



# **Bottineau County Zoning Ordinance**

**Adopted December 18, 2017**

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**PREAMBLE  
AN ORDINANCE ESTABLISHING  
COMPREHENSIVE ZONING REGULATIONS  
FOR  
BOTTINEAU COUNTY**

The intent is to:

Promote the health, safety, public convenience, general prosperity, and public welfare of Bottineau County and the orderly development of lands within the county;

Preserve and maintain agricultural lands for farm use;

Encourage nonfarm growth to locate within existing communities or within the immediate environs of communities;

Promote a healthy and visually attractive environment;

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

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

THESE REGULATIONS ARE HEREBY ADOPTED EFFECTIVE THIS 18TH DAY OF DECEMBER, 2017.

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Charlie Adams, Chairman  
Bottineau County Commission

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Lisa Herbel  
Bottineau County Auditor

**ZONING REGULATIONS  
BOTTINEAU COUNTY, NORTH DAKOTA**

**ARTICLE 1 – INTRODUCTION**

**SECTION 1. TITLE:** This resolution shall be known, cited, and referred to as the “Zoning Regulations of Bottineau County, North Dakota.”

**SECTION 2. PURPOSE:** These regulations are designed to promote the health, safety, public convenience, general prosperity, and public welfare of Bottineau County.

**SECTION 3. REPEAL:** All other zoning regulations and amendments thereto adopted under the Authority of Chapter 11-33 of the North Dakota Century Code are hereby repealed.

**SECTION 4. AUTHORITY:** These regulations are adopted under the authority granted by Chapter 11-33 of the North Dakota Century Code.

**SECTION 5. SEVERABILITY:** Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

**SECTION 6. EFFECTIVE DATE:** These regulations shall be in full force and effective from and after its passage and approval.

**ARTICLE 2 – GENERAL PROVISIONS**

**SECTION 1. JURISDICTION:** These zoning regulations shall apply to all areas within the civil boundaries of Bottineau County, North Dakota; with the exception of those areas within the civil boundaries and extraterritorial zoning boundaries of organized cities in Bottineau County and those townships that have elected to have their own zoning. Those areas will retain the opportunity to exercise their own zoning authority.

**SECTION 2. COMPLIANCE:** Except hereinafter provided, no building, structures, or land shall be used, occupied, erected, constructed, moved, reconstructed, or structurally altered except in conformity with all the regulations for the district in which it is located.

**SECTION 3. AGRICULTURE EXEMPTED:** Nothing in this ordinance shall be applied for the purpose of preventing or restricting the use of land or buildings for agricultural use or for any of the normal incidents of agriculture.

**SECTION 4. INTERPRETATION:** In the interpretation and application of these regulations, these provisions shall be held to be the minimum requirements adopted for the promotion of the public health, safety, and welfare. Where these regulations impose a greater restriction on land, buildings, or structures than is imposed or required by existing provisions of law, ordinance, contract, deed or resolution, the provisions of these regulations shall control.

**SECTION 5. NONCONFORMING USES:**

1. Lawful nonconforming uses of land or buildings existing at the date of adoption of these regulations may continue, provided no structural alterations, except for normal maintenance, are made and such nonconforming uses shall not be extended to occupy a greater area of land than occupied at the date of adoption of these regulations.

2. No building or structure where a nonconforming use has been discontinued for a period of two years or has changed to a permitted use shall again be devoted to a nonconforming use.
3. A nonconforming structure destroyed or damaged less than fifty percent of its fair market value may be reconstructed within one year of such casualty. If damaged more than fifty percent of its fair market value, such building shall be reconstructed in conformance with these regulations, if it is reconstructed.
4. The provisions of this section shall not be applicable to conditional uses or any made nonconforming by a change or amendment in district regulations.

#### **SECTION 6. UTILITIES:**

1. All new utilities shall be considered as a conditional use and, as such, shall conform to all requirements put on them by the Planning Commission and/or County Commission.
2. No conditional use permit shall be issued unless satisfactory provisions for the following have been made:
  - A. Underground utilities shall be placed a minimum depth of two (2) feet, so as not to constitute a hazard to normal farming or general county/township maintenance.
  - B. Above ground utilities shall be placed in a manner which will conform with state law.
  - C. Utility placement shall conform with section lines, highways (state and federal), and railroad right of ways.
  - D. The activities will not result in undue damage or injury to roads, bridges, right of ways in the County, or to any public or private property.
  - E. Excavation costs for purposes of construction or maintenance of a utility shall be borne by the contractor or owner of said utility.

#### **SECTION 7. MINERAL EXPLORATION AND MINERAL PRODUCTION:**

1. All permanent mineral production activities shall be considered as a conditional use and, as such, shall conform to all requirements put on them by the Planning Commission and/or County Commission.
2. No conditional use permit shall be issued unless satisfactory provision for the following has been made:
  - A. The activities will not result in undue damage or injury to roads, bridges, right of ways in the County, or to any public or private property.
  - B. Evidence of a reclamation agreement with the surface owner.
  - C. Reclamation of the project shall be finished within one (1) year of the completion of the mineral exploration and/or production activities.
  - D. Evidence of compliance with the County, State, and Federal regulations.
  - E. Evidence that the activity is one hundred fifty (150) feet from all section lines, property lines, water resources and the centerlines of all township, county, state and federal roads.

**SECTION 8. SANITARY REGULATIONS:** All residential, commercial, or industrial structures shall conform to the North Dakota health regulations as they refer to wells, irrigation, septic, and sanitary systems.

#### **SECTION 9. WASTE DISPOSAL SITES:**

1. At a minimum the following waste disposal sites shall comply with all applicable federal, state and county regulations.

2. Private Waste Disposal Sites – A solid waste disposal site used exclusively by and only for the landowner or tenant engaged in farming. Sites shall be limited to one per landowner and used for refuse generated from personal farming operations, in addition these sites must comply with Farm Service Agency (FSA) regulations.
3. Commercial Waste Disposal Sites – A solid waste disposal site or facility permitted pursuant to the laws of the State of North Dakota. Waste transported to a disposal site shall be by a waste hauler licensed by the State of North Dakota.

**SECTION 10. SIGN REGULATIONS:** Signs shall be permitted if they conform to the regulations in this article.

1. Permitted Signs – The following signs shall be permitted in all zoning districts:
  - A. Signs not exceeding three square feet in area bearing property numbers, box numbers, or names of occupants of the premises.
  - B. Flags and the insignia of any government agency.
  - C. Legal notices, identification information, or directional signs erected by government bodies.
  - D. Signs directing and guiding traffic or parking on private property.
  - E. No more than two signs advertising property for sale or rent.
  - F. Bulletin boards and signs for churches or other public institutions.
2. Limited Permitted Signs – The following signs shall be permitted in only the “CO” and the “IN” zoning districts:
  - A. Illuminated signs
  - B. Marquee signs
  - C. Portable signs
  - D. Projecting signs
  - E. Roof signs
  - F. Wall signs
  - G. Temporary signs
  - H. Commercial billboards
3. Unlawful Signs – The following types of signs are prohibited from all zoning districts:
  - A. Any signs, outdoor commercial advertising or lighting device such as a beacon light, constituting a nuisance because of lighting glare, focus, animation, or flashing.
  - B. Any sign which conflicts in any manner with the clear and obvious appearance of public signs and devices controlling traffic.
  - C. Any sign projecting more than ten feet over a road, street, alley, or other public space, or closer than two feet to the curb line of any public road, street, or alley, or less than the state requirement above any road, street, alley, or public space.
  - D. Any sign that obstructs a view of oncoming traffic.

**SECTION 11. SUBDIVISION REQUIREMENTS:** Subdivision regulations are established to safeguard the public interest in accordance with the County’s comprehensive plan and to assist the subdivider in harmonizing their interests with those of the County.

1. The tract to be used for the subdivision shall not be less than five acres in area.
2. The applicant for a zoning change to permit a subdivision, must satisfy the Planning Commission that all development to occur within this District shall not extensively alter natural grade of land or permit extensive alteration, removal, or destruction of natural vegetation in order to prevent erosion or pollution.

3. The application for a platting of a subdivision must meet all State Health Department standards prior to any development on the land.
4. The applicant platting the subdivision shall prepare or cause to be prepared an application for rezoning and a development plan, and shall present three copies of the plan for review and approval by the Planning Commission. The development plan shall show topography at a minimum of ten feet intervals, such as shown on a 7 ½ minute quadrangle topographic map, and include designation of the following:
  - A. Lot dimensions
    - a. In the Rural Recreational District, all lots, except recreational vehicle park spaces, shall have a minimum area of 15,000 square feet. Additional lot area may be required to meet the State Health Department minimum standards for public health and safety. Minimum lot width shall not be less than 100 feet and depth of not less than 150 feet. The principal and accessory structures shall not cover more than 30% of the lot area.
    - b. In the Rural Residential and Commercial Districts, lot size shall not be less than 5,000 square feet, if served by a sewer collection system common to other adjoining users, or not less than three acres if the sewer is drained into an on site user owned drainage field.
  - B. Recreational vehicle park and sites, if applicable  
Recreational vehicle park spaces shall have a maximum density of 12 spaces per gross acre with a minimum area of 2,500 square feet for each space where State approved public type sanitary sewers are available for each space. When State approved public type sanitary sewers are not available, the maximum density shall be 12 spaces per gross acre with a minimum area of 2,500 square feet for each space, provided that toilet, shower, and laundry facilities are included (for recreational vehicle occupants' exclusive use) in calculation of gross area and are provided within 250 feet of each space. Each space shall be at least 35 feet wide and clearly defined.
  - C. Recreational vehicle park service buildings, if applicable
  - D. Water lines, if applicable to development
  - E. Water outlets, if applicable to development (mandatory for recreational vehicle park)
  - F. Sewer lines, if applicable to development
  - G. Recreational vehicle holding tanks, if applicable
  - H. Recreational areas
  - I. Landscaped areas and walls or fences
  - J. Roadways
5. The approval of the application for rezoning and the development plan in no way obligates the County to the provision, development or maintenance of access, required or otherwise, to the property concerned.
6. Roadways shall not be less than 30 feet in width for two-way traffic systems and 16 feet for one-way traffic systems.
7. Upon approval of the preliminary development plan by the Planning Commission, the applicant shall prepare or cause to be prepared a final development plan, which shall incorporate any changes or alterations requested. The final development plan and the Planning Commission recommendation shall be forwarded to the County Commission for review and final action.

**SECTION 12. ANIMAL FEEDING OPERATIONS:**

1. All new animal feeding operations that exceed 300 animal units shall be considered as a conditional use and, as such, shall conform to all requirements put on them by the Planning Commission and/or County Commission.
2. No conditional use permit shall be issued unless satisfactory provisions for the following have been made:
  - A. Evidence of compliance with applicable state laws and rules, including the laws and rules administered by the North Dakota Department of Health and any permits granted by that department.
  - B. Water Resource Setback Requirements – the operator of a new animal feeding operation that has more than 300 animal units (see Equivalent Animal Unit Numbers table) shall not locate or establish that operation:
    - a. Within a delineated source water protection area for a public water system. The source water protection areas for water supply wells include the entire wellhead protection area. For the surface water intakes of public water systems, source water protection areas include all or portions of the surface water that supplies the water for the public water system, including all or portions of the surface water’s shoreline.
    - b. Within 1,200 feet of a private ground water well which is not owned by the animal feeding operator or within 1,500 feet of a public ground water well which does not have a delineated source water protection area.
    - c. Within 1,000 feet of surface water which is not included in source water protection area.

**Equivalent Animal Numbers**

Livestock Type	Animal Unit Equivalent	Equivalent Numbers of the Livestock (hd) for Four Sizes (a.u.) of Animal Feeding Operations			
		300 a.u.	1,000 a.u.	2,000 a.u.	5,000 a.u.
1 horse	2.0000	150	500	1,000	2,500
1 dairy cow	1.3300	225	750	1,500	3,750
1 mature beef	1.0000	300	1,000	2,000	5,000
1 beef feeder - finishing	1.0000	300	1,000	2,000	5,000
1 beef feeder - backgrounding	0.7500	400	1,333	2,667	6,667
1 mature bison	1.0000	300	1,000	2,000	5,000
1 bison feeder	1.0000	300	1,000	2,000	5,000
1 swine > 55 lbs	0.4000	750	2,500	5,000	12,500
1 goose/duck	0.2000	1,500	5,000	10,000	25,000
1 sheep	0.1000	3,000	10,000	20,000	50,000
1 swine - nursery	0.1000	3,000	10,000	20,000	50,000
1 turkey	0.0182	16,500	55,000	110,000	275,000
1 chicken	0.0100	30,000	100,000	200,000	500,000

- C. Odor Setback Requirements
  - a. The operator of a new animal feeding operation shall not locate that operation within the extraterritorial zoning jurisdiction of an incorporated city.
  - b. An owner of property shall locate and establish a residence, business, church, school, public park or zone for residential use so as to provide a separation distance from any existing animal feeding operation. The separation distances for odor are listed in the following table. An owner of property who is any operator of the animal feeding operation may locate the owner’s residence or business within the setbacks.



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

**Odor Setback Distances for Animal Feeding Operations**

Number of Animal Units	Hog Operations	Other Animal Operations
0 - 1,000	0.50 miles	0.50 miles
1,001 - 2,000	0.75 miles	0.50 miles
2,001 - 5,000	1.00 miles	0.75 miles
5,001 or more	1.50 miles	1.00 miles

- D. The application for a conditional use permit to operate a facility for an animal feeding operation shall include a scaled site plan. If the facility will handle more than 1,000 animal units, the scaled plan shall be prepared by a registered land surveyor, civil engineer or other person having comparable experience or qualifications. The site plan shall include:
  - a. Proposed number of animal units.
  - b. Total acreage of the site of the facility.
  - c. Existing and proposed roads and access ways within and adjacent to the site of the facility.
  - d. Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.
  - e. A copy of the permit application submitted by the applicant to the North Dakota Department of Health.

**SECTION 13. LARGE WIND TOWER REGULATIONS-See Appendix I**

**SECTION 14. SMALL WIND TOWER REGULATIONS-See Appendix II**

**ARTICLE 3 – DISTRICTS AND BOUNDARIES**

**SECTION 1. ESTABLISHMENT OF DISTRICTS:** In order to effectively carry out the provisions of these regulations, the land covered by the jurisdiction of these regulations shall be divided into the following zoning districts:

- “AG” Agricultural District
- “RR” Rural Residential District
- “CO” Commercial District
- “IN” Industrial District
- “RE” Rural Recreational District

**SECTION 2. ZONING MAP:** The location and boundaries of the zoning districts are hereby established as shown on the maps attached and made a part of this ordinance. The maps shall be kept on file with the zoning administrator and shall be regularly updated to show any change in the zoning boundary lines resulting from amendments.

**SECTION 3. INTERPRETATION OF BOUNDARIES:** The following rules shall apply to the boundaries of the zoning districts on the zoning district map.

- 1. Where zoning district boundaries follow streets, highways, roads, railroad lines, or extensions thereof, such boundary lines shall be centerline of those streets, highways, roads, railroad lines, or extensions thereof.
- 2. Zoning district boundaries indicated as approximately following platted lot lines or other property lines shall be construed to follow such lines or extensions thereof.

3. Zoning district boundaries which do not follow streets, highways, roads, railroad lines, property lines, or lot lines, or extensions thereof shall be determined by the use of a scale or dimensions appearing on the map.

#### **SECTION 4. AGRICULTURAL DISTRICT (AG):**

1. Intent and Purpose – This district is established for the purpose of preserving and protecting agricultural uses and other natural land uses in the County.
2. Permitted Uses – The following uses shall be permitted in this district:
  - A. Agriculture and agriculture related buildings and farm dwellings, provided such used are maintained in connection with a farm or farming operation where the primary source of the operator's income is derived from farming.
  - B. Park and outdoor recreational facilities and related buildings for outdoor recreation.
  - C. Single-family non-farm dwellings (subject to the Residential Guidelines of this section).
  - D. Churches and similar places of worship and parish home.
  - E. Greenhouses, nurseries, and garden centers.
  - F. Hobby farms, whether or not there is a dwelling on the same site or contiguous to the site. If there is a dwelling (either farm or non-farm) associated with the site it is subject to the Residential Guidelines of this section.
3. Conditional Uses – The following uses shall be considered conditional uses and shall be permitted only after a conditional use permit has been obtained in accordance with these zoning regulations.
  - A. Mineral extraction and exploration (including sand and gravel) subject to the requirements of Article 2, Section 7 of these regulations.
  - B. Multiple family, non-farm dwellings.
  - C. Mobile home parks.
  - D. Animal Feeding Operations.
  - E. Radio or TV towers, utility lines, substations and pipelines subject to the requirements of Article 2, Section 6 of these regulations.
  - F. Commercial grain elevators.
  - G. Cemetery.
  - H. Bed and Breakfast facilities.
  - I. Junk yards, auto wrecking yard or salvage yard provided that all operations are conducted within an area enclosed on all sides with a solid fence or wall not less than eight (8) feet in height.
  - J. Retail agriculture chemical and fertilizer outlets.
  - K. Bulk storage of chemicals.
  - L. Wind towers.
4. Prohibited Uses – Land uses which are not listed in this section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.
5. Residential Development – The following regulations shall be applied to the construction of individual non-farm dwelling units: (The terms of lot size and density shall exclude the immediate family of the surface owner.)
  - A. Lot Size – Not less than three acres
  - B. Lot Density – Not more than three non-farm dwelling per 10 acres.

- C. Lot Location – The development and location of all lots related to non-farms shall provide their own access to an existing improved road. (An improved road is one which is gravel or hard surfaced and is regularly maintained in good driving condition.)
6. Dimensional Standards- Building and Structure Setbacks – 100 feet from all section lines and 100 feet from the centerline if abutting a federal, state, county, or township road.

#### **SECTION 5. RURAL RESIDENTIAL DISTRICT (RR):**

- 1. Intent and Purpose – This district is established for the purpose of providing for and guiding the development of any rural subdivisions and for preserving and protecting the character of residential areas in unincorporated villages in Bottineau County.
- 2. Permitted Uses – The following uses shall be permitted in this district:
  - A. All single family dwellings.
  - B. Multiple family dwellings.
  - C. Parks and outdoor recreational facilities and related buildings for outdoor recreation.
  - D. Churches and facilities related to religious activities.
  - E. Public and parochial schools.
  - F. Utility facilities necessary to serve the area.
- 3. Conditional Uses – The following uses shall be considered conditional uses and shall be permitted only after a conditional use permit has been obtained in accordance with these zoning regulations.
  - A. Mobile home parks.
  - B. Home occupations, including Bed and Breakfast facilities.
  - C. Small wind towers.
- 4. Prohibited Uses – Land uses which are not listed in this section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.
- 5. Dimensional Standards:
  - A. Lot size – not less than 5,000 square feet if served by a sewer collection system common to other adjoining users; not less than three acres if the sewer is drained into an on site user owned drainage field.
  - B. Setbacks:
    - a. Front, side and rear yard – 20 feet from lot line or 100 feet from the centerline if abutting a federal, state, county, or township road.
    - b. Shoreline – 50 feet from any shoreline.

#### **SECTION 6. COMMERCIAL DISTRICT (CO):**

- 1. Intent and Purpose – This district is established for the purpose of allowing commercial areas adjacent to highways and for the grouping together of retail and service businesses in areas to best serve the needs of persons traveling in the county and to also provide area residents convenient access to those entities.
- 2. Permitted Uses – Generally any commercial retail or service business which may include but is not limited to the following:

- A. Automobile/truck sales, supply, service, and repair.
  - B. Service stations, bulk fuel sales.
  - C. Grocery and convenience stores.
  - D. Farm implement sales, supply, service, and repair.
  - E. Motels, hotels, or lodging establishments.
  - F. Public buildings and churches.
  - G. Parks and playgrounds.
  - H. Restaurants, lounges, and liquor stores.
  - I. Banks and other savings and lending institutions.
  - J. Apparel, department, clothing, toy, variety, furniture, hardware, and other retail establishments.
  - K. Medical, dental, health, and veterinary clinics.
3. Conditional Uses – The following uses shall be considered conditional uses and may be permitted only after a conditional use permit has been obtained in accordance with these zoning regulations:
- A. Commercial grain elevators.
  - B. Welding shops.
  - C. Wholesale supply and warehouse storage facilities.
  - D. Storage facilities for building materials, such as lumber, steel, concrete blocks or pipe; provided that these materials are either:
    - a. Enclosed by a wall or fence not less than five feet high or,
    - b. Stored in an enclosed structure.
  - E. Retail agriculture chemical and fertilizer outlets.
  - F. Wind towers
4. Prohibited Uses – Land uses which are not listed in this section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.
5. Dimensional Standards:
- A. Lot size – not less than 5,000 square feet if served by a sewer collection system common to other adjoining users; not less than three acres if the sewer is drained into an on site user owned drainage field.
  - B. Setbacks – No minimum setbacks, except in the case of the property abutting a federal, state, county, or township road, then building setbacks shall be a minimum of 100 feet from the centerline of that road.
  - C. Lot coverage by buildings – No requirements other than those that may exist with regard to fire protection.

**SECTION 7. INDUSTRIAL DISTRICT (IN):**

- 1. Intent and Purpose – This district is intended to provide areas for industrial development and those land uses which are generally not compatible with agricultural, commercial, or residential land uses.
- 2. Permitted Uses – The following uses shall be permitted in this district.
  - A. All Commercial (CO) District permitted uses.
  - B. Airports, railroads, essential public utilities, and public service installations.
  - C. Radio and television transmitting stations.
  - D. Overhead, above grade and underground storage facilities for oil, gas, flammable liquids and gases, as approved by Fire Code regulations.

- E. Manufacturing industries.
  - F. Processing industries consisting of agricultural products and foodstuffs.
  - G. Concrete mixing and concrete product manufacturing plants.
3. Conditional Uses – The following uses shall be considered conditional uses and may be permitted only after a conditional use permit has been obtained in accordance with this ordinance:
- A. Petroleum or petroleum products refining.
  - B. Junk yard, auto wrecking yard or salvage yard provided that all operations are conducted within an area enclosed on all sides with a solid fence or wall not less than eight (8) feet in height.
  - C. Adult entertainment center provided it is at least 500 feet from any other zoning district boundary.
  - D. Commercial bulk storage of chemicals.
  - E. Wind towers.
4. Prohibited Uses – Land uses which are not listed in this section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.
5. Dimensional Standards:
- A. Lot size – No minimum standard.
  - B. Setbacks – No minimum setbacks, except in the case of the property abutting a federal, state, county, or township road, then building setbacks shall be a minimum of 100 feet from the centerline of that road.
  - C. Lot coverage by buildings – No requirements other than those that may exist with regard to fire protection.

## **SECTION 8. RURAL RECREATIONAL DISTRICT (RE):**

1. Intent and Purpose of District – The “RE” Rural Recreational District is established for the purpose of protecting general farm operations and permitting small rural vacation or seasonal residence developments, recreational vehicle parks for short term or seasonal parking and the uses that serve them by restricting and regulating density, land coverage and land use.
2. Permitted Uses:
- A. General farm operations – This shall not include or permit:
    - a. The spreading, accumulation, feeding or use of garbage in any form on the surface of the land.
    - b. Any activity within 300 feet of an “RE” District which is noxious or offensive by reason of dust, odor, or noise.
  - B. Single family lake cabins and cottages.
  - C. Utility facilities necessary to serve this area.
  - D. Golf courses, except miniature golf courses and driving tees operated for commercial purposes.
  - E. Park, playground, or community buildings.
  - F. Customary accessory uses and structures located on the same tract with the principal use.
  - G. Temporary structures incidental to construction work, but only for the period of such work. Basements and cellars may not be occupied for residential purposes until the building is completed.
  - H. Up to three (3) recreational campers will be allowed per parcel provided they comply with all First District Health regulations.

3. Conditional Uses – The following uses shall be considered conditional uses and may be permitted only after a conditional use permit has been obtained in accordance with this ordinance:
  - A. Any public building erected on land used by any department of the City, County, State, or Federal Government.
  - B. Airports and heliports.
  - C. Churches.
  - D. Cemetery.
  - E. Commercial lake resort.
  - F. Boat livery, including boat docks, sales, rental, construction and repair and sale of bait and fishing equipment, fuel, etc.
  - G. Commercial campgrounds (tent and/or recreational vehicle).
  - H. Recreational vehicle park, two or more acres in area.
  - I. Camps and campgrounds operated by non-profit charitable institutions.
  - J. Small wind towers.
4. Prohibited Uses – Land uses which are not listed in this section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.
5. Dimensional Standards:
  - A. Lot side – lot width shall not be less than 100 feet and lot depth shall not be less than 150 feet. All structures shall conform to the North Dakota health regulations as they refer to wells, irrigation, septic, and sanitary systems.
  - B. Setbacks:
    - a. Front, side and rear yard – 20 feet from lot line, or 45 feet from two-way traffic roadway centerline or 33 feet from one-way traffic roadway centerline, outside of the roadway setbacks, the road authority has jurisdiction over the road right of way.
    - b. Shoreline – 50 feet from any shoreline.

## **ARTICLE 4 – ADMINISTRATION AND ENFORCEMENT**

**SECTION 1. PLANNING COMMISSION:** The administration and enforcement of these Zoning Regulations is hereby vested in the Planning Commission of Bottineau County. Members of the Planning Commission shall be appointed by the County Commission in accordance with State Statutes. Duties of the Planning Commission shall include:

1. Issuance of all permits.
2. Inspection for permit compliance in accordance with these zoning regulations.
3. Maintenance of the records for the regulations and permits.
4. Collection of any fees instituted by the County Commission in the administration of this ordinance.
5. Interpret district boundaries on the Official Zoning Map.
6. Establishment of rules, regulations, and procedures for the purpose of administering these zoning regulations.
7. Periodic review of the provisions of these regulations.

8. Conduct public hearings on conditional use permits, variance permits, regulation amendments, and any other business pertaining to these zoning regulations which may require a public hearing.
9. The Planning Commission shall serve as an advisor to the County Commission and make recommendations regarding the implementation of these Zoning Regulations. The County Commission shall have final review of Planning Commission decisions with regard to conditional use permits, variance permits, and zoning regulation amendments.
10. The Planning Commission may request the County Commission to officially appoint a Zoning Administrator to conduct the business of the Planning Commission for any part of the above mentioned duties.

**SECTION 2. BOARD OF ZONING APPEALS:** A Board of Zoning Appeals is hereby created. Such Board shall consist of the County Commission and shall have the authority to grant variances to these regulations.

1. Records – The Board shall keep minutes of its proceedings, show evidence presented, finding of fact by the Board, decisions of the Board, and voting upon each question. Records of all official actions of the Board shall be filed in its office and shall be a public record.
2. Public Hearing and Notice – The Board of Zoning Appeals shall within thirty days of filing fix a date of the hearing of an appeal. Notice of the time, place, and subject of such hearing shall be published once in the official county newspaper at least ten days prior to the date fixed for the hearing. A copy of said notice shall be mailed to each party of the appeal.
3. Powers and Jurisdiction – The Board of Zoning Appeals shall administer the details of appeals or other matters referred to it regarding the application of the zoning regulations. The Board shall have the following specific powers:
  - A. To hear and decide on appeals where it is alleged that there is error in an order, requirement, decision, or determination made by the Planning Commission in the enforcement of the zoning regulations.
  - B. To interpret the provisions of these regulations in such a way as to carry out the intent and purpose of the adopted comprehensive plan and as shown upon the zoning district maps.
  - C. The concurring vote of three-fourths of all members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Planning Commission, or to decide in favor of the applicant any matter upon which it is required to pass under this ordinance or to affect any variation of these regulations.
4. Procedure – The appeals process is outlined below:
  - A. Appeals to the Board of Zoning Appeals may be taken by any person aggrieved, by any officer of the County or by any governmental agency or body affected by any decision of the official administering the provisions of these zoning regulations.
  - B. Appeals shall be taken within 30 days of filing provided by the rules of the Board, by filing a notice of appeal specifying the grounds thereof and payment of the required filing fee.
  - C. The Board of Zoning Appeals shall advertise and hold a public hearing as required in Section 2.2 of this Article.
  - D. Notice of the decision of the Board of Zoning Appeals shall be in writing and transmitted within 15 days to the appellant. A copy of such decision shall also be transmitted to the official administering the regulations for action, if action is required.

**SECTION 3. BUILDING PERMITS:** No building or structure, other than those associated with the normal incidents of agriculture, shall be erected, moved, added to, or structurally altered without a building permit. No building permit shall be issued except in conformity with the provisions of this ordinance unless a written

order has been received from the County Commission in the form of a conditional use or variance as provided by this ordinance. No permit is required for maintenance of any building or structure, which does not structurally alter the building. If no construction takes place in a year from the issuance of a building permit, the permit shall expire.

1. Procedure – The building permit process is outlined below:
  - A. All applicants who wish to build or alter any structure as defined in these zoning regulations must apply to the Planning Commission for a permit.
  - B. If the applicant's plans meet district regulations as prescribed in these zoning regulations and any other applicable ordinances, the Planning Commission or designated Zoning Administrator collects any applicable fees and issues the building permit.
  - C. If the applicant's plans do not comply with district regulations, the amendment, variance, conditional use procedures, or appeals sections of these regulations may be applied.

#### **SECTION 4. CONDITIONAL USE PERMITS:**

1. Requirements for Conditional Uses – A conditional use permit may be granted following compliance with the procedure set forth in this section (if the conditional use is one set forth in the District Regulations), provided that no application for a conditional use shall be granted unless all of the following conditions are found to be present:
  - A. The conditional use will not be detrimental to or endanger the public health, safety or general welfare.
  - B. The existing permitted uses in the area will not be substantially impaired or diminished by the establishment of the conditional use.
  - C. The conditional use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.
  - D. Adequate utilities, access roads, drainage, and other necessary site improvements have been or are being provided.
  - E. Adequate measures have or will be taken to provide access and exit so designed as to minimize traffic congestion in the public roads and streets.
  - F. The conditional use shall conform to all provisions of the district in which it is located.

The Conditional Use Permit may be issued for a specified period of time with automatic cancellation at the end of time unless it is renewed, or conditions may be applied to the issuance of the Permit and periodic review may be required to determine if the conditional use has any detrimental effects on neighboring uses or districts. The Permit shall be granted for a particular use and not for a particular person or firm.

2. Applications – Application for a Conditional Use Permit shall be submitted by the property owner to the Planning Commission. The application shall include:
  - A. The name and address of the applicant.
  - B. The date of the application.
  - C. A description of the site and the immediate surrounding area.
  - D. A preliminary map showing boundary lines and location of structures.
  - E. Location of existing structures on adjacent property.
  - F. Parking plan showing off street parking areas and/or loading areas.
  - G. Names and addresses of adjacent property owners.
  - H. Any reasonable information the Planning Commission deems necessary.
  - I. Payment of the required filing fee.



3. Planning Commission Recommendation – The Planning Commission, upon receipt of an application for a Conditional Use Permit, shall at its next regular or special meeting, specify a time and date within the next 30 days for a public hearing for the proposed conditional use. Following the public hearing, the Planning Commission shall consider the application and make a recommendation to the County Commission within 30 days.
4. Public Hearing and Notice – The Planning Commission shall publish a notice of the public hearing in the official county newspaper at least ten days before the hearing. Notice shall include the date, time, place, and purpose of the hearing. In addition to the published notice, the Planning Commission may require that the notice be mailed to those persons designated by the Planning Commission.
5. County Commission – Upon receipt of the Planning Commission’s recommendations, the County Commission may either grant the proposed conditional use, grant the proposed conditional use with additional conditions, or deny the proposed conditional use.

**SECTION 5. VARIANCE PERMITS:** To permit a variation in the yard, setback and height requirements of any district where there are practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of lot, or topographical or other conditions, provided such variation will not seriously affect any adjoining property or the general welfare, or where variations may be permitted which allow unusual arrangement on the lot and still clearly and unmistakably accomplish the intent of these regulations. The Board must find that the granting of such variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable or unusual hardship or difficulty.

The Variance Permit may be issued for a specific period of time with automatic cancellation at the end of that time unless it is renewed, or conditions may be applied to the issuance of the permit and periodic review may be required to determine if the variance has any detrimental effects on neighboring uses or districts. The permit shall be granted for a particular use and not for a particular person or firm.

1. Applications: Applications for a Variance Permit shall be submitted by the property owner to the Planning Commission on forms provided by the Commission. The application shall include:
  - A. The name and address of the applicant.
  - B. The date of the application.
  - C. A description of the site and the immediate surrounding area.
  - D. A preliminary map showing boundary lines and location of structures.
  - E. Location of existing structures on adjacent property.
  - F. Parking plan showing off street parking areas and/or loading areas.
  - G. Names and addresses of adjacent property owners.
  - H. Any reasonable information the Planning Commission deems necessary.
  - I. Payment of the required filing fee.
2. Planning Commission Recommendation – The Planning Commission, upon receipt of an application for a Variance Permit, shall at its next regular or special meeting, specify a time and date within the next 30 days for a public hearing for the proposed variance. Following the public hearing, the Planning Commission shall consider the application and make a recommendation to the County Commission within 30 days.
3. Public Hearing and Notice – The Planning Commission shall publish a notice of the public hearing in the official county newspaper at least ten days before the hearing. Notice shall include the date, time, place, and purpose of the hearing. In addition to the published notice, the Planning Commission may require that the notice be mailed to those persons designated by the Planning Commission.

4. County Commission – Upon receipt of the Planning Commission’s recommendations, the County Commission may either grant the proposed variance, grant the proposed variance with additional conditions, or deny the proposed variance.

**SECTION 6. AMENDMENTS:** The County Commission may from time to time amend, supplement, or change the district boundaries or regulations contained in these zoning regulations. A proposal for an amendment or a change in zoning may be initiated by the County Commission, by the Planning Commission, or upon application by the owner of the property affected.

1. Applications – The party desiring any change in zoning district boundaries or zoning regulations as to any lot, or area of land, shall file with the County Auditor an application upon forms provided, and such application shall be accompanied by such data and information as may be prescribed by the Planning Commission.
2. Public Hearing and Notice – Before the Planning Commission shall, by proper action, formulate its recommendation to the County Commission on any such proposed or requested change of zoning district boundary or regulation, whether initiated by the County Commission, the Planning Commission, or by the property owner, the Planning Commission shall hold a public hearing on such a proposal. The Planning Commission shall cause a notice of public hearing to be published once a week for two successive weeks prior to the time set for the said hearing in the official county newspaper. Such notices shall contain:
  - A. The time and place of the hearing.
  - B. A description of any property involved in any zoning change, by street address and/or other legal description.
  - C. A description of the nature, scope and purpose of the proposed regulation, restriction, or boundary.
  - D. A statement of the times at which it will be available to the public for inspection and copying at the office of the County Auditor.
3. County Commission Approval – Upon receipt of the recommendation of the Planning Commission on any amendment, or in the event of the failure of the Planning Commission to so report after 30 days from the time of the filing of the proposed amendment to the Planning Commission, the County Commission shall hold a public hearing. Notice of the public hearing shall be published once a week for two successive weeks prior to the time set for said hearing. The notice shall contain the same information required for the Planning Commission public hearing listed in Section 6.2 of this Article. A majority decision of the County Commission shall be sufficient to approve an amendment of the zoning regulations.

**SECTION 7. SCHEDULE OF FEES AND CHARGES:** The County Commission shall establish a schedule of fees, charges, and expenses and a collection procedure for permits, appeals, and other matters pertaining to these regulations. The schedule of fees shall be posted in the office of the Zoning Administrator and may be altered or amended only by the County Commission. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

1. Building Permits – A building permit is required for all new construction or anything that alters the structural shape or integrity of the lot, excluding fences. The following schedule shall be used for issuing building permits:
  - A. Residential \$50.00
  - B. Commercial \$100.00

2. Other permits and hearings – A fee of \$150.00 shall be paid by the applicant upon filing an application for an amendment, conditional use permit, variance permit, or any other activity which requires an advertised public hearing.

## **SECTION 8. PENALTIES**

1. Enforcement – The County Sheriff and the Sheriff’s staff shall enforce these zoning regulations. Appeal from the decision of the Sheriff may be made to the County Commission.
2. Complaints – Any person may file a written complaint whenever a violation of these regulations occurs, or is alleged to have occurred. Such a complaint shall state the cause and basis thereof and be filed with the County Sheriff, with a copy to be provided to the Zoning Board. The County Sheriff shall record the complaint, promptly investigate, and take action thereon as provided by these regulations.
3. Violations – If any building or structure is erected, reconstructed, altered, enlarged, converted, or moved; or if any building, structure, or land is used in violation of these regulations, the County Sheriff shall order in writing, the correction of such violation. The County Sheriff, States Attorney, or other official designated by the County Commission, may institute appropriate action of proceedings for the purpose of:
  - A. Prosecuting any violation.
  - B. Restraining, correcting, or abating such violation.
  - C. Preventing the occupancy of any building, structure, or land in violation of these regulations.
  - D. Preventing any illegal act, conducting of business, or use in or about any buildings, structure or land in violation of these regulations.
4. Penalty – Any persons, firm, or corporation violating the provisions of these regulations shall constitute the maintenance of a public nuisance and shall be a Class B misdemeanor. Nothing herein contained shall prevent the County from taking other lawful action to prevent or remedy any violation of the zoning regulations.

## **ARTICLE 5 – DEFINITIONS**

**SECTION 1. RULES:** For the purpose of these regulations, the following rules shall apply:

1. Words used singularly shall include the plural. Words used in the plural form shall include the singular. Words used in the present tense shall include the future.
2. The word “persons” includes a corporation, members of a partnership, a business organization, a committee, board, trustee, receiver, agent, or other representative.
3. The word “shall” is mandatory. The work “may” is permissive.
4. The word “including” shall mean including, but not limited to.

**SECTION 2. DEFINITIONS:** The following words, term, and phrases are hereby defined and shall be interpreted in the same fashion throughout these regulations. Terms not herein defined shall have the meaning customarily assigned to them.

Access – A way or means of approach to provide physical entrance to property.

Accessory Buildings and Uses – A subordinate building, the use of which is incidental to that of the main building or to the main use of the premises. An accessory use is one which is incidental to the main use of the premises.

Agriculture – The production, keeping, or maintenance, for sale, lease, or personal use, of plants and animals useful to man, including but not limited to: forages and sod crops, grains and seed crops; dairy animals and dairy products; poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats, or any mutation or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds including grapes, nuts and berries; vegetables, nursery, floral, ornamental, and greenhouse products; or lands devoted to a soil conservation or forestry management program.

Airport – A place where aircraft can land and take off, usually equipped with hangers, facilities for refueling and repair and various accommodations for passengers.

Alteration – Any change or rearrangement in the primary supporting members of an existing building, such as bearing walls, columns, beams, girders, or interior partitions; any significant change in doors, windows, or any enlargement to or diminution of a building or structure, whether horizontally or vertically; or the moving of a building or structure from one location to another.

Animal Feeding Operation – Any building, structure, enclosure, or premises used, designed, or intended for the concentrated feeding or fattening of livestock for more than 45 days in any 12 month period for marketing and where less than 50% of the feed is raised by the owner and where animal waste or manure accumulates and is a separate pursuit to the normal incidence of farming. Adjoining animal feeding operations under common ownership are considered to be one animal feed operation, if they use common areas or systems for manure handling.

Building – A structure having a roof supported by columns or walls including any overhang.

Conditional Use – A use which generally would not be suitable in a particular zoning district, but which would be acceptable under certain circumstances. The permit shall be granted for a particular use and not for a particular person or firm.

County Commission – Shall mean the Bottineau County Commission.

Dwelling – Any building or portion thereof, which is designed and used exclusively for residential purposes.

Dwelling, Non-farm – A single family dwelling or mobile home located on a farm or otherwise from which the occupant does not derive at least 50% of their income from agricultural activities.

Farm – Farm means a single tract or continuous tracts of agricultural land containing a minimum of ten acres and which normally provides a farmer, who is actually farming the land or engaged in the raising of livestock or other similar operation normally associated with farming and ranching, with their primary source of annual income.

Hobby Farm – Means any agriculture and agriculture related farm buildings, where the uses are not maintained in connection with a normal farm or farming operation and does not provide the surface owner with his/her source of primary annual income, but is operated as a pursuit of pleasure.

Farmer – Means any individual who normally devotes the major portion of their time to the activities of producing products of the soil, poultry, livestock, or dairy farming and such products, and who normally receives not less than 50% of their annual net income from any one or more of the foregoing activities (as defined in North Dakota Century Code 57-02); and the term also includes an individual who is retired because of illness or age and who at the time or retirement owned or occupied as a farmer, as above

defined the residence in which they live and which is exempt from taxation pursuant to the laws of North Dakota.

Home Occupations – An occupation or activity carried on in a residential dwelling that provides the occupant with their primary source of annual income.

Junk Yard – An establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste or junked, dismantled or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material or for the maintenance or operation of an automobile graveyard.

Livestock – Domestic animals or types customarily raised or kept on farms for profit or other purposes.

Lot – A piece, plot, or area of land, or contiguous assemblage as established by survey, plat, or deed, occupied or to be occupied by a building, or a unit group of buildings, and/or accessory buildings thereto or for other use, together with such open spaces as may be required under these regulations and having its frontage on a street or officially approved place.

Mineral Exploration/Production – Any activity, use or technique which when applied to the surface of the land, will aid in the discovery, evaluation or production of coal, oil, gas, potash, sand, gravel, and/or rock, or other subsurface minerals as defined in North Dakota Century Code 38-12.

Nonconforming Uses – Use of a building or of land that does not conform to the regulations as to use for the district in which it is situated.

Park – A tract of land designated and used by the public for active and passive recreation.

Permitted Use – Any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

Planning Commission – The Planning and Zoning Commission of Bottineau County, North Dakota.

Prohibited Use – A use not permitted in a zoning district.

Public Hearing – A meeting announced and advertised in advance and open to the public, with the public given an opportunity to talk and participate.

School – Any building or part thereof which is designed, constructed, or used for education or instruction in any branch of knowledge.

Setback – The open space extending the full width of a lot between a building including the overhang and a public right of way line, easement, shoreline or property line.

Sign – Any surface, fabric, device, or display, which bears lettered, pictorial, or sculptured matter, including forms shaped to resemble any human, animal, or product, designed to convey information visually and which is exposed to public view. For purposes of these regulations, the term “sign” shall include all structural members. A sign shall be constructed to be a display surface or device containing organized and related elements composed to form a single unit. In cases where matter is displayed in a random or unconnected manner without organized relationship of the components, each such component shall be considered a single sign.

Billboard – A sign, which directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located.

**Bulletin Board** – A sign, which identifies an institution or organization on premises of which it is located and which contains the name of the institution or organization, the names of individuals connected with it, and general announcements or events or activities occurring at the institution or similar messages.

**Illuminated** – A sign lighted by or exposed to artificial lighting either by lights on or in the sign (directly illuminated), or directed toward the sign (indirectly illuminated).

**Marquee** – Any sign attached to and made part of a marquee. A marquee is defined as a permanent roof like structure projecting beyond the building's wall and generally designed and constructed to provide protection against the weather.

**Portable** – A sign that is not permanent, affixed to a building, structure, or the ground.

**Roof** – A sign that is mounted on the roof of a building, or which is wholly dependent upon a building for support and which projects above the point of a building with a flat roof, the eave line of a building with a gambrel, gable, or hip roof, or the deck line of a building with a mansard roof.

**Temporary** – A sign or advertising display constructed of cloth, canvas, fabric, plywood, or other light material and designed or intended to be displayed for a short period of time.

**Wall** – A sign fastened to or painted on the wall of a building or structure in such a manner that the wall becomes the supporting structure for, or forms the background surface of the sign, and which does not project more than 12 inches from such building or structure.

**Street** – Any thoroughfare or public space, which has been dedicated to, and accepted by the public for public use, and includes all the right-of-way sidelines.

**Structure** – Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, including, but without limiting the generality of the foregoing, advertising signs, billboards, back stops for tennis courts, and arbors of breeze ways, but excepting utility poles, fences, retaining walls, and ornamental light fixtures.

**Structural Alterations** – Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, or girder, or any complete rebuilding of the roof or exterior walls.

**Utility** – Any person, firm, corporation, municipal department or board duly authorized to furnish and furnishing under public regulations, to the public: electricity, gas, heat, power, steam, telephone, transportation, or water.

**Variance** – The relaxation of the terms of the Zoning Regulations in relation to height, area, size, and open spaces where specific physical conditions, unique to the site, would create an unreasonable hardship in the development of the site for permitted uses.

**Yard** – An open space on the same lot with a building, unoccupied and obstructed by any portion of a structure from the ground upward. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and the main building shall be used.

**Front** – A yard that extends across the full width of the lot. The depth is measured as the least distance between the front lot line and the front building line.

**Rear** – A yard that extends across the full width of the lot. The depth is measured as the least distance between the rear lot line and the rear building line.

Side – A yard extending from the front to the rear yard. The depth is measured from the side lot line and side building line.

Zoning Map – The map or maps which are a part of the zoning regulations and delineate the boundaries of the zoning districts.

## APPENDIX I. LARGE WIND TOWER REGULATIONS

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

Zoning District	Not Permitted	Conditional Use Permit
Agricultural (AG)		Yes
Commercial (CO)		Yes
Industrial (IN)		Yes
Rural Residential (RR)	No	
Rural Recreational (RE)	No	

2. Conditional use permit application process:

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

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

- A. The application shall include a fee of \$1,000 plus \$1,000 for each proposed wind turbine up to a total amount of no more than \$25,000.
- B. The name, business address and phone number of the person in whose name the permit is to be issued and if the authorized agent for service of process is different than the permit holder, the name and North Dakota address of the agent of the person authorized to receive service of process on the person's behalf.
- C. Evidence of the applicant's capacity to contractually bind the person seeking the permit and authority to make binding representations on the person's behalf for purposes of zoning, siting, and construction of a wind-energy facility.
- D. A schedule for the proposed start and completion of construction of the facility which includes the applicant's proposal for final repairs to public roads.
- E. The applicant shall include in the application information describing the applicant's wind rights within the boundaries of the proposed site.
- F. The applicant shall provide a registered professional engineer's report as described below in road protection.
- G. A USGS topographical map of the wind energy facility and 1,320 feet of adjoining land, not-participating land, contiguous with any proposed host property. The following shall be clearly marked on the map:
  - a. Each existing: wind turbine, wind energy facility fixture, regardless of ownership, accessory structure or building, including substation, meteorological tower, electrical infrastructure, and collector line or transmission line.
  - b. Each of the applicant's proposed improvements for the wind energy facility or accessory structure or building, including each wind turbine, MET tower, electrical line, and access road.
  - c. Each occupied structure, improvement, public road, private road, utility line, and public facility.
  - d. All section lines and any boundaries between abutting parcels, tracts, or lots owned by different parties.
  - e. Boundaries of any easement for section line, public road, highway, that is 5 RD of an envisioned or probable wind turbine site.



- f. Boundaries of any filed lease, easement, or option for wind energy facilities, whether they benefit the applicant, the applicant's probable operator, or an unrelated party.
  - g. The site boundary.
  - h. Each public or private airstrip with an FAA identification number. See [http://www.faa.gov/airports\\_airtraffic/airports/airport\\_safety/airportdata\\_5010/](http://www.faa.gov/airports_airtraffic/airports/airport_safety/airportdata_5010/).
  - i. Natural terrain features.
  - j. Either noted on the map and/or via key, the names of the property owners inside the site and of the property owners for adjoining land.
3. Planning Commission Recommendation – The Planning Commission, upon receipt of an application for a Conditional Use Permit shall at its regular or special meeting, specify a time and date within the next 30 days for a public hearing for the proposed conditional use. Following the public hearing, the Planning Commission shall consider the application and make a recommendation to the County Commission within 30 days.
  4. Public Hearing and Notice – The Planning Commission shall publish a notice of the public hearing in the official county newspaper at least ten days before the hearing. Notice shall include the date, time, place, and purpose of the hearing. In addition to the published notice, the Planning Commission may require that the notice be mailed to those persons designated by the Planning Commission.
  5. County Commission – Upon receipt of the Planning Commission's recommendations, the County Commission may either grant the proposed conditional use, grant the proposed conditional use with additional conditions, or deny the proposed conditional use.
  6. Demonstration of Compliance – The permit issued pursuant to this Ordinance is conditioned on the Permittee's final demonstration of compliance with the requirements of the Ordinance following completion of construction of the facility. Within 90 days of facility construction completion, the Permittee shall submit to the Planning Commission an updated and final USGS topographical map, or survey if available, providing all information pursuant to Section 2 (G) and demonstrating actual compliance with the requirements and conditions of the permit.
  7. Appearance, Lighting, Sound, Agricultural Operations, Roads and Power Lines
    - A. Wind turbines shall be painted a non-reflective coating and in a non-obtrusive color.
    - B. Turbines shall not display any advertising.
    - C. Each turbine will be marked with an identification number large enough to assist identification of the turbine number in an emergency.
    - D. Turbines are to be lighted to the extent advised by the FAA in FAA Advisory Circulars 45CFR§§17.21-17.58 or their successors.
    - E. At wind energy facilities, the location and construction of access roads and other infrastructure shall, to the extent reasonably possible, not disrupt farming, agricultural operations or the landscape. In order to preserve the integrity of fields and capacity for efficient tilling, planting, and harvesting, access roads should be built parallel or perpendicular to existing roads, not diagonally across fields for mere convenience of the shortest route to a turbine.
    - F. The Permittee shall promptly replace or repair all fences or gates removed or damaged during all phases of the Wind Energy Facility's life, unless otherwise negotiated with the affected landowner. When the Permittee installs a gate where electric fences are present, the Permittee shall provide for continuity in the electric fence circuit.
    - G. The Permittee shall place electrical lines, known as collectors, and communication cables underground when located on private property, unless the Permittee either first obtains a waiver from the private land owner and the Permittee provides clear and convincing evidence to the Planning Commission that satisfies the Permittee's heavy burden of proving there are either geographic and/or geologic conditions present that make underground location impossible, impractical or infeasible, in which case a variance may be granted. Similarly,

where the Permittee obtains a waiver from the landowner and can show by clear and convincing evidence presented to the Planning Commission that the physics of conductivity will cause such power loss due to transmitting over such long distance underground, a variance will be granted. Use of the public right of way must be in compliance with the associated governing body's criteria for use. Collectors and cables shall also be placed within or adjacent to the land necessary for wind turbine access roads, unless otherwise negotiated with the affected landowner. Feeder lines are excepted from the requirements in this paragraph.

- H. The Permittee shall place overhead feeder lines on public right-of-way, if a public right-of-way exists, or the Permittee may place feeder lines on private property. A change of routes may be made as long as the feeder remains on public right of way and approval has been obtained from the government responsible for the affected right-of-way. When placing a feeder line on private property, the Permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.
  - I. MET towers 100 feet or more tall must be marked and lighted in a way that satisfies FAA advice set out in FAA Advisory Circulars 47 CFR §§17.21-17.58 or their successors. <http://wireless.fcc.gov/antenna/documentation/faadocs/7460-1K.pdf>. Neither an environmental statement nor assessment is required. The concern addressed by this requirement for a light is aviation safety and that concern must be sensibly balanced with residential privacy. Operators are to avoid using high intensity white lighting at night. Use common sense in making a lighting selection for this area.
  - J. The noise level caused by the operation of the project, measured at five (5) feet above ground level at the property line coincident with or outside the project boundary, shall not exceed 65 decibels (A-weighted) and shall not exceed 50 decibels (A-weighted) if it is determined that a pure tone noise is generated by the project. These levels, however, may be exceeded during short-term events such as utility outages and/or severe wind storms.
8. Setbacks – These setbacks apply to all wind turbines in a wind energy facility. Setbacks are measured from the vertical or nearly vertical surface of the wind turbine's tower at ground level to the closest near vertical surface of the occupied or unoccupied structure, improvement, or the nearest point of a boundary, bridge, line, or outside edge of the improved surface of a road or airstrip.
- A. Each wind turbine must be set back at least 5 RD from any occupied structure.
  - B. Each wind turbine must be set back at least 1.5 times the turbine height from any public road or bridge; rail line; above ground electrical or communication line. Turbines must be setback at least 1.5 times the turbine height RD from each antenna, tower, unoccupied structure, or improvement with an estimated value over \$25,000. The Planning Commission can estimate the value without appraisal, but interested parties may timely submit an appraisal.
  - C. Each wind turbine must be set back at least 5 RD from the boundary between the host property and any property that adjoins the host property. Public roads are excepted from the 5 RD setback requirement but have an applicable setback above.

9. Variance to Setback

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

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

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

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

11. Waiver of Setback

Where the provision for variances on wind turbines differ from general variance provision in Article 4 Section 5 of this Ordinance, this wind turbine's special provision governs for wind turbine issues.

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

12. Contents of Setback Waiver

The party seeking the variance from the setback must attempt to obtain from the affected property owner and should provide to the Planning Commission a waiver executed by each affected owner sought to be removed from the applicable setback protection. The waiver should be for a period of time equal to or greater than the greatest period of time granted to the operator in the lease, easement, option or the greatest combination thereof given by the host property owner.

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

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

13. Required Dignities of Valid Variance

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

14. Minimum Ground Clearance

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

15. Restoration of Property

Within one hundred and eighty (180) days of termination or abandonment of leases or easements for a wind energy facility in the County, the Permittee shall cause, at its expense, removal of all structures to a depth of four (4) feet below preconstruction grade.

16. Road Protection

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

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

17. Engineer's Report

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

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

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

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

- A. Video recording of the haul road(s) from start to finish taken from a vehicle driven 25 mph.
- B. Use straight edge to check for rutting every 0.10 miles.

- C. Use still photography with notation re: location and length to record breakups and yielding aka alligator aka checkerboard.
- D. Record round (steel) and joint alignment (concrete) on major centerline culverts.
- E. Record width of traveled way and depth of pavement or gravel every 0.10 miles of completion of the construction of the wind energy facility, at its own expense, obtain and submit to the Zoning Administrator a post construction assessment of any Bottineau County or Township road the permittee traveled with greater than 80,000 lbs gross weight. The report must be approved by a registered engineer. Any damage caused or thought to be exacerbated by the permittee's loads or work that has not been repaired or remedied at the time of the report will be identified and a time line for repairing each will be identified along with an explanation of the repair or replacement proposed.

18. Surety Required

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

19. Transfer of Wind Energy Facility Siting Permit

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

**APPENDIX II. SMALL WIND TOWER REGULATIONS:** This section is intended to provide reasonable standards for the use of a Small Wind Energy System (SWES) which would allow electrical power consumers to supplement or replace their use of utility-provided electrical power without creating negative impacts to adjacent properties or the public.

1. For the purposes of this section, a SWES is defined as a wind turbine of less than 100 kilowatts maximum output capacity and all appurtenant structures and equipment. A SWES is incidental and accessory to a permitted principal use located on the same lot or parcel of land. A SWES is intended to produce electricity primarily for on-site consumption but excess electrical power may be transferred to a utility company power supply grid pursuant to utility company interconnection agreements.
2. A SWES may be permitted in any zoning district subject to approval of a conditional use permit by the Planning Commission and County Commission. A conditional use permit may be revoked at any time if the SWES is found to be in violation of any of the rules of this or other sections of the Zoning Ordinance or in violation of any of the conditions imposed by the Planning Commission in granting the conditional use permit.
3. The minimum building setback distance shall be 150% of the height of the structure.
  - A. The setback distance is the horizontal distance from the center of the supporting structure to the nearest property line or to the nearest overhead utility easement or underground easement.
  - B. The height of the structure is the vertical distance from the ground surface to the highest point of a rotor blade when in an upright position.
4. The bottom of the rotor blade sweep shall be no closer than 25 feet above the ground surface. Blades may not extend over parking areas, driveways, or sidewalks.
5. Small wind energy systems shall not exceed 50 dBA, as measured at the closest neighboring inhabited dwelling unit. The noise level may be exceeded during short term events such as utility outages and/or severe wind storms.
6. Additional rules regarding SWES's.
  - A. Following the approval and installation of a SWES, the Zoning Administrator may require the owner/operator of the SWES to engage a certified technician to perform sound measurements at the closest property line to determine and report ambient and operating decibel levels.
  - B. A SWES shall be equipped with both automatic and manual braking controls to prevent uncontrolled rotation and to limit the rotation speed to the design limits of the SWES.
  - C. The owner/operator of a SWES must provide proof of liability insurance at the time of application.
  - D. Shadow flicker shall not negatively impact any adjacent properties.
  - E. The SWES shall not cause electronic or electromagnetic interference with signal receptions or transmissions beyond the boundaries of the property upon which the SWES is located.
  - F. To minimize off-site visibility to the greatest extent possible, the color of a structure shall be a neutral white or light gray and the surface finish shall be nonreflective.
  - G. The use of flood lights, laser lights, strobe lights, searchlights, beacons and similar lighting is prohibited unless required by the FAA.
  - H. No signs are allowed on the SWES structures except for safety or warning signs which are limited to three square feet in area.
  - I. No climbing apparatus shall be located within 12 feet of the ground on any structure. All structures shall be designed to prevent climbing by unauthorized persons.

- J. Facilities shall be well maintained in an operational condition that poses no potential safety hazard.
  - a. If a SWES remains nonfunctional for a continuous period of one-year, the system shall constitute a public nuisance and shall be removed at the owners expense.
  - b. Removal includes the entire structure and related appurtenances including any foundation and transmission systems.
- K. An application for a conditional use permit for the placement of a SWES shall include the following:
  - a. Scaled and dimensioned site plan drawing showing features of the property and adjacent land within 300 feet of the subject parcel, including but not limited to:
    - 1. Location and height of the SWES.
    - 2. Property boundaries.
    - 3. Distances from a SWES to closest points on adjacent property boundaries.
    - 4. Location and dimensions of structures.
    - 5. Zoning districts of all adjacent properties.
    - 6. Owners of all adjacent properties.
    - 7. Locations, dimensions and descriptions of utility easements.
    - 8. Location of utility lines.
    - 9. Location of underground petroleum pipelines.
    - 10. Distances from the SWES to the closest points on utility easements.
  - b. Written information on the manufacturer of the proposed SWES stating the following:
    - 1. Compliance with noise standards established by paragraph 5 of this section.
    - 2. Compliance with electronic interference standards established by paragraph 6 (E) of this section.
    - 3. Evidence that the proposed SWES model has an operational history of at least one year.
    - 4. Shadow flicker properties.
  - c. Unless certified by the manufacture as not causing shadow flicker in the proposed installation, a shadow flicker model and map showing:
    - 1. Shadow flicker map coverage area of 1,000 feet from a SWES.
    - 2. Shadow flicker model representing locations affected, intensity, and duration.
  - d. Copies of letters of compliance of the proposed SWES from the following:
    - 1. Federal Aviation Administration.
    - 2. United Sates Fish and Wildlife Service.
    - 3. The local electrical utility company serving the subject property.
- L. An application for a building permit for the placement of a SWES must include:
  - a. A copy of the conditional use permit, with the site plan, as approved by the Planning Commission.
  - b. Dimensioned engineering drawings of the structure including the tower, base, and footings.
  - c. Line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation will meet compliance with electrical codes.
  - d. Documentation certifying that the SWES will meet structural loading requirements for a 90 m.p.h. sustained wind. Wind load certification shall be prepared by a professional structural engineer registered in the State of North Dakota.

## Wind Turbine Definitions

**Adjoining land** – Real property that has a different owner than the host property and is either contiguous to the host property at any point or segment, or is separated from the host property by an intervening fee simple interest that is less than 5RD.

**Airstrip** – A takeoff and landing area for fixed wing aircraft, whether publicly or privately owned, that was given an FAA numerical designation sometime before March 1, 2009.

**Applicant** – A person who filed an application for a conditional use permit.

**Facility Owner** – Person(s) having an equity interest in the wind energy facility.

**Feeder Lines** – Power lines between a wind energy facility's collector stations or substations and the region's high voltage transmission lines.

**Gross Weight** – The weight of a vehicle without a load plus the weight of any load on it.

**Host Property** – The very lot on which a wind turbine is located. A wind energy facility may contain several host properties. The fact that adjoining properties having various respective owners are covered by related options, leases, or easements to a single facility owner does not cause the various land owners to be a single host property. Each parcel containing a turbine is a host property even if an abutting property belonging to another property contains a turbine belonging to the same facility owner.

**Hub Height** – The distance measured from the surface of the tower foundation to the height of the axis of the wind turbine hub.

**MET Tower** – A meteorological structure used to collect data on wind and/or weather conditions.

**Occupied Structure** – A manmade shelter in which people either live, meet, conduct business, or gather, in addition it includes but is not limited to a residence, dwelling, apartment house, condominium, or residential setting; any structure open to the public for business that regularly conducts business including but not limited to a hotel, motel, campground, stable, mall, school, hospital, church, public library, store, manufacturing facility, or sport venue; or other structure that is either legally inhabited, in use or under substantial construction (e.g. surface has been improved in preparation for construction) at the time the permit application is issued for use as one of the above.

**Operator** – The person responsible for the day-to-day operation and maintenance of a wind energy facility. A facility owner may contract with or hire a person to operate it.

**Permittee** – The person holding the conditional use permit. Permittee may include the subsidiaries, agents, subcontractors, independent contractors, and employees of the person holding the permit; i.e. for purposes of liability for road damage cause in erection or maintenance.

**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, or any other entity, public or private, however organized.

**Public Road** – Every way or place generally open to vehicle travel, even though it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair or maintenance. NDCC 57-43.1.01 A section line is a public road NDCC 27-07-03.



RD – An abbreviation for “rotor diameter” which is the distance of a line segment that bisects the center of the hub and terminates at the circle that encompasses the tips of each rotor blade that are farthest from the hub.

Site – A contiguous tract or group of parcels for which one operator and/or facility owner or a group acting in concert has option agreements, easements, and/or leases acquired to operate a turbine, wind energy facility or accessory thereto.

Site Perimeter – The outside boundary of the contiguous parcels all having either an option, easement, and/or lease agreement for a wind energy facility accessory to the same facility owner.

Turbine Height – The distance measured from the ground level surface of the tower foundation to the highest point of the turbine rotor plane.

Wind Turbine (also known as turbine) – Captures kinetic energy from the wind to drive an electrical generator. Its typical components include blades, tower, accelerator platform or nacelle body.

Wind Energy Facility – An electric generating facility, the main mechanical or electrical purpose of which is to supply electricity. It consists of one or more wind turbine and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.