

**ARTICLE 12.00
ADDITIONAL USE REGULATIONS**

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 - 12.02 Wind Energy Conversion Systems
 - 12.03 Home Occupations
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12.01 FENCES. Regulations regarding fences shall be as follows:

- (A). Fences up to four feet in height may be located on any part of the lot except that such a fence may not be more than 30 percent solid if located within 30 feet of a street intersection, measuring along the property line.
- (B). Fences up to six feet in height may be erected on those parts of a lot that are as far back or farther back from the street than the main building.
EXCEPTION: Fences up to six feet in height may be placed in the side-street-side front yard where:
 - (1). The side-street-side front yard abuts an arterial street shown on the major street plan.
 - (2). The side-street-side front yard is not adjacent to a side yard.
 - (3). The fence is located no closer to the front yard than the rear wall of the main building.

12.02 WIND ENERGY CONVERSION SYSTEMS. The regulations regarding Wind Energy Conversion Systems (hereafter referred to as WECS) shall be as follows:

- (A). Limited use. No WECS installed in accordance with the requirements of these regulations shall generate power as a commercial enterprise as defined by the Public Utility Commission.
- (B). Setback requirements. The minimum distance between the property line, overhead utility lines or another wind turban, and any tower support base of a WECS shall be equal to the

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proposed tower height (plus the radius of the rotor for the horizontal access machines). Contiguous property owners and planned developments may construct a WECS 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 to the Planning Commissions for their approval.

- (C). Tower access. Climbing access to the WECS tower shall be limited either by means of a fence six feet high around the tower base with a locking portal, or by limiting tower climbing apparatus so there is access to it no lower than 12 feet from the ground.
- (D). Electromagnetic interference. If a WECS is installed in any location along or within the major access of an existing microwave communications link, the person desiring to install the WECS shall be required to provide a letter from the business whose link they are within or adjacent to stating that the business whose link is affected would have no objection to the installation of the WECS.
- (E). Air space. A WECS shall be located or installed in compliance with the guidelines of the Federal Aviation Administration Regulations with regard to Airport Approach Zones and clearance around VOR stations.
- (F). Interconnect. The WECS, if interconnected to an electric utility distribution system, shall meet the interconnect requirements of the electric utility company.

12.03 HOME OCCUPATIONS. It is deemed appropriate to allow limited nonresidential activities to operate in conjunction with a residence in those zoning districts where residential dwellings are permitted, provided the regulations protect the character and integrity of the unincorporated area.

The objective of these regulations is to allow limited commercial type activities associated with a residence only to the extent that the activity is clearly subordinate to the residential or agricultural use of the property. Uses such as motor vehicle repair or body shop, motor vehicle sales, recycling center, retail business or similar type uses shall not be considered a home occupation. Due to the diverse pattern of development in the rural area, the regulations provide for both minor and major home occupations.

12.0301 Minor Home Occupation. In all zoning districts permitting residential dwellings, minor home occupations in compliance with each of the following standards are permitted as accessory uses. Due to their incidental and residential nature, minor home occupations are relatively common accessory uses which are not easily detectable and are not reasonable or desirable to regulate through a conditional use permit.

- 1) The occupation shall be conducted entirely within a dwelling and clearly incidental to

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- the use of the structure for residential purposes.
- 2) There shall be no change in the outside appearance of the dwelling or any visible evidence of the conduct of the occupation.
 - 3) Only residents of the dwelling shall be employed by or participate in the occupation.
 - 4) The storage of equipment, vehicles, or supplies associated with the occupation shall not occur outside the dwelling. Accessory buildings or structures shall not be used for storage.
 - 5) There shall be no display of products visible in any manner when viewed from outside the dwelling.
 - 6) No advertising or display signs shall be permitted other than a nameplate attached to the dwelling. The nameplate shall not be illuminated and shall not be more than two square feet in area. No off premise signs shall be used.
 - 7) The occupation shall not require internal alterations or involve construction features not customary in a dwelling. External alterations intended to create a separate entrance or other feature exclusively for the occupation is prohibited.
 - 8) There shall be only limited and incidental sale of products conducted on the premise.
 - 9) The occupation shall not generate more than four (4) visits per day from clients or customers averaged over a period of seven (7) consecutive days.
 - 10) The occupation shall not result in additional off-street parking spaces for clients or customers.
 - 11) Toxic, explosive, flammable, combustible, corrosive, radioactive or other restricted materials are prohibited.
 - 12) No equipment or process shall be used in the occupation which creates noise, vibration, glare, fumes, or odor detectable to the normal senses off the property.
 - 13) No equipment or process shall be used in the occupation which creates visual or audible electrical interference in any radio or television receiver or causes fluctuations in line voltage off the property.
 - 14) The number of deliveries generated by the occupation shall not significantly affect the character of the area. Delivery vehicles shall be limited to auto, pick up, or typical delivery service truck.

12.0302 Major Home Occupation. It is recognized that home occupations which exceed the requirements of Section 12.0301 may be appropriate in a low density residential setting or if associated with an agricultural use. For the purpose of this ordinance, such uses are classified as either a Class 1 or Class 2 major home occupation, and shall be evaluated giving consideration to the following criteria:

(A) Class 1:

- (1) The occupation shall be conducted entirely within a dwelling or accessory building and clearly incidental to the use of the structure for residential purposes.
- (2) The occupation shall be operated by a member of the family residing in the dwelling.
- (3) Employees of the occupation shall be limited to residents of the dwelling and up to two (2) non-resident employees, not to exceed four (4) employees on site.

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- (4) In addition to the dwelling, up to 750 square feet of accessory building space may be used for the occupation.
- (5) The occupation shall not create noise which, when measured off the property, exceeds 60 decibels between the hours of 8:00 a.m. and 6:00 p.m. The occupation shall not create noise which is detectable to the normal sensory perception off the property between the hours of 6:00 p.m. and 8:00 a.m. These off the property noise standards shall not apply to public and railroad rights-of-way.
- (6) The occupation shall not create vibration, glare, fumes, odor, or electrical interference detectable to the normal senses off the property.
- (7) No outside storage, display of goods or merchandise, or external evidence of the occupation shall occur except as outlined in this section.
- (8) A non-illuminated nameplate not exceeding two square feet in area may be placed on the dwelling or accessory building. Additionally, one non-illuminated sign not exceeding four square feet in area may be located along the driveway for the occupation. No off premise signs shall be used.
- (9) The occupation shall not generate more than 10 visits per day from clients or customers averaged over a period of seven (7) consecutive days.
- (10) There shall be only limited and incidental sale of products conducted on the premise.
- (11) The number of deliveries generated by the occupation shall not significantly affect the character of the area. Delivery vehicles shall be limited to auto, pick up, or typical delivery service truck.

(B) Class 2:

- (1) The occupation shall be conducted in a dwelling or agricultural building accessory to the dwelling which comprise the headquarters for the agricultural use, and such agricultural use is conducted on one or more parcels of land with a total area of at least one-half of a quarter section or equivalent area which must be contiguous to or in close proximity to the headquarters.
- (2) The occupation shall be clearly secondary to the principal use of the land for agricultural purposes.
- (3) The owner or occupant of the dwelling shall be engaged in the occupation.
- (4) The occupation shall have no more than five (5) employees, including residents of the property.
- (5) The occupation shall be conducted within a completely enclosed building typical of farm buildings. Such building shall be located behind the dwelling, or shall be located at least 200 feet from the nearest road right-of-way.
- (6) All materials, supplies and products associated with the occupation shall be stored within a building or if open storage of materials or equipment is required it shall be concealed with appropriate screening or landscaping.
- (7) A non-illuminated nameplate not exceeding two square feet in area may be placed on the dwelling or agricultural building. Additionally, one non-illuminated sign not exceeding four square feet in area may be located along the driveway for the occupation. No off premise signs shall be used.

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- (8) The use shall cease operating when the property is no longer in conformance with Section 12.03.02 (B) (1).

12.0303 Major Home Occupation - Permit Procedure. A conditional use application is required for a major home occupation in accordance with the requirements of Article 19.00. The application shall be evaluated and conditions established using the criteria in Section 12.0302 (A) or (B).

12.04 MINERAL EXPLORATION & DEVELOPMENT. The regulations regarding mineral exploration and development shall be as follows:

- (A). Exploration for minerals may be approved by Conditional Use only as long as the following minimum requirements are met:
- (1). The applicant shall provide:
 - (a). A description of the mineral or minerals which are the subject of the exploration.
 - (b). Maps showing the general area within which the exploration operation will be conducted.
 - (c). A detailed description of the regional environmental conditions, to include surface land use and vegetation, as well as a detailed description of the area's geologic formations and hydrology from the best available scientific sources.
 - (d). Maps indicating the location of the drill sites to the nearest section of land, a technical description of the exploration process, the types of equipment to be used, and the estimated time table for each phase of work and for final completion of the program.
 - (e). A description of the major environmental impacts upon air quality, water quality and quantity, and land use modification presented by the proposed exploration.
 - (f). A description of the proposed plan to address the identified environmental impacts to include all measures to be taken to prevent soil erosion, water contamination, air contamination, disruption of the areas ecological balance and any other related hazard to public health and safety.
 - (g). A plan for reclamation of the land to its original condition after exploration is completed. Measures to be taken for surface reclamation shall take into account the impact on adjacent land uses and natural resources and the proposed future use of the lands explored and adjacent lands. The reclamation plans include :
 - reclamation schedule
 - methods of plugging drill holes
 - methods of severing and returning topsoil and subsoil.
 - methods of grading, backfilling and contouring of exploration sites and access roads

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- methods of waste management and disposal, including liquid and solid wastes
- methods of revegetation
- (h). A surety performance bond in an amount to be determined by the City and County Commissions to assure that sufficient funds will be available to carry out required reclamation and, if necessary, decontamination of the affected ground and surface waters. The amount shall be set by the City and County Commissions based on an estimate of the cost of reclamation and decontamination. The bond shall be released five years after exploration has ceased unless the Commissioners find for good cause shown, that the water quality of the affected area has not been restored or the reclamation plan has not been completed. The amount of the surety bond may be reduced by the commissioners, if a bond is held by the State of South Dakota for the same purpose, by the same amount of the latter bond.
- (2). The applicant shall identify specific phases when monitoring and inspection of the exploration activities shall be conducted by city, county, state, federal or independent personnel to assure compliance with all applicable rules and regulations. If a conditional use permit is granted, the permit shall identify such inspection agency and it shall be the responsibility of the applicant to notify said agency when monitoring or inspection is required. The applicant shall bear the burden of the cost of the monitoring and inspection program as determined by the Commissioners.
- (3). A Conditional Use shall be issued only after all of the conditions specified herein have been met. Evidence of violation of the regulations, including but not limited to air and water contamination, shall be cause for an immediate cessation of exploration activities.
- (B). Mineral extraction and/or mining may be approved by Conditional Use only as long as the following minimum requirements are met:
 - (1). The Applicant shall provide:
 - (a). A description of the mineral or minerals to be mined or milled.
 - (b). Maps showing the area within which the mining or milling operations will be conducted.
 - (c). A description of the surface land use and vegetation, as well as a description of the nature and depth of the top soil and subsoil.
 - (d). An environmental assessment which establishes base line conditions for radioactive intoxicant materials and air, ground and surface waters, soils, vegetation and animals.
 - (e). A description of the overburden, mineral seams, and other geologic formations, their conductivities and hydraulic gradients, known to exist above the deepest projected depth of the mining operation.
 - (f). A description of the hydrology to the deepest projected depth of the

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mining operation, including mapping of the depth, water table level, extent, and flow characteristics of ground water and aquifers for the hydrologic regime of the ground water and drainage basins affected by the mining or milling operation.

- (g). A technical description of the mining or milling, types of equipment to be used, detailed site plan of all anticipated construction, an estimated timetable for each phase of work and for final completion of the program, a statement of source, quality, and quantity of water to be used in the mining or milling operations, as well as the chemical and radioactive characteristics of all mined or milled products, waste products, and emissions to the environment.
- (h). A description of the major environmental impacts upon air quality, water quality and quantity, and land use modification presented by the mining or milling operations.
- (i). A description of the proposed plan to address the identified environmental impacts to include:
 - methods of separating the topsoil, subsoil, and soil piles, protecting them from erosion before reclamation begins, and keeping the topsoil free from acid or toxic materials
 - plan for insuring that acid forming or toxic materials constituting a hazard uncovered or created during mining or milling are promptly treated in a manner to prevent water and air contamination
 - measures to maintain the quantity and quality of ground and surface water, hydrologic balance, productivity of farmland, and soil and water recharge capacity
 - procedures to prevent water and air contamination through radioactive or toxic seepage of runoff from tailings, ponds, mine wastes, mine dewatering discharge, or other mining and milling related operations.
- (j). A plan for the reclamation of the land after mining is completed. Measures to be taken for surface reclamation shall take into account the impact on adjacent land uses and natural resources, and the proposed future use of the lands mined and adjacent lands, and shall include:
 - a reclamation schedule
 - methods of grading, backfilling and contouring of disturbed areas and access roads.
 - methods of waste management and disposal, including liquid and solid wastes
 - methods of revegetation.
- (k). A surety performance bond in an amount to be determined by the City and County Commissions to assure that sufficient funds will be available to carry out required reclamation and, if necessary, decontamination of

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- affected ground and surface waters. The amount shall be set by the City and County Commissions based on an estimate of the cost of reclamation and decontamination. The bond shall be released five years after mining and milling has ceased unless the Commissioners find, for good cause shown, that the water quality of the affected area has not been restored or the reclamation plan has not been completed. The amount of the bond may be reduced by the Commissioners if a bond is held by the State of South Dakota for the same purpose, by the same amount of the latter bond.
- (2). The applicant shall identify specific phases when monitoring and inspection of the mining and milling process shall be conducted by city, county, state, federal or independent personnel to assure compliance with all applicable rules and regulations. If the Conditional Use is granted, the permit shall identify the inspection agency and it shall be the responsibility of the applicant to notify said agency when monitoring or inspection is required. The applicant shall bear the burden of the cost of the monitoring and inspection program as determined by the Commissioners.
 - (3). A Conditional Use shall be issued only after all conditions specified therein have been met. Evidence of violation of the regulations, including but not limited to air and water contamination, shall be cause for an immediate cessation of the mining and milling.
- (C). Solution mining and/or in situ mining of an ore body with the circulation of chemicals through injection and recovery wells for minerals is prohibited.

12.05 [Reserved.]

12.06 MOBILE HOMES/MANUFACTURED HOMES. Regulations regarding mobile homes and manufactured homes shall be as follows:

- (A). A park intended for the placement of mobile homes and manufactured homes on rented lots and where the roads are not publicly dedicated shall meet the following minimum standards:
 - (1). A plan shall be prepared showing the layout of the park, including lot lines, the road system and spacing diagram for all structures. Upon approval of the conditional use for the park, the plan shall be filed in the Office of Planning and Zoning and govern all future development.
 - (2). Each lot shall have a minimum size required for the zoning district in which the park is located. However, a smaller lot size may be approved as part of the conditional use.
 - (3). No dwelling or any structure, addition, or appurtenance thereto shall be located less than the minimum setback required by the district in which the park is located. The setback requirements may be changed as part of the approval of the conditional use.

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- (4). Each lot shall abut or face a clear unoccupied space, roadway, or street having a width of at least 34 feet where parking is permitted on both sides, 27 feet in width where parking is restricted to one side only and 24 feet wide where parking is prohibited, or be connected to such street or roadway by a private driveway not less than 12 feet in width, serving no more than four lots. A hard surfaced material shall be used on all roadways except in the RR District, in which case gravel may be used.
 - (5). The park shall be a minimum of 10 acres in size.
- (B). A subdivision for mobile homes and manufactured homes shall be required to meet the subdivision regulations and the density, area and yard requirements for the district in which it is located. The subdivision shall be a minimum of 10 acres in size.
- (C). A manufactured home may be considered for a conditional use as specified in the district regulations only if the following requirements are met:
- (1). The structure shall have been constructed on or after July 15, 1976.
 - (2). The exterior dimensions of the structure, measured by excluding overhangs, shall not be less than 22 feet.
 - (3). The structure shall be supported by a foundation system consisting of walls along the perimeter and piers on the interior. All foundation walls and piers shall extend a minimum of 42 inches below final grade.
 - (4). The roofing and siding material shall be consistent with the material used in site-built dwellings.
 - (5). The roof pitch shall not be less than a 3 in 12 slope.
- (D). Mobile homes which are nonconforming uses may be replaced with another such structure by making application for a conditional use. The compatibility of the replacement dwelling with neighboring dwellings shall be considered in reviewing the conditional use request.
- (E). A mobile home or manufactured dwelling may be located temporarily on land owned by the occupant during the construction of a dwelling. Placement shall not occur until construction has actually commenced. The unit shall be removed after one year or upon completion of the dwelling, whichever occurs first.
- (F). All mobile homes and manufactured homes as defined in Article 26.00 must be located in conformance with these requirements.

12.07 ACCESSORY BUILDING AND USES. The regulations regarding accessory buildings and uses shall be as follows:

- (A). Limited Use. Accessory buildings and uses are buildings and uses customarily incident to any of the permitted uses in the district in which it is located. In the A-1, RR and R-1

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districts, accessory buildings and uses are limited to:

- (1). A noncommercial greenhouse that does not exceed in floor area 25 percent of the ground floor area on the main building.
 - (2). A private residential garage used only for the storage of noncommercial vehicles and other related material.
 - (3). Tennis court, swimming pool, garden house, pergola, ornamental gate, barbeque oven, fireplace, and similar uses customarily accessory to residential uses.
 - (4). Home occupation in conformance with Section 15.04.
 - (5). Temporary storage and distribution of seed and similar type products provided the use is located within a farmstead, the product is stored within a completely enclosed building typical of farm buildings and the use is limited to the seasonal sale of products from the premises.
- (B). Time of Construction. No accessory buildings shall be constructed upon a lot until the construction of a main building has been actually commenced, and no accessory buildings shall be used unless the main building on the lot is also being used. Accessory buildings may not be used for dwelling purposes.
- (C). Setback Requirements.
- (1). Accessory buildings which are attached to or located within 10 feet of the main building shall be considered a part of the main building and shall comply with the same yard requirements as the main building.
 - (2). Accessory buildings not a part of the main building, when located in the required rear yard, shall be no closer than three feet to the side and rear property lines.
- (D). Accessory buildings shall not occupy more than thirty (30) percent of the rear yard, subject further to the following limitations:
- (1) In the A-1 and RC Districts, the total area of accessory buildings shall not exceed 1200 square feet when such buildings are located in a subdivision of more than four (4) lots unless a conditional use has been approved.
 - (2) In all Residential Districts, the total area of accessory buildings shall not exceed 1200 square feet unless a conditional use has been approved.
 - (3) In a Planned Development District, the total area of accessory buildings shall not exceed 1200 square feet unless a minor amendment has been approved.

12.08 ROCK, SAND AND GRAVEL EXTRACTION

- (A). Intent.
This section addresses the application, review and regulation of extraction and on-site processing of rock, sand and gravel. An applicant must meet certain requirements as specified in Subsection C when filing for a conditional use in addition to the general requirements contained in other sections of the zoning regulations.

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The developmental and operational criteria contained in Subsection G are intended to assist in the formulation of conditions to be imposed on individual extraction operations. The criteria have been designed to eliminate potential health risks and minimize the adverse impact on other land uses due to extraction operations.

The County and City will have the discretion of requiring more or less stringent conditions based upon the location of a proposed operation. It is also recognized that such operations will not be appropriate throughout all areas of the joint zoning jurisdiction. *(amended by MC28-01-03)*

(B). Submission of Application.

The application for rock, sand or gravel extraction shall be filed with the Planning Office on the prescribed conditional use form at least 30 days in advance of a regularly scheduled joint meeting of the Planning Commissions.

(C). Application.

The conditional use application shall be accompanied by the following:

- (1). 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.
- (2). A description of the surface land use and vegetation, including all pertinent physical characteristics.
- (3). A hydrologic study which shall include all available information from the State Geological Survey and other information pertinent to the application. If the applicant believes a study is not warranted, documentation shall accompany the application in support of this position.
- (4). A reclamation plan which takes into consideration the criteria listed in Subsection G - reclamation.
- (5). The applicant shall meet with the township supervisors of the affected township to discuss repair and maintenance responsibilities on township roads to be used as haul routes. A summary of the meeting(s) shall be presented with the application.

(D). Fee.

If a conditional use 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 the direct and indirect costs associated with general administration and enforcement of this section. The fee shall be payable by January 20th 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.

(E). Notification Requirements.

In addition to the notification requirements of Article XXII Section 4(B), the Planning

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Director shall notify by U.S. mail all property owners of record within one mile of the proposed conditional use area or the owners of the thirty properties nearest to the affected property, whichever affects the least number of owners, of the time, date, place and purpose of the public hearing. The notice shall be mailed not less than 15 days prior to the public hearing.

(F). [Reserved.]

(G). Developmental 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 and City or the applicant may present arguments to relax the requirements based on specific characteristics of the site.

Buffer Area.

(1). A minimum distance of 1000 feet should be maintained between an existing residence and a rock, sand or gravel operation, except in those instances when the operator secures a waiver from the affected landowner.

Hours of Operation.

- (1). Monday thru Friday - 7:00 A.M. to 6:00 P.M., Saturday - 8:00 A.M. to 12:00 noon. Operations should not be conducted on legal holidays. Activities such as office or maintenance operations which produce no noise off-site should not be restricted by the hours of operation.
- (2). Blasting should be scheduled on weekdays at 12:00 noon. There should be no blasting on legal holidays. Area residents should be notified of the date and time of each blast.

Visual Considerations.

- (1). Earth berms and vegetation should be employed to minimize visual impacts and reduce the effects of noise.
- (2). The need for and 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.
- (3). The operator should work with the County Conservation District and Planning Director to develop a planting program. Consideration should be given to planting one or more of the following: evergreen, Russian olive, ash, caragana, crab apple, lilac and buffalo berry. The plants should be properly cared for to ensure the highest survival rate and all dead plants replaced during the current

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planting season. As a minimum, the program should include trees of varying maturity. The planting program should be reduced to writing and kept on file in the Planning Office.

- (4). At a minimum, berms should be constructed prior to blasting or the extraction of rock, sand or gravel.

Blasting.

- (1). Ground vibration and over pressure (air blast) should be monitored for each blast and not exceed guidelines established by the U. S. Bureau of Mines.

Noise.

- (1). The noise level produced from rock, sand and 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.

Air Quality.

- (1). Air quality monitoring should be conducted at the operator=s expense when conditions warrant.
- (2). Ambient air quality: total suspended particulate matter - 150 micrograms per cubic meter of air as a 24-hour average not to be exceeded more than once per year, and 60 micrograms per cubic meter of air as an arithmetic mean; PM¹⁰ (10 micrometers or less in size) consistent with the regulations of the State of South Dakota.
- (3). Employ techniques that minimize the release of particulate matter created by material stockpiles, vehicular movement and process operations.
- (4). Dust control agents should be applied to township gravel roads designated as haul routes and all driving surfaces within the extraction area.

Hydrology, Dewatering and Drainage.

- (1). Existing wells should be monitored at the operator=s expense to document changes in hydrologic conditions around extraction sites.
- (2). Dewatering of the extraction site should not result in downstream flooding.
- (3). Berms should not interrupt the natural drainage of the area, unless such diversion is part of an approved drainage control system.

Haul Roads.

- (1). 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.

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- (2). Identify repair and maintenance responsibilities through a haul road agreement.
- (3). Consider the potential impact on County highways to be used as haul routes.

Operator Surety.

- (1). A surety performance bond may be required in an amount to be determined by the Planning Commissions to assure that sufficient funds will be available to protect the County and City in the event the operator abandons a site without completing the conditions imposed by the conditional use, including fulfillment of the agreement with the township concerning repair of designated haul roads and, if necessary, decontamination of affected ground and surface waters. In lieu of the required surety, the operator may deposit cash with the County in the amount equal to the required surety.

Reclamation.

- (1). The type and extent of reclamation should be based on the type of material extracted on 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.
- (2). Provide maps, including cross sections, showing the existing natural topography and anticipated topographic conditions upon completion of reclamation.
- (3). 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.
- (4). Topsoil should remain on site and be used during reclamation.
- (5). A seeding and revegetation plan should be developed for the affected area in consultation with the County Conservation District.
- (6). All required reclamation activities should be completed and a compliance inspection performed by the County Planning Director prior to the release of the surety.

Additional Considerations.

- (1). The maximum height of a bench in a quarry should be 30 feet.
- (2). 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.

12.09 ADULT USES. In the development and execution of this ordinance, it is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, and are not compatible with certain uses. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the

blighting or downgrading of the surrounding area.

- (A). None of the following uses may be established, operated, or maintained within five hundred (500) feet of a residential dwelling, a residential district, a church, a school meeting all the requirements of the Compulsory Education Laws of the State of South Dakota, or a public park, as measured from the closest point of the property lines.
1. Adult bookstore
 2. Adult theater
 3. Adult photo studio
 4. Adult mini motion picture theater
 5. Adult amusement or entertainment establishment

12.10 CONCENTRATED ANIMAL FEEDING OPERATIONS

- (A). Intent.
It is the intent of this section to provide for a viable livestock industry within agriculturally zoned areas of the joint zoning jurisdiction, protect ground and surface waters and ensure that concentrated animal feeding operations are properly sited, maintained and managed. *(amended by MC28-01-03)*
- (B). Water Source Protection Areas.
A concentrated animal feeding operation - new (Class A, B or C) shall not be permitted in the Water Source Protection Overlay District.
- (C). Application Procedures and Requirements. *(amended by MC28-08-06)*

Prior to application submittal the operator of the proposed facility shall meet with the Planning Director to discuss application requirements.

The conditional use application shall be accompanied, at a minimum, by the following information. The geotechnical boring requirement in subsection 3 may be waived if a state general permit is required.

- (1). A description of the type of concentrated animal feeding operation and the number of animals proposed for the facility.
- (2). A site plan of the proposed facility including:
 - (a). A landscaping plan designed to assist in the dispersal of odors.
 - (b). A grading plan designed to help keep pens and solid waste containment areas dry.
- (3). When the site is located within a designated water source protection area or 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

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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.
- (4). A pest, odor control and dead animal disposal plan.

(D). Notification Requirements.

In addition to the requirements of Section 19.05 (A), the County Planning Director shall notify by U.S. mail all property owners of record within one-half mile of the proposed concentrated animal feeding operation of the time, date, place and purpose of the public hearing. Such notification shall occur at least fifteen days prior to the hearing.

(E). Conditional Use Permit Requirements. *(amended by MC28-08-06)*

A concentrated animal feeding operation which is granted a conditional use permit shall, at a minimum, meet the following requirements:

- (1). When a state permit is required. The operator shall file copies of all state-approved construction plans with the County.
- (2). Record Keeping. The operator shall maintain inspection and maintenance records on the animal waste facilities, and records on compliance with the waste and nutrient management plan and odor and pest control plan. Copies of records shall be filed annually with the County.
- (3). Waste Application. All liquid wastes shall be injected to provide for better agronomic benefits and to reduce the potential for runoff and minimize odor.
 - (a). In the event that an extraordinary circumstance requires surface application of liquid waste, the following information shall be submitted to the Planning Office: a description of the extraordinary circumstance which requires surface application; a map showing the proposed application sites along with soil types, slopes, and the required separations from natural features or adjoining land uses: the minimum volume of waste which will have to be applied in order to provide relief; and the means by which the waste will be applied. The Planning Director may authorize the surface application of liquid waste under the following minimum conditions:
 - (1). Waste shall not be surfaced applied on frozen ground with slopes of greater than 4 percent.
 - (2). Only the minimum amount of waste necessary to provide relief shall

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- be surface applied.
- (3). The separation requirements in Table 3, Section 12.10 (G) shall be met.
 - (b). The Planning Director may approve surface application of livestock production surplus water upon receiving an application from the producer. Such application shall include:
 - (1). The results of tests on the livestock production surplus water proposed for surface application which shows the percentage of solids and the amount of N (nitrogen) per 1000 gallons of water.
 - (2). The amount of livestock production surplus water to be applied.
 - (3). A map showing the areas on which the producer proposes to surface apply the livestock production surplus water including soil types, slopes, and the required separations from natural features or adjoining land uses.
 - (4). The separation requirements in Table 3, Section 12.10 (G) shall be met.
 - (4). 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.
 - (5). Inspections. A registered professional engineer shall inspect the facility during construction and certify to the County that the newly constructed facility conforms with the approved plans and with South Dakota Department of Environment and Natural Resources design standards.
 - (6). 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 Water Pollution Control Permit for Concentrated Swine Feeding Operations or for Concentrated Animal Feeding Operations.
 - (7). A nutrient management plan for liquid and solid waste including:
 - (a). Location and description of the animal waste facilities and structures.
 - (b). Operational procedures and maintenance of the animal waste facilities.
 - (c). Description of the proposed method for animal waste application.
 - (d). Map showing distances from proposed animal waste application sites to natural features and land uses as shown in Table 3.
 - (e). 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.
 - (f). 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.

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- (F). Separation Requirements and Criteria for Concentrated Animal Feeding Operations.
A concentrated animal feeding operation shall comply with the minimum separation requirements in Table 1.

Table 1
Concentrated Animal Feeding Operations
Minimum Separation Requirements

	Class A	Class B	Class C	Class D
Public Water Supplies	1,000 feet	1,000 feet	1000 feet	500 feet
Private Wells (other than owner=s or operator=s)	250 feet	250 feet	250 feet	250 feet
Private Wells (owner=s or operator=s)	150 feet	150 feet	150 feet	150 feet
Lakes, Rivers and Streams Classified as Fisheries	500 feet	200 feet	200 feet	200 feet
Intermittent Streams or waterways	100 feet	100 feet	100 feet	100 feet

The minimum separation criteria in Table 2 shall be used in siting a concentrated animal feeding operation. The minimum separation criteria may be increased based on site specific conditions. When a proposed operation does not meet the minimum separation criteria, the application shall be accompanied by one of the following or a combination thereof:

- 1) A signed waiver from each landowner located closer than the minimum separation criteria. No building permit shall be issued until the waivers are filed with the County Register of Deeds.
- 2) In the absence of a waiver, documentation shall be presented on new technology, management practices, topographic features, soil conditions or other factors which substantiate a reduction in the minimum separation criteria.

Table 2
Concentrated Animal Feeding Operations
Minimum Separation Criteria

	Class A	Class B	Class C
Dwellings, Churches, Schools, and Businesses	4,620 feet plus 880 ft. For each additional 250 AU (or portion thereof) over 2,000 AU	1,980 feet plus 660 ft. For each additional 250 AU (or portion thereof) over 1,000 AU	660 feet plus 440 ft. For each additional 250 AU (or portion thereof) over 250 AU

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Public Parks	5,280 feet plus 880 ft. For each additional 250 AU (or portion thereof) over 2,000 AU	2,640 feet plus 660 ft. For each additional 250 AU (or portion thereof) over 1,000 AU	1,320 ft. plus 440 ft. For each additional 250 AU (or portion thereof) over 250 AU
Municipalities	10,560 feet plus 1320 ft. For each additional 250 AU (or portion thereof) over 2,000 AU	5,280 feet plus 1320 ft. For each additional 250 AU (or portion thereof) over 1,000 AU	2,640 ft. plus 880 ft. For each additional 250 AU (or portion thereof) over 250 AU

(G). Separation Requirements for Animal Waste Application Sites.

The minimum separation requirements in Table 3 shall apply to the application of animal waste from a concentrated animal feeding operation.

Table 3
Animal Waste Application Sites
Minimum Separation Requirements

	Animal Waste, Surface Applied	Animal Waste, Incorporated or Injected
Lakes, Rivers and Streams Classified as Fisheries	300 feet	100 feet (lake) 50 feet (river or stream)
Streams and Lakes Classified as Drinking Water Supplies	1,000 feet	300 feet
Intermittent Stream or Waterway	200 feet	50 feet
Public Wells	1,000 feet	1,000 feet
Private Wells	250 feet	250 feet
Residence (other than operator)	300 feet (surface)	50 feet
Municipalities	1,000 feet	300 feet

The application of liquid animal waste by irrigation shall be prohibited. The County Planning Director, however, may approve the surface application of livestock production surplus water in accordance with Section 12.10 (E)(3).

12.11 TEMPORARY USES

(A) Intent. The requirements of this section are intended to provide for the regulation and permitting of uses and associated improvements on private property which are not so recurring in nature as to constitute a permanent use. These requirements are not intended to regulate temporary uses on public property, including public rights-of-way.

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- (B) Permit Required. No person shall operate a temporary use without first obtaining a permit therefor from the County Planning Department as prescribed in this section. If an objection is filed pursuant to Section 12.11 (E) or if the County Planning Department determines that a hearing should be held due to the scope of the proposed use, the County Planning Department shall refer the temporary use application to a joint meeting of the City and County Planning Commissions for action.
- (C) Applications.
- 1) Submission deadline. All applications for a temporary use permit shall be made at least 60 days prior to the proposed commencement date of the use, provided that the County Planning Department may approve a lesser time consistent with the requirements of this section.
 - 2) Temporary use plan. All temporary uses shall be subject to approval of a temporary use plan. The plan shall describe the nature and location of all temporary improvements and activities, the location of any permanent buildings intended to be used, the time period for which the temporary use permit is requested, and such other information in sufficient detail as the County Planning Department determines is reasonably necessary to adequately review the application and to ensure the use will be conducted in a manner consistent with the requirements of this section.
- (D) Standards for review. The following standards shall be used in determining the suitability and compatibility of a temporary use:
- 1) The temporary use will have no adverse effect on nearby properties or jeopardize public health, safety, and general welfare.
 - 2) The temporary use will not create hazardous traffic conditions or result in traffic in excess of the capacity of the roads serving the use.
 - 3) The site is adequate to accommodate the proposed use, including the provision for on and off site parking.
 - 4) Adequate sanitation facilities will be available on the site.
 - 5) The time period and hours of operation for the temporary use are clearly specified.
 - 6) Provision is made for the removal, clean-up, and restoration of the site.
 - 7) The temporary use will not adversely impact the natural environment.
 - 8) The site is suitable for the proposed temporary use, considering flood hazard, drainage, soils, and other conditions which may constitute a danger to life, health or property.
 - 9) All temporary improvements and any permanent structures proposed to be used will comply with all applicable provisions of the county=s building code.
- (E) Notice. The County Planning Department shall send written notice of the temporary use permit application to the owners of all property located within at least 600 feet of the property involved. Such notice shall be sent at least 14 days before the County Planning Department makes its determination on the temporary use permit. If any of the owners so

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notified file a written objection prior to the time the County Planning Department makes its determination regarding the application, the application shall be referred to a joint meeting of the County and City Planning Commissions for action.

- (F) Conditions of approval. Reasonable conditions may be required in connection with the approval of any temporary use permit which are deemed necessary to protect the public health, safety and welfare and the social and economic well being of those who will use the temporary use, residents and landowners immediately adjacent to the proposed use, and the community as a whole. Any condition imposed must be clearly specified in writing on the temporary use permit.
- (G) Appeal of decision. Any person aggrieved by an action of the County Planning Department in granting, denying, revoking, or suspending a temporary use permit may appeal such action to a joint meeting of the County and City Planning Commissions. Such appeal shall be in writing and filed with the County Planning Department within five working days of the decision. The action of the Planning Commissions may be appealed to the Board of County Commissioners and City Council in the same manner.
- (H) Fee. A fee of \$250 shall accompany the application for a temporary use permit. *(amended by MC28-06-05)*
- (I) Exemptions. The following uses shall not require a temporary use permit:
- 1) Estate or real estate sales involving the property or items from the property where the sale is held.
 - 2) Garage, yard or rummage sales provided:
 - a) Sales last not longer than three (3) days.
 - b) Sales are held no more than twice yearly.
 - c) Sales are conducted on the owner=s property or one of the owner=s properties in case of a multi-party sale.
 - 3) Weddings, purely social parties or similar family events where the function or event involves the owner or lessor of the property and where no monetary consideration or fees for such use of the property or attendance is involved.

12.12 TELECOMMUNICATIONS TOWERS, ANTENNA SUPPORT STRUCTURES AND BROADCAST TOWERS. *(amended by MC28-01-03)*

- (A) Intent. Regulations regarding telecommunications towers, antenna support structures and broadcast 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 telecommunications

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towers, antenna support structures and broadcast towers. The specific intent of this section is to:

- (1). Regulate the location of telecommunications towers, antenna support structures and broadcast towers;
 - (2). Promote and encourage shared use/co-location of telecommunications towers, antenna support structures and broadcast towers;
 - (3). Avoid potential damage to property caused by telecommunications towers, antenna support structures and broadcast towers by insuring 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). Insure that telecommunications towers, antenna support structures and broadcast towers are compatible with and do not adversely impact surrounding land uses;
 - (5). Facilitate the provision of wireless communications services to residents and businesses in an orderly fashion.
- (B) Equipment Design.
- (1). Antennas shall be mounted on a single monopole or guyed lattice tower.
 - (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.
 - (3). There shall be a minimum distance of three (3) miles between towers.
- (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) 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

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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.

(F) 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.

(G) 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.
- (3). The Planning Director may revoke a building permit when a tower is capable of co-location if:
 - (i) 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
 - (ii) 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.

(H) 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:
 - (i) Reuse the facility; or
 - (ii) Dismantle the facility. If the facility is not removed within seventy-five (75)

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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.

- (I). Application Requirements (in addition to standard requirements).
The facility or property owner shall file a letter with the Planning Department accepting responsibility for removal of the tower if it is abandoned.
- (J). 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 in at the sole discretion of the County.

12.13 Vehicle & Equipment Restrictions. (Section added by MC28-14-10 4/27/10)

(A). Intent. It is the intent of this section to limit the impact of commercial vehicles and equipment, recreational vehicles, and agricultural vehicles and equipment upon those areas of the county in which the land use is residential or agricultural in nature. Fire, law enforcement, emergency vehicles, and those vehicles designed for persons with disability are exempt from this section of the ordinance.

Section 12.13 shall apply to the Agricultural, Recreation/Conservation, and Residential zoning districts. Commercial vehicles, agricultural vehicles, recreational vehicles, and equipment are prohibited unless in compliance with Section 12.13.

(B). Commercial Vehicles and Equipment. It is not the purpose of the section to prohibit commercial vehicles as described herein from residential parcels when actually engaged in a business activity which requires their presence for a specific purpose and limited time period.

1. One commercial vehicle per resident, not to exceed a maximum of two commercial vehicles, shall be permitted on a property with an occupied residence provided that:
 - a. In a residential development area, the vehicle shall be currently licensed, fully functional, and have a gross vehicle weight of 12,000 pounds or less and not exceed 22 feet in length. Exclusive of a residential development area, the vehicle shall be currently licensed, fully functional and have a gross vehicle weight of 26,000 pounds or less and not exceed 22 feet in length.
 - b. A semi-tractor is exempt from the gross vehicle weight requirement for Section (B)1a.
 - c. The vehicle shall be operated by a person residing on the premises, and shall provide primary transportation for the resident to and from their place of employment.
 - d. The vehicle shall not be parked or stored within the right-of-way.

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- e. No attached vehicle, trailer or equipment shall be allowed.
2. Commercial vehicles and equipment that are currently licensed (if required) and fully functional and are in use as part of a permitted construction project shall be allowed for the duration of the said project. Should the construction project cease for period of six (6) months, the commercial vehicles and equipment shall be removed from the property. Commercial vehicles and equipment shall not be stored or parked for longer than seventy-two (72) hours upon any right-of-way.
3. Commercial equipment that is fully functional, owned by the resident, and used by the resident for regular or ongoing maintenance of the property (i.e. lawn care, driveway maintenance, snow removal) and not for profit, shall be allowed on properties used for residential and agricultural uses.
4. Commercial vehicles or equipment shall not be used for human or animal occupancy. Semi –trailers shall not be used for storage.

(C). Recreational Vehicles and Equipment.

1. The parking and storage of recreational vehicles shall be allowed provided that:
 - a. The vehicle title holder for any and all recreation vehicles parked or stored on the property shall be the property owner or permanent resident of the dwelling, or
 - b. If the property owner or permanent resident of the dwelling does not hold vehicle title to all of the recreational vehicles on the property, no more than three recreational vehicles shall be allowed to stored or parked on the property, regardless of ownership.
2. The vehicle and equipment shall be fully functional and licensed if required.
3. No recreational vehicles shall be stored or parked for longer than 72 hours upon any right-of-way in a residential development district.
4. No recreational vehicle or trailer shall be connected to gas, water, septic or sewer service unless approved by a county issued permit.
5. Recreational vehicles shall not be used as accessory structures nor shall they be used for human or animal occupancy.
6. Recreational vehicles shall not have their wheels removed or be affixed to the ground so as to prevent ready removal of the vehicle.

(D). Agricultural Vehicles and Equipment.

Agricultural vehicles and equipment shall meet the following conditions.

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1. Shall be fully functional and currently licensed if required.
2. Shall be owned by the property owner or tenant.
3. Shall be presently used in the activity of agricultural operations or used for regular or ongoing maintenance of the property.

(E). Township Road Maintenance Vehicles and Equipment.

Those persons employed by and/or operating township road maintenance vehicles and equipment shall be allowed to store said vehicles and equipment on their property. If the property is located within a residential development area, the vehicles and equipment shall be screened from public view.