

ORDINANCE # _____
AN ORDINANCE AMENDING GRANT COUNTY ORDINANCE #2004-1, AN ORDINANCE ESTABLISHING ZONING REGULATIONS FOR GRANT COUNTY, SOUTH DAKOTA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTERS 11-2, 1967 SDCL, AND AMENDMENTS THEREOF, AND FOR THE REPEAL OF ALL RESOLUTIONS AND ORDINANCES IN CONFLICT THEREWITH

WHEREAS, the Grant County, South Dakota, Board of County Commissioners, hereinafter referred to as the Board of County Commissioners, deems it necessary, for the purpose of promoting the health, safety, and the general welfare of the County, to enact zoning regulations and to provide for its administration, and

WHEREAS, the Board of County Commissioners has appointed a County Planning Commission, hereinafter referred to as the Planning Commission, to recommend the district boundaries and to recommend appropriate regulations to be enforced therein, and

WHEREAS, the Planning Commission has divided Grant County into districts, and has established by reference to maps the boundaries of said districts for administration and interpretation; has provided for definitions and for amendments to this Ordinance; has provided for the enforcement; prescribed penalties for violation of provisions; has provided for building permits within the districts; has provided for invalidity of a part and for repeal of regulations in conflict herewith; and has prepared regulations pertaining to such districts in accordance with the county comprehensive plan and with the purpose to protect the tax base, to guide the physical development of the county, to encourage the distribution of population or mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements, to conserve and develop natural resources, and

WHEREAS, the Planning Commission has given reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses, and

WHEREAS, the Planning Commission and Board of County Commissioners has given due public notice to a hearing relating to zoning districts, regulations, and restrictions, and has held such public hearings, and

WHEREAS, all requirements of SDCL 11-2, with regard to the preparation of these regulations and subsequent action of the Board of County Commissioners, has been met, and

WHEREAS, copies of said zoning regulations have been filed with the Grant County Auditor for public inspection and review during regular business hours, and

WHEREAS, all ordinances, or parts of regulations in conflict herewith are hereby expressly repealed;

THEREFORE BE IT ORDAINED that Ordinance ____ is hereby adopted by the Board of County Commissioners, Grant County, South Dakota.

Adopted this ____ day of _____, 2016.

ATTEST:

Chairperson
Grant County Board of County Commissioners

Grant County Auditor

- **Bolded Underlined Yellow Highlighted** language represents proposed new ordinance language
- ~~Strikeout Yellow Highlighted~~ language represents language proposed to be deleted from ordinance

Article II Definitions

Section 202. Accessory Buildings and Uses. A subordinate ~~use~~ **building or portion of the principal building, the use of** which is incidental to **and customary in connection with the main principal** building or to the main use of the premises **and which is located on the same lot with such principal building or use.** **An accessory use is a use which is incidental to the main use of the premises.**

Section 210 Agriculture. The use of land for agricultural purposes including farming, dairying, raising, breeding, or management of livestock, poultry, or honey bees, truck gardening, forestry, horticulture, floriculture, viticulture, and the necessary accessory uses for packaging, treating or storing the produce providing that the operation of any such accessory use shall be secondary to the normal agricultural activities. This definition ~~shall not~~ includes intensive agricultural activities such as concentrated animal feeding operations ~~and but not~~ agribusiness activities.

Section 209a. Agribusiness Activities. **A generic term that refers to the various businesses involved in food production, including agrichemicals, farm machinery, wholesale and distribution, processing, marketing, and retail sales.**

Section 211a. Animal Feeding Operation Structure. **An anaerobic lagoon, formed manure storage area/structure, egg wash water storage structure, earthen manure storage basin, feedlot, confinement building or other structure associated with an animal feeding operation.**

Section 213. ~~Animal Manure, Poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding or other material.~~ **(reserved)**

Section 215 ~~Animal Waste, Incorporated.~~ ~~Animal waste applied to the land surface and mechanically mixed into the soil within twenty four (24) hours.~~ **(reserved)**

Section 216. ~~Animal Waste, Injected.~~ ~~Animal waste injected or tilled into the soil at the time of application.~~ **(reserved)**

Section 217 ~~Animal Waste, Surface Applied.~~ ~~Animal manure applied to the land surface without benefit of incorporation or injection. This shall not include the use of animal manure in irrigation waters.~~ **(reserved)**

Section 220a. Best Management Practices. **1) Methods or techniques identified by the county to be effective in achieving an objective. 2) Measures contained in USDA NRCS South Dakota Technical Guide, either managerial or structural, that are determined to be the most effective, practical means of preventing or reducing pollution inputs from non-point sources to water bodies.**

Section 223a. Calamity. **An event causing great and often sudden damage or distress to structures or use of land.**

Section 225a. Certified Crop Advisor. **Means any crop advisor/agronomist certified by the American Society of Agronomy.**

Section 225b. Concentrated Animal Feeding Operation, New. A new Concentrated animal feeding operation is a concentrated animal feeding operation which is located where one previously did not exist; or an expansion of an existing concentrated animal feeding operation from one class to a new class.

Section 235a. Engineer. Means any engineer licensed by the State of South Dakota.

Section 235b. Established Residence. A non-seasonal dwelling established before the siting of a new concentrated animal feeding operation or the expansion of an existing concentrated animal feeding operation.

Section 238a. Feedlot. Feedlot means pens or similar areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Feedlot is synonymous with other industry terms such as open lot, pasture lot, dirt lot, or dry lot.

Section 240a. General Permit. South Dakota General Water Pollution Control Permit for Concentrated Animal Feeding Operations

Section 243a. General Compatibility with Adjacent Properties. All uses listed as permitted or as conditional uses are generally compatible with other property in a specified zoning district. If such uses are not generally compatible, they should be prohibited within the specified district. Conditional uses may only be denied in accordance with definable criteria in order that an applicant may know under which circumstances a permit may be granted in this location. In Grant County, general compatibility refers to the manner of operation of a use. The Board of Adjustment may consider compatibility when prescribing conditions for approval of a permit, but those conditions should be uniformly required of similar uses under similar circumstances throughout the county.

Section 244a. Inventory (in reference to Article XIII). The total number of animal units located on a concentrated animal feeding operation.

Section 246a. Letter of Assurances. A list of conditions signed by the applicant for a permit acknowledging agreement to follow the conditions of the permit.

Section 251a. Manure, Animal: Poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding or other materials.

Section 251b. Manure, Incorporated. Animal manure applied to the land surface and mechanically mixed into the soil within twenty-four (24) hours.

Section 251c. Manure, Injected. Animal manure injected or tilled into the soil at the time of application.

Section 251d. Manure, Liquid. A suspension of livestock manure in water in which the concentration of manure solids is low enough to maintain a free flowing fluid. Liquid manure also includes slurry which is a mixture of livestock manure, bedding and waste feed in water. Liquid manure and slurry is typically applied to fields by pumping through irrigation equipment or by hauling and spreading with a tank wagon. The solids content of liquid manure or slurry is less than ten (10) percent. A practical definition of liquid manure includes any livestock manure mixture that can be pumped through conventional liquid manure handling equipment.

Section 251e. Manure Management Facilities. Any structure or facility utilized for the storage of animal manure.

Section 251f. Manure, Surface Applied. Animal manure applied to the land surface without benefit of incorporation or injection. This shall not include the use of animal manure in irrigation waters.

Section 254. Nonconforming Use. Any building or land lawfully occupied by a use at the time of passage of this regulation or amendment thereto, which does not conform after the passage of this regulation or amendment. **Exception: A use vested in accordance with Section 1305 shall not be deemed a nonconforming use in such district.**

Section 254a. Nonstandard Use. The category of nonconformance consisting of lots occupied by buildings or structures or uses which existed immediately prior to the effective date of this ordinance which fail to comply with any of the following: minimum lot requirements for the area, density, width, front yard, side yard, rear yard, height, unobstructed open space, parking for the district in which they are located, or minimum separation/setback distances between uses and structures even though the use of the premises conforms with the allowable uses within the district as set out in the provisions of this ordinance.

Section 254b. Nonstandard Concentrated Animal Feeding Operation. A concentrated animal feeding operation existing which is classified as a nonstandard use and is determined to be vested in accordance with Section 1305.

Section 259. Permitted Use. Any use **allowed listed as a "permitted use"** in a **particular** zoning district and subject to the restrictions applicable to that zoning district. **Permitted uses are allowable by right and simply require the property owner to obtain a permit to establish the use based upon a properly filed application, without further action.**

Section 259a. Permitted Special Use. A permitted special use is a use of buildings or land which are acceptable in a particular zoning district, provided the use is consistent with all conditions and standards set forth for the particular "permitted special use", together with any other conditions and standards set forth within Section 1306 of the Grant County Zoning Ordinance. The issuance of a permitted special use permit is administrative in nature.

Section 260. Potential Pollution Hazard. A Class D Concentrated Animal Feeding Operation of 50 to **4-999** Animal Units **may be is** required to obtain a conditional use permit when a potential pollution hazard exists. Factors to be considered by the Zoning Officer in determining a Potential Pollution Hazard include the following:

1. The Concentrated Animal Feeding Operation does not meet the minimum setback and separation distances of these regulations.
2. A Potential Water Pollution Hazard exists due to siting **a concentrated animal feeding operation** over a shallow aquifer or drainage which contributes to the waters of the State.

Section 260a. Principal Building. The structure in which the principal use of the lot is conducted. For example a farm dwelling on farm; or dwelling on a residential lot; or a gas station on a commercial lot.

Section 272. Shallow Aquifer. An aquifer zero (0) to fifty (50) feet in depth in which the permeable media (sand and gravel) starts near the land surface, immediately below the soil profile. A shallow aquifer is vulnerable to contamination because the permeable material making up the aquifer (a) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (b) extends to near the land surface and lacks a sufficiently thick layer of impermeable material on the land or near the land surface to limit percolation water from transporting contaminants from the land surface to the aquifer.

Section 272a. Setback. The setback of a building is the minimum horizontal distance between the street or property line and the front line of the building or any projection thereof, except cornices, unenclosed porches, and entrance vestibules and window bays projecting not more than three and one-half (3 1/2) feet from the building and having no more than fifty (50) square feet area and not extending above the first story of the building.

Section 272b. Setback Between Uses. Unless specifically mentioned within this ordinance, the setback or separation distance between uses is the minimum horizontal distance measured from the wall line of a neighboring principal building to the wall line of the proposed building/structure/use. In regard to Concentrated Animal Feeding Operations the separation distance shall be measured from the wall line of the neighboring principal building to the wall line of the feedlot or structure housing animals and/or manure management facility.

Section 273. Shallow Well. A well which is located in a shallow aquifer. (Reserved)

Section 283a. Vested Right The right to continue a non-conforming and/or non-standard use despite a zoning ordinance that prohibits that use in a zoning district.

Section 289. Well. An artificial excavation or opening in the ground, made by means of digging, boring, drilling, jetting, or by any other artificial method, for the purpose of obtaining groundwater. Any series of openings, borings, or drillings developed and pumped collectively by a single pump unit shall be considered as one well. (SDCL 46-1-6)

Section 290. Well, abandoned. A well which is in either such a state disrepair that its original purpose cannot be reasonably achieved or which has not been used for water production in the past two (2) years.

Section 291. Well, Established. A water producing well that is either registered with the State of South Dakota or has well logs on file with the South Dakota Department of Environment and Natural Resources or has been used for more than one week for water production on a quarterly basis within the past two (2) years.

Article IX Non Conforming Uses or Lots of Record

Section 405. Unless vested in accordance with Section 1305, nothing in this Ordinance shall be interpreted as authorization for, or approval of, the continuance of the use of a building or premises in violation of zoning regulations in effect at the time of the effective date of this Ordinance.

Section 409. Continuation of Nonstandard Uses. Nonstandard uses existing immediately prior to the effective date of this ordinance may be continued, although such uses do not conform to the provisions hereof. Nonstandard uses buildings or structures may be enlarged or extended, converted, reconstructed, or structurally altered as follows:

1. Enlargements, extensions, conversions, or structural alterations may be made as required by law or ordinance.
2. Structural alteration of buildings or structures may otherwise be made if such changes do not encroach into an existing front yard, side yard, or rear yard which is less than the minimum required yards for the district in which they are located.
3. Enlargement, extension, conversion of buildings or structures may otherwise be made if such changes comply with the minimum required yards, lot area, height, landscaping, parking, and density for the district in which they are located.

Article XI Zoning Districts Section 1101 Agricultural District

Section 1101.03. Permitted Special Uses.

1. Class C, Concentrated Animal Feeding Operations. (See Concentrated Animal Feeding Operations, Article XIII.)

Section 1101.034. Conditional Uses.

5. Reserved. Class C Concentrated Animal Feeding Operations that do not meet Concentrated Animal Feeding Operation Permitted Special Use Standards Section 1306.02

10. Class A, Class B, ~~Class C,~~ and Class D Concentrated Animal Feeding Operations. (See Concentrated Animal Feeding Operations, Article XIII.)

Section 1101.045. Area Regulations.

Section 1101.056. Height Regulations.

Section 1101.067. Access.

Section 1101.078. Easements/Waivers.

Section 1105 Aquifer Protection Overlay District

Section 1105.02. Definitions for Aquifer Protection Overlay District:

1. **Abandoned Well:** A well no longer used or intended to be used as a water source. **(Reserved)**
2. **Concentrated Animal Feeding Operation:** (See Concentrated Animal Feeding Operations, Article XIII.) **(Reserved)**
3. **Best Management Practices:** Measures contained in Soil Conservation Service South Dakota Technical Guide, either managerial or structural, that are determined to be the most effective, practical means of preventing or reducing pollution inputs from nonpoint sources to water bodies. **(Reserved)**
11. **Manure Storage Area:** An area separate from pens or buildings where animal manure is stored for more than one year. **(Reserved)**
16. **Shallow Aquifer:** An aquifer vulnerable to contamination because the permeable material making up the aquifer (1) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (b) extends to near the land surface and lacks a sufficiently thick layer of impermeable material on the land or near the land surface to limit percolation water from transporting contaminants from the land surface to the aquifer. **(Reserved)**

Section 1105.05. Permitted Uses in Zone A:

The following uses are permitted provided they meet appropriate performance standards outlined for aquifer protection overlay zones:

6. **All "Permitted Uses" listed in the underlying district(s) which do not pose a potential risk to groundwater resources and are not a prohibited use.**

Section 1105.06. Conditional Uses in Zone A:

The following uses are permitted only under the terms of a conditional use and must conform to provisions of the underlying zoning district and meet Performance Standards outlined for Aquifer Protection Overlay Zones.

1. Expansion, **modification, alteration, or relocation** of existing uses to the extent they remain or become nonconforming and to the extent allowed by the underlying district. The Board of Adjustment shall not grant approval unless it finds the proposed expansion does not pose greater potential for groundwater contamination than the existing use.
2. All uses **not permitted or not prohibited in Zone A may be approved by the Board of Adjustment permitted by conditional use in the underlying districts which do not pose a potential risk to groundwater resources and are not a prohibited use and** provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones.

Section 1105.07. Prohibited Uses in Zone A:

The following uses are expressly prohibited in Zone A:

1. New Concentrated Animal Feeding Operations **and the expansion of any existing** including Class A, Class B, Class C, Class D, and Class E.

Section 1105.09. Permitted Uses in Zone B:

1. All ~~uses permitted~~ **"Permitted Uses"** listed in the underlying zoning districts **which do not pose a potential risk to groundwater resources and are not a prohibited use and** provided that they can meet the Performance Standards as outlined for the Aquifer Protection Overlay Zones **and are not a prohibited use.**

Section 1105.10. Conditional Uses in Zone B:

The following uses are permitted only under the terms of a conditional use and must conform to provisions of the underlying zoning district and meet Performance Standards outlined for Aquifer Protection Overlay Zones.

1. All ~~conditional~~ uses ~~allowed in~~ **permitted by conditional use in the** underlying districts, ~~with the exception of those expressly prohibited in Zone B~~ **which do not pose a potential risk to groundwater resources and are not a prohibited use and,** may be approved by the Board of Adjustment ~~provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones.~~
2. Earthen storage basins and lagoons may be approved by the Board of Adjustment after site specific review. The Board reserves the right to require an impermeable liner to prevent ground water contamination.
3. ~~New Concentrated Animal Feeding Operations over 99 animal units.~~ **Expansion of existing Class D Concentrated Animal Feeding Operations (Existing as of Date of Adoption of the Ordinance) not to exceed a cumulative total of three hundred (300) animal units. Said expansion or alteration must be constructed according to the Department of Environment and Natural Resources State General Permit criteria and shall apply for said General Permit. The County shall require soil borings to determine impermeable material between land surface and the aquifer.**
4. **Stockpiling of solid waste.**
5. **Expansion, modification, alteration, or relocation of existing permitted or conditional uses to the extent they remain or become nonconforming and to the extent allowed by the underlying district. The Board of Adjustment shall not grant approval unless it finds the proposed expansion does not pose greater potential for groundwater contamination than the existing use.**

Section 1105.11. Prohibited Uses in Zone B:

The following uses are expressly prohibited in Zone B:

6. **New Concentrated Animal Feeding Operations of Class A, Class B, and Class C, or expansions of existing Class D concentrated animal feeding operations which cannot meet performance standards.**

ARTICLE XIII
CONCENTRATED ANIMAL FEEDING OPERATION REGULATIONS

Section 1300. Intent.

An adequate supply of healthy livestock, poultry and other animals is essential to the well-being of county citizens and the State of South Dakota. However, livestock, poultry, and other animals produce manure which may, where improperly stored, transported, or disposed, negatively affect the County's environment. **Confined Animal Feeding Operations, also referred to herein as CAFO(s),** and the **Animal manure generated from those facilities** must be controlled where it may add to air, surface water, ground water, or land pollution. The following regulations have been **adopted in order to provide standards for the location of animal feeding operations and** to provide protection against pollution caused by manure from domesticated animals. All ~~new and proposed expansions of~~ Concentrated Animal Feeding Operations shall comply with the regulations as outlined herein.

~~It is the intention of the Board of Adjustment in the enforcement of this ordinance that when an operator of an existing Concentrated Animal Feeding Operation applies for a permit to expand to another class level, the standards that apply to the expansion will not be applied to existing structures that were built in compliance with accepted industry standards in existence at the time of the construction of such facilities.~~

Section 1301. Animal Units Equivalent to Animal Species. ~~Animal species and number of a species required to equal 500, 1,000 and 2,000 animal units. Note that these figures relate to inventory rather than annual production. Other animal species equivalents which are not listed will be based on species' waste production.~~

Grant County uses an animal unit equivalency ratio to determine the head count of a specific animal species for the purpose of defining the specific class of a CAFO by animal unit. The animal species equivalents are based upon a species' manure production. The standards for determining an animal unit to animal head count equivalency are derived from the Environmental Protection Agency and the State of South Dakota General Permit. Table 1301.1 details the classes of Concentrated Animal Feeding Operations and the specific animal unit equivalency ratio. Note that the figures in Table 1301.1 relate to inventory rather than annual production.

Table 1301.1
Number of Animals to Define Classes of Concentrated Animal Feeding Operations

Animal Species	Class A CAFO (Over 5000 Animal Units)	Class B CAFO (2,000-4,999 Animal Units)	Class C CAFO (1,000-1,999 Animal Units)	Class D CAFO (50 to 999 Units – Water Pollution Hazard)	Class E CAFO (50 to 999 Units – No Water Pollution Hazard)	Animal Unit Equivalency Ratio
	Animal numbers equal to or more than:	Animal numbers equal to:	Animal numbers equal to:	Animal numbers equal to:	Animal numbers equal to:	
Cattle other than mature dairy cows or veal calves ¹	5,000	2,000 to 4,999	1,000 to 1,999	50 to 999	50 to 999	1.0
Mature Dairy Cattle (milked or dry)	3,497	1,400 to 3,496	700 to 1,399	35 to 699	35 to 699	1.43
Swine (weighing over 55 lbs.)	12,500	5,000 to 12,499	2,500 to 4,999	125 to 2,499	125 to 2,499	0.4
Swine (weighing less than 55 lbs.)	50,000	20,000 to 49,999	10,000 to 19,999	500 to 9,999	500 to 9,999	0.1
Horses	2,500	1,000 to 2,499	500 to 999	25 to 499	25 to 499	2.0
Sheep or lambs	50,000	20,000 to 49,999	10,000 to 19,999	500 to 9,999	500 to 9,999	0.1
Turkeys	277,778	110,000 to 277,777	55,000 to 109,999	2,775 to 54,999	2,775 to 54,999	0.018
Chickens, other than laying hens using other than liquid manure handling system	625,000	250,000 to 624,999	125,000 to 249,999	6,250 to 124,999	6,250 to 124,999	.008
Laying hens using other than liquid manure handling system	409,836	164,000 to 409,835	82,000 to 163,999	4,165 to 81,999	4,165 to 81,999	.0122
Laying Hens & Broilers using liquid manure handling system	150,150	60,000 to 150,149	30,000 to 59,999	1,500 to 29,999	1,500 to 29,999	.0333
Ducks Using liquid manure Handling system	25,000	10,000 to 24,999	5,000 to 9,999	250 to 4,999	250 to 4,999	0.2
Ducks using other than liquid manure handling system)	151,515	60,000 to 151,514	30,000 to 59,999	515 to 29,999	515 to 29,999	.033
Geese	151,515	60,000 to 151,514	30,000 to 59,999	515 to 29,999	515 to 29,999	.033

1. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.

Section 1302. Classes of Concentrated Animal Feeding Operations.

For the purpose of these regulations, Concentrated Animal Feeding Operations are divided into the following classes:

ANIMAL UNITS

Class A	5,000 or more	
Class AB	2,000 or more to 4,999	
Class BC	1,000 to 1,999	
Class CD	500 to 999	(Potential water pollution hazard)
Class DE	50 to 4 999	(Potential water <u>No</u> pollution hazard)
Class E	50 to 999	(No pollution hazard)

Section 1303. Concentrated Animal Feeding Operation Permit Requirements

Owners of Class A, Class B, Class C, Class D, and Class E ~~with animal units of 99 and above~~ Concentrated Animal Feeding Operations are required to complete, ~~where applicable,~~ a **building permit, permitted special use permit and/or conditional use** permit application as follows:

1. A new Concentrated Animal Feeding Operation is proposed where one does not exist.
2. An expansion is proposed ~~beyond what a current permit allows.~~ **that exceeds the number of animal units allowed by an existing county-issued permit.**
3. An expansion ~~of an existing, non-permitted~~ **in the number of animal units of a** Concentrated Animal Feeding Operation ~~after,~~ **without a county-issued permit, that existed prior to November 1, 1997 (Date of adoption of ordinance),** which would result in the creation of either a Class A, B, C, ~~or~~ D, **or E** Concentrated Animal Feeding Operation.
4. ~~A change in ownership of a Class A or Class B concentrated animal feeding operation. This requirement does not apply if the transfer of ownership is between family members with one degree of consanguinity.~~ **In the event there is a change in ownership of a Class A, B, C, D, or E Concentrated Animal Feeding Operation, which has a previously issued county permit, the new owner(s) has sixty (60) days from the date of legal conveyance of ownership in which to apply for a transfer of a previously issued county CAFO permit in order to keep said current permit valid. The new owner will be required to abide by the permit requirements and any letter of assurances that were issued under the previously approved permit application(s). If no transfer is completed within sixty (60) days, the new owner will be required to submit a new application for approval.**
5. A change in ownership of ~~a Class C, Class D, or Class E if documented pollution problem exists.~~ **any Concentrated Animal Feeding Operation with a history of pollution documented by the County Zoning Officer or State of South Dakota.**
6. An existing Concentrated Animal Feeding Operation is to be restocked after being idle for five (5) years.
7. A signed complaint has been received by the County Zoning Officer ~~and/~~ **and/** or South Dakota Department of Environment and Natural Resources and after inspection reveals that the Concentrated Animal Feeding Operation is in violation of ~~either~~ **either** County or State regulations. **Violations of State regulations shall be inspected by State officials.**

Section 1304. Concentrated Animal Feeding Operation Control Requirements

1. No Significant Contribution of Pollution

In general, no Concentrated Animal Feeding Operation shall be constructed, located, or operated so as to create a significant contribution of pollution **as determined by the South Dakota Department of Environment and Natural Resources.**

2. State General Permit

a. Class A, Class B, Class C Concentrated Animal Feeding Operations shall obtain a State General Permit pertaining to the animal species of the Concentrated Animal Feeding Operation. A County conditional use permit or permitted special use permit may be approved conditioned upon receiving a State General Permit. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan and manure management plan.

b. It shall be at the discretion of the Zoning Officer and/or the Board of Adjustment to require an applicant to submit plans for review to the South Dakota Department of Environment and Natural Resources. a State General Permit for Class C and Class D Concentrated Animal Feeding Operations. A Class D and Class E Concentrated Animal Feeding Operations may be required to submit their plans for review by the South Dakota Department of Environment and Natural Resources if the following occur:

i.If a lagoon is used as a manure management facility. Exception: Existing operations that are improving waste handling facilities that are designed by an engineer according to South Dakota Department of Environment and Natural Resources General Permit or Natural Resource Conservation Service standards.

ii.The Zoning Officer and/or the Board of Adjustment decide conditions require a State General Permit.

3. Nutrient Management Plan.

Classes A, B, C, and D Concentrated Animal Feeding Operations are required to have a nutrient management plan. The applicant shall develop, maintain, and follow a nutrient management plan to ensure safe disposal of manure and protection of surface and ground water. The South Dakota Department of Environment & Natural Resources must approve the plan prior to land application of any wastes. Due to crop rotation, site changes, and other operational changes, the producer should update the plan annually to reflect the current operation and crops grown on the application sites. The applicant shall collect, store, and dispose of liquid and solid manure according to recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site are secondary to the proper and safe disposal of the manure.

A generic nutrient management plan that the applicant may use in developing a nutrient management plan is available from the South Dakota Department of Environment & Natural Resources. The generic nutrient management plan is based on application of nitrogen. The applicant may use other plans, provided the alternate plan contains all the information necessary to determine compliance with conditions of this general permit. Nitrogen, in addition to that allowed in the nutrient management

plan, may be applied up to the amounts as indicated by soil or crop nitrogen test results that are necessary to obtain the realistic crop yield.

The South Dakota Department of Environment & Natural Resources recommends and encourages producers to develop nutrient management plans for other nutrients such as phosphorous and potassium. Over application of these nutrients may lead to water quality problems in area lakes and streams and result in potential damage to the producer's land and crop.

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

The plan must comply with County Manure Application Setbacks.

Land spreading agreements (for 5-year plan) shall be provided if applicant does not have minimum acreage to apply animal manure.

Nutrient management planning can ensure that the 4 R's (Right rate, Right source, Right application method, and Right application timing) provide the proper amount of nutrients to the crop where it is needed while protecting surface and ground water. The discharge of manure, litter, or process wastewater to waters of the state as a result of land application of that manure, litter, or process wastewater by the Concentrated Animal Feeding Operation to land it owns, rents, or leases is a discharge except where the manure, litter or process wastewater has been applied in accordance with its approved nutrient management plan. The applicant is responsible for the safe land application of manure and process wastewater generated at the Concentrated Animal Feeding Operation. The applicant shall develop, maintain, and follow a nutrient management plan, per the requirements below, to ensure safe disposal of manure and process wastewater and protection of surface and ground water.

- a. **New Class A, B, C, D and E Concentrated Animal Feeding Operations are required to have a nutrient management plan.**
- b. **Nutrient management plan(s) for Class A, Class B, and Class C Concentrated Animal Feeding Operations shall be reviewed and approved by the South Dakota Department of Environment & Natural Resources. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan.**
- c. **The nutrient management plan(s) for Class D and E Concentrated Animal Feeding Operations nutrient management plans shall be developed by a Certified Crop Advisor and meet the current Natural Resources Conservation Service (NRCS) South Dakota Technical Nutrient Management Standards and all other applicable South Dakota Department of Environment & Natural Resources and Grant County regulations.**
- d. **The applicant must maintain records to show compliance with the approved nutrient management plan.**
- e. **The applicant must comply with Manure Application Setbacks found in 1304.8.**
- f. **Documentation of land spreading agreements shall be available upon request by the County.**

4. Manure Management and Operation Plan

a. **New** Classes A, B, C, **D**, and **E** Concentrated Animal Feeding Operations **must submit are required to have** a Manure Management and Operation Plan.

b. **The manure management and operation plan for Class A, Class B and Class C Concentrated Animal Feeding Operations reviewed and approved by the South Dakota Department of Environment & Natural Resources. The issuance of a State General Permit satisfies the county's requirements for an approved manure management plan.**

c. **Class D and E Concentrated Animal Feeding Operations manure management and operation plans shall at a minimum meet the current Natural Resources Conservation Service (NRCS) Standards and all applicable DENR and Grant County Zoning Standards.**

A.d. **Manure Management and Operation Plan** must include:

1. The location and specifics of proposed **animal** manure **management** facilities.
2. The operation procedures and maintenance of manure **management** facilities.
3. Plans and specifications must be prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer. **Waste Manure management** treatment facilities will require inspection by an engineer. **and as-built plans to be submitted to the County Zoning Officer.**
4. **Animal M**anure shall not be stored longer than two **(2)** years.
5. Manure **management** containment structures shall provide for a minimum design volume of three hundred sixty-five (365) days of storage.
6. ~~Producers shall keep records on manure applications on individual fields which document acceptable manure and nutrient management practices have been followed. These records shall include soils test results for surface two feet of soil, actual and projected crop yields, nutrient analysis of manure, and information about date, rate and method of manure applications for individual fields.~~ **Manure management facilities utilizing methane digesters may receive on and off-site generated manure and/or organic wastes.**
7. **If a lagoon is used as a manure management facility for a Class A, B, C, and D CAFO, situated over the shallow aquifer per Section 1105.03, a man-made impervious liner will be used in conjunction with a clay liner.**
8. **The applicant will provide information regarding how manure from the CAFO site will be transported to fields identified in the nutrient management plan. This may require the need for a haul road agreement and/or the applicable agreement for pipes to occupy the right-of-way or private property. Unless otherwise agreed to between the Road Authority and the applicant, at Grant County requires, at a minimum, the applicant to abide by the haul road agreement terms found in Grant County Resolution #2014-36**

B.e. As a condition of the permit, the **County Zoning Officer and/or** the Board of Adjustment may require the **producer applicant** to participate in environmental training programs **and become a certified livestock manager.**

5. Management Plan for Fly and Odor Control

a. **New** Classes A, B, C, **D,** and **D E** Concentrated Animal Feeding Operations shall dispose of dead animals, manure and wastewater in such a manner as to control odors or flies. A management plan is required for submission of a permit. The **Zoning Officer and/or County** Board of Adjustment will review the need for control measures on a site specific basis, ~~taking into consideration prevailing wind direction and topography.~~ The following procedures to control flies and odors ~~should~~ **shall** be considered in a management control plan:

A.i. Operational plans for manure collection, storage treatment and how said plans ~~and use must be kept~~ **will be** updated and implemented.

B.ii. Methods to be utilized to dispose of dead animals ~~should~~ **shall** be included ~~in the management plan.~~

C.iii. ~~Plant trees and shrubs to reduce wind movement of odors away from buildings, manure storage ponds and/or lagoons.~~ **Location of existing and proposed tree/shrub plantings.**

b. The County recommends the following Best Management Practices in the development of a fly and odor management plan:

D.i. Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized.

E.ii. Store solid manure in containment areas having good drainage to minimize odor production.

F.iii. Remove manure from open pens as frequently as possible to minimize odor production.

H.iv. Avoid spreading manure on weekends, holidays and evenings during warm season when neighbors may be involved in outdoor recreation activities.

I.v. Avoid spreading during calm and humid days, since these conditions restrict the dispersion and dilution of odors.

c. To assist in mitigating odors, the County may require any or all of the following:

G.i. ~~consider~~ **U**se of covers on open storage systems for liquid manure systems to reduce odor production.

ii. The storage of solid manure in self-contained containment areas to minimize odor production.

iii. The use of bio-filters or other proven odor mitigation technologies on enclosed concentrated animal feeding operation barns/structures to reduce odor production. The design and installation of said bio-filters shall be reviewed by specialists at South Dakota State University or others designated by the Board of Adjustment.

6. Required **Minimum** Setbacks and Separation Distance for **New Classes A, B, C, D, and E** New Concentrated Animal Feeding Operations and those Existing, Non-permitted Concentrated Animal Feeding operations expanding into a Class A, B, C, or D Concentrated animal Feeding Operations after **November 1, 1997 (Date of Adoption) See Table 1304.1.**

MINIMUMS

	<u>CLASS A</u>	<u>CLASS B</u>	<u>CLASS C</u>	<u>CLASS D&E</u>
Established Residences	2,640 feet	2,640 feet	2,640 feet	2,640 feet
Churches, Businesses and Commercially Zoned Areas	2,640 feet	2,640 feet	2,640 feet	2,640 feet
Incorporated Municipality Limits	2,640 feet	2,640 feet	2,640 feet	2,640 feet
Private Wells other than the operator	2,640 feet	2,640 feet	2,640 feet	2,640 feet
Lakes and Streams classified as Fisheries as identified by the State	500 feet	500 feet	200 feet	200 feet
Federal, State & County Road ROW — Confinement	300 feet	300 feet	200 feet	200 feet
Federal, State & County Road ROW — Open Lot	50 feet	50 feet	50 feet	50 feet
Township Road ROW — Confinement	150 feet	150 feet	150 feet	150 feet
Township Road ROW — Open Lot	50 feet	50 feet	50 feet	50 feet

Table 1304.1
Minimum Setbacks* ^^

Number of Animal Units	Less than 350 Animal Units	350 to 699 Animal Units	700 to 999 Animal Units	1,000 to 1,999 Animal Units	2,000 to 3,499 Animal Units	3,500 to 4,999 Animal Units	5,000 to 6,999 Animal Units	Over 7,000 Animal Units
Established Residences	660 feet	1,320 feet	1,980 feet	2,640 feet	3,300 feet	3,630 feet	3,960 feet	5,280 feet
Churches, Businesses and Commercially Zoned Areas	2,640 feet	2,640 feet	2,640 feet	2,640 feet	3,960 feet	3,960 feet	3,960 feet	5,280 feet
Incorporated Municipality Limits	2,640 feet	2,640 feet	2,640 feet	2,640 feet	3,960 feet	3,960 feet	3,960 feet	5,280 feet
Established Private Water Well***	250 feet	250 feet	250 feet	250 feet	250 feet	250 feet	250 feet	250 feet
Existing Public Water Well	1,000 feet	1,000 feet	1,000 feet	1,000 feet	1,000 feet	1,000 feet	1,000 feet	2,640 feet
Lakes and Streams classified as Fisheries as identified by the State	200 feet	200 feet	200 feet	500 feet	500 feet	500 feet	500 feet	500 feet
Federal, State & County Road ROW								
Confinement	200 feet	200 feet	200 feet	300 feet	300 feet	300 feet	300 feet	300 feet
Open Lot	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet
Township Road ROW								
Confinement	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet
Open Lot	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet

* Two (2) or more CAFOs under common ownership are a single concentrated animal feeding operation if they adjoin each other (within one mile) or if they use a common area or system for disposal of manure. Required setbacks for the two (2) or more CAFOs treated as a single operation shall not be less than the minimum setback required for each operation if said operations were treated as individual operations.

^^ The Board of Adjustment may utilize Section 1304.7 and 1304.8 to increase or decrease the required setback.

*** Setback does not apply to the wells of the CAFO operator. The 250 foot setback will be applied when monitoring wells are utilized and when an impervious liner is used in conjunction with an earthen storage basin or lagoon. In the event monitoring wells and impervious liners are not utilized with the manure management facility the setback from established private wells, not to include the CAFO operator, shall be two thousand six hundred forty (2,640) feet.

7. **Exceptions/Exemptions to Separation and/or Setback Distance Requirements**

- a. **Except as identified in 1304.7(e) through (h), below, All Concentrated Animal Feeding Operations constructed in operation prior to before November 1, 1997 (Date of Adoption), which does not comply with the minimum setback requirements, but which continues to operate, but and is are not expanded in a manner which will result in the one of the following examples are exempt from setback/separation distance requirements:**
- i. **Example 1: A Class E CAFO expands to a Class A, B, or C CAFO.**
 - ii. **Example 2: A Class C CAFO expands to a Class A or B CAFO.**
 - iii. **Example 3: A Class B CAFO expands to a Class A CAFO.**
 - iv. **Example 4: A Class A CAFO expands by 10% of the number of animal units**
- b. A Concentrated Animal Feeding Operation structure which is expanded or constructed, if the title holder of the land benefiting from the distance separation requirement executes a written waiver with the title holder of the land where the structure is located, under such terms and conditions which the parties may negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the Register of Deeds in the county. The **benefited title holder of the land benefiting from the distance separation requirement** is the residence, commercial enterprise, **individual or individuals, governmental entity, bonafide** religious institution, **or** educational institution from which separation is required. **The waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.**
- c. A Concentrated Animal Feeding Operation **structure which is** constructed or expanded closer than the required **setback/separation** distance **within from** the corporate limits of a city, if the incorporated community approves a **written** waiver **which shall be stated in writing**. The written waiver becomes effective only after recording with the Register of Deeds.
- d. A Concentrated Animal Feeding Operation structure **which is located within any distance from an existed prior to the creation of residence,** educational institution, commercial enterprise, **bonafide** religious institution, incorporated community, if the **residence,** educational institution, commercial enterprise or **bonafide religious** institution was constructed or expanded or the boundaries of the incorporated community were expanded, after the date that the **concentrated** animal feeding operation was established. The date that the Concentrated Animal feeding Operation was established is the date on which the Concentrated Animal Feeding Operation commenced operating. A change in ownership or expansion shall not change the date of operation.
- e. **A non-standard Concentrated Animal Feeding Operation (Class E) without a county issued permit is exempt from setback/separation distance requirements. In the event of a calamity, the buildings and use areas associated with the non-standard Concentrated Animal Feeding Operation are allowed to be replaced. The non-standard Concentrated Animal Feeding Operation is allowed to expand to a maximum size of one thousand nine hundred ninety-nine (1,999) animal units. The replacement and/or expansion is allowed without having to obtain a variance from setback/separation requirements, provided the separation distance between the structure or use associated with the proposed Concentrated Animal Feeding Operation replacement/expansion is equal to or greater than the distance between the Concentrated**

Animal Feeding Operation and other existing uses requiring a separation distance on (the Adoption date of ordinance). The replacement and expansion provisions contained herein do not apply to non-standard Concentrated Animal Feeding Operations situated over the Aquifer Protection Overlay District. See Figure 1304.7.

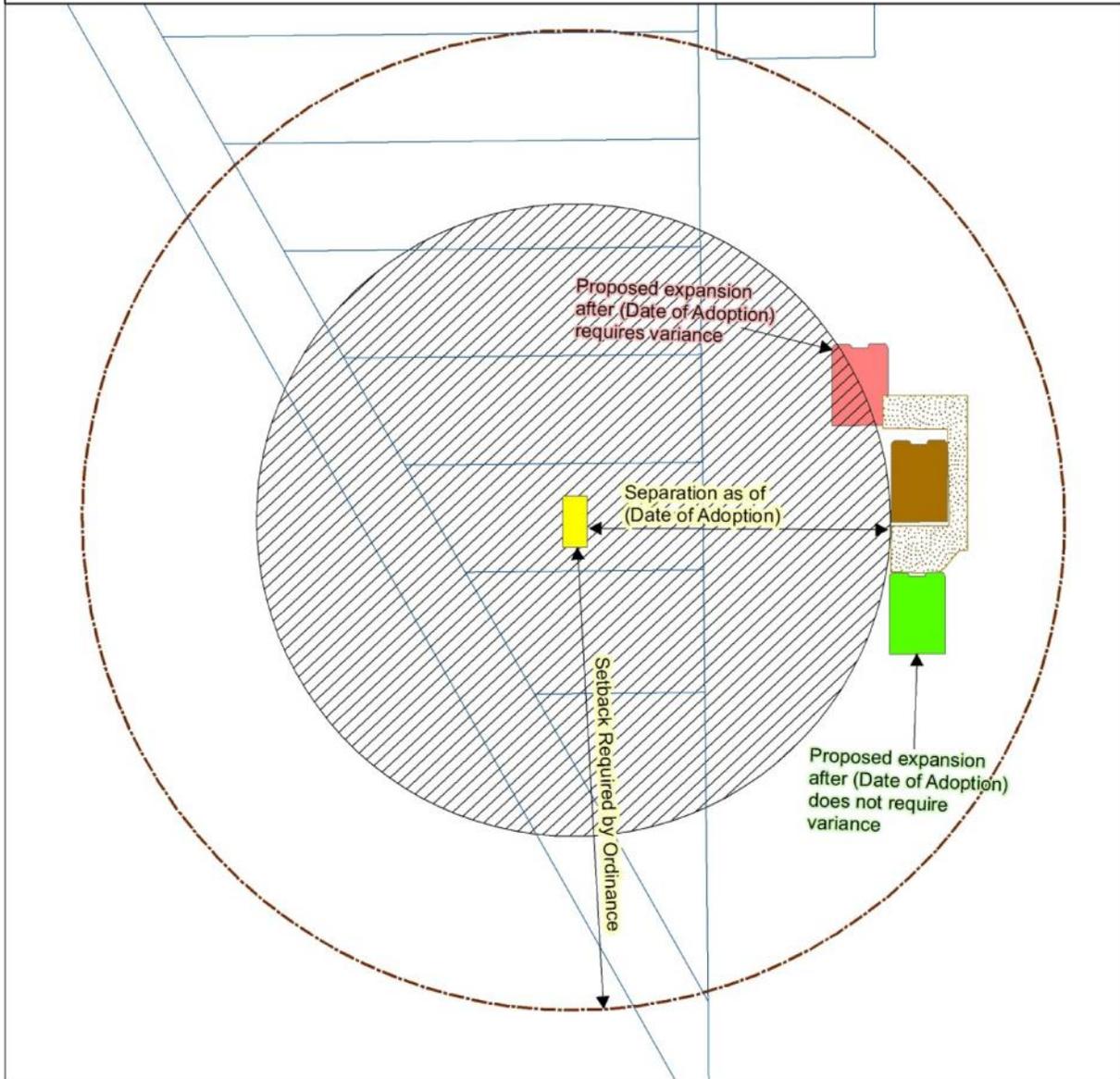
f. A non-standard Concentrated Animal Feeding Operation (Class D) is exempt from setback/separation distance requirements. The non-standard Concentrated Animal Feeding Operation is allowed an expansion not to exceed a cumulative total of three hundred (300) animal units without having to obtain a variance from setback/separation requirements. The expansion is allowed, provided the separation distance between the structure or use associated with the proposed Concentrated Animal Feeding Operation replacement/expansion is equal to or greater than the distance between the Concentrated Animal Feeding Operation and other existing uses requiring a separation distance on (the Adoption date of ordinance). The expansion also shall conform to Section 11.05.05. See Figure 1304.7.

g. A non-standard Concentrated Animal Feeding Operation (Class C) with a county issued permit is exempt from setback/separation distance requirements. In the event of a calamity, the buildings and use areas associated with the non-standard Concentrated Animal Feeding Operation are allowed to be replaced. The non-standard Concentrated Animal Feeding Operation is allowed to expand to a maximum size of one thousand nine hundred ninety-nine (1,999) animal units. The replacement and/or expansion is allowed without having to obtain a variance from setback/separation requirements. The replacement and/or expansion is allowed without having to obtain a variance from setback/separation requirements, provided the separation distance between the structure or use associated with the proposed Concentrated Animal Feeding Operation replacement/expansion is equal to or greater than the distance between the Concentrated Animal Feeding Operation and other existing uses requiring a separation distance on (the Adoption date of ordinance). The replacement and expansion provisions contained herein do not apply to non-standard Concentrated Animal Feeding Operations situated over the Aquifer Protection Overlay District. See Figure 1304.7.

h. A non-standard Concentrated Animal Feeding Operation (Class A or Class B) with a county issued permit is exempt from setback/separation distance requirements. In the event of a calamity, the buildings and use areas associated with the non-standard Concentrated Animal Feeding Operation are allowed to be replaced. The replacement is allowed without having to obtain a variance from setback/separation requirements, provided the separation distance between the structure or use associated with the proposed Concentrated Animal Feeding Operation replacement/expansion is equal to or greater than the distance between the Concentrated Animal Feeding Operation and other existing uses requiring a separation distance on (the Adoption date of ordinance). The replacement of said Concentrated Animal Feeding Operation cannot exceed the number of animal units identified in the existing County Permit, unless a variance is granted. The replacement and expansion provisions contained herein do not apply to non-standard Concentrated Animal Feeding Operations situated over the Aquifer Protection Overlay District. See Figure 1304.7.

**Figure 1304.7
Required Setback vs Existing Separation Distance**

- | | |
|--|--|
|  Lots |  House Existing at time of expansion |
|  Required Setback |  Open Lot Existing as of (Date of Adoption) |
|  Separation as of (Date of Adoption) |  Proposed Expansion - ALLOWED |
|  Barn Existing as of (Date of Adoption) |  Proposed expansion - NOT ALLOWED |



8. Additional Setback and Separation Distance Requirements for Class A, B, C, D, and E Concentrated Animal Feeding Operations.

Each application for a new or expanded Concentrated Animal Feeding Operation (CAFO) will be reviewed by the Board of Adjustment on a site specific basis. The Board of Adjustment reserves the right to increase or decrease the minimum required setbacks and separation distance on a site specific review, based on one (1) or more of the following considerations.

a. **Considerations To Increase Setbacks And/or Separation Distances**

A.i.Existing Concentration - A concentration of CAFOs in the area exists or would occur which may pose an air or water quality concern. A Concentrated Animal Feeding Operation of two thousand (2,000) or more animal units is proposed to be located in an area where a concentration of three thousand (3,000) animal units currently exists within one (1) mile of the proposed Concentrated Animal Feeding Operation site.

In the event the Board determines that a concentration of animal units already exists and an increase in animal units may pose air or water quality concerns, the Board may utilize the South Dakota Odor Footprint Tool or other instrument developed and/or accepted by South Dakota State University and the Board of Adjustment to determine the need to increase setback and/or separation requirements. The Board may further:

a) Apply the established minimum setback subject to 1304.8.a.ii

b) Increase the established minimum setback based upon 1304.8.a.ii

c) Amend and approve the request for less than three thousand (3,000) animal units based upon 1304.8.a.ii.

d) Deny the request

B.ii.Due to topography and prevailing wind direction, **and/or concentration of animal units,** additional setback and separation distance is appropriate to safeguard air or water quality. **The South Dakota Odor Footprint Tool or other instrument developed and/or accepted by South Dakota State University and the Board of Adjustment may be utilized to determine the need to increase setback and/or separation requirements.**

C.iii.Siting of A a Concentrated Animal Feeding Operation is in excess of **5,000 one thousand (1,000)** animal units.

In the event the Board determines that the siting of a CAFO, where one did not previously exist, with more than one thousand (1,000) animal units may pose air or water quality concerns, the Board may utilize the South Dakota Odor Footprint or other instrument developed and/or accepted by South Dakota State University and the Board of Adjustment to determine the need to increase setback and/or separation requirements. The Board may further:

a) Apply the established minimum setback subject to 1304.8.a.ii

b) Increase the established minimum setback based upon 1304.8.a.ii

c) Amend and approve the request for less than one thousand (1,000) animal units based upon 1304.8.a.ii

d) Deny the request

ii. Review of past management practices and proposed improvements to manure handling facilities.

b. **Considerations To Decrease Setbacks and Separation Distances**

A. ~~An existing Concentrated Animal Feeding Operation proposes to expand but does not meet suggested setback or separation distances, the Board of Adjustment may reduce suggested setbacks and separation distances after~~ The Board of Adjustment may reduce minimum setback/separation distances of any new or existing Concentrated Animal Feeding Operation proposing to expand based upon any or all of the following considerations:

i. ~~Review of past management practices and proposed improvements to waste handling facilities~~ the operation of the Concentrated Animal Feeding Operation as it pertains to the type of manure handling system and manure application methods to be used.

ii. ~~Due to the type of waste manure handling and management of the CAFO little or no impact on adjacent property is expected.~~ The use of Bio-filters, neoprene lagoon covers, and/or methane digesters are examples of improvements which may result in the reduction of recommended setbacks and separation distances. The South Dakota Odor Footprint Tool or other instrument developed and/or accepted by South Dakota State University and the Board of Adjustment may be utilized to determine the need to decrease setback and/or separation requirements.

iii. ~~Due to topography and/or prevailing wind direction little or no impact on adjacent property is expected.~~ The South Dakota Odor Footprint Tool or other instrument developed and/or accepted by South Dakota State University and the Board of Adjustment may be utilized to determine the need to decrease setback and/or separation requirements.

iv. ~~Due to the limited number of animal units~~ By limiting the proposed expansion to specific number of animal units no adverse impacts are expected. The South Dakota Odor Footprint Tool or other instrument developed and/or accepted by South Dakota State University and the Board of Adjustment may be utilized to determine the need to decrease setback and/or separation requirements.

89. Manure Application Setbacks

- a. **Table 1304.2 provides** the following manure application setbacks apply to all classes of Concentrated Animal Feeding Operations.

Table 1304.2

COUNTY MANURE APPLICATION SETBACKS

CATEGORY	SURFACE APPLIED	INCORPORATED OR INJECTED
Lakes, Rivers and Streams Classified as Fisheries	300 feet*	100 feet* (lake) 50 feet (river & stream)
Streams and Lakes Classified as Drinking Water Supplies	1,000 feet	300 feet
Public Roads	25 feet (surface) from right-of-way 300 feet (irrigation) from right-of-way	10 feet from right-of-way
Area of 10 or More Residences	300 feet (surface) 1,000 feet (irrigation)	300 feet
Public Wells	1,000 feet	1,000 feet
Established Private Water Well	250 feet	250 feet
A Residence Other Than the Operator	300 feet (surface) 1,000 feet (irrigation)	300 feet
Natural or Manmade Surface Drainage	200 feet*	50 feet

***Or as prescribed within the South Dakota General Permit for Manure Application on Saturated, Snow Covered, or Frozen Soil**

- b. The **County** Board of Adjustment may require liquid manure to be incorporated or injected in order to minimize air and water quality impacts.
- c. Requests for application of liquid manure by means of irrigation will be reviewed by the Board of Adjustment on a site-specific basis. Impact on air and water quality will be taken into consideration.

910. Standards for ~~Special Exceptions~~ Conditional Uses

- a. The **County** Board of Adjustment may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.
- b. The **County** Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations additional conditions which the Board of Adjustment considers necessary to protect the public health, safety and welfare.

- c. ~~Special exceptions~~ **Conditional Use Permits for concentrated Animal Feeding Operations** shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are being adhered to.
- d. When considering an application, the **County** Board of Adjustment will take into consideration current and past violations, **documented by the Environmental Protection Agency, the South Dakota Department of Environment and Natural Resources, or similar applicable agency in other states,** in relating to Concentrated Animal Feeding Operations that the applicant has **or had** an interest in.
- e. **Conditional Use** Permit applicants will be required to file a letter of assurances as required by the Board of Adjustment. The letter of assurances will be prepared by the zoning officer **and/or Board of Adjustment** and signed by both the applicant and the ~~zoning officer~~ **Board of Adjustment's designee. The permit for the concentrated animal feeding operation is based upon compliance with the regulations herein, and associated letter of assurances. Any violation of these regulations or non-compliance with the letter of assurances shall be cause for revoking a permit. If a violation of these regulations or non-compliance with the letter of assurance occurs, permit holders will be notified by registered mail and a hearing before the Board of Adjustment will be held concerning status of the permit. The Board of Adjustment shall either revoke the permit or set a time line for compliance. If compliance is not met, the permit shall be revoked and the permit holder ordered to cease operations.**

1011. Information Required for Class A and B Concentrated Animal Feeding Operation Permit. The following information may be requested and reviewed by the Board of Adjustment prior to the issuance or as a condition to the issuance of a conditional use permit for any class of CAFO.

- a. Owner **(s)/Applicant(s)** name, address and telephone number.
- b. Legal descriptions of site and site plan.
- c. Number and type of animals.
- d. **Preliminary** Nutrient Management Plan, **if required.**
- e. **Preliminary** manure management and operation plan, **if required.**
- f. **Preliminary** management plan for fly and odor control.
- g. Information on ability to meet suggested setbacks and separation distances ~~including site plan to scale.~~
- h. **As a condition of approval of any Concentrated Animal Feeding Operation over 1,000 animal units or as determined by the Board of Adjustment, the documentation of an approved** General Permit from **the** South Dakota Department of Environment & Natural Resources for animal species **is required. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan and manure management plan.**

- i. ~~Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources~~ **Documentation of notice to public water supply officials.**
- j. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- k. ~~Notification~~ **Documentation of notice to** whomever maintains the access road (township, county and state). ~~Notification of public water supply officials~~
- l. Any other information as contained in the application and requested by the ~~County Zoning Officer~~ **Zoning Officer.**

~~11. Information Required for Class C, Class D, and Class E of 99 Animal Units and _____ Above _____ for Concentrated Animal Feeding Operation Permit.~~

- ~~A. Owner's name, address and telephone number.~~
- ~~B. Legal descriptions of site and site plan.~~
- ~~C. Number and type of animals.~~
- ~~D. Nutrient management plan.~~
- ~~E. Manure management and operation plan.~~
- ~~F. Management plan for fly and odor control.~~
- ~~G. Information on ability to meet designated setback requirements, including site plan to scale.~~
- ~~H. Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources if using lagoon or earthen storage basin.~~
- ~~I. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.~~
- ~~J. Notification of whomever maintains the access road (township, county and state). Notification of public water supply officials.~~
- ~~K. Any other information as contained in the application and requested by the County Zoning Officer.~~

Section 1305. Vesting of Concentrated Animal Feeding Operations

- 1. **Grant County recognizes the vested right to utilize a property for the purpose of a concentrated animal feeding operation if:**
 - a. **The owner or lawful agent was engaged in the operation of a concentrated animal feeding operation, with or without a county-issued permit on (Date of adoption of ordinance);**

- b. The concentrated animal feeding operation was determined to be a nonconforming use due to setback/separation requirements established by Grant County on November 1, 1997 and/or was determined to be a non-standard use due to setback/separation requirements established by Grant County on (Date of Adoption of Ordinance).
 - c. The owner or lawful agent applies for a vested right claim, a zoning permit and signs a letter of assurance within two years after (Date of adoption of ordinance).
 2. Any person claiming to be the owner of a vested right to operate a concentrated animal feeding operation as defined herein may file a vested right claim with the form of said claim to be submitted, reviewed and approved in a manner prescribed by the Board of County Commissioners. At a minimum, the claim shall set forth the size of the concentrated animal feeding operation, the legal description of the land upon which the concentrated animal feeding operation was located and the name and owner of the land on (date of adoption of ordinance). The claim shall be signed under oath, and shall be either from the claimant's own personal knowledge or on information and belief. The vested right shall be recorded with the title of the property.
 3. If the owner or lawful agent fails to acquire vested rights within the prescribed time, then zoning regulations adopted on November 1, 1997 and subsequent amendments will apply to his property.
 4. The granting of a vested right allows the owner or lawful agent the ability to use a property for the purpose of a concentrated animal feeding operation in accordance with Section 1304.7.
 5. The vested property right shall be considered abandoned and the vested property shall revert to a nonconforming land use status subject to Article IV of these Regulations if any of the following occur:
 - a. The property is not used as a Concentrated Animal Feeding Operation for a period of one year.
 - b. The owner or lawful agent does not comply with the zoning permit and associated letter of assurance.
 - c. The principle use of the property changes from agricultural use to a residential, commercial, industrial or public use.

Section 1306. Permitted Special Use Regulations for Concentrated Animal Feeding Operations

Section 1306.01. General.

1. Permitted special use permits involve land use actions governed by standards and approval criteria that generally require the exercise of limited discretion. Impacts associated with the land use action may require imposition of conditions of approval to minimize those impacts and to ensure compliance with this Ordinance. Any Permitted Special Use approved by the Zoning Officer shall conform to the standards for such uses as set forth below. These standards shall be construed to be the minimum requirements for any of the permitted special use permit and the Zoning Officer may require additional requirements.

Section 1306.02. Concentrated Animal Feeding Operation Permitted Special Use Standards

- 1. A Permitted Special Use Permit for Concentrated Animal Feeding Operation(s) shall comply with the following:**
 - a. A Permitted Special Use Permit may only be granted for Class C Concentrated Animal Feeding Operations (1,000 to 1,999 animal units).**
 - b. The Concentrated Animal Feeding Operation site meets all setback requirements in Article XIII, Section 1304.6.**
 - c. The Concentrated Animal Feeding Operation will comply with Section 1105 Aquifer Protection Overlay District regulations.**
 - d. The applicant shall obtain a South Dakota Department of Environment and Natural Resources "General Permit" prior to the issuance of a County Permitted Special Use Permit. Said "General Permit" shall serve as meeting the requirements of the Nutrient Management Plan and Manure Management Plan standards identified in Section 1304.3 and Section 1304.4.**
 - e. The applicant shall observe manure application setbacks per 1304.9.**
 - f. The applicant shall provide a management plan for fly and odor control consistent with the standards found in Section 1304.5.**
 - g. The applicant shall obtain a haul road agreement with the applicable road authority for construction and maintenance of roads associated with the Concentrated Animal Feeding Operation. Unless otherwise agreed to between the Road Authority and the applicant, at Grant County requires, at a minimum, the applicant to abide by the haul road agreement terms found in Grant County Resolution #2014-36**
 - h. The applicant and the Board of Adjustment's designee shall sign a letter of assurance as prescribed in Section 1306.04.**

Section 1306.04. Procedures for approval of Permitted Special Use Permit

- 1. The Permitted Special Use procedure is an administrative review process, where the Zoning Officer shall have the power to review an application for conformance with the applicable standards and approval criteria and issue a Permitted Special Use permit. Requests for permitted special uses may be granted if it has been determined that the prescribed conditions for a specific use have been met or assurance has been provided that the conditions will be met. If any of the performance standards cannot be met, the proposed permitted special use will be considered a conditional use. A Permitted Special Use Permit shall not be granted unless and until:**
 - a. A written application for a permitted special use is submitted, indicating the section of this Ordinance under which the permitted special use is sought and stating the grounds on which it is requested.**
 - b. The Zoning Officer shall review the application for conformance with Article XIII.**

- c. The Zoning Officer shall provide written notice of the proposed Permitted Special Use Permit request to all landowners within the required setback (Table 1304.1)
- d. If it is determined that additional conditions and safeguards are required by the Zoning Officer for the approval of the Permitted Special Use Permit in conformity with this regulation, or the applicant fails to meet any of the prescribed conditions and safeguards; the Zoning Officer shall determine that the application is not in conformance with Article XIII and appropriate Permitted Special Use Standards (Section 1306.02). The application may then be considered by the Board of Adjustment as a Conditional Use permit (see Article V).
- e. If the Zoning Officer determines that the application is in conformance with Article XIII, the Zoning Officer shall make written findings certifying compliance with the specific standards governing Permitted Special Use Permits (Section 1306.02) and that satisfactory provisions and arrangements have been made concerning the prescribed conditions for the Permitted Special Use Permit (Section 1306.04). The Zoning Officer shall then issue the Permitted Special Use Permit subject to the applicant and designee of the Board of Adjustment signing the letter of assurance per Section 1306.04.
- f. The Zoning Officer shall report the issuance of the Permitted Special Use Permit to the Board of Adjustment at a regularly scheduled meeting where the Board's designee will sign the letter of assurance.
- g. The Zoning Officer shall then issue any other associated building/use permits.
- h. The Zoning Officer may refer any application for a permitted special use to the Board of Adjustment.

Section 1306.04. Permitted Special Use Letter of Assurance

As a requirement of Section 1306.02, the following letter of assurance is to be signed by the applicant and Designee of the Grant County Board of Adjustment prior to the issuance of any Permitted Special Use Permit.

Prepared by:
Grant County Zoning Officer
Address
Milbank, SD 57252

Permitted Special Use Letter of Assurance

A Permitted Special Use Permit has been granted by the Grant County Zoning Officer to (Applicant Name) to operate a Class C Concentrated Animal Feeding Operation on property owned by (Applicant Name).

Property Location:

Permitted Special Use Standards and Conditions to be placed upon the Permitted Special Use Permit for a Class C Concentrated Animal Feeding Operation issued by the Grant County Zoning Officer on (date).

1. This Permitted Special Use Permit authorizes the use of the above described property for a Class C Concentrated Animal Feeding Operation consisting of (number animal units and species of animal)
2. The Concentrated Animal Feeding Operation site will comply with all setback requirements found in Article XIII, Section 1304.6 of the Grant County Zoning Ordinance.
3. The Concentrated Animal Feeding Operation will comply with all requirements of Section 1105 "Aquifer Protection Overlay District" of the Grant County Zoning Ordinance.
4. The applicant shall obtain a South Dakota Department of Environment and Natural Resources "General Permit" prior to the issuance of a County Permitted Special Use Permit and any associated building/use permits. Said "General Permit" shall serve as meeting the requirements of the Nutrient Management Plan and Manure Management Plan standards in Section 1304.3 and Section 1304.4 of the Grant County Zoning Ordinance.
5. The applicant shall comply with the South Dakota Department of Environment and Natural Resources approved Nutrient Management Plan and Manure Management Plan.
6. The applicant shall provide updated information regarding the Nutrient Management Plan and Manure Management Plan upon request of the Zoning Officer.
7. The applicant shall comply with all manure application setbacks per found in Section 1304.9 of the Grant County Zoning Ordinance.
8. The applicant shall provide and comply with a management plan for fly and odor control consistent Section 1304.5.
9. The applicant shall obtain a haul road agreement with the applicable road authority for construction and maintenance of roads associated with the Concentrated Animal Feeding Operation. Unless otherwise agreed to between the Road Authority and the applicant, at Grant County requires, at a minimum, the applicant to abide by the haul road agreement terms found Grant County Resolution #2014-36.
10. The Permitted Special Use Permit is transferable. Subsequent owners/operators will be required to agree to the terms of this permit.
11. The applicant may be required to forfeit the Permitted Special Use Permit in the event there are either
 - a. Violations of the Permitted Special Use Permit or other Grant County Zoning regulations or
 - b. Failure of the manure management facility.
12. Violation of the terms of this Permitted Special Use Permit will be determined by the Grant County Zoning Officer.
 - a. The first violation substantiated by the Zoning Officer of this Permitted Special Use Permit may result in a notification letter stating the violation and a prescribed period of time to remove the violation. A second violation occurring within one (1) calendar year of the previous violation may

result in a review of the validity of the Permitted Special Use Permit and potential revocation of said permit. A third violation within one (1) calendar year of the initial violation may result in revocation of the Permitted Special Use Permit and cessation of all CAFO operations within forty-five days (45) of notice of revocation.

b. The applicant may make appeal from the decision of the Zoning Officer or other agent of the Grant County Board of Adjustment to the Grant County Board of Adjustment. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days. Appeals from the Board of Adjustment shall be taken to Circuit Court.

c. Failure to comply with the decision of the Zoning Officer or other agent of the Grant County Board of Adjustment may be deemed a separate violation.

IN WITNESS WHEREOF, Grant County and the Grantor(s) have executed this Conditional Use Permit Letter of Assurance.

Applicant (Grantor) Date

Chairperson Date
Grant County Board of Adjustment

STATE OF SOUTH DAKOTA
SS:
COUNTY OF GRANT

This instrument was acknowledged before me on _____, 20____ by (Applicant), Grantor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My Commission Expires:

STATE OF SOUTH DAKOTA
SS:
COUNTY OF GRANT

This instrument was acknowledged before me on _____, 20____ by _____, representing Grant County as the Chairman of the Grant County Board of Adjustment.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My Commission Expires: