

Ordinance 2024-01  
An Ordinance for the Adoption of the Perkins County,  
South Dakota Zoning Ordinance

Perkins County, SD  
Zoning Ordinance

## **ORDINANCE 2024-01**

### **AN ORDINANCE FOR THE ADOPTION OF THE PERKINS COUNTY, SOUTH DAKOTA ZONING ORDINANCE**

**BE IT ORDAINED** by the Perkins County Commission that the following **ORDINANCE** of Perkins County adopting **The Perkins County, South Dakota Zoning Ordinance**. Perkins County does ordain as follows:

**Section 1.** That a certain document, the Perkins County Zoning Ordinance, one (1) copy of which is on file in the office of the Perkins County Finance Officer is hereby referred to, adopted and made a part hereof as if fully set out in this legislation.

**Section 2.** That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional; such decision shall not affect the validity of the remaining portions of this ordinance. The Perkins County Commission hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Dated at Bison, this 25<sup>th</sup> day of July, 2024.

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Kyle Carmichael  
Perkins County Commission Chairman

ATTEST:

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Sara Stadler  
Perkins County Finance Officer

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## **ARTICLE I. AUTHORITY AND JURISDICTION**

### **SECTION 1. STATUTORY AUTHORITY**

This Ordinance is enacted under the authority of SDCL Chapter 11-2 and is hereby adopted by the Perkins County Commissioners.

### **SECTION 2. SHORT TITLE**

This Ordinance shall be known and cited as the Perkins County Zoning Ordinance.

### **SECTION 3. PURPOSE OF THE ORDINANCE**

The purpose of the Zoning Ordinance is to protect the health, safety, and general welfare of the residents of Perkins County.

### **SECTION 4. JURISDICTION**

This Ordinance shall govern all lands within the planning jurisdiction of the Perkins County Commissioners as established on the map entitled “The Official Zoning Map of Perkins County, South Dakota.”

### **SECTION 5. ADMINISTRATIVE RESPONSIBILITY**

It shall be the responsibility of the Perkins County Commissioners to administer and enforce this Ordinance.

## ARTICLE II. ADMINISTRATION AND ENFORCEMENT

### SECTION 1. GENERAL PROVISIONS FOR APPLICATION OF REGULATIONS

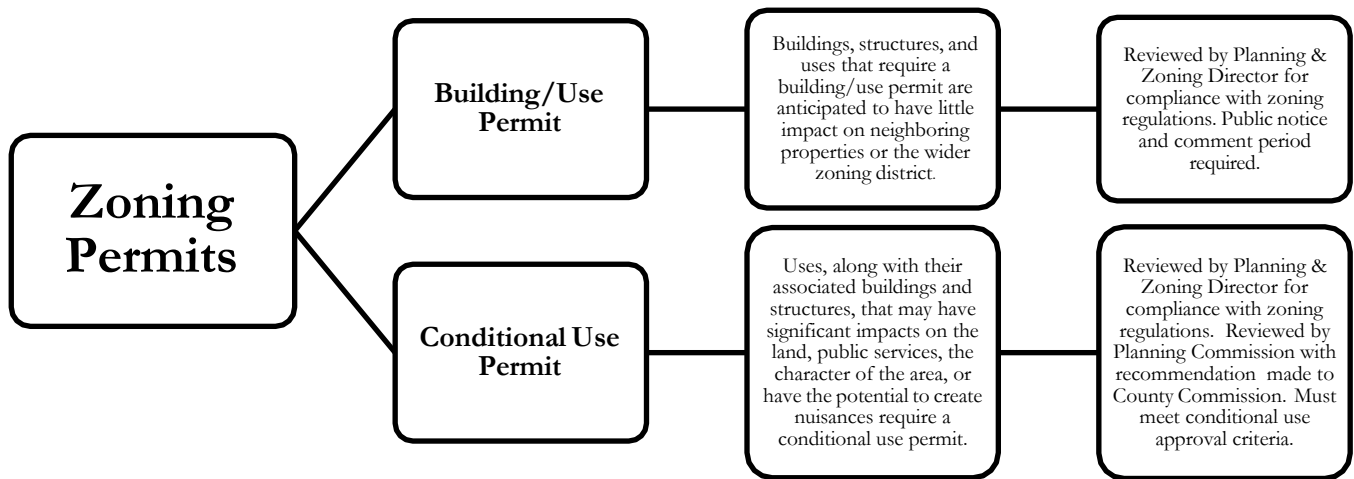
This Ordinance is intended to regulate the erection, construction, and use of buildings and structures, and the uses of land. All regulations shall be uniform for each class or kind of building or use throughout each zoning district.

### SECTION 2. ZONING PERMIT REQUIRED

No land use shall be commenced or changed and no structure shall be erected or moved until the appropriate Zoning Permit is obtained.

This section sets forth the requirements and procedures for two types of Zoning Permits. The application material requirements and review procedures for each type of permit are consistent with the potential level of impact the building, structure, and/or use will have on the community.

The request for a Zoning Permit must be made on the appropriate application form furnished by the Planning and Zoning Department and must be accompanied by the items required for the type of permit. Applications for permits will be processed based on the regulations in effect on the date an application is filed with the County.



**A. Building/Use Permit.** Proposals for buildings, structures, and uses that are anticipated to have little impact on neighboring properties or the wider zoning district require a Building/Use Permit. Public notification and a 14-day public comment period are required prior to obtaining a Building/Use Permit.

- a. Exemption for Agricultural Buildings. Proposed agricultural buildings do not require a Building/Use Permit if *all* of the following criteria are met:
  - i. The property must be located within the General Agricultural District;
  - ii. The parcel must be at least 39 acres or larger, or is a part of a larger ag operation that is contiguous to the parcel;
  - iii. The building must be located at least 100 feet from any property line or public road; and,
  - iv. There must be an existing agricultural use on the property, or the property must have obvious potential to be developed with an agricultural use for which the building will be needed.
- b. Required Information for Building/Use Permits. The Planning and Zoning Commission shall formulate written policies that address the required application materials for permits. The applicant is responsible for the accuracy of all information submitted with the request. Any permit issued based on false information in the application or supporting documentation shall be revoked.
- c. Building/Use Permit Approval Process.
  - i. Upon submittal of a complete application, the Planning and Zoning Director shall review the proposal for compliance with the zoning district regulations.
  - ii. If the proposal fails to comply with the zoning district regulations, the Planning and Zoning Director will issue a written denial, which will be reviewed by the Planning and Zoning Commission. In issuing the denial, the Director will, in writing, state the reasons for the denial, and what, if any, modifications to the proposal can be made so that it conforms to the Ordinance. If a proposal is denied, the applicant has the option to: resubmit a proposal that complies with the Ordinance; appeal to the Board of Adjustment for a Variance; or, apply for a Zoning Ordinance Amendment.
  - iii. If the proposal is in full compliance with the zoning district development standards, notice of the proposal shall be published by the County in its legally designated newspaper. The 14-day public comment period shall begin on the day the notice appears in the newspaper, and shall end 14 days thereafter.
  - iv. If no written objections are received during the comment period, a Building/Use Permit will be issued by the Planning and Zoning Director.
  - v. If written objections are received by the County during the 14-day public comment period, the objections will be heard by the Planning and Zoning Commission.

**B. Conditional Use Permits.** Proposals for buildings, structures, and land uses that are allowed in a zoning district if they meet specific approval criteria require a Conditional Use Permit. While Conditional Uses may have beneficial impacts and serve important public interests, they are subject to the Conditional Use regulations because they may have significant impacts on the land, public services, the character of an area, or have the potential to create nuisances. Therefore, reviews of these uses are necessary due to the individual or collective impacts they may have on the surrounding community. The Conditional Use Permit approval process provides an opportunity to allow the use, but impose mitigation measures to address identified concerns, or deny the use if the concerns cannot be resolved.

- a. Required Information for Conditional Use Permits. The Planning and Zoning Commission shall formulate written policies that address the required application materials for Conditional Use Permits. The applicant is responsible for the accuracy of all information submitted with the request.

Any permit issued based on false information in the application or supporting documentation shall be revoked.

b. Conditional Use Permit Approval Process.

- i. Upon submittal of a complete application, the Planning and Zoning Director shall review the proposal for compliance with the zoning district regulations.
- ii. If the proposal fails to comply with the zoning district development standards, the Planning and Zoning Director will issue a written denial, which will be reviewed by the Planning and Zoning Commission. In issuing the denial, the Director will, in writing, state the reasons for the denial, and what, if any, modifications to the proposal can be made so that it conforms to the Ordinance. If a proposal is denied, the applicant has the option to: resubmit a proposal that complies with the Ordinance; appeal to the Board of Adjustment for a Variance; or, apply for a Zoning Ordinance Amendment.
- iii. If the proposal is in full compliance with the zoning district development standards, a public hearing will be scheduled with the Planning and Zoning Commission. Notification of such hearing shall be provided by the County at least fourteen (14) days prior to the hearing by publication in the legally designated newspaper. The County shall also send notification via certified mail of the nature of the proposal and the date, time, and location of the public hearing to all adjoining land owners at least fourteen (14) days prior to the hearing.
- iv. At the public hearing the Planning and Zoning Commission will consider the application, any supporting documentation provided by the applicant, public input, and the applicable approval criteria. The Planning and Zoning Commission may recommend approval of the application, approval with conditions, or denial of the application. The Planning and Zoning Commission's recommendation will be forwarded to the Perkins County Commission for consideration.
- v. The County Commission may concur with the Planning and Zoning Commission recommendation, refer the application back to the Planning and Zoning Commission for further study, modify, or reverse the recommendation of the Planning and Zoning Commission by a majority vote of all of its members.
- vi. Upon approval of a Conditional Use proposal by the County Commission, the Planning and Zoning Director shall issue a permit subject to all applicable rules, regulations, and conditions. All approved plans and conditions made as part of the approval shall constitute certification on the part of the applicant that the proposal shall conform to such plans and conditions at all times.

c. Conditional Use Approval Criteria. Requests for Conditional Use Permits will be approved if the Planning and Zoning Commission and County Commission find that *all* of the approval criteria have been met. A proposal that can comply with all of the criteria as long as special mitigation measures are taken will be approved with conditions. A proposal that cannot comply with the criteria outright or cannot comply even with special mitigation measures will be denied. The following approval criteria allow for a wide range of uses and development that are consistent with the purpose of the zoning district or the goals of the Perkins County Comprehensive Plan. The approval criteria are:

i. *Character and Compatibility*

1. The proposed use is consistent with the land uses in the area and the character of the zoning district;
2. The proposed use will not conflict with surrounding land uses and will not create nuisances for neighboring land owners; and,



3. Land resources, such as soils will not be adversely affected.
- ii. *Services*
  1. The existing transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include, road capacity, access restrictions, and County and State road designations;
  2. The proposed water, wastewater, and stormwater plan will provide adequate service to the proposed use and meet the applicable requirements of the State of South Dakota Department of Environment and Natural Resources and Department of Health; and,
  3. Public services for law enforcement, fire protection, and emergency management are capable of serving the proposed use.
- iii. *Comprehensive Plan*
  1. The proposal is consistent with the goals, objectives, and activities identified in the Perkins County Comprehensive Plan.
- d. Conditions of Approval. The Planning and Zoning Commission may recommend conditions of approval, and the County Commission may attach conditions of approval to Conditional Use Permits. However, conditions may be applied only to ensure that proposal will conform to the applicable Conditional Use approval criteria, or to ensure the enforcement of other regulations.
- e. Provision for Surety. The Planning and Zoning Commission may recommend, and the County Commission may require that an applicant post surety to ensure that a development plan, decommissioning plan, or reclamation plan approved in conjunction with a Conditional Use Permit is carried out. In determining the amount of surety to be provided, the County Commission must consider factual information as to the magnitude, type, and costs of activities planned for the land affected and the nature, extent, and duration of operations under the approved permit. The amount of the surety shall be fixed at an amount that will ensure compliance with the requirements of the Conditional Use Permit.
- f. Loss of Conditional Use Status. If a Conditional Use is discontinued or abandoned for one (1) year, the Conditional Use rights are lost. If a Conditional Use ceases operations, even if the structure or materials related to the use remain, the use has been discontinued. Any Conditional Use proposing to locate at the site after that time must receive a new permit.
- g. Revocation of Conditional Use Permit. A Conditional Use Permit may be revoked only for cause, consisting of failure to maintain the standards required in the permit. A notice of intent to revoke a Conditional Use Permit shall be given in writing 30 days prior to actual revocation and shall specify the area or areas of continued failure to meet requirements and maintain conditions the County may have imposed. If, during that period, proof of compliance is made by the holder of the Conditional Use Permit, the permit shall be continued in force. If a hearing has been requested following receipt of notice of intent to revoke, the Planning & Zoning Commission shall hold a public hearing on the matter and make a recommendation to the County Commission for final determination on the revocation.

**C. Prohibited Uses.** Proposals for land uses that are not allowed within a zoning district are listed as prohibited in the use tables in the zoning district regulations. In these cases the applicant has the option to apply for an Ordinance Amendment. Variances to uses are not permitted. Any proposed use not identified in the use tables, or in the Ordinance definitions shall be deemed a prohibited use.

**D. Site Inspections.** Upon application for a Zoning Permit, the Planning and Zoning Director may inspect the site to determine compliance with the requirements of this Ordinance. Such inspection shall be at reasonable times with notice provided to the applicant.

**E. Expiration of Zoning Permit.** A Zoning Permit issued under the provisions of this Ordinance shall expire and become null and void if the building or use authorized by such permit is not commenced within 365 days from the date of such permit. Any person holding an unexpired permit may apply for an extension. The Planning and Zoning Commission may extend the time for action on the permit for a period not exceeding 180 days upon written request.

### **SECTION 3: VARIANCES**

The purpose of a Variance is to modify the strict application of the development standards of the zoning district in the case of exceptionally irregular, narrow, shallow or steep lots or other exceptional physical conditions, whereby the strict application would result in practical difficulty or unnecessary hardship that would deprive an owner of the reasonable use of his or her land. The Variance shall be used only where necessary to overcome some obstacle that is preventing an owner from developing his or her property as the Ordinance intended. Prior to obtaining a Zoning Permit for a proposal that does not meet the development standards of the zoning district, a Variance must be approved by the Board of Adjustment. Variances to uses are prohibited.

**A. Required Information for a Variance Request.** The Planning and Zoning Commission shall formulate written policies that address the required application materials for Variance requests. The applicant is responsible for the accuracy of all information submitted with the request. Any Variance issued based on false information in the application or supporting documentation shall be revoked.

**B. Variance Approval Process.**

- a. Upon submittal of a complete application, the Planning and Zoning Director shall schedule a recommendation meeting on the proposed Variance with the Planning and Zoning Commission.
- b. At the recommendation meeting, the Planning and Zoning Commission shall review the application, any supporting documentation, public input, and the Variance approval criteria. The Planning and Zoning Commission may vote to recommend approval, approval with conditions, or denial of the Variance. The Planning and Zoning Commission's recommendation shall be forwarded to the Perkins County Commission, acting as the Board of Adjustment, for final consideration.
- c. A notice of the public hearing with the Perkins County Commission, acting as the Board of Adjustment, shall be made by the County fourteen (14) days prior to the hearing in its legally designated newspaper. In addition, the County shall notify by certified mail all adjoining landowners of the nature of the request and the date, time, and location of the public hearing at least fourteen (14) days prior to the hearing.
- d. The Perkins County Commission, acting as the Board of Adjustment, may concur with, modify, or reverse the Planning and Zoning Commission's recommendation. The decision to grant a Variance must be approved by at least two-thirds of the full membership of the Board of Adjustment.

**C. Variance Approval Criteria.** *All* of the following criteria shall be met for all Variances.

- a. Granting the Variance will not be contrary to the public interest;
- b. The literal enforcement of the development standard would result in an unnecessary hardship; and,
- c. Granting the Variance will not be contrary to the purpose of the zoning district.

**SECTION 4. ZONING ORDINANCE AMENDMENTS**

The regulations, restrictions, areas and boundaries set forth in this Ordinance may from time to time be amended, supplemented, revised, or repealed as conditions warrant. The Perkins County Commission may amend zoning district boundaries, use categories, or the regulations established by this Ordinance. No Ordinance Amendment shall become effective unless it has been proposed by, or has been referred to the Planning and Zoning Commission for review and recommendation to the Perkins County Commissioners. Errors or oversights found in this Ordinance as originally adopted shall be corrected under the Amendment procedure.

**A. Amendment Procedure.** Amendments to this Ordinance may be initiated by the property owner, County Commission, or the Planning and Zoning Commission. The request shall be made on the appropriate application form and submitted to the Planning and Zoning Director.

**B. Required Information for an Ordinance Amendment Request.** The Planning and Zoning Commission shall formulate written policies that address the required application materials for Ordinance Amendments. The applicant is responsible for the accuracy of all information submitted with the request.

**C. Ordinance Amendment Approval Process.**

- a. An application for an Ordinance Amendment shall be filed with the Planning and Zoning Director. Upon submittal of a complete application, a hearing will be scheduled with the Planning and Zoning Commission.
- b. Notice of the public hearing shall be made by the County fourteen (14) days prior to the hearing in its legally designated newspaper.
- c. If the application is for an Amendment to the Zoning Map, the County shall notify by certified mail all adjoining landowners at least fourteen (14) days prior to the public hearing. If the affected property adjoins, or is within one mile of the county border, the public notice requirements as per SDCL 11-2-28.1 shall be followed.
- d. The Planning and Zoning Commission shall consider oral or written testimony from the public, the applicant’s statement, supporting documentation, and the applicable approval criteria. The Planning and Zoning Commission’s recommendation will be forwarded to the County Commission for consideration.
- e. The County Commission shall hold a public hearing on the proposed Amendment. A notice of the public hearing shall be made by the County in its legally designated newspaper. Notification of such hearing shall be published once per week for two (2) successive weeks prior to the hearing.
- f. The County Commission may vote to approve or deny the Amendment or it may refer the request back to the Planning and Zoning Commission for further study.
- g. If the County Commission denies an Amendment, the reasons for denial shall be stated in writing and sent to the applicant. An applicant may not initiate another request for the same Amendment within twelve (12) months from the date of the last action by the County Commission.

**D. Ordinance Amendment Approval Criteria.** All of the following criteria shall be met for all Amendments.

- a. The proposed Amendment shall be necessary because of substantially changed or changing conditions of the area and the districts affected;
- b. The proposed Amendment shall be consistent with the purpose of this Ordinance and not in conflict with the Perkins County Comprehensive Plan; and,
- c. The proposed Amendment shall not adversely affect any other section of this Ordinance.

**SECTION 5. PLANNING AND ZONING DIRECTOR**

- A. Duties of the Planning and Zoning Director.** The Planning and Zoning Director is authorized to enforce all the provisions of this Ordinance. The Perkins County Planning and Zoning Director shall review all proposals for conformance with this Ordinance and shall issue permits in accordance with this Ordinance.

**SECTION 6: PERKINS COUNTY PLANNING AND ZONING COMMISSION**

- A. Duties of the Perkins County Planning and Zoning Commission.** The Perkins County Planning and Zoning Commission shall assist the Perkins County Commission in an advisory capacity in achieving the established purpose of this Ordinance. The Planning and Zoning Commission shall have the power to render interpretations of this Ordinance and to adopt and enforce supplemental policies in order to clarify the application of the Ordinance. Such interpretations shall be within the purpose of this Ordinance and be set forth in writing.
- B. Appointment and Membership of the Planning and Zoning Commission.** The County Commission shall appoint five (5) or more members to the Planning and Zoning Commission. The total membership of the Planning and Zoning Commission must always be an uneven number. One (1) member of the Planning and Zoning Commission must be a member of the Perkins County Commission. The Planning and Zoning Commission must also have one (1) resident of the Town of Bison and one (1) resident of the City of Lemmon, selected by each respective Town Board or City Council.
- C. Term of Office.** The term of each of the appointed members of the Planning and Zoning Commission shall be for three (3) years. The terms shall be varied so no more than one-third of the terms shall expire in the same year.
- D. Operational Procedure.** The Perkins County Planning and Zoning Commission must meet at such times necessary to accomplish the purposes of SDCL 11-2. However, the Planning and Zoning Commission must meet at least once every three (3) months.
- E. Recommendation of the Planning and Zoning Commission.** In addition to the items submitted with Zoning Permit, Variance, or Ordinance Amendment requests, the Planning and Zoning Commission shall consider any written or oral comments from the public and the applicable approval criteria in making a recommendation to the County Commission. The Planning and Zoning Commission shall make a formal recommendation to the County Commission on an application within forty-five (45) days of a complete submittal. The Planning and Zoning Commission may request that the County Commission extend the forty-five (45) day limit to allow further evaluation.

**SECTION 7. PERKINS COUNTY COMMISSION**

- A. Duties of the Perkins County Commission.** The Perkins County Commission shall review all recommendations of the Planning and Zoning Commission. The County Commission may reverse or modify the recommendation of the Planning and Zoning Commission by a majority vote of all of its members. If no action is taken by the County Commission within thirty (30) days of the Planning and Zoning Commission

recommendation, then the recommendation rendered by the Planning and Zoning Commission shall be considered final.

- B. Appeal to the Court.** Appeals from any decision of the Perkins County Commission by any person or persons jointly or severally aggrieved by any decision of the County Commission, or any taxpayer, or any officer, department, board or bureau of the towns or county, may be taken to the court with competent jurisdiction. Such appeal shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Perkins County Commission.

## SECTION 8. BOARD OF ADJUSTMENT

- A. Perkins County Commission as the Board of Adjustment.** In lieu of appointing a Board of Adjustment, the Perkins County Commission shall act as, and perform all of the duties and the powers of the Board of Adjustment. The chair of the Perkins County Commission is the chair of the Board of Adjustment as so composed.
- B. Duties of the Board of Adjustment.** The Board of Adjustment shall administratively review appeals where it is alleged that there is an error in any requirement, permit decision, determination, or denial. The concurring vote of at least two-thirds of the members of the board as so composed is necessary to reverse any decision.

## SECTION 9. FEES

Upon application, a fee shall be paid for a Zoning Permit, Variance, or Ordinance Amendment request. The fee shall be set by resolution of the County Commission.

## SECTION 10. NONCONFORMING USES AND DEVELOPMENT

A legally nonconforming building, structure, or use existing at the time of the adoption of this Ordinance may be continued, maintained and repaired except as otherwise provided in this section.

- A. Continuance of Nonconforming Uses.** Any use that is legal immediately prior to the adoption of this Ordinance, but does not conform to this Ordinance upon its adoption becomes a legal nonconforming use. A nonconforming use may continue unless it is discontinued for a period of one (1) year. In such case the use shall not be reestablished unless the Perkins County Commission approves such action.
- B. Alteration or Enlargement of Nonconforming Building, Structures or Uses.** A legal nonconforming building, structure or use shall not be added to or enlarged in any manner unless such addition or enlargement is approved by the Perkins County Commission.
- C. Damage to Nonconforming Buildings and Structures.** A building that by reason of the passage of this Ordinance has become legally nonconforming and thereafter is damaged by fire, explosion, act of God, or the public enemy to the extent of more than 50 percent of its value, shall not be restored except in conformity with the regulations of the zoning district in which it is located. When damaged by less than 50 percent of its value, a legally nonconforming building may be repaired or reconstructed up to its original size, and used as before the time of damage, provided such repairs or reconstruction are completed within one (1) year of the date of such damage.

**SECTION 11. VIOLATIONS AND PENALTIES**

Any person who violates any provisions of the Ordinance or any amendment thereto, or who fails to perform any act required hereunder, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine and/or imprisonment pursuant to SDCL 7-18A-2.

**SECTION 12. SEVERABILITY**

This Ordinance and the various parts, sections, subsections and clauses thereof, are hereby declared to be severable. If any part, sentence, paragraph, subsection, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, it is hereby provided that the remainder of this Ordinance shall not be affected thereby.

**SECTION 13. RELATIONSHIP TO OTHER LAWS**

This Ordinance is not intended to interfere with or annul any other ordinance, rule or regulation, state statute, or other provision of law. Where the provisions of this Ordinance impose restrictions different from those imposed by any other ordinance, rule or regulations, statute, or other provision of law, whichever provisions are more restrictive or impose higher standards shall control.

## **ARTICLE III. ZONING DISTRICTS AND MAP**

### **SECTION 1. ESTABLISHMENT OF ZONING DISTRICTS**

For the purposes of this Ordinance, Perkins County is divided into the following zoning district: General Agricultural District.

### **SECTION 2. OFFICIAL ZONING MAP**

The location and boundaries of the zoning districts established by this Ordinance are denoted and defined as shown on the “Official Zoning Map of Perkins County, South Dakota” and certified by the County Finance Officer. The said map is hereby declared to be part of this Ordinance.

- A. Interpretation of the Zoning Map.** Where, due to scale, lack of detail or illegibility of the Zoning Map there is any uncertainty, contradiction, or conflict as to the intended location of any zoning district boundary as shown thereon, the Planning and Zoning Commission shall make an interpretation of said map at the request of any person. Any person aggrieved by any such interpretation may appeal such interpretation to the County Commission. The Planning and Zoning Commission and the County Commission, in interpreting the Zoning Map or deciding any appeal, shall apply the following standards.
- a. Zoning district boundary lines are intended to follow lot lines, or be parallel or perpendicular thereto, or along the center lines of alleys, streets, rights-of-way of water courses, unless such of the boundary lines are fixed by dimensions shown on the Zoning Map.
  - b. Where zoning district boundary lines are so indicated that they approximately follow the limits of political jurisdictions, such boundary lines shall be construed as following such limits.
  - c. Where a zoning district boundary line divides a lot, the location of any such zoning district boundary line, unless indicated by the dimensions shown on the Zoning Map, shall be determined by the use of the map scale shown thereon.
  - d. Whenever any street, alley, section line, or other public easement is vacated, the zoning district classification of the property to which the vacated portions of the land accrued shall become the classification of the vacated land.
  - e. If, after the application of the foregoing rules, uncertainty still exists as to the exact location of a zoning district boundary line, the regulations of the more restrictive zoning district shall govern the entire parcel in question, unless otherwise determined by the County Commission.

### **SECTION 3. LAND USE CATEGORIES**

This Ordinance classifies land uses and activities into land use categories on the basis of common, functional, or physical characteristics. Characteristics include the type and amount of activity; the type of customers or residents; how goods or services are sold or delivered; and, common site factors. The land use categories are listed in each zoning district’s use table. Detailed definitions of the land use categories are listed in Article IV.

### **SECTION 4. USE REGULATIONS**

The use regulations are intended to promote the purpose of the zoning district. The district use tables under each zoning district section list each use category, and the required permitting process for that use. Uses that are prohibited in the zoning district are listed as prohibited in the district use tables. Existing uses that are prohibited may be subject to the regulations in Article II, Section 10 *Nonconforming Uses and Development*. Any proposed use not identified in the use tables, or in the Ordinance definitions shall be deemed a prohibited use. Variances to uses are not permitted.

**SECTION 5. DEVELOPMENT STANDARDS**

The development standards regulate development within each zoning district. The development standards work together with the use regulations to promote the purpose of the district. The development standards also provide certainty to landowners, builders, and neighbors about the limits of what is allowed on land within a district. The development standards are generally written for development on flat, regularly shaped lots. Other situations are addressed through the Variance procedure.

**SECTION 6: GENERAL AGRICULTURAL DISTRICT**

- A. Purpose.** The purpose of the General Agricultural District is to preserve land for agricultural uses. The district allows for a variety of agricultural uses and other compatible land uses on large tracts of land.
- B. Where These Zoning Regulations Apply.** The General Agricultural zoning district regulations apply to all land designated as General Agricultural on the Zoning Map. The regulations in this section state the permitting requirements for uses and the development standards for the district.
- C. Use Regulations.** The use regulations listed in the table below are intended to maintain and promote agricultural uses. They allow for some non-agricultural uses through the Conditional Use Permit process, but not to such an extent as to sacrifice the character of the agricultural district.

<b>GENERAL AGRICULTURAL DISTRICT USES</b>	
<b>RESIDENTIAL CATEGORIES</b>	
Single-Dwelling Units	BUP
Multi-Dwelling Units	CUP
Group Living	CUP
Manufactured Home Parks	CUP
Crew Housing Facilities	CUP
<b>COMMERCIAL CATEGORIES</b>	
Retail Sales and Services	CUP
Office	CUP
Vehicle Service and Repair	CUP
Self-Service Storage	CUP
Major Event Entertainment	CUP
Recreational Vehicle Parks	CUP
Temporary Campgrounds	CUP
Agricultural Service	BUP
Adult-Oriented Businesses	-
Liquor Stores	-
Bars	-
<b>INDUSTRIAL CATEGORIES</b>	
Manufacturing and Production	CUP
Warehouse and Freight Movement	CUP
Wholesale Sales	CUP
Industrial Service	CUP
Waste-Related Facilities	CUP
<b>INSTITUTIONAL CATEGORIES</b>	
Basic Utilities and Services	BUP
Community Facilities	CUP
Parks and Open Areas	CUP
Schools	CUP
Daycare Centers	CUP



Medical Centers	CUP
Religious Institutions	CUP
Detention Facilities	CUP
<b>AGRICULTURAL CATEGORIES</b>	
Ranching and Farming	BUP*
Concentrated Animal Feeding Operations	CUP
<b>MINERAL EXPLORATION &amp; EXTRACTION CATEGORIES</b>	
Oil & Gas Exploration and Extraction Site Facilities	BUP
Uranium Exploration and Extraction Site Facilities	CUP
Mining	CUP
Oil & Gas Exploration	CUP
Oil & Gas Exploration and Extraction Support Facilities	CUP
<b>OTHER CATEGORIES</b>	
Wireless Telecommunication Facilities	CUP
Wind Energy Systems	CUP
Home Occupations	BUP
Off-Premise Sign	CUP
On-Premise Sign	BUP

BUP: Building Use Permit, CUP: Conditional Use Permit, - : Prohibited

\*Agricultural buildings do not require a Building/Use Permit if the criteria in Article II, Section 2.A.a are met.

**D. General Agricultural District Development Standards.** The development standards in the General Agricultural District regulate how land in the district is developed in order to maintain the agricultural character of the district. The table below summarizes the development standards in the district.

<b>SUMMARY OF STANDARDS IN THE GENERAL AGRICULTURAL DISTRICT</b>	
Standard	General Agricultural District
Minimum Lot Size	39 acres
Minimum Setbacks	25 feet
Maximum Height	35 feet
Parking	N/A

- a. *Minimum lot size.* The minimum lot area for primary structures is stated in the table above.
- b. *Minimum setbacks.* The minimum setbacks for structures are stated in the table above.
  - i. Exceptions to minimum setbacks.
    - 1. The setback requirements for Wind Energy Systems; and, Wireless Telecommunication Facilities are listed in Article III, Section 8.
- c. *Maximum height.* The maximum height for structures is stated in the table above.
  - i. Exceptions to maximum height.
    - 1. Chimneys, flag poles, and satellite dishes may extend above the height limit.
    - 2. Agricultural buildings such as silos and barns; radio and television transmission towers; utility power poles; water towers; and, public safety facilities are exempt from the height limit as long as they are set back from all property lines at least one (1) foot for every one (1) foot in height.

3. Wind Energy Systems and Wireless Telecommunication Facilities are exempt from the height limit requirements in this section if the requirements in Article III, Section 8 are met.
- d. *Parking.* There are no parking requirements except those imposed as part of a Conditional Use Permit.

## SECTION 7: DEVELOPMENT STANDARDS FOR SPECIFIC USES IN ALL ZONING DISTRICTS

**A. Purpose.** The intent of this section is to set development standards for specific uses that apply to that use regardless of the zoning district it is located within.

**B. Where These Zoning Regulations Apply.** The regulations in this section apply to all zoning districts.

### C. Wireless Telecommunication Facilities

- a. *Purpose.* The purpose of the Wireless Telecommunication Facilities regulations is to ensure that the placement and construction of facilities are consistent with the County's land use policies.
- b. *Exemptions to Wireless Telecommunication Facilities regulations.*
  - i. Ordinary maintenance of existing telecommunication facilities and support structures.
  - ii. Antennas used by residential households solely for broadcast radio and television reception.
  - iii. Satellite antennas used solely for residential or household purposes.
  - iv. Carrier on Wheels (COW) placed for a period of not more than one-hundred and twenty (120) days at any location within the district after a declaration of an emergency or disaster by the Governor or by the responsible County official.
- c. *Wireless Telecommunication Facilities located on existing structures.*
  - i. Antennas and accessory equipment may be located on any existing structure, including, but not limited to, buildings, water tanks, utility poles, broadcast towers or any existing support structure in accordance with the requirements of this section.
  - ii. No wireless telecommunication facility shall be located within thirty (30) inches of any space occupied by or available to the public.
  - iii. Antennas and accessory equipment may exceed the maximum building height limitations, provided that the antenna and accessory equipment are in compliance with the requirements and standards of this subsection.
  - iv. Each antenna mounting on existing structures and any accessory equipment shall meet the following standards:
    1. Omnidirectional or whip antennas shall not exceed twenty (20) feet in length and seven (7) inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure.
    2. Directional or panel antennas shall not exceed ten (10) feet in length and two (2) feet in width and shall be of a color that is identical or similar to the color of the supporting structure.
    3. Cylinder-type antennas shall not exceed ten (10) feet in length and twelve (12) inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure.
    4. Satellite and microwave dishes shall not exceed ten (10) feet in diameter and shall be of a color that is identical or similar to the color of the supporting structure.
    5. Other antenna types not specifically mentioned above shall be permitted if they are

not significantly greater in size and will have a visual impact no greater than the antennas listed above.

d. *New Support Structures*

- i. The height of any proposed support structure shall not exceed the minimum height necessary to meet the coverage objectives of the facility, and shall not exceed one-hundred and ninety-nine (199) feet in height.
- ii. Monopoles or replacement poles that will support utility lines as well as a telecommunication facility within utility easements or right-of-way, must meet the following requirement.
  1. The utility easement or right-of-way shall be a minimum of one-hundred (100) feet in width.
  2. The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.
  3. The height of the monopole or replacement pole may not exceed by more than thirty (30) feet the height of the existing utility support structures.
  4. Monopoles and the accessory equipment associated there with shall be set back a minimum of fifteen (15) feet from all boundaries of the easement or right-of-way.
  5. Poles that use the structure of a utility tower for support are permitted. Such poles may extend up to twenty (20) feet above the height of the utility tower.
  6. Monopoles or replacement poles located on public property or within public rights-of-way that will support public facilities or equipment in addition to telecommunication facilities shall be permitted. Examples include, but are not limited to, public communication facilities, athletic field lights, traffic lights, street lights, and other types of utility poles in the public right-of-way.

e. *Design and Aesthetics*

- i. Monopoles and Towers
  1. Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration, or the County Commission, monopoles and towers shall have a galvanized silver or gray finish.
- ii. Telecommunication facilities or support structures shall not be lighted or marked unless required by the Federal Communications Commission or the Federal Aviation Administration.
- iii. Signs located at the telecommunication facility shall be limited to ownership and contact information, Federal Communications Commission antenna registration number, and any other information required by government regulation. Commercial advertising is strictly prohibited.
- iv. As part of a Conditional Use Permit, the Planning Commission may recommend, and the County Commission may require landscaping surrounding the accessory equipment.

f. *Setbacks*

- i. Property lines. Unless otherwise stated herein, monopoles and towers shall be setback from all property lines a distance equal to their height measured from the base of the structure to its highest point. Other support structures shall be governed by the setbacks required by the underlying zoning district.
- ii. Residential dwellings on the same site. There shall be no setback requirements from dwellings located on the same lot as the proposed structure.
- iii. Accessory equipment. Unless otherwise stated herein, all accessory equipment shall be setback from all property lines in accordance with the minimum setback requirements of the underlying zoning district.

- g. *Height.* Support structures shall not exceed a height of one-hundred and ninety-nine (199) feet from the base of the structure to the top of the highest point. Any proposed support structure shall be designed to be the minimum height needed to meet the service objectives.
- h. *Accessory equipment.* An equipment building, shelter, or cabinet must not exceed five-hundred and sixty (560) square feet and twelve (12) feet in height.
- i. *Safety.* Ground-mounted accessory equipment and support structures shall be secured and enclosed with a fence not less than six (6) feet in height.
- j. *Abandonment and removal.* Any telecommunications facility or support structure that is not operated for a period of twelve (12) consecutive months shall be considered abandoned. The County Commission may issue a Notice of Abandonment to the owner of the wireless telecommunication system that it is deemed abandoned. The owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from the Notice of Abandonment receipt date. The County Commission shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the wireless telecommunication system has not been abandoned. If the wireless telecommunication system is determined to be abandoned, the owner of the system shall remove the wireless telecommunication system at the owner's sole expense within three (3) months of the receipt of the Notice of Abandonment. If the owner fails to remove the wireless telecommunication system, the County Commission may pursue legal action to have the wireless telecommunication system removed at the owner's expense.

#### **D. Wind Energy Systems**

- a. *Purpose.* The purpose of the Wind Energy Systems (WES) regulations is to ensure that the placement, construction and modification of a WES facility is consistent with the County's land use policies, to minimize the impact of WES facilities, and to protect the health, safety and welfare of the county's citizens.
- b. *Small Wind Energy Systems*
  - i. *Setbacks.* The minimum setback distance between each wind turbine tower and all surrounding property lines, overhead utility or transmission lines, other wind turbine towers, electrical substations, public roads, and dwelling units shall be equal to or greater than one point one (1.1) times the tower height.
  - ii. *Access.* All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access, and the tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum of eight (8) feet above the ground.
  - iii. *Lighting.* A small wind energy system shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration.
  - iv. *Noise.* A small wind energy system shall not emit noise that exceeds fifty-five (55) dBA, as measured at the closest neighboring inhabited dwelling. The level may be exceeded during short-term events such as utility outages or wind storms.
  - v. *Appearance, Color, Finish.* The small wind energy system shall remain painted or finished the color or finish that was originally applied by the manufacturer, unless otherwise approved as part of the Zoning Permit.
  - vi. *Signs.* All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification signs, shall not be visible from any public road. Commercial advertising is strictly prohibited.
  - vii. *Code Compliance.* A small wind energy system shall comply with all applicable State construction and electrical codes.

- viii. Utility Notification. No small wind energy system shall be installed until evidence that the utility company has been notified of the intent to install an interconnected customer-owned generator. Off grid systems are exempt from this requirement.
- ix. Abandonment. A small wind energy system that is out of service for a period of twelve (12) consecutive months will be deemed abandoned. The County Commission may issue a Notice of Abandonment to the owner of the small wind energy system that it is deemed abandoned. The owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from the Notice of Abandonment receipt date. The County Commission shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the small wind energy system has not been abandoned. If the small wind energy system is determined to be abandoned, the owner of the system shall remove the wind generator from the tower at the owner's sole expense within three (3) months of the receipt of the Notice of Abandonment. If the owner fails to remove the wind generator from the tower, the County Commission may pursue legal action to have the wind generator removed at the owner's expense.

### **E. Large Wind Energy System (WES)**

- a. *Purpose.* The purpose of the Ordinance is to provide regulations for the proper permitting and construction of Large Wind Energy System (WES) Facilities in the unincorporated areas of Perkins County, to protect the public health, safety and welfare, preserve the natural environment, maintain the integrity of county infrastructure, mitigate potential negative impacts of development, and promote compatible land uses in rural areas, in accordance with the policies set forth in the adopted Perkins County Comprehensive Plan.
- b. *Definitions*
  - i. Applicant. The person or entity filing an application under this Ordinance.
  - ii. County Commission. The Perkins County Board of County Commissioners.
  - iii. Engineering Certification. Verification provided by the manufacturer's engineer and/or a registered, professional engineer in the state of South Dakota certifying that the turbine, foundation, and tower design of a WES is within accepted professional standards and will be constructed according to the manufacturer's recommendations.
  - iv. FAA. The U.S. Department of Transportation Federal Aviation Administration.
  - v. Facility Owner. The entity or entities having an equity interest in a Large WES Facility, including their respective successors and assigns.
  - vi. Large Wind Energy Facility (WES) Facility. An electric generating facility consisting of one (1) or more WES whose primary purpose is for the wholesale or retail sale of electricity for off-site consumption. This term also includes other accessory structures and buildings, including substations, Meteorological Tower, electrical infrastructure, transmission lines and other appurtenant structures and facilities, related to the operation of a Large WES Facility. The term Large WES Facility is synonymous with wind farm.
  - vii. Meteorological Tower. Meteorological Towers are those towers which are erected primarily to measure wind speed and direction, plus other data relevant to the siting of a proposed WES. Meteorological Towers do not include towers and equipment used by airports, the South Dakota Department of Transportation, National Weather Service, or other similar applications to monitor weather conditions. Meteorological Towers, whether temporary or permanent, must meet all FAA requirements. Meteorological Towers are otherwise excepted from the regulations of this Ordinance.
  - viii. Non-Participating Landowner. Any landowner except those on whose parcel all or a portion

of a Large WES Facility is located pursuant to an agreement with the Facility Owner or Operator.

- ix. Occupied Building. A residence, school, hospital, church, public library, community center, fire hall, or other building that is occupied or in use when a Large WES Facility permit application is submitted.
- x. Operator. The entity responsible for the day-to-day operation and maintenance of a Large WES Facility.
- xi. Parcel. Portion of land defined by a legal description or combination of legal descriptions.
- xii. Participating Landowner. The landowner on whose parcel all or a portion of a Large WES Facility is located pursuant to agreement with the Facility Owner or Operator.
- xiii. Planning Commission. The Perkins County Planning Commission.
- xiv. SDCL. South Dakota Codified Law(s).
- xv. Setback. The minimum distance a structure, including a WES, must be set back or separated from another feature, such as a road, parcel line, or building. All required setback distances shall be measured to/from the center of the base of each WES facility.
- xvi. Shadow Flicker. The alternating pattern of sun and shade caused by the blades of a WES casting a shadow.
- xvii. Small Wind Energy System (WES). A wind turbine and related equipment primarily used for the on-site consumption of generated electricity, which has a rated capacity of not more than one (1) Megawatt (MW) and a tower height of 120 feet or less. Small WES are excepted from the regulations of this Ordinance.
- xviii. Substantial Commencement. Actual physical commencement of construction or delivery of supplies/materials.
- xix. Tower Height. The height above grade of the fixed portion of the tower, excluding the wind turbine itself.
- xx. Turbine Height. The distance measured from the surface of the tower foundation to the highest point of the turbine when a blade is fully extended at a 90-degree angle from the ground surface (measured vertically from the center of the WES unit).
- xxi. Variance. A specified deviation from the regulations contained in this Ordinance.
- xxii. Wind Turbine. A WES that converts wind energy into electricity through the use of a turbine generator and includes all related components, such as the nacelle, rotor, tower, blades, and pad transformer, if any.
- xxiii. WES Permit. A permit issued by the County Commission that allows for the construction of a Large WES Facility, or physical modification of an existing Large WES Facility, upon verification of all requirements of this Ordinance being met.
- xxiv. Wind Energy System (WES). An electric generating facility that operates by converting the kinetic energy of wind into electrical energy and is comprised of one (1) or more wind turbines and accessory facilities including, but not limited to, power lines, transformers, substations, and Meteorological Towers. The energy may be used on-site or distributed into the electrical grid. The term WES is synonymous for wind turbine.

c. *Applicability*

- i. Large WES Facility. This Ordinance applies to all Large WES Facilities proposed to be constructed or placed after the effective date of the Ordinance. Large WES Facilities constructed or placed prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance. Any physical modification to an existing Large WES Facility that materially alters the size, type, or number of WES units or other equipment shall comply with the requirements of this Ordinance.

- ii. Exceptions. Small WES and Meteorological Towers as defined herein are excepted from the regulations of this Ordinance.
- d. *Permitting*
- i. Section 1 – WES Permit Requirements.
    - 1. Required Prior to Construction. A Large WES Facility may not be located in the unincorporated areas of Perkins County unless a WES Permit has been obtained from the Perkins County Commission approving construction in accordance with the requirements of this Ordinance.
    - 2. Modification of Existing Large WES Facility. Any physical modification to an existing or permitted Large WES Facility that materially alters the size, type, or number of WES units or other equipment shall require a WES Permit under this ordinance prior to modification. Like-kind replacements shall not require a WES permit.
    - 3. Expiration. An approved WES Permit for a Large WES Facility shall expire if there has been no substantial commencement within 24 months from the date of approval by the County Commission.
  - ii. Section 2 – WES Permit Application
    - 1. Compliance. The WES Permit application shall demonstrate that the proposed Large WES Facility, or modifications to any existing Large WES Facility, will comply with all requirements of this Ordinance.
    - 2. Submittal. WES Permit applications shall be submitted to the Perkins County Finance Office.
    - 3. Fees. The permit application shall be accompanied with a fee in an amount set by resolution by the County Commission.
    - 4. A WES Permit application shall contain the following:
      - A. Project Narrative. A narrative describing the proposed Large WES Facility, including an overview of the project; the project location; the approximate generating capacity of the WES facility; the approximate number, representative types and height or range of heights of wind turbines to be constructed, including their generating capacity, dimensions and respective manufacturers; a description of ancillary facilities; and an estimated construction schedule.
      - B. Owner’s Agreement. A notarized affidavit or similar evidence of agreement between the Participating Landowner and the Facility Owner and/or Operator demonstrating that the Facility Owner and/or Operator has the permission of the Participating Landowner to apply for the necessary permits for construction and operation of the Large WES Facility.
      - C. Property Location Map. Identification of the parcel or parcels on which the proposed Large WES Facility will be located, and all parcels adjacent to and within a 2,500-foot radius of the parcel line on which the Large WES facility will be located.
      - D. Site Plan. A site plan showing the planned location of each wind turbine, parcel lines, applicable setback lines, access road and turnout locations, substation(s), electrical cabling from the Large WES Facility to the substation(s), ancillary equipment, buildings, and structures, including Meteorological Towers, associated transmission lines, and any existing Occupied Buildings on parcel of Non-Participating Landowners within 2,500 feet.
      - E. Decommissioning Documents. Documents related to the decommissioning of all WES and associated equipment as required in Article VI.
      - F. Contact Information. The name, phone number, email, and mailing address of the

Participating Landowner, Applicant, Facility Owner, and Operator, as applicable.

- G. Power Company Agreement. Provide a copy of the agreement between the Facility Owner and the affected local power company.
- H. PUC Approval. Provide a copy of the approval of the South Dakota Public Utilities Commission for all Large WES Facilities with a capacity of 100 MW or more (if not yet approved, a written explanation of the status of the project with the PUC may be provided).
- I. Haul Road Agreements. Provide a copy of all approved Haul Road Agreements for the use of all roads to be utilized during construction and for maintenance of the Large WES Facility, as required by the Perkins County Highway Department or applicable local road authority.
- J. Environmental and Cultural Review. The Applicant or Facility Owner shall provide an environmental and cultural review conducted by a qualified professional third-party company to determine if there are any potential significant issues related to the construction and maintenance of the proposed Large WES Facility, that have been approved by Perkins County Commission and paid for by the WES Facility Owner. If the environmental and cultural review determines there are no significant issues, no further action is required. Recommendations from the qualified professional third-party company must be followed. The following state and federal agencies shall be consulted include (as a minimum):
  - a. South Dakota Department of Agriculture and Natural Resources
  - b. South Dakota Game, Fish & Parks
  - c. United States Fish and Wildlife Services
  - d. U.S. Army Corps of Engineers
  - e. South Dakota State Historic Preservation Office
  - f. Natural Resource Conservation Service
  - g. Tribal Consultation (refer to Tribal Directory Assessment Tool for most current list of tribes to be consulted in Perkins County).
- K. Other Information. Other relevant studies, reports, certifications, and approvals as may be reasonably requested by Perkins County to enable technical review of the proposed project and ensure compliance with this Ordinance.

iii. Section 3 – WES Permit Review & Public Hearing

- 1. Completeness Review. Within 30 days after receipt of a WES Permit application, the Perkins County Finance Officer, or their designee, will determine whether the application is complete and advise the Applicant accordingly. Applications deemed complete will then be scheduled for consideration by the Planning Commission at the next meeting which allows for proper public hearing notification.
- 2. Planning Commission Recommendation and Public Hearing. The Planning Commission shall meet to consider the WES Permit in relation to the requirements of this Ordinance and make a recommendation to the County Commission to approve, approve with conditions, or deny the WES Permit. At this meeting, the Applicant, or their representative, shall appear to present the project and answer any questions. A public hearing shall also be held at this same meeting and the public shall be afforded an opportunity to ask questions and provide comments on the proposed Large WES Facility. Written comments may also be submitted by any member of the public prior to the public hearing.
  - A. Public Hearing Notification Requirements.



1. Written Notification. Non-Participating Landowners within 2,500 feet of the parcel or parcels on which the proposed Large WES Facility will be located must be notified by the Applicant a minimum of 14 calendar days by certified mail in advance of the Planning Commission meeting, along with:
    - a. A map of the location of the proposed Large WES Facility.
    - b. Name, telephone number and address of the Facility Owner and Operator.
    - c. Information regarding the right to participate in the Perkins County Planning Commission meeting on the WES Permit application, including the date, time, and location of the scheduled public hearing.
    - d. The Applicant shall maintain a list of the Non-Participating Landowners who were sent notice, together with copies of the certified receipts, and provide this to the Perkins County Finance Office prior to the public hearing.
  2. Newspaper Notification. A public notice shall also be published in all legal newspapers of Perkins County a minimum of 10 days prior to the public hearing. The notice shall include a brief description of the proposed WES Permit application and legal description of the affected parcel, along with the date, time, and location of the public hearing. The cost for publishing the legal notice shall be the responsibility of the Applicant.
  3. County Commission Review. Following the Planning Commission meeting, the WES Permit shall be scheduled for review at the next feasible County Commission meeting. The County Commission shall be forwarded the recommendation of the Planning Commission and any public comments received for their consideration. Within 30 days, unless otherwise agreed to by the Applicant, the County Commission shall make the final decision whether to approve, approve with conditions, or deny (with explanation) the WES Permit application.
  4. Appeals. Any person aggrieved by the decision of the County Commission may appeal in accordance with the provisions of SDCL 11-2.
- e. *Design and Installation Standards*
- i. Section 1 – General Requirements
    1. Design Safety Certification. The design of the WES facility shall conform to applicable industry standards, including those of the American National Standards Institute. The Applicant shall submit an Engineering Certification for all Large WES Facilities. The manufacturer’s engineer and/or a registered, professional engineer in the state of South Dakota shall certify that the turbine, foundation, and tower design of the Large WES Facility is within accepted professional standards, given local soil and climate conditions, and will be constructed according to the manufacturer’s recommendations.
    2. International Building Code Compliance. The WES facility shall comply with the current, adopted version of the International Building Code as required by SDCL.
    3. Controls and Brakes. All WES facilities shall be equipped with an electronic shut down or a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and/or mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.
    4. Electrical Components. All electrical components of a WES facility shall conform to the National Electric Code, all relevant and applicable local, state, and national codes, and relevant and applicable international standards, as well as the standards set forth by the affected local power company.

5. Visual Appearance. All WES (wind turbines) shall be a non-obtrusive color such as white, off-white, or gray.
6. Lighting. All WES facilities shall not be artificially lighted, except to the extent required by the FAA or other applicable authority that regulates air safety, and/or the County Commission.
7. Signage. WES units shall not display advertising or other signage, except for reasonable identification of the turbine manufacturer, Facility Owner and Operator, and emergency contact information.
8. Noise. Large WES Facilities shall not exceed 45 dBA (decibels, A weighted) as measured at the closest parcel line at the time of WES Permit application. The dBA level, however, may be exceeded during short-term events, such as utility outages and/or severe windstorms.
9. Power Lines. On-site transmission and power lines between wind turbines shall be placed underground. Exceptions may be granted as part of the WES Permit approval in instances where shallow bedrock, water courses, or other elements of natural landscape interfere with the ability to bury lines.
10. Warnings:
  - A. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
  - B. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of ten feet from the ground.
11. Climb Prevention/Locks:
  - A. WES units shall not be climbable up to 15 feet above ground surface.
  - B. All access doors to WES units and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.
12. Livestock Protection. The Facility Owner and/or Operator shall take necessary precautions to protect livestock from construction and operation of WES facilities during all phases of the project.
13. Shadow Flicker. Shadow Flicker shall be limited to 24 hours per year at residences located on any non-participating landowner's parcel at the time of WES construction.
14. Liability Insurance. The WES Facility Owner or Operator shall maintain a current insurance policy with a bond rating acceptable to the County Commission to cover installation and operation. Any loss of coverage must be reported within three (3) working days of loss. Failure to maintain coverage shall constitute a cessation of operations and revocation of permit.

ii. Section 2 – Setback and Area Requirements

1. Setbacks:

- A. Participating Landowner Parcel Lines. All WES facilities shall maintain a minimum setback from all Participating Landowner's parcel lines at a distance not less than five (5) times the turbine height of each WES unit, as measured to the nearest point along the parcel line.
- B. Public Roads. All WES facilities shall maintain a minimum setback from public road(s) a distance of not less than three (3) times the turbine height of the WES unit, as measured from the nearest edge of the right-of-way line along any public road.
- C. Airports. All WES facilities shall maintain a minimum setback of two (2) miles from all FAA registered airports and must comply with all applicable FAA regulations, including any necessary approvals.
- D. Occupied Buildings. Large WES facilities and related equipment shall maintain a minimum setback of one (1) mile to any existing occupied buildings at the time of WES

Permit application, as measured from the perimeter fence of the Large WES facility to the closest wall of any existing occupied building.

a. Setback on the Large WES Facility participating parcel may be reduced with a written waiver from the property owner.

1. Minimum Lot Size. A Large WES Facility may not be constructed on any parcel of land less than 640 acres in size.

iii. Section 3 – Use of Public Roads

1. Haul Road Agreements. The Applicant shall identify all state and local public roads to be used within Perkins County to transport equipment and parts for construction, operation, or maintenance of the Commercial WES facility. Haul Road Agreements shall be obtained by the Applicant as required by the Perkins County Highway Superintendent and/or the applicable local road authority.
2. Financial Assurance. The County Commission shall require that all county road(s) to be used as a haul road must be bonded for by the Applicant. The Applicant and/or WES Facility Owner shall also demonstrate that they have appropriate financial assurance to ensure the prompt repair of damaged roads through a surety bond, an irrevocable letter of credit, or other form of security satisfactory to the County Commission.
3. Documentation and Inspection of Road Conditions. The Perkins County Highway Superintendent, and a qualified third-party engineer hired by the Applicant (with the approval of the County Commission for the third-party engineer the Applicant has selected), shall document road conditions prior to construction of any Large WES Facility. The Perkins County Highway Superintendent and the third-party engineer shall document road conditions again 30 days after construction is complete, or as weather permits. Costs related to a third-party engineer will be paid for by the Applicant.
4. Damages. Any road damage caused by the Applicant, or its contractors, shall be promptly repaired at the Applicant's expense, and all repairs must be approved by the County Commission and inspected by the Perkins County Highway Superintendent and when applicable the local road authority.

iv. Section 4 – Local Emergency Services and Municipal Airport Review

1. Emergency Services Review. The Applicant shall provide a copy of the project narrative, parcel location map, and site plan also to local emergency services, including volunteer Fire Department(s), for their review a minimum of 30 days prior to the public hearing.
2. Emergency Response Plan. Upon request, the Applicant shall cooperate with Perkins County Emergency Management and other emergency services to develop and coordinate implementation of an emergency response plan for the Large WES Facility.
3. Airport Review. The Applicant shall send the application package with the plans of the proposed Large WES Facility to any FAA registered airport located within five (5) miles of the project site for review a minimum of 30 days prior to the public hearing.

f. *Decommissioning*

1. Standards. At the end of the useful life of a Large WES Facility project, all improvements shall be removed from the parcel at the expense of the Facility Owner and/or Participating Landowner, including, but not limited to, wind turbines, equipment, fencing, foundations and concrete footings to a depth of ten (10) feet, roads, and restoration of soil and vegetation of landowner approval and following South Dakota State Seed Laws and Regulations.

2. Abandonment. Any and all WES facilities which are not used for 12 successive months shall be deemed abandoned and shall be dismantled to the same standards as for decommissioning described above.
3. Decommissioning Plan. Application for a WES Permit for a Large WES Facility project shall include a decommissioning plan to ensure it is properly decommissioned upon the end of the project life, inoperability of individual WES units, or facility abandonment. The decommissioning plan shall state how the facility will be decommissioned, the Professional Engineer's estimated cost of decommissioning, the financial resources to be used to accomplish decommissioning, approval of decommission plan by landowner and the escrow agent with which the resources shall be deposited.
4. Decommissioning Bond. Facility Owners of a Large WES Facility must provide a copy of financial surety bond, or equivalent financial security in a form acceptable to the County Commission, which will cover the decommissioning of the Large WES Facility at the end of its anticipated useful life or in the case of abandonment to the Perkins County Finance Office. The decommissioning bond (or equivalent) must be at 105% of the total decommissioning costs (not including the salvage value of equipment), based on the decommissioning plan or updates thereof.
5. Updates. The Decommissioning Plan must be updated every five (5) years of the on-going operation of the Large WES Facility and an adequate decommissioning bond (or equivalent) must be in place throughout the life of the project. Updates to the decommissioning plan and corresponding bond amount must be presented to and approved by the County Commission.
6. Written Notice. For every Large WES Facility that is decommissioned or removed within Perkins County, the Facility Owner and/or Operator must notify in writing by certified mail to the Perkins County Finance Officer their intent to decommission or remove the WES at least 30 calendar days prior to the date the equipment and/or tower is to be decommissioned.
7. Extensions. Extensions may be granted upon request to the County Commission prior to the expiration of the one (1) year requirement for decommissioning. Such requests shall include written explanation for the circumstances requiring extension.
8. Use of Public Roads. Prior to decommissioning, the Facility Owner shall adhere to all requirements of Article V, Section 3 regarding the use of public roads for the transportation of equipment and other materials to be utilized for decommissioning.
9. Change in Ownership or Operation. The County Commission must be immediately notified in writing and in person of any change in ownership or management of the Large WES Facility with proof that an adequate Decommission Bond is in place within 30 days of such a change.
10. Escrow Funds Access. Perkins County shall have access to the escrow account funds for the expressed purpose of completing decommissioning if decommissioning is not completed by the Applicant within one (1) year of the end of project life, inoperability of individual WES, or facility abandonment. Escrow funds may be used for administrative fees and costs associated with decommissioning.
11. Right of Entry. Perkins County is granted the right of entry onto the site, pursuant to reasonable notice, to effect or complete decommissioning.
12. Injunctive Relief. Perkins County is granted the right to seek injunctive relief to effect or complete decommissioning, to seek reimbursement from the Applicant or Applicant's successor for decommissioning costs in excess of the amount deposited in escrow, and to file a lien against any real

estate owned by Applicant or Applicant’s successor, or in which they have an interest, and to take all steps allowed by law to enforce said lien.

g. *Third Party Review*

1. Expert Review. To ensure compliance with the requirements of this Ordinance, Perkins County reserves the right to choose and hire a third-party expert to review any or all items required, including, but not limited to, the WES Permit application, Design and Installation Standards, Use of Public Roads, Decommissioning Plan, and any of the financial sureties required.
2. Cost and Selection. The third-party company shall be hired at the Applicant’s expense with a mutual agreement on the chosen company between the County Commission and the Applicant or Operator if different from Applicant.

h. *Variances*

i. Section 1 – Board of Adjustment

1. Designation. The Perkins County Commission, acting as the Board of Adjustment, shall hear and decide appeals and requests for variances from the terms of this Ordinance. The Board of Adjustment shall base its determination on technical justifications and has the right to attach such conditions to variances as it deems necessary to further the purposes and objectives of this ordinance.
2. Meetings. The Board of Adjustment shall convene and consider variance requests, as needed, at regularly scheduled meetings of the Perkins County Commission.
3. Findings. In making its findings, as required herein, the Board of Adjustment shall consider:
  - A. The nature of the proposed use of land and the existing land uses in the vicinity, and the probable effect granting of a variance would have upon the health, safety, and welfare of others in the vicinity.
  - B. That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.
  - C. That there are exceptional circumstances or conditions affecting said property such that the strict application of the provisions of this Ordinance would deprive the Participating Landowner of the reasonable use of their land.
4. Approval and Appeals. Approval of a variance requires a two-thirds (2/3) majority vote by the Board of Adjustment. The decision of the Board of Adjustment may be contested by any aggrieved person in accordance with the provisions of SDCL 11-2-61.

ii. Section 2 – Variance Procedure

1. Application Required. Applications for any such variance shall be submitted in writing by the Facility Owner and/or Participating Landowner, preferably, at the time when the WES Permit application is filed and shall state fully and clearly all facts relied upon by the petitioner. Variance applications shall also be supplemented with maps, plans or other additional data which may aid the Board of Adjustment in the analysis of the proposed Large WES Facility project.
2. Additional Requirements. The Applicant requesting the variance has the burden of showing:

- A. That the granting of the variance will not be contrary to the public interest.
  - B. That the literal enforcement of the ordinance will result in unnecessary hardship.
  - C. That by granting the variance contrary to the provisions of the Ordinance, the spirit of the Ordinance will be observed.
  - D. That by granting the variance, substantial justice will be done.
3. Public Hearing. Proper notice shall be given to all Non-Participating Landowners and the public of the variance request in accordance with the same requirements for a WES Permit described above in Article III, Section 8: E, d, iii. Section 3-2-A, additionally including a description of the nature of the variance request.
  4. Consideration. When practical, applications for variance shall be considered at the same meeting as the WES Permit application is considered by the County Commission. The Board of Adjustment will render its decision no later than 30 days after the public hearing at which the request for variance was considered.
  5. Conditions of Approval. In granting variances, modifications, and approvals for the WES Permit application, the Board of Adjustment may require such conditions at will, in its judgment, secure substantially the objectives or the standards or requirements so varied, modified, or approved. In granting any variance, the Board of Adjustment shall prescribe conditions that it deems necessary to, or desirable for the public interest. These conditions may include, but are not limited to, personal, surety, performance, or maintenance bonds, affidavits, covenants, or other legal instruments.

i. *Violations*

i. Section 1 – Remedies

1. It shall be unlawful for any person, firm, or corporation to violate or fail to comply with or take any action which is contrary to the terms of this Ordinance.
2. Any person may file a complaint with the County Commission if a violation of this Ordinance occurs or is alleged to have occurred.
3. If Perkins County determines that a violation of this Ordinance or a WES Permit has occurred, the County Commission shall provide written notice to any person, firm, or corporation alleged to be in violation of this Ordinance or permit. If the alleged violation does not pose an immediate threat to public health or safety, Perkins County and the parties shall engage in good faith negotiations to resolve the alleged violation. Such negotiations shall be conducted within 30 days of the notice of violation.
4. If after 30 days from the date of the notice of violation, the County Commission determines, in its discretion, that the parties have not resolved the alleged violation, Perkins County may institute civil enforcement proceedings or any other remedy at law to ensure compliance with this Ordinance or WES Permit.

ii. Section 2 – Penalties for Violation

1. Violation of this ordinance shall be a Class 2 misdemeanor with a maximum penalty imposed of \$500 per violation and each day the violation shall constitute a separate offense. In addition to the criminal penalty set forth above, the Commission may immediately suspend all of the permits or the construction activities of a Large WES Facility which does not meet the requirements of this Ordinance. If a suspension occurs,

the reasons for such suspension shall be clearly stated by the County Commission. The suspension of a WES Permit or construction activities shall be lifted by the County Commission upon satisfactory proof that the reasons which led to the suspension have been remedied.

j. *Severability and Separability*

1. Should any Article, Section, subsection, or provision of the WES Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the WES Ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional. Any portion of this ordinance stricken by a court of competent jurisdiction shall be immediately regarded as having been modified in accordance with any limitations imposed by the court.

k. *Indemnification*

1. The applicant, owner, and/or operator of the WES facility shall defend, indemnify, and hold harmless Perkins County and its officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses, and liabilities whatsoever, including attorney's fees, without limitation, arising out of acts or omissions of the applicant, owner, and/or operator associated with the construction and/or operation of a WES facility.

**F. Solar**

- a. *Purpose.* The purpose of the Ordinance is to provide regulations for the proper permitting and construction of Solar Energy System (SES) facilities in the unincorporated areas of Perkins County to protect the public health, safety and welfare, preserve the natural environment, maintain the integrity of county infrastructure, mitigate potential negative impacts of development, and promote compatible land uses in rural areas, in accordance with the policies set forth in the adopted Perkins County Comprehensive Plan.

b. *Definitions.*

- i. **Acreeage Coverage.** The total acres covered by blocks of photovoltaic panels including spaces between panels, buildings, inverters, substations, battery storage, ancillary equipment, and fencing around these items, but excluding wildlife corridors, mandated setbacks, wetlands, and other avoided natural or cultural features outside of the security fencing on the project site.
- ii. **Applicant.** The person or entity who submits an application to Perkins County for consideration of a sitting permit under this ordinance.
- iii. **Battery Energy Storage System.** A physical container or structure providing secondary containment to battery cells that is equipped with cooling, ventilation, fire suppression, and a battery management system.
- iv. **Battery Management System.** An electronic regulator that manages a battery energy storage system by monitoring individual battery module voltages and temperatures, container temperature and humidity, off-gassing of combustible gas, fireground fault and DC surge, and door access and providing controls to prevent operation outside safe limits.
- v. **County Commission.** The Perkins County Board of County Commissioners.
- vi. **Decommissioning Report.** A report with a plan to disconnect, remove and properly dispose of equipment, facilities, or devices with detailed costs for the complete removal

including land restoration costs.

- vii. **Facility Owner.** The entity or entities having an equity interest in all or a portion of a SES facility, including their respective successors and assigns.
- viii. **Occupied Building.** A residence, school, hospital, church, public library, community center, fire hall, or other building that is occupied or in use when a SES Facility permit application is submitted.
- ix. **Operator.** The person responsible for the overall operation and management of an SES facility.
- x. **Parcel.** Portion of land defined by a legal description or combination of legal descriptions.
- xi. **Photovoltaic or "PV".** Materials and devices that absorb sunlight and convert it directly into electricity.
- xii. **Photovoltaic Nameplate Capacity.** Output of the photovoltaic system rating expressed in watt peak.
- xiii. **Planning Commission.** The Perkins County Planning Commission.
- xiv. **Rated Capacity.** The maximum capacity of a solar facility based on the total of each photovoltaic system's nameplate capacity.
- xv. **SDCL.** South Dakota Codified Law(s).
- xvi. **Setback.** The minimum distance a structure, including a SES, must be set back or separated from another feature, such as a road, parcel line, or building. All required setback distances shall be measured to/from the center of the edge of each SES facility.
- xvii. **SES Permit.** A permit issued by the County Commission that allows for the construction of a SES Facility, or physical modification of an existing SES Facility, upon verification of all requirements of this Ordinance being met.
- xviii. **Solar Energy System (SES).** A series of solar panels, or array composed of multiple solar panels, on ground-mounted racks or poles that has a primary purpose of generating electricity from sunlight for wholesale or retail sale of electricity for off-site consumption. The term SES is synonymous with solar farm.
- xix. **Substantial Commencement.** Actual physical commencement of construction or delivery of supplies/materials.
- xx. **Variance.** A specified deviation from the regulations contained in this Ordinance.

c. *Applicability*

- 1. **SES Facility.** This Ordinance applies to all SES facilities proposed to be constructed or placed after the effective date of the Ordinance. SES facilities constructed or placed prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance. Any physical modification to an existing SES facility that materially alters the size, type, or number of SES units or other equipment shall comply with the requirements of this Ordinance.
- 2. **Exceptions.** The installation and maintenance of solar panels and related equipment for the primary purpose of on-site consumption of generated electricity with a rated capacity of less than 1 Megawatt (MW) are excepted from the regulations of this Ordinance.

d. *Permitting*

i. Section 1 - SES Permit Requirements

- 1. **Pre-Application Meeting.** The Applicant(s) of a proposed SES facility are required to schedule a pre-application meeting with the County Commission at one of their regularly scheduled



meetings to discuss the general location, scale, and nature of the proposed project, as well as what will be expected during the permitting process.

2. Required Prior to Construction. A SES facility may not be located in the unincorporated areas of Perkins County unless a SES Permit has been obtained from the Perkins County Commission approving construction in accordance with the requirements of this Ordinance.
3. Modification of Existing SES Facility. Any physical modification to an existing or permitted SES facility that materially alters the size, type, or number of SES units or other equipment shall require a SES Permit under this ordinance prior to modification. Like-kind replacements shall not require an SES permit.
4. Expiration. An approved SES Permit shall expire if there has been no substantial commencement within 24 months from the date of approval by the County Commission.

ii. Section 2 - SES Permit Application

1. Compliance. The SES Permit application shall demonstrate that the proposed SES facility, or modifications to any existing SES facility, will comply with all requirements of this Ordinance.
2. Submittal. SES Permit applications shall be submitted to the Perkins County Finance Office.
3. Fees. The permit application shall be accompanied by a fee in an amount set by resolution by the County Commission.
4. A SES Permit application shall contain the following:
  - A. Project Narrative. A brief narrative describing the proposed SES facility, including an overview of the project; the project location; the approximate generating capacity of the SES facility; the approximate number, representative types and height or range of heights of solar panels to be constructed, including their generating capacity, dimensions and respective manufacturers; a description of related facilities; and an estimated construction schedule.
  - B. A Site Plan with existing conditions including the following:
    1. Existing parcel lines and showing a 100-foot buffer from the exterior boundaries, including the names of all adjacent parcel owners and current land use of those parcels.
    2. Existing public and private roads and rights-of-way, showing widths of the roads and any associated easements.
    3. Location and size of any water wells and all on-site wastewater treatment systems on the parcel.
    4. Location of existing substations.
    5. Existing buildings and any impervious surfaces on the parcel.
    6. A topography with a 10-foot contour interval, including the area within a 100-foot buffer on adjacent parcels.
    7. Waterways, watercourses, stock ponds, and delineated wetland boundaries on the parcel and all adjacent parcels.

8. If available, the current FEMA Flood Insurance Rate Map which shows the subject parcel.
  9. Surface water drainage patterns on the parcel and adjacent parcels; and,
  10. The location of any utilities or pipes (both above and below ground) and related easements on the parcel.
- C. Owner's Agreement. A notarized affidavit or similar evidence of agreement between the landowner and the Facility Owner and/or Operator demonstrating that the Facility Owner and/or Operator has the permission of the landowner to apply for the necessary permits for construction and operation of the SES facility.
- D. Interconnect Agreement. Applicant to provide interconnection agreement before the issuance of building permit as a condition of the SES permit approval. The electric utility company that executes the interconnect agreement shall meet with the Perkins County Finance Officer, or their designee, and/or the County Commission on or before the SES Permit is approved.
- E. Decommissioning Documents. Documents related to the decommissioning of all SES facilities and associated equipment as required in Article VII. The Decommissioning Report shall also be signed by the responsible party for decommissioning, as well as by the landowner, acknowledging that they have received a copy of the Decommissioning Report from the Facility Owner of the SES facility.
- F. Contact Information. The name, phone number, email, and mailing address of the landowner, Applicant, Facility Owner, and Operator, as applicable.
- G. PUC Approval. Provide a copy of the approval of the South Dakota Public Utilities Commission for all SES facilities with a capacity of 100 MW or more (if not yet approved, a written explanation of the status of the project with the PUC may be provided).
- H. Haul Road Agreements. Provide a copy of all approved Haul Road Agreements for the use of all county roads to be utilized during construction and for maintenance of the SES Facility, as required by the Perkins County Highway Department or applicable local road authority.
- I. A SES Facility Plan containing the following information:
1. Location and spacing of all solar panels.
  2. Location of access roads and proposed approaches, internal roads, and points of ingress/egress.
  3. Planned location of substations, electrical cabling from the solar facility systems to the substations, ancillary equipment, structures including parcel lines and setbacks.
  4. A complete layout plan including the solar arrays, electrical equipment and buildings including a scaled elevation view of the parcel and other supporting drawings, photographs of the proposed site, photo or other realistic simulations or modeling of the proposed project from potentially sensitive locations as deemed necessary by Perkins County to assess the visual impact of the project.
  5. Landscaping/screening and vegetation plan, including identification of water source.
  6. An Acreage Coverage map, including the total Photovoltaic with the number of solar panels proposed.
  7. An acceptable weed/grass control plan for property inside and outside fenced area.

The Operator must maintain the fence and adhere to the weed/grass control plan in accordance with Article VI-3.

8. A stormwater management and erosion control plan describing how the project will minimize stormwater and chemical runoff and comply with the requirements of the South Dakota Department of Agriculture and Natural Resources (SD DANR), including any necessary permits needing to be obtained.
  9. Manufacturer's specifications and recommended installation methods for all major equipment, including solar panels, mounting systems and foundations for poles or racks. Copies of all foundation engineering must be submitted with the SES Permit application, along with manufacturer's installation methods documentation.
  10. A description of the method to connect the solar array to a building or substation.
  11. The manufacturer's specifications of the inverters, including the expected noise level of the inverters.
  12. Identification of any anticipated solar glare aviation hazards to be created by the SES facility.
- J. Environmental and Cultural Review. The Applicant or Facility Owner shall provide an environmental and cultural review conducted by a qualified professional third-party company to determine if there are any potential significant issues related to the construction and maintenance of the proposed Large SES Facility, that have been approved by Perkins County Commission and paid for by the SES Facility Owner. If the environmental and cultural review determines there are no significant issues, no further action is required. Recommendations from a qualified professional third-party company must be followed. The following state and federal agencies shall be consulted include (as a minimum):
- a. South Dakota Department of Agriculture and Natural Resources
  - b. South Dakota Game, Fish & Parks
  - c. United States Fish and Wildlife Services
  - d. U.S. Army Corps of Engineers
  - e. South Dakota State Historic Preservation Office
  - f. Natural Resource Conservation Service
  - g. Tribal Consultation (refer to Tribal Directory Assessment Tool for most current list of tribes to be consulted in Perkins County).
- K. Other Information. Other relevant studies, reports, certifications, and approvals as may be reasonably requested by Perkins County to enable technical review of the proposed project and ensure compliance with this Ordinance.

iii. Section 3 - SES Permit Review & Public Hearing

1. Completeness Review. Within 30 days after receipt of a SES Permit application, the Perkins County Finance Officer, or their designee, will determine whether the application is complete and advise the Applicant accordingly. Applications deemed complete will then be scheduled for consideration by the Planning Commission at the next meeting which allows for proper public hearing notification.
2. Planning Commission Recommendation and Public Hearing. The Planning Commission shall meet to consider the SES Permit in relation to the requirements of this Ordinance and make a recommendation to the County Commission to approve, approve with conditions, or deny the SES Permit. At this meeting, the Applicant, or their representative, shall appear to present the project and answer any questions. A public hearing shall also be held at this same meeting and the public shall be afforded an opportunity to ask questions

and provide comments on the proposed SES facility. Written comments may also be submitted by any member of the public prior to the public hearing.

A. Public Hearing Notification Requirements.

1. Written Notification. All landowners within 1,000 feet of the parcel on which the proposed SES Facility will be located must be notified by the Applicant a minimum of 14 calendar days by certified mail in advance of the Planning Commission meeting, along with:
  - a. A map of the location of the proposed SES facility.
  - b. Name, telephone number and address of the Facility Owner and Operator.
  - c. Information regarding the right to participate in the Perkins County Planning Commission meeting on the SES Permit application, including the date, time, and location of the scheduled public hearing.
  - d. The Applicant shall maintain a list of the landowners who were sent notice, together with copies of the certified receipts, and provide this to the Perkins County Finance Office prior to the public hearing.
2. Newspaper Notification. A public notice shall also be published in all legal newspapers of Perkins County a minimum of 10 days prior to the public hearing. The notice shall include a brief description of the proposed SES Permit application and legal description of the affected parcel or parcels, along with the date, time, and location of the public hearing. The cost for publishing the legal notice shall be the responsibility of the Applicant.
3. County Commission Review. Following the Planning Commission meeting, the SES Permit shall be scheduled for review at the next feasible County Commission meeting. The County Commission shall be forwarded the recommendation of the Planning Commission and any public comments received for their consideration. Within 30 days, unless otherwise agreed to by the Applicant, the County Commission shall make the final decision whether to approve, approve with conditions, or deny (with explanation) the SES Permit application.
4. Appeals. Any person aggrieved by the decision of the County Commission may appeal in accordance with the provisions of SDCL 11-2.

e. Design and Installation Standards

i. Section 1 - General Standards

1. Industry Standards and Building Code. The SES Facility layout, design and installation shall conform to applicable industry standards, such as those of the American National Standards Institute (ANSI), Underwriters Laboratories (UL), the American Society for Testing and Materials (ASTM), Institute of Electrical and Electronics Engineers (IEEE), Solar Rating and Certification Corporation (SRCC), Electrical Testing Laboratory (ETL), and shall comply with the current, adopted International Building Code as required by SDCL, and with all other applicable fire and life safety requirements. The manufacturer specifications for the key components of the system shall be submitted as part of the SES Permit application.
2. Engineering Certification. A registered, professional engineer in the state of South Dakota shall certify that the design of all the foundations on the project, including foundations for the solar arrays, is within accepted professional standards, given local soil and climate

conditions.

3. Ordinance and Code Compliance. All SES facilities shall be in compliance with this Ordinance, all other applicable Perkins County ordinances, the South Dakota Public Utilities Commission, federal regulatory standards, and the electric code as adopted by South Dakota Electrical Commission.
4. Power and Communication Lines. All power and communication lines running between the inverters to electric substations or interconnections with buildings shall be buried underground. Exceptions may be granted as part of the SES Permit approval in instances where shallow bedrock, water courses, or other elements of natural landscape interfere with the ability to bury lines.
5. Fencing. All SES equipment and structures shall be fully enclosed and secured by a fence with locked gates. The Solar Energy Facility Perimeter Fencing must follow the requirements of the National Electrical Code (NEC) and must facilitate movement of wildlife and pollinators. Lock or Knox boxes and keys shall be provided at locked entrances for emergency personnel access. Entrances must be provided every one-half (1/2) mile along the perimeter of entire fenced portion of the SES facility. Fencing must be maintained in good condition until the Solar Energy Facility is decommissioned. Snow fences must also be installed along roads where drifting may occur.
6. Lighting. If lighting is provided for security at the site, lighting shall be shielded and downcast so light does not spill onto adjacent land and constitute a nuisance to the public or create unnecessary light pollution.
7. Noise. Noise levels shall not exceed 45 decibels as measured at the closest parcel line at the time of SES Permit application.
8. Signage and Emergency Contact. Appropriate warning signs shall be provided at the entrances to the facility and along the perimeter of the SES facility. The signs at the entrance to the facility shall include the name and contact information of the Facility Owner, Operator and utility, the facility's 911 address, and a 24-hour emergency contact number.
9. Outdoor Storage. Only the outdoor storage of materials, vehicles, and equipment that directly support the operation and maintenance of the Solar Energy Facility shall be allowed.
10. Ground Cover. The SES facility must maintain ground cover vegetation throughout the life of the project, with the exception of foundation, structure, and access road locations. A water source shall be identified for starting and maintaining ground cover as part of the SES Permit application.
11. Airports. For consideration of potential impacts to low altitude flight paths, notification of intent to construct a SES facility shall be sent to all FAA registered airports within five (5) miles of the project site. The latest version of the Solar Glare Hazard Analysis Tool (SGHAT) or equivalent shall be used per its user's manual to evaluate the solar glare aviation hazard.
12. Contact Identification. The Solar Energy Facility Owner and/or Operator shall maintain a phone number and identify a person responsible for the public to contact with inquiries and complaints throughout the life of the project and provide this information to the Perkins County Finance Office. The SES Facility Owner and/or Operator shall make reasonable

efforts to respond to the public's inquiries and complaints.

13. PUC Permit. SES facilities that are regulated under SDCL 49-41B are also required to obtain a siting permit from the South Dakota Public Utilities Commission (PUC).
14. Battery Storage. Any Battery Energy Storage Systems shall be installed with industry best practices including a Battery Management System (BMS) with 24/7 monitoring and automated fire suppression. The Battery Energy Storage System shall also have a secondary containment to battery cells that is equipped with cooling, ventilation, and a battery management system.
15. Liability Insurance. The SES Facility Owner or Operator shall maintain a current insurance policy with a bond rating acceptable to the County Commission to cover installation and operation. Any loss of coverage must be reported within three (3) working days of loss. Failure to maintain coverage shall constitute a cessation of operations and revocation of permit.

ii. Section 2 - Setback, Height, and Area Requirements

1. Setbacks:

- A. Parcel Lines. SES facilities and related equipment shall maintain a minimum setback of 1,000 feet from all parcel lines. This requirement does not apply to fencing.
- B. Public Roads. SES facilities and related equipment shall maintain a minimum setback of 1000 feet from the edge of any public right-of-way. This requirement does not apply to fencing.
- C. Occupied Buildings. SES facilities and related equipment shall maintain a minimum setback of one (1) mile to any existing occupied buildings at the time of SES Permit application, as measured from the perimeter fence of the SES facility to the closest wall of any existing occupied building.
  - a. Setback on the SES participating parcel may be reduced with a written waiver from the property owner.

2. Height. All SES equipment and structures shall not exceed 25 feet in height when ground mounted. Excluded from this height requirement are electric transmission lines, utility poles, substations, step up transformers, cameras, and security lights.
3. Minimum Lot Size. A SES facility may not be constructed on any lot or parcel of land less than 160 acres in size.

iii. Section 3 - Haul Roads

1. Road Identification. All routes on either County, Political Townships or road district roads that will be used for construction or maintenance purposes for a SES facility shall be identified on the site plan. All routes for either ingress or egress must be shown.
2. Approval. The routing in the unincorporated boundaries of Perkins County shall be approved subject to the approval of the Perkins County Highway Superintendent and/or applicable local road authority, such as road district, political township, or the South

Dakota Department of Transportation.

3. Road Conditions Survey. The SES Facility Owner or Applicant must enter into a haul road agreement and provide a preconstruction baseline survey mutually agreed upon with the Perkins County Highway Superintendent for construction activities involving the use of public roads, until the SES facility is decommissioned. The baseline survey shall determine the existing public road conditions for assessing potential future damages due to SES facility development related to construction and operation/maintenance traffic.
4. Road Repair Plan. The SES Facility Owner or Applicant shall provide a road repair plan for any damaged public road(s) to ameliorate any and all damages, installation, or replacement of roads that might be required.
5. Surety and Inspection. The applicant/owner shall provide an irrevocable letter of credit or surety bond upon submittal of the SES Permit application, in an amount and form approved by the Perkins County Highway Superintendent and the County Commission. Upon the completion of said construction activities, a final inspection and approval of any impacted public roads will be completed by the Perkins County Highway Superintendent and a release of the bond or irrevocable letter of credit may be issued by Perkins County at that time.

iv. Section 4 - Local Emergency Services and Airport Review

1. Emergency Services Review. The Applicant shall provide a copy of the project narrative, parcel location map, and site plan also to local emergency services, including volunteer Fire Department(s), for their review a minimum of 30 days prior to the public hearing.
2. Emergency Response Plan. Upon request, the Applicant shall cooperate with Perkins County Emergency Management and other emergency services to develop and coordinate implementation of an emergency response plan for SES Facility.
3. Airport Review. The Applicant shall send the application package with the plans of the proposed SES Facility to any FAA registered airports located within five (5) miles of the project site for review a minimum of 30 days prior to the public hearing.

f. *Maintenance Requirements*

1. General. The owner or operator shall maintain the solar facility in good condition. Such maintenance shall include, but not be limited to, painting, structural integrity of the equipment and structures, as applicable, maintenance of the buffer areas and landscaping, and stormwater management/erosion control.
2. Site Access and Roads. Site access shall be maintained to a level acceptable to Perkins County. The project owner shall be responsible for the cost of maintaining the SES Facility and access approaches/roads, and any costs of repairing damage to public roads due to construction and operation.
3. Vegetation and Weed Control. The SES facility must manage vegetation throughout the life of the project. Site-wide mowing and/or grazing is required to a height of six (6) inches when vegetation reaches a height of 18 inches. Care must be taken during the nesting season (April 1 to August 1) to not destroy nests of upland grassland birds. Site-wide mowing and/or grazing must be completed every year during the first week of June to control invasive species. To prevent the spread of invasive species, spot herbicide treatment must be utilized applied by a South Dakota Licensed Applicator.

Broadcast or drilled seeding methods must be implemented with mixed grass seed in accordance with landowner approval and the South Dakota State Seed Laws and Regulations to maintain vegetation. During high or extreme fire rating conditions, the local volunteer fire department must be contacted prior to any planned mowing activities and their recommendations must be followed.

4. Hazards. The Solar Energy Facility must be properly maintained and be kept free from all hazards, including but not limited to faulty wiring, loose fastenings, being in an unsafe condition or detrimental to public health, safety, or general welfare. In the event of a violation of any of the foregoing provisions, the Code Enforcement Officer shall give written notice specifying the violation to the owner of Solar Energy Facility.
5. Waste Removal. Broken or waste solar panels will need to be removed from the SES Facility site and shall not be stored on site for more than 60 days of being taken out of service.
6. Signage. No signage of any type may be placed on the facility other than notices, warnings, and identification information required by this Ordinance in Article V, Section 1-8 and SDCL.

g. *Decommissioning*

i. Section 1 - Decommissioning Report

1. General Requirements. A Decommissioning Report shall be required to ensure that facilities are properly removed after their useful life. Decommissioning of solar panels shall also occur in the event they are not in use for 12 consecutive months, referred to as abandonment. The Facility Owner and/or landowner at the end of the 12 consecutive months shall have six (6) months to complete the decommissioning, or Perkins County will take the necessary decommission steps at the Facility Owner's and/or landowner's expense. The Decommissioning Report shall be certified by registered, professional engineer in the state of South Dakota and include provisions for the removal of all improvements, including, but not limited to, equipment, fencing, foundations concrete footings to a depth of ten (10) feet, roads, and restoration of soil and vegetation of landowner approval and the following South Dakota State Seed Laws and Regulations.
2. The Decommissioning Report shall also include:
  - A. The anticipated life of the project;
  - B. The estimated decommissioning cost, in current dollars;
  - C. How the estimate was determined;
  - D. The method of ensuring that funds will be available for decommissioning and removal, and how decommissioning costs will be kept current; and,
  - E. Specifics on how the project will be decommissioned and the site restored.
  - F. Approval of plan by landowner.

ii. Section 2 - Decommissioning Costs

1. Decommissioning Cost. A detailed decommissioning cost estimate shall be prepared by a registered, professional engineer in the state of South Dakota and incorporated into the Decommissioning Report. The cost estimate shall include all costs to complete the decommissioning of all SES infrastructure and shall include a mechanism for calculating increased removal costs due to inflation and without any reduction for salvage value that will be utilized to determine the amount of the decommissioning bond.
2. Decommissioning Bond. Decommissioning security bonding, or equivalent financial security in a form acceptable to the County Commission, shall be required upon the issuance of a SES Permit,



and prior to any construction activities, to assure the proper decommissioning of the site. A copy of the security bond, and any updates thereto, shall be securely kept on file at the Perkins County Finance Office. The decommissioning bond (or equivalent) must be at 105% of the total decommissioning costs (not including the salvage value of equipment), based on the Decommissioning Report or updates thereof.

3. Updates. The Decommissioning Report must be updated every five (5) years of the on-going operation of the SES facility and an adequate decommissioning bond (or equivalent) must be in place throughout the life of the project. Updates to the Decommissioning Report and corresponding bond amount must be presented to and approved by the County Commission.

iii. Section 3 - Other Requirements

1. Additional Information. Perkins County reserves the right to require additional information or components to the Decommissioning Report as deemed necessary, to ensure that an adequate proposal is in place to decommission the facility in its entirety with adequate funds available.
2. Injunctive Relief. Perkins County is granted the right to seek injunctive relief to effect or complete decommissioning, as well as the county's right to seek reimbursement from applicant or applicant's successor for decommissioning costs in excess of the amount bonded.
3. Change in Ownership or Operation. The County Commission must be immediately notified in writing and in person of any change in ownership or management of the SES facility with proof that an adequate Decommission Bond is in place within 30 days of such a change.
4. Written Notice. The Facility Owner or Operator shall notify the County Commission by certified mail at least 30 calendar days prior to the date the equipment is to be decommissioned.
5. Right of Entry. Perkins County is granted the right of entry onto the site, pursuant to reasonable notice, to effect or complete decommissioning.
6. Use of Public Roads. Prior to decommissioning, the Facility Owner shall adhere to all requirements of Article 5, Section 3 regarding the use of public roads for the transportation of equipment and other materials to be utilized for decommissioning.
7. Extensions. Extensions may be granted upon request to the County Commission prior to the expiration of the six (6) month requirement for decommissioning. Such requests shall include written explanation for the circumstances requiring extension.

h. *Third-Party Review*

1. Expert Review. To ensure compliance with the requirements of this Ordinance, Perkins County reserves the right to choose and hire a third-party expert to review any or all items required, including, but not limited to, the SES Permit application, Design and Installation Standards, Haul Roads, Maintenance, Decommissioning Report, and any of the financial sureties required.
2. Cost and Selection. The third-party company shall be hired at the Applicant's expense with a mutual agreement on the chosen company between the County Commission and the Applicant or Operator if different from Applicant.

i. *Variances*

i. Section 1 - Board of Adjustment

1. Designation. The Perkins County Commission, acting as the Board of Adjustment, shall hear and decide appeals and requests for variances from the terms of this Ordinance. The Board of Adjustment shall base its determination on technical justifications and has the right to attach such conditions to variances as it deems necessary to further the purposes and objectives of this ordinance.
  2. Meetings. The Board of Adjustment shall convene and consider variance requests, as needed, at regularly scheduled meetings of the Perkins County Commission.
  3. Findings. In making its findings, as required herein, the Board of Adjustment shall consider:
    - A. The nature of the proposed use of land and the existing land uses in the vicinity, and the probable effect granting of a variance would have upon the health, safety, and welfare of others in the vicinity.
    - B. That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.
    - C. That there are exceptional circumstances or conditions affecting said property such that the strict application of the provisions of this Ordinance would deprive the landowner of the reasonable use of their land.
  4. Approval and Appeals. Approval of a variance requires a two-thirds (2/3) majority vote by the Board of Adjustment. The decision of the Board of Adjustment may be contested by any aggrieved person in accordance with the provisions of SDCL 11-2-61.
- ii. Section 2 - Variance Procedure
1. Application Required. Applications for any such variance shall be submitted in writing by the Facility Owner and/or Applicant, preferably at the time when the SES Permit application is filed and shall state fully and clearly all facts relied upon by the petitioner. Variance applications shall also be supplemented with maps, plans or other additional data which may aid the Board of Adjustment in the analysis of the proposed SES facility project.
  2. Additional Requirements. The Applicant requesting the variance has the burden of showing:
    - A. That the granting of the variance will not be contrary to the public interest.
    - B. That the literal enforcement of the ordinance will result in unnecessary hardship.
    - C. That by granting the variance contrary to the provisions of the Ordinance, the spirit of the Ordinance will be observed.
    - D. That by granting the variance, substantial justice will be done.
  3. Public Hearing. Proper notice shall be given to all surrounding landowners and the public of the variance request in accordance with the same requirements for a WES Permit described above in Article III, Section 8: E, d, iii, Section 3-2-A, additionally including a description of the nature of the variance request.
  4. Consideration. When practical, applications for variance shall be considered at the same meeting as the SES Permit application is considered by the County Commission. The Board of Adjustment will render its decision no later than 30 days after the public hearing at which the request for variance was considered.
  5. Conditions of Approval. In granting variances, modifications, and approvals for the SES Permit

application, the Board of Adjustment may require such conditions at will, in its judgment, secure substantially the objectives or the standards or requirements so varied, modified, or approved. In granting any variance, the Board of Adjustment shall prescribe conditions that it deems necessary to, or desirable for the public interest. These conditions may include, but are not limited to, personal, surety, performance, or maintenance bonds, affidavits, covenants, or other legal instruments.

j. *Violations*

i. Section 1 - Remedies

1. It shall be unlawful for any person, firm, or corporation to violate or fail to comply with or take any action which is contrary to the terms of this Ordinance.
2. Any person may file a complaint with the County Commission if a violation of this Ordinance occurs or is alleged to have occurred.
3. If Perkins County determines that a violation of this Ordinance or a SES Permit has occurred, the County Commission shall provide written notice to any person, firm, or corporation alleged to be in violation of this Ordinance or permit. If the alleged violation does not pose an immediate threat to public health or safety, Perkins County and the parties shall engage in good faith negotiations to resolve the alleged violation. Such negotiations shall be conducted within 30 days of the notice of violation.
4. If after 30 days from the date of the notice of violation, the County Commission determines, in its discretion, that the parties have not resolved the alleged violation, Perkins County may institute civil enforcement proceedings or any other remedy at law to ensure compliance with this Ordinance or SES Permit.

ii. Section 2 - Penalties for Violation

1. Violation of this ordinance shall be a Class 2 misdemeanor with a maximum penalty imposed of \$500 per violation and each day the violation shall constitute a separate offense. In addition to the criminal penalty set forth above, the Commission may immediately suspend all the permits or the construction activities of a SES facility which does not meet the requirements of this Ordinance. If a suspension occurs, the reasons for such suspension shall be clearly stated by the County Commission. The suspension of a SES Permit or construction activities shall be lifted by the County Commission upon satisfactory proof that the reasons which led to the suspension have been remedied.

k. *Indemnification*

1. The applicant, owner, and/or operator of the SES facility shall defend, indemnify, and hold harmless Perkins County and its officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses, and liabilities whatsoever, including attorney's fees, without limitation, arising out of acts or omissions of the applicant, owner, and/or operator associated with the construction and/or operation of a SES facility.

l. Severability and Separability

1. Should any Article, Section, Sub-section, or Provision of this Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of this ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional. Any portion of this ordinance stricken by a court of competent jurisdiction shall be immediately regarded as having been modified in accordance

with any limitations imposed by the court.

**G. Mineral Exploration & Extraction Categories**

- a. *Purpose.* The purpose of these regulations is to minimize the impacts of Mineral Exploration & Extraction uses and protect the health, safety, and welfare of the county’s citizens.
- b. *Exemption for extraction for personal use.* A permit is not required for the extraction of sand, gravel, or rock to be used by: an individual on his or her land for personal use; or, a governmental entity for public use.
- c. *New permit required for expansion or reconfiguration of Oil & Gas Exploration and Extraction Site Facilities.* In the event that an oil and gas exploration and extraction site is reconfigured or expanded due to activities such as reentering a well or directional drilling, a new permit must be obtained.
- d. *Mitigation Measures.*
  - i. *Site Clearance.* The applicants shall disturb or clear the site only to the extent necessary to assure suitable access for construction, maintenance, and safe operation.
  - ii. *Topsoil Protection.* The applicants shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
  - iii. *Compaction.* The applicants shall implement measures to minimize compaction of all lands during all phases of the project’s life and shall confine compaction to as small an area as practicable.
  - iv. *Livestock Protection.* The applicants shall take precautions to protect livestock on the site from project operations during all phases of the project’s life.
  - v. *Fences.* The applicants shall promptly replace or repair all fences and gates removed or damaged by project operations during all phases of the project’s life unless otherwise negotiated with the fence owner.
  - vi. *Roads.*
    - 1. Public Roads. Prior to commencement of construction, the applicant shall identify all state, county or township haul roads that will be used to transport the system components to the site. The applicant shall notify the County to determine if the roads are acceptable for transport. The County shall be given adequate time to inspect the proposed haul roads prior to transport. Where practicable, existing roadways shall be used for all activities associated with the facilities.
    - 2. Access Roads. Construction of access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross the roads and shall be covered with Class 5 gravel or similar material. Access roads shall avoid crossing streams and drainage ways wherever possible. If access roads must be constructed across streams and drainage ways, the access road shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.
    - 3. Private Roads. The applicants shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
    - 4. Control of Dust. The applicants shall utilize all reasonable measures and practices of construction to control dust during construction.
- e. *Pipeline Mapping.*
  - i. All pipelines used for the transportation of products involved in Mineral Exploration

& Extraction uses shall be mapped by the applicant. The map shall identify the location, path, depth, type of pipe, size of pipe, and product being transported. A map of the pipeline shall be provided to the property owner and/or operator upon installation of the line.

- ii. All pipelines that enter a public right-of-way, including a publicly maintained roadway or section line, shall be mapped and registered with South Dakota One Call.
- iii. A master map of all pipelines shall be located at the local company office, and made available for viewing to State and County governmental agencies or their designated agents. A copy of the master map may be released to the State and County governmental agencies upon mutual agreement between the company and agency.

## ARTICLE IV. ORDINANCE LANGUAGE AND DEFINITIONS

**SECTION 1. GENERAL RULES FOR APPLICATION OF THE ORDINANCE LANGUAGE.** Where the language in the Ordinance is ambiguous or unclear, the Planning and Zoning Director may issue a statement of clarification, which must be reviewed and approved by the Planning and Zoning Commission and the County Commission, or an Amendment to the Ordinance may be initiated.

**SECTION 2. TENSES AND USAGE.** Words used in the singular include the plural, and words used in the plural include the singular. Words used in the present tense include the future tense, and words used in the future tense include the present tense. The words “must”, “shall”, and “will” are mandatory. The word “may” is permissive. The word “prohibited” means that a Variance cannot be requested in order to allow an exception to the regulation. This does not preclude requests for Ordinance Amendments.

**SECTION 3. LISTS.** Lists of items that state “such as” or similar language are not limited to just those items. The lists are intended to provide examples, but not to be exhaustive of all possibilities.

**SECTION 4. DEFINING WORDS AND PHRASES.** The following words, terms, and phrases are defined and shall be interpreted as such throughout this title. Terms not herein defined shall have the meaning customarily assigned to them.

- A. **ABANDONED:** For Mineral Exploration & Extraction Categories, abandoned means that an operator has discontinued the extraction of minerals and the site is deemed abandoned by DENR.
- B. **ABUT:** To share any portion of a lot line, including a single point. Property is considered as abutting even though it may be separated from the property of the petitioner by a public road or highway.
- C. **ACCESSORY STRUCTURE:** A structure of secondary importance or function on a site. In general, the primary use of the site is not carried out in an accessory structure. Accessory structures may be attached or detached from the primary structure. Examples of accessory structures include: garages, caretaker’s quarters, and other structures.
- D. **ACCESSORY USE:** A use or activity that is a subordinate part of a primary use and that is clearly incidental to a primary use on a site.
- E. **ADJACENT:** Parcels with no private lots between them; can be shared by public right-of-way.
- F. **ADJOIN:** See *ABUT*.
- G. **ADULT-ORIENTED BUSINESS:** An adult-oriented business is an adult entertainment center, adults-only bookstore, adult novelty store, adult video store, or adults-only motion picture theater where the inventory, merchandise, or performances are characterized by a preponderance of nudity, sexual conduct, sadomasochistic abuse, and/or sexual excitement.

- H. AGRICULTURAL BUILDING:** A structure designed and constructed for the sole purpose of storing farm implements, hay, grain, poultry, livestock or other horticultural products. The structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated, or packaged; nor shall it be a place used by the public.
- I. AGRICULTURAL SERVICE:** Services that directly support the agricultural industry. Examples include meat lockers; farm implement and machinery sales and service; grain terminals; livestock auction facilities; veterinary facilities; stables; riding academies; and animal boarding facilities.
- J. ALTERATIONS:** When applied to a building or structure, means a change or rearrangement in the structural parts, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.
- K. ANTENNA:** Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to the following: directional antennas, such as panels, microwave dishes and satellite dishes; and, omnidirectional antennas, such as whips.
- L. APPLICANT:** A person or entity who applies for a permit. An applicant can be the owner of the property or someone who is representing the owner, such as a builder, developer, optional purchaser, consultant, engineer, or architect.
- M. BAR:** A bar is an establishment in which the primary function is the sale and service of alcoholic beverages for consumption on the premises.
- N. BASIC UTILITIES & SERVICES:** Infrastructure services that provide access, power, water, sewage service, telephone, stormwater facilities, and telephone and internet. Basic services that serve a development site are accessory uses to the primary use being served.
- O. BILLBOARD:** See *SIGN, OFF-PREMISES*.
- P. PLANNING AND ZONING COMMISSION:** The Perkins County Planning and Zoning Commission.
- Q. BUILDING:** A structure that has a roof and is enclosed on its sides.
- R. BUILDING COVERAGE:** The area that is covered by buildings and other roofed structures.
- S. CARETAKER:** A caretaker looks after or provides security for goods or property.
- T. CARRIER ON WHEELS (COW):** A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom and an antenna support.
- U. COMMUNITY FACILITIES:** Community facilities are uses of a public or nonprofit nature that provide a local service to people of the community. Examples include: libraries; museums; senior centers; historic and monument sites; clubs or lodges; public swimming pools; golf courses; municipal airports; and, public safety facilities, such as police, ambulance, and fire stations.
- V. COMPREHENSIVE PLAN:** The currently adopted Perkins County Comprehensive Plan.
- W. CONCENTRATED ANIMAL FEEDING OPERATION (CAFO):** A lot or facility that stables or confines and feeds or maintains animals and meets the State of South Dakota Department of Agriculture and Natural Resources definition of a CAFO.
- X. CONDITIONAL USE:** A conditional use is any use that, owing to certain special characteristics attendant to its operation, may be permitted in a zoning district subject to the evaluation and approval following the process established in this Ordinance.
- Y. COUNTY COMMISSION:** The Perkins County Commission.
- Z. CREW HOUSING FACILITY:** Housing facilities designed and intended to be used for a temporary period of time to house construction workers. Crew housing facilities may include the use of

recreational vehicles, campers, manufactured homes, or a combination of the above.

- AA. DAYCARE CENTERS:** A daycare center provides day or evening care of two or more children or adults in need of supervision outside of their homes for a fee. Examples include: childcare centers; preschools; nursery schools; and senior daycare programs. In-home daycare is not included in this category and is considered a Home Occupation.
- BB. DETENTION FACILITIES:** Detention facilities include facilities for judicially required detention or incarceration of people. Inmates and detainees are under 24-hour supervision. Examples include: prisons; jails; probation centers; and, juvenile detention homes.
- CC. DEVELOP:** To construct or alter a structure or to make a physical change to the land.
- DD. DRAINAGEWAY:** An open linear depression, whether constructed or natural, which functions for the collection and drainage of surface water.
- EE. DRIVEWAY:** The area that provides vehicular access to a site. A driveway begins at the property line and extends into the site.
- FF. DWELLING UNIT:** A building, or a portion of a building that has independent living facilities including provisions for sleeping, cooking, and sanitation, and that is designed for residential occupancy by a household.
- GG. EASEMENT:** A grant of rights by a property owner that allows another person to use the owner's land for a specific purpose, such as access or to locate utilities.
- HH. GARAGE:** A covered structure designed to provide shelter for vehicles, and which is accessory to a primary residential use on the lot. Carports are considered garages.
- II. GROUP LIVING:** A facility, licensed by the appropriate state or local agency that provides resident service to individuals of whom one or more are unrelated. These are individuals with disabilities, aged, undergoing rehabilitation, or in need of adult supervision. The size of the group is typically larger than the average size of a household. Examples include: nursing and convalescent homes; group homes for the physically or intellectually disabled, or emotionally disturbed; residential programs for drug and alcohol treatment; and, alternative or post incarceration facilities.
- JJ. HEIGHT:** The vertical distance measured from the average ground elevation of the proposed finished grade to the highest point of the structure.
- KK. HOME OCCUPATION:** A business activity that is carried out on the same site as a dwelling unit, and which is accessory to the residential use on the site.
- LL. HOUSE:** A detached dwelling unit located on its own lot.
- MM. HOUSEHOLD:** One or more persons related by blood, marriage, legal adoption or guardianship, who live together in one dwelling unit, or a group not to exceed five (5) persons not related by blood, marriage, legal adoption or guardianship, living together as a single housekeeping unit and using common cooking facilities.
- NN. INDUSTRIAL SERVICE:** Industrial service businesses repair or service industrial, business, or consumer machinery. Few customers come to the site. Examples include: welding shops; machine shops; tool repair; salvage or wrecking of heavy machinery, metal or building materials; towing and vehicle storage; auto and truck salvage and wrecking; fuel oil distributors; and, laundry, dry-cleaning and carpet cleaning plants.
- OO. LEGAL NONCONFORMING DEVELOPMENT:** An element of a development, such as a setback or building height existing at the time of enactment of this title that is not legally conforming to the regulations of the zoning district in which it is situated.
- PP. LEGAL NONCONFORMING USE:** A use of land existing at the time of enactment of this title that is not legally conforming to the regulations of the zoning district in which it is situated.
- QQ. LIQUOR STORE:** A liquor store is characterized by the retail sale of beer, wine, and/or other

- alcoholic beverages for consumption off-premises.
- RR. LOT:** A platted parcel of land, which is, or may be occupied by a building and its accessory buildings.
- SS. LOT LINE:** The property lines along the edge of a lot.
- TT. LOT LINE, FRONT:** A lot line that abuts a street. On a corner lot, the front lot line is the shortest of the lot lines that abut a street. If two or more street lot lines are of equal length, then the applicant or property owner can choose which lot line is to be the front.
- UU. LOT LINE, REAR:** A lot line that is opposite a front lot line.
- VV. LOT LINE, SIDE:** A lot line that is neither a front or rear lot line. On a corner lot, the longer lot line that abuts a street is a side lot line.
- WW. MAJOR EVENT ENTERTAINMENT:** Major event entertainment uses are characterized by activities and structures that draw large numbers of people to specific events or attractions. Examples include: race tracks, sports areas; rodeo grounds; exhibition areas; drive-in theaters; amusement parks; golf courses and country clubs; flea markets; tourist attraction sites; and, fairgrounds.
- XX. MANUFACTURED HOME:** A movable living unit designed for year-round occupancy, have no foundation other than wheels, jacks, piers or skirting, and which is capable of being moved, towed or transported by another vehicle. Manufactured homes shall comply with the requirements of the Manufactured Home Construction and Safety Standards effective June 15, 1976.
- YY. MANUFACTURED HOME PARK:** A contiguous parcel of land of at least two (2) acres that is used for the accommodation of occupied manufactured homes. This definition does not include Recreational Vehicle Parks or Crew Housing Facilities.
- ZZ. MANUFACTURED HOME SPACE:** A defined area within a manufactured home park that is designed for and designated as the location for a manufactured home and its accessory uses and structures.
- AAA. MANUFACTURING AND PRODUCTION:** Manufacturing and production businesses are involved in manufacturing, processing, fabrication, packaging, or assembly of goods. Goods are generally not displayed or sold on this site. Few customers come to the site. Examples include: processing of food; breweries; distilleries; wineries; slaughter houses; production of textile or apparel; lumber mills and wood products manufacturing; production of rubber, leather, clay, plastic, stone, or glass materials or products; fabrication of metal products; and, manufacturing of machinery, equipment, and instruments.
- BBB. MEDICAL CENTER:** Medical centers provide medical or surgical care to patients and may or may not offer overnight care. Examples include: hospitals and clinics.
- CCC. MINERAL:** A substance with economic value, whether organic or inorganic, that can be extracted from the earth, other than water.
- DDD. MINING:** The development or extraction of a mineral from its natural occurrence on affected land. Examples include the mining of minerals such as stone, sand, gravel, clay, and coal.
- EEE. MONOPOLE:** A single, freestanding pole-type structure supporting one or more antenna. For purposes of this Ordinance, a monopole is not a tower.
- FFF. MULTI-DWELLING UNIT:** A structure that contains two or more dwelling units that share common walls or floor/ceilings with one or more unit for residential occupancy by two or more households. The land underneath the structure is not divided into separate lots. Examples include: duplexes and apartment buildings.
- GGG. OIL AND GAS EXPLORATION:** The geologic or geophysical activities related to the search for natural gas or oil including prospecting, geophysical and geologic seismic surveying and sampling techniques, which include but are not limited to core or rotary drilling or making an excavation in the



search and evaluation of natural gas or oil deposits.

- HHH. OIL AND GAS EXPLORATION & EXTRACTION SITE FACILITIES:** The surface buildings and structures associated with oil and gas exploration and well sites, such as treaters and pump houses.
- III. OIL AND GAS EXPLORATION & EXTRACTION SUPPORT FACILITIES:** The surface buildings and structures required to support oil and gas exploration activities, such as company offices, warehouses, compressor buildings, and burn towers.
- JJJ. OFFICE:** Office uses are characterized by activities conducted in an office setting that focus on the provision of services. The services do not require frequent visits by customers and clients. Examples include: offices of attorneys; accountants; engineers; financial businesses; real estate agents; government offices; public utility offices; and, doctor’s offices.
- KKK. OWNER:** The owner of the title to real property or the contract purchases of real property of record, as shown on the latest assessment records of the Perkins County Assessor. Owner also includes a deed holder or contract purchaser whose name does not appear in the latest assessment records, but who presents to the County a copy of a deed or contract of sale showing date, book, and page of recording.
- LLL. PARKING SPACE:** A space designed to provide parking for a motor vehicle.
- MMM. PARKS AND OPEN AREAS:** Parks and open areas are uses that are characterized by natural areas consisting mostly of vegetative landscaping and/or outdoor recreation facilities. Examples include: parks; public squares; recreational trails; community gardens; and, nature preserves.
- NNN. PLANNING AND ZONING COMMISSION:** The Perkins County Planning and Zoning Commission.
- OOO. PLAT:** A map, plan, or layout indicating the location and boundaries of individual properties drawn in compliance to state requirements.
- PPP. PRIMARY STRUCTURE:** A structure or combination of structures of chief importance or function on a site. In general, the primary use of the site is carried out in a primary structure.
- QQQ. PRIMARY USE:** An activity or combination of activities of chief importance on the site; the main purpose for which the land or structures are intended, designed, or ordinarily used.
- RRR. RANCHING AND FARMING:** Ranching and farming activities are characterized by the breeding, raising, and keeping of cattle, sheep, fowl and crop production on large tracts of open land. Ranching and Farming uses do not include Concentrated Animal Feeding Operations. Examples include: general farming; pasture; grazing; horticulture; viticulture; forestry; sod farming; wild crop harvesting; and, roadside stands exclusively for the sale of products raised on the premises.
- SSS. RECREATIONAL VEHICLE:** A portable or mobile living unit, in which the wheels cannot be removed, unlike a manufactured home, used for human occupancy away from the principal place of residence of the occupants.
- TTT. RECREATIONAL VEHICLE PARK:** A commercial use where one or more lots are rented to users of recreational vehicles that are occupied for temporary purposes. There is no minimum required stay in a recreational vehicle park; however, the maximum stay is thirty (30) days. Uses where unoccupied recreational vehicles are offered for sale or lease, or are stored, are not Recreational Vehicle Parks.
- UUU. RECREATIONAL VEHICLE SPACE:** The area within a recreational vehicle park designated for one recreational vehicle.
- VVV. RELIGIOUS INSTITUTIONS:** Religious institutions provide meeting areas for religious activities. Examples include: churches; temples; synagogues; and, mosques.
- WWW. RETAIL SALES AND PERSONAL SERVICES:** Retail sales and services businesses are

involved in the sale or lease of products to the general public. The business may provide personal services or entertainment, or product repair or services. Examples include: retail stores; laundromats; hair salons; restaurants; banks; bowling alleys; health clubs; car sales; hotels and motels; shoe repair; print shops; theaters; arcades; funeral and crematory services; taxidermist; private art galleries; and, miniature golf facilities.

- XXX. RIGHT-OF-WAY:** A dedicated public area that allows for the passage of people or goods.
- YYY. ROADWAY:** The portion of a right-of-way that is improved for motor vehicle travel. Roadway includes vehicle travel lanes and on-street parking areas. Roadway does not include areas devoted to curbs, parking strips, or sidewalks.
- ZZZ. SANITARY LANDFILL:** A facility that complies with State of South Dakota regulations for the disposal of solid waste materials.
- AAAA. SCHOOLS:** A school is a private or public institution of education, such as an elementary, middle, high school, or post-secondary school.
- BBBB. SELF-SERVICE STORAGE:** Self-service storage uses provide separate storage areas for individual or business uses. The storage areas are designed to allow private access by the tenant for storing or removing personal property. Examples include: facilities that provide individual storage units or areas for rent.
- CCCC. SETBACK:** The minimum distance required between a specified object, such as a building, and another point. Setbacks are usually measured from lot lines to a specified object. Unless otherwise indicated, an unspecified setback refers to a building setback.
- DDDD. SETBACK, FRONT:** A setback measured from a front lot line.
- EEEE. SETBACK, REAR:** A setback measured from a rear lot line.
- FFFF. SETBACK, SIDE:** A setback measured from a side lot line.
- GGGG. SIGN:** Any identification, description, illustration, or device illuminated or non-illuminated, which directs attention to a product, service, place, activity, person, institution, business, or solicitation, including any permanently installed or situated merchandise, or any emblem, painting, banner, pennant, place card or temporary sign designed to advise, identify, or convey information, with exceptions of window displays.
- HHHH. SIGN, OFF-PREMISES:** A sign that displays a message relating to a use of property or sale of goods or services at a location other than that on which the sign is located.
- III I. SIGN, ON-PREMISES:** A sign that displays a message that is directly related to the use of the property on which the sign is located.
- JJJJ. SINGLE-DWELLING UNIT:** A single-dwelling unit is characterized by the residential occupancy of a dwelling unit by a single household. Examples include houses, manufactured homes, and modular homes. Caretaker's residences and garages are examples of accessory structures.
- KKKK. SITE:** A parcel of land occupied or intended to be occupied by a building or structure.
- LLLL. SITE FRONTAGE:** The part of the site that abuts a street.
- MMMM. SITE PLAN:** A plan for a development submitted by an applicant to demonstrate that the development complies with the requirements of this Ordinance.
- NNNN. SUBDIVISION ORDINANCE:** The Perkins County Subdivision Ordinance.
- OOOO. SUBDIVISION:** The division of any tract or parcel of land into two or more lots, tracts, or other division for the purpose, whether immediate or future, of sale or building development.
- PPPP. SURETY:** A promise to pay the County a certain amount of money if an applicant fails to meet the terms of the permit.
- QQQQ. STREET:** A public thoroughfare that affords the principal means of access to abutting property.
- RRRR. STREET LINE:** The legal line between the street right-of-way and abutting property.

- SSSS. STRUCTURE:** Any object constructed on the ground. Structure includes buildings, towers, signs, and other similar objects.
- TTTT. SUPPORT STRUCTURE:** A structure design to support wireless telecommunications facilities including, but not limited to, monopoles, towers, utility poles and other freestanding self-supporting structures.
- UUUU. TEMPORARY CAMPGROUNDS:** Campgrounds for overnight lodging of twenty (20) or more people for three (3) days consecutively or cumulatively in a calendar year.
- VVVV. TOWER:** A lattice-type structure, guyed or freestanding, that supports one or more antennas.
- WWWW. TRACT:** A piece of land created and designed as part of a subdivision that is not a lot, lot of record, or public right-of-way.
- XXXX. TURBINE:** The parts of a Wind Energy System including the blades, generator, and tail.
- YYYY. URANIUM EXPLORATION & EXTRACTION SITE FACILITIES:** The surface buildings and structures required to support uranium exploration and extraction sites.
- ZZZZ. USE:** The specified purpose for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained.
- AAAAA. UTILITIES:** Infrastructure services and structures necessary to deliver those services. These services may be provided by a public or private agency. Examples include water, sanitary sewer, electricity, natural gas, internet, and telephone services.
- BBBBB. VARIANCE:** An officially approved exception to the strict development regulations set forth in the Zoning Ordinance. An approved Variance is a vested property right that runs with the land.
- CCCCC. VEHICLE SERVICE AND REPAIR:** Vehicle service and repair uses provide servicing for passenger vehicles, trucks, motorcycles, boats, and recreational vehicles. Examples include: gas stations; auto mechanic shops; transmission or muffler shops; auto body shops; tire sales and mounting businesses; oil change businesses; and, self-service automobile washing businesses.
- DDDDD. WAREHOUSE AND FREIGHT MOVEMENT:** Warehouse and freight movement businesses are involved in the storage or movement of goods. There is little onsite sales activity. Examples include: general freight storage; parcel services; stockpiling of aggregate material; and, storage of weapons or ammunition.
- EEEE. WASTE COLLECTION AREAS:** The areas set aside or designed to be used for garbage and/or recycling collection. Waste collection areas include areas occupied by dumpsters and other solid waste receptacles.
- FFFF. WASTE-RELATED FACILITIES:** Waste-related uses are characterized by uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods from the biological decomposition of organic material. Examples include: landfills; sewer treatment plants; recycling operations; and, hazardous waste collection sites.
- GGGG. WHOLESALE SALES:** Wholesale sales businesses are involved in the sale, lease, or rent of products primarily intended for industrial, institutional, or commercial businesses. Examples include: the wholesale sale or rental of machinery; and, the wholesale sale of building materials, special trade tools, machine parts, food, clothing, building hardware, and office supplies.
- HHHHH. WIND ENERGY SYSTEM (WES):** A commonly owned and/or managed integrated system that converts wind movement into electricity. All of the following are encompassed in this definition of system: tower, or towers, including foundations; generator(s); blades; power collection systems, including padmount transformers; access roads, meteorological towers, on-site electric substation, control building, and other ancillary equipment and facilities; and, electrical interconnection systems or portion thereof dedicated to the wind energy system.

- IIII I. WIND ENERGY SYSTEM, LARGE:** All wind energy systems facilities excluding Small Wind Energy Systems.
- JJJJ. WIND ENERGY SYSTEM, SMALL:** A wind energy systems facility with a single tower of less than seventy-five (75) feet used primarily for on-site consumption of power.
- KKKKK. WIRELESS TELECOMMUNICATION FACILITY:** Any unmanned facility, including all devices, machinery, structures, or supporting elements necessary to provide wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communication service (PCS), and paging service. A Wireless Telecommunication Towers may be self-supporting, guyed, or mounted on poles or mounted on poles or buildings. Examples include: broadcast towers; communication towers; and point-to-point microwave towers.
- LLLLL. ZONING DISTRICT:** Any section or sections of the County for which the regulations governing use of the land and use, density and height, of buildings and other structures are uniform.
- MMMMM.ZONING MAP:** The Perkins County Zoning Map, which delineates the extent of each zoning district established in the zoning ordinance.
- NNNNN. ZONING ORDINANCE:** The Perkins County Zoning Ordinance.
- OOOOO. YARD:** An open space between a building and the lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward.