs facility, the facility owner or operator shall file with the County Commission the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed facility and a decommissioning plan that describes how the facility owner will ensure that resources are available to pay for decommissioning the facility at the appropriate time. The County Commission shall review a plan filed under this section and shall approve or disapprove the plan within six (6) months after the decommissioning plan was filed. The County Commission may at any time require the owner or operator of a LWECs to file a report describing how the LWECs owner or operator is fulfilling this obligation.
  - f) Financial Assurance. At any time after the tenth (10th) year of operation of a LWECs facility, the County Commission may review the owner/operator's financial strength, credit rating, and internal measures for removing the liability or risk of decommissioning the WECS and may require a form of financial assurance ranging from corporate guarantee to a letter of credit, performance bond, surety bond, or other form of financial assurance (i.e. scrap value, etc.) that is acceptable to the County Commission to cover the anticipated costs of decommissioning the LWECs facility.
  - g) Failure to Decommission. If the LWECs facility owner or operator does not complete decommissioning, the County Commission may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the County Commission may take such action as may be necessary to decommission a LWECs facility and seek additional expenditures necessary to do so from the facility owner.
15. Pre-construction Filing. At least forty-five (45) days prior to commencement of construction, the applicant/permittee shall submit final maps depicting the approximate location of the proposed wind turbines, access roads and collector and feeder lines. Upon completion, the applicant shall also supply an "as-built" ALTA survey indicating that the proposed facilities are in compliance with the setbacks in the permit.

**Source:** Ord. No. 2007-08, 2007; Ord. No. 2009-02, 2009; Ord. No. 2009-15, 2009.

### **Section 2-118. Concentrated Animal Feeding Operation Regulations.**

- A. Intent. An adequate supply of healthy livestock, poultry and other animals is essential to the well being of county citizens and the State of South Dakota. However, livestock, poultry, and other animals produce manure, which may, where improperly stored, transported, or disposed, negatively affect the County's environment. Animal manure must be controlled where it may add to air, surface water, ground water, or land pollution. The following regulations have been adopted to provide protection against pollution caused by manure from domesticated animals. All new and proposed

expansions of Concentrated Feeding Operations shall comply with the regulations as outlined herein.

It is the intention of the County Commission in the enforcement of this Section that when an operator of an existing Concentrated Animal Feeding Operation applies for a Conditional Use Permit (or amendment to an existing CUP) to expand to another class level, the standards that apply to the expansion will not be applied to existing structures that were built in compliance with accepted industry standards in existence at the time of the construction of such facilities.

It is further the intention of the County Commission that this Section be applied, to the extent feasible, to other areas of agriculture, aquaculture, vermiculture, and similar ventures which involve breeding, raising, or growing organisms which may pose a threat of water, soil, air, noise or odor pollution exceeding that normally encountered and permitted in the agricultural areas of the County. Such extended applications may include additional state regulatory or licensing requirements in which case such requirements shall become, by reference, requirements for issuance of a Conditional Use Permit under this Section.

Concentrated Animal Feeding Operations are divided into five Classes, A-E, as defined in Section 1-102 of this Ordinance.

**B. Concentrated Animal Feeding Operation Pollution Control Requirements.**

**1. No Significant Contribution of Pollution.**

In general, no Concentrated Animal Feeding Operation shall be constructed, located, or operated so as to create a significant contribution of pollution.

**2. State General or Individual Permit.**

The Department of Environment and Natural Resources (DENR), pursuant to the Water Pollution Control Act, requires that all Concentrated Animal Feeding Operations, regardless of size, shall obtain coverage under a State General or Individual Water Pollution Control Permit for Concentrated Animal Feeding Operations (General Permit/Individual Permit) pertaining to the animal species of the Concentrated Animal Feeding Operation. A County Conditional Use Permit, if required, may be approved conditioned on receiving State approved plans.

Classes C and D Concentrated Animal Feeding Operations not meeting DENR mandatory criteria for a General or Individual Permit shall be required to obtain a State Permit if the following occur:

- a. If an earthen storage basin or lagoon is used for manure storage.
- b. The County Commission or Board of Adjustment decides conditions require a State Permit.

### 3. Nutrient Management Plan.

The applicant shall develop, maintain, and follow a nutrient management plan to ensure safe disposal of manure and protection of surface and ground water. The nutrient management plan must be either approved by the Hughes County Zoning Administrator or by the South Dakota Department of Environment & Natural Resources if a State Permit is required prior to land application of any manure. Due to crop rotation, site changes, and other operational changes, the applicant should update the plan annually to reflect the current operation and crops grown on the application sites. The applicant should collect, store, and dispose of manure according to recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site are secondary to the proper and safe disposal of the manure. If a violation of the nutrient management plan occurs the violator will be required to update the nutrient management plan annually and the collection, storage and disposal of liquid and solid manure will be done according to recognized practices of good agricultural management.

A generic nutrient management plan that the applicant may use in developing a nutrient management plan is available from the South Dakota Department of Environment & Natural Resources and NRCS. The generic nutrient management plan is based on application of nitrogen. The applicant may use other plans, provided the alternate plan contains all the information necessary to determine compliance with conditions of the State Permit or Hughes County requirements. Nitrogen, in addition to that allowed in the nutrient management plan, may be applied up to the amounts as indicated by soil or crop nitrogen test results that are necessary to obtain the realistic crop yield. The South Dakota Department of Environment & Natural Resources and Hughes County encourage producers to develop a nutrient management plan for phosphorous. Over application of phosphorous may lead to water quality problems in area lakes and streams.

The applicant must have the manure analyzed, soil tests taken on land where manure is to be applied and take the results to the Cooperative Extension Service and/or an agronomist for recommendations for the correct amount to apply per acre. This must be done the first year and every year thereafter. Phosphorus should be sampled every 3-5 years.

The applicant must maintain records to show compliance with the plan.

Land spreading agreements shall be provided if applicant does not have minimum acreage to apply animal waste.

### 4. Manure Management and Operation Plans

Classes A, B, C, and D Concentrated Animal Feeding Operations must submit a Manure Management Plan and an Operation and Maintenance Plan.

a. Plans must include at a minimum:

- i. The location and specifics of proposed animal manure facilities.
  - ii. The operation procedures and maintenance of manure facilities.
  - iii. Plans and specifications must be prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer. Waste containment facilities will require inspection by an engineer or NRCS technician and as-built plans shall be submitted to the Hughes County Zoning Administrator.
  - iv. Animal manure shall not be stored longer than two years.
  - v. Manure containment structures shall provide for a minimum design volume of 270 days of storage. In addition, open outdoor storage shall include storage for direct precipitation and/or runoff from a 25 year, 24 hour storm.
  - vi. Applicants shall keep records of manure applications on individual fields, which document acceptable manure, and nutrient management practices have been followed. These records shall include soils test results for surface two feet of soil, actual and projected crop yields, nutrient analysis of manure, and information about date, rate and method of manure applications for individual fields. The producer shall retain records of all monitoring information, maintenance and inspection records, copies of reports required by this permit. The producer shall keep the records for at least three years from the date of the sample, measurement, report, or application. Data collected and a copy of this permit must be kept at the confined animal feeding operation or the usual place of business where employees of the operation have access to them. These shall be made available for review by the Hughes County Commission, Board of Adjustment, or its representative upon a written request.
- b. The applicant must participate in environmental training programs, such as those offered by SDSU Cooperative Extension Service, and become a certified livestock manager if available.
  - c. The applicant is responsible for the misapplication of the manure whether applied on the applicants own land or on land where there is a land spreading agreement or in transport. The complaint procedure will be the same as for any other zoning complaint.
  - d. The Board of Adjustment may require manure to be injected or incorporated in order to minimize air and water quality impacts.
  - e. Requests for application of liquid manure by means of irrigation systems will be reviewed by the Board of Adjustment on a site-specific basis. Impact on air and water quality will be taken into consideration.

- f. All irrigation systems blending manure with ground water must have check valves installed to prevent back flow into the water supply.
  - g. The County Commission or Board of Adjustment may, after notice and hearing, revoke a Conditional Use in the event of a violation of any of such conditions. In addition, the Conditional Use permit may not be transferred during any violation.
5. Management Plan for Fly and Odor Control (also other offal, waste, and refuse management plans if applicable).

Concentrated Animal Feeding Operations shall dispose of dead animals, waste and wastewater in such a manner as to control odors and flies. A management plan is required for submission of a permit. The Board of Adjustment will review the need for control measures on a site specific basis, taking into consideration prevailing wind direction and topography.

- a. The following procedures to control flies and odors shall be considered in a management control plan.
    - i. Operational plans for manure collection, storage,- treatment and use must be kept updated and implemented.
    - ii. Methods to be utilized to dispose of dead animals shall be included in the management plan.
  - b. The following procedures to control flies and odors should be considered in a management control plan.
    - i. Plant trees and shrubs to reduce wind movement of odors away from buildings, manure storage ponds and/or lagoons.
    - ii. Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized.
    - iii. Store solid manure in containment areas having good drainage to minimize odor production.
    - iv. Consider use of BMP's on open storage systems for liquid manure systems to control odor production.
6. Required Setbacks and Separation Distance for New Concentrated Feeding Operations.

MINIMUM SETBACKS AND SEPARATIONS

	<u>CLASS A</u>	<u>CLASS B</u>	<u>CLASS C</u>	<u>CLASS D</u>
Established residences, Riverfront and Park District,	5,280 feet	5,280 feet	2,640 feet	1,320 feet

Incorporated Municipal Areas				
Churches, Businesses and Commercially Zoned Areas	2,640 feet	2,640 feet	1,320 feet	1,320 feet
Private Wells (other than the operator)	2,640 feet	1,760 feet	1,320 feet	1,320 feet
Lakes and Streams (classified as Fisheries as identified by the state)	500 feet	500 feet	500 feet	500 feet
Adjoining Property Lines and Public Road ROW (Confinement operation)	330 feet	330 feet	330 feet	330 feet
Public Road ROW (Open lot operation)	100 feet	100 feet	100 feet	100 feet

Each application for a new or expanded Concentrated Animal Feeding Operation (CAFO) will be reviewed by the Board of Adjustment on a site specific basis. The Board of Adjustment reserves the right to increase the minimum required setbacks and separation distance on a site specific review, based on one or more of the following considerations.

- a. A concentration of CAFOs in the area exists or would occur which may pose an air or water quality concern.
- b. Due to topography and prevailing wind direction, additional setback and separation distance is appropriate to safeguard air or water quality.
- c. A concentrated animal feeding operation is in excess of 5,000 animal units.

An operator of a CAFO may request the required setback or separation be lessened or waived in accordance with variance procedures detailed herein. Scientific data may be requested from the operator regarding odor transmission via wind and odor roses as utilized within odor modeling technologies.

C. Concentrated Animal Feeding Operation (CAFO) Conditional Use Permit (CUP) Requirements.

1. Owners of Class A, Class B, and Class C CAFOs are required to complete a CUP application whenever any of the following occur:
  - a. A new CAFO is proposed where one does not exist.
  - b. An expansion is proposed beyond what a current CUP allows.
  - c. A signed complaint has been received by the Zoning Administrator or South Dakota Department of Environment and Natural Resources and after inspection reveals that the CAFO is in violation of County or State regulations. Any complaint against a Concentrated Animal Feeding Operation must be in writing and signed. Names of complainants will be kept confidential.

- d. An existing CAFO is to be restocked after being idle for one (1) or more years.
  - e. An existing state General or Individual Permit has been allowed to expire.
2. Standards for Conditional Use Permits.
- a. The County Board of Adjustment or Zoning Administrator may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.
  - b. The Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations, additional conditions which the Board of Adjustment considers necessary to protect the public health, safety and welfare.
  - c. Conditional Uses shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are being adhered to.
  - d. When considering an application, the Board of Adjustment will take into consideration current and past violations relating to Concentrated Animal Feeding Operations that the applicant has an interest in.
  - e. The permit holder shall provide and at all times maintain General Liability insurance in the amount of at least \$1,000,000.00, with an Environmental Protection Insurance rider of at least \$100,000.00. Proof of such insurance must be received prior to the issuance of a permit and must be provided annually during the operation of such CAFO. The insurance carrier shall be required to provide Hughes County with notice of insurance and with a notice of cancellation or change in coverage. Failure to maintain such insurance shall be grounds for cancellation of the Conditional Use Permit.
  - f. CUP applicants will be required to file a Letter of Assurances as required by the Board of Adjustment. The letter of assurances will be prepared by the Zoning Administrator and signed by both the applicant and the Chairman of the Board of Adjustment.
  - g. In the event of a discharge (as defined by SDCL 34A-2B-1) of manure or other materials or wastes associated with a CAFO, the permit holder shall cooperate fully with and comply with all requirements of the South Dakota Department of Environment and Natural Resources and such permit holder shall take all steps necessary to clean up and eliminate such discharge at the sole expense of the permit holder and/or its insurance carrier. Failure to comply with the requirements of this paragraph shall be grounds for cancellation of the Conditional Use Permit.
  - h. The permit holder shall at all times properly dispose of dead livestock consistent with the rules, regulations and directives of the South Dakota Animal Industry Board of the Department of Agriculture. Failure to comply with such rules,

regulations or directives shall be grounds for cancellation of the Conditional Use Permit.

- i. The permit holder shall notify Hughes County in writing in the event of closure of the animal confinement operation. Included in the notification shall be: plans for cleaning the buildings, waste system and emptying of the holding pond, storage pit or lagoon. Owners and operators shall have joint and several liability for clean-up, closure, or remediation of abandoned CAFO sites.
- j. Violations and Enforcement.
  - i. Violations. Any person, firm or corporation who shall violate any of the provisions hereof or who shall fail to comply with any of the provisions hereof or who shall make any false statement in any document required to be submitted under the provisions hereof, shall be guilty of a misdemeanor. Each day that a violation continues shall constitute a separate offense.
  - ii. Enforcement.
    - (a) Stop Work Orders. Whenever any work is being done contrary to the provisions of this Ordinance, the Director of Planning and Zoning may order the work stopped by written notice personally served upon the owner or operator of the feedlot. All activities shall cease and desist until subsequent authorization to proceed is received from the Director of Planning and Zoning.
    - (b) Revocation. Any person who fails to comply with the conditions set forth on the Permit may be subject to revocation upon written notice personally served upon the owner or operator of the feedlot.
    - (c) Injunctive Relief and Other Remedies. In the event of a violation of this Ordinance, the County may institute appropriate actions or proceedings, including requesting injunctive relief, to prevent, restrain, correct or abate such violations. All costs incurred for corrective action may be recovered by the County in a civil action in any court of competent jurisdiction or, at the discretion of the County, the costs may be certified to the County Auditor as a special tax against the real property. These and other remedies, as determined appropriate by the County, may be imposed upon the applicant, permittee, installer, or other responsible person either in addition to or separate from other enforcement actions.
    - (d) Costs of Enforcement. In the event that the Director of Planning and Zoning is required to take action to abate a violation of this Ordinance or undertake regular monitoring of a regulated feedlot to ensure compliance with the requirements of this Ordinance, the costs of that abatement action and/or monitoring may be certified to the County Auditor as a special tax against the real property.

3. Information Required for Concentrated Animal Feeding Operation CUP. A copy of the State General or Individual Permit may be substituted for duplicated information.
  - a. Owner's name, address and telephone number.
  - b. Narrative description of the type of concentrated animal feeding operation proposed, including capacity, unique design elements, market served, and identification of similar or comparable existing facilities (if any).
  - c. Legal description(s) of site.
    - i. Status of site – leased, deeded, contract for deed, purchase agreement.
  - d. Site plan.
    - i. Sketch plan may be provided initially. Detailed plan to scale will be required prior to permit issuance.
    - ii. Plan should include any landscaping intended to assist in dispersal of odors.
    - iii. Include staged plan if immediate build-out is not anticipated.
    - iv. Include setback plans.
    - v. Include separation (if less than 5,280 feet) from Public Water Supplies, Private Wells, Lakes, Rivers, Streams, dwellings, Churches, Schools, Businesses, Public Parks, Municipalities.
  - e. Number and type of animals.
    - i. Include staged implementation/capacity plan if applicable.
  - f. Nutrient management plan including:
    - i. Location and description of waste facilities and structures.
    - ii. Operational procedures and maintenance of the waste facilities.
    - iii. Description of the proposed method for waste application.
    - iv. Map showing distances from proposed animal waste application sites to natural features and other land uses.
    - v. Information showing the application of waste based on agronomic rates computed from the types of crops and estimated yields on the application sites, the available nutrients in the application site soils and the available nutrients in the waste.

- vi. Waste application agreements shall be required if the petitioner does not own the minimum acreage required to apply the animal waste produced by the facility.
- g. Manure Management and Operation plans.
- h. Other offal, waste, and refuse management plans (if applicable).
- i. Management Plan for Fly, Odor, and Pest Control.
- j. Permit from South Dakota DENR if required.
  - i. If a General or Individual Permit is not required and the site is located over a mapped shallow aquifer area, a geotechnical test boring log recording the geological data of at least one deep subsurface boring shall be required. This boring must be located below the location of the proposed containment facility and extend to a minimum of 25 feet below the ground surface and may stop when one of the following criteria has been met:
    - (a) At least 15 continuous feet of extremely low permeability geologic material such as unweathered clayey till or shale is encountered in the boring;
    - (b) At least 30 continuous feet of low to extremely low permeability weathered or unweathered till or shale is encountered;
    - (c) The boring reaches an aquifer; or
    - (d) A total depth of 100 feet is reached.
  - ii. Shallow Aquifer. If the geotechnical test boring shows the area to be over a shallow aquifer, then measures shall be employed to protect the groundwater. The County may call upon the expertise of the South Dakota Geological Survey in making a determination on whether a shallow aquifer exists on the site.
- k. Inspections. A registered professional engineer shall inspect the facility during construction and certify to the County that the newly constructed facility conforms to the approved plans and South Dakota Department of Environment and Natural Resources design standards.
- l. If required by the South Dakota Department of Environment and Natural Resources or as a condition of the conditional use permit the operation shall obtain a State General or Individual Water Pollution Control Permit for Concentrated Swine Feeding Operations or for Concentrated Animal Feeding Operations.

- m. Review of Plans and Specifications and Nutrient Management Plan by the South Dakota Department of Environment & Natural Resources.
- n. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year flood plain designation.
- o. Notification of whoever maintains the access road (township, county and state).
- p. Notification of public water supply officials.
- q. Certification of whether owner or developer has ever been subject to any type of legal action for alleged environmental harm caused by a feeding operation under their management or ownership.
- r. Any other information requested by the Zoning Administrator in order to ensure the best interests of Hughes County are addressed and protected.”

**Source:** Ord. No. 2007-08, 2007.

**Section 2-119. Mineral Extraction Operations.**

- A. Intent. Extraction or mining of sand, gravel, or other minerals is essential to the well being of Hughes County and the State of South Dakota. However, improper extraction methods, inadequate reclamation of extraction sites, inadequate post-extraction protocols, excessive noise, odor, dust or other particulate matter, and excessive damage to roads may negatively impact the county’s environment and have an adverse impact on the quality of life of county citizens. It is the intent of the County Commission that this section (Section 2-119) be used as a guideline when evaluating an application for a Conditional Use Permit for mining or other mineral extraction in Hughes County. The County will have the discretion of requiring more or less stringent conditions based on the location of a proposed operation and the specific type of operation proposed.
- B. Application. The application for a Conditional Use Permit shall be filed with the Planning Director at least 30 days in advance of a regularly scheduled Board of Adjustment meeting. The application shall be accompanied by the following:
  - 1. Copies of state permitting/licensing applications and supporting documentation related to proposed operation, including any air quality, waste disposal, mining, or other permits/licenses required by statute.
  - 2. Maps showing the area within which the extraction operations will be conducted, including areas to be disturbed, setbacks from property lines, and the location of all structures, equipment, and access and haul roads.
  - 3. A description of the surface land use and vegetation, including all pertinent physical characteristics.
  - 4. Water quality and water level data and impact on hydrologic balance of affected land. To the extent such data is not included in the state permit/license applications, a hydrologic study which shall include all available information from the State Geological Survey and

other information pertinent to the application. If an applicant does not believe a study is warranted, documentation shall accompany the application in support of this position.

5. A reclamation plan which takes into consideration the criteria listed in section 2-119.D.10.
  6. The applicant shall meet with the Highway Superintendent to discuss repair and maintenance responsibilities on County roads to be used as haul routes. A summary of the meeting(s) shall be presented with the application, including a statement of willingness to enter into a Haul Road Agreement.
- C. Fee. In addition to the standard Conditional Use Permit application fee, if a Permit is granted the operator shall pay to the County an annual fee of \$10 per acre of land which is being disturbed by the extraction activities and has not been reclaimed. The fee shall be used to defray costs associated with general administration and enforcement of this section. The initial fee shall be payable at the time of issuance of the permit and shall be based on the estimated disturbed land area projected for the end of the year. Future fees shall be payable by January 20<sup>th</sup> of each year and deposited in the general fund of the County. The disturbed land area existing on January 1 of each year shall be used in calculating the fee.
- D. Development and Operational Criteria. The following criteria shall be considered in developing conditions for applications involving rock, sand, and gravel extractions. More stringent requirements may be imposed by the County, or the applicant may present arguments to relax the requirements based on specific characteristics of the site.
1. Buffer Area. A minimum distance of 1000 feet should be maintained between an existing residence and a rock, sand, or gravel operation, measured from the perimeter of the residence to the nearest structure, equipment, or disturbed soil of the operation. This distance may be reduced if the operator secures a waiver from the affected landowner.
  2. Hours of Operation. Hours of operation, to include blasting, should be considered by the Board based on the location and other specific characteristics of the site.
  3. Visual Considerations.
    - a. Earth berms and vegetation may be employed to minimize visual impacts and reduce the effects of noise. The need for placement of berms should be determined by the orientation and position of the excavation site with respect to residences and roadways. Berms should be located in such a way as to restrict the public's view of the property. Consideration should be given to placing the berms as close to the public point of view as practical. Generally, berms should be six feet in height and seeded immediately after construction to avoid soil erosion. Berms should be maintained and kept reasonably free of weeds.
    - b. The operator should work with the County Conservation District and Planning Director to develop a planting program. The plants should be properly cared for to ensure the highest survival rate and all dead plants replaced during the current planting season. As a minimum, the program should include trees of varying maturity. The planting program should be submitted in writing and kept on file in the Planning Office.
    - c. At a minimum, berms should be constructed prior to blasting or the extraction of rock, sand, or gravel.

4. Blasting. Area residents shall be notified of the date and time of each blast by means agreed upon in the Permit.
5. Noise. The noise level produced from rock, sand, or gravel operations should not exceed an average of 55 decibels recorded over a 10 minute period measured at the nearest existing residence to the extraction operation. Off-site activities which contribute to background noise levels should be taken into consideration when monitoring an operation. Blasting should not be recorded as part of the noise level.
6. Air Quality.
  - a. The operator shall provide copies of all air quality permits and reports required by state and federal statute to the Planning Director.
  - b. The operator shall employ industry best practices that minimize the release of particulate matter created by material stockpiles, vehicular movement, and process operations to a level acceptable to the County.
  - c. Dust control agents should be applied to county gravel roads designated as haul routes and all driving surfaces within the extraction area.
7. Hydrology, Dewatering, and Drainage.
  - a. Existing wells should be monitored at the operator's expense to document changes in hydrologic conditions around extraction sites.
  - b. Dewatering of the extraction site should not result in downstream flooding.
  - c. Berms should not interrupt the natural drainage of the area, unless such diversion is part of an approved drainage control system.
8. Haul Roads.
  - a. In order to minimize the negative impact of truck traffic on area residents, extraction operations should be located on or near existing hard surfaced roads. Consideration should be given to the number of residents located along gravel surfaced roads intended for use as haul roads.
  - b. Identify repair and maintenance responsibilities through a Haul Road Agreement.
  - c. Consider the potential impact on County highways to be used as haul routes.
9. Operator Surety. A surety bond should be filed with the County Auditor to protect the County in the event the operator abandons a site without completing the conditions imposed by the Conditional Use, including fulfillment of the Haul Road Agreement. In lieu of the required surety, the operator may deposit cash with the County in the amount equal to the required surety. In determining the amount of the surety, the Board of Adjustment should consider the adequacy of any surety required by the state for their licensing and permitting. Pursuant to SDCL 45-6B-4, the county may not request additional surety if the same is required by state law.
10. Reclamation.
  - a. The type and extent of reclamation should be based on the type of material extracted and the intended post-mining land use, but in all cases the reclamation procedures should result in the rehabilitation of affected land through contouring and soil stabilization, revegetation, and other appropriate means so as to create the least

amount of unsightliness and most appropriate future use of the reclaimed area. Bodies of water may be incorporated into an acceptable reclamation plan.

- b. Provide maps, including cross sections, showing the existing natural topography and anticipated topographic conditions upon completion of reclamation.
- c. Grading should achieve a contour that is most beneficial to the proposed future land use. All berms should be removed where sand and gravel operations were conducted. In most cases involving quarry operations, the berms should remain in place unless their removal would serve a more useful purpose.
- d. Topsoil should remain onsite and be used during reclamation.
- e. A seeding and revegetation plan should be developed for the affected area in consultation with the County Conservation District.
- f. All required reclamation activities should be completed and a compliance inspection performed by the Planning Director prior to release of the surety.

11. Additional Considerations.

- a. The maximum height of a bench in a quarry should be 20 feet.
- b. The property should be secured during non-working hours by means of gates and fencing. The property should continue to be secured until all required reclamation activities have been completed.

**Source:** Ord. No. 2009-05, 2009.

***Sections 2-120 to 199, inclusive. Reserved.***