

THE BUFFALO TOWNSHIP ZONING ORDINANCE

ZONING REGULATIONS:

Be **it** ordained by the Buffalo Township Board of Supervisors of Cass County , North Dakota :

An ORDINANCE to provide for dividing the unincorporated territory of Buffalo Township into **districts (zones)** to regulate and **redistrict** the location and use of buildings , structures and land for trade, industry, commerce , residence or other purpose ; to regulate and determine the area of yards and other open space about buildings; to regulate and determine the density of use of land and lot area. No regulation or restriction contained herein shall prohibit or prevent the use of land or buildings for farming or any of the normal incidentals of farming . The purpose of these regulations is to encourage orderly growth and development of the Municipality and adjacent area and promote health , safety and general welfare .

There is hereby created two Districts:

A., **RESIDENTIAL DISTRICT:** Shall consist of that portion of the North One-Half of the Southwest Quarter (N1/2SW1/4) and the Southwest Quarter of the Southeast Quarter (SW1/4SE 1/4) of Section Nineteen (19); and the South One-Half of the Northwest Quarter (S1/2NE1/4) and the Northwest Quarter of **the** Northeast Quarter (NW1/4NE1/4) of Section Thirty (30); all in Township one Hundred Forty (140) North , of Range Fifty-Four (54) West , of the 5th P.M. , that lying outside the corporate limits of the City of Buffalo.

Use Regulations: A building or premises shall be used only for the following purposes:

1. Single family dwelling
2. Agriculture, including the customary incidents thereof, together with agricultural buildings and structures utilized therewith.
- 3.. Churches
4. Public and private schools
- 5 Public or private Forest and Wildlife reservations.
- 6 Accessory buildings and uses customarily incident to any of the above uses .

Area Regulations:

Front Yard : There shall be a front yard having a depth of not less than Twenty-Five (25) Feet.

Side Yard: There shall be a side yard on each side of a building which yard shall have a width of not less than Fifteen (15) Feet.

Rear Yard: There shall be rear yard having a depth of not less than Thirty-Five (35) Feet.

Intensity US : Every lot or tract of land shall have a minimum width of One Hundred (100) feet at building line and an area of not less than Fourteen Thousand (14,000) square feet. Lot area required in individual cases may be reduced by the Township Board Supervisors when the lot is in a sub-division plot of record or otherwise when appropriate to the intendment hereof.

B. **AGRICULTURE DISTRICT:** This District consists of all area in Buffalo Township that has not been included in "A" Residence District.

ZONING DISTRICTS RELATED TO AGRICULTURAL LAND
USAGES

This Zoning Ordinance identifies Permitted Uses within each identified District requiring no additional zoning action by the Board of Township Supervisors in the event of a proper application for a building permit, or any other application seeking township authorization.

As to each identified District there also exists a list of Conditional Uses. Upon proper application for a building permit, or any other application seeking township authorization for any use described as being a Conditional Use, the Zoning Administrator will identify all additional conditions in writing which will allow for such Conditional Use because (a) such additional conditions will overcome any detriment to the District, and (b) such additional conditions will substantially serve the public welfare. Such Conditional Use, as supplemented by the additional written conditions identified by the Zoning Administrator, are still subject to the approval of the Board of Township Supervisors under the following general standards:

No application for a Conditional Use permit shall be granted unless all the following conditions are present:

- a. that the uses, values and enjoyment of the other property in the area shall in no foreseeable manner, be impaired or diminished by the Conditional Use;
- b. that the Conditional Use will not be detrimental to or endanger the public health, safety, comfort or general welfare;
- c. that the Conditional Use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the District;
- d. that adequate utilities, access roads, drainage and other necessary site improvements have been made or are being provided;
- e. that the Conditional Use shall conform to all applicable regulations of the District in which it is located.

A. OPEN SPACE AND AGRICULTURAL CONSERVATION DISTRICT ["OAg"]

The predominant use of land within this District is agriculture and undeveloped land. It is the purpose of this zoning district to maintain these uses.

1. Permitted Uses: All Permitted Uses set forth in Table SIX(A) (1 & 2) plus the following:
 - a. Grain and crop farming, nurseries, greenhouses and roadside stands for the sale of products which are grown on the premises.
 - b. Golf courses, but not including miniature golf courses.
 - c. Public parks, facilities and playgrounds.
 - d. Farm drainage and irrigation systems.
 - e. Designated historical sites.
 - f. Accessory Use.
 - g. Farm Buildings.

2. Conditional Uses: All Conditional Uses set forth in Table SIX(A) (1 & 2) plus the following:
 - a. Utility lines and public service facilities.
 - b. Single family dwellings or Manufactured Home [no more than two Dwelling Units within any contiguous 160 acre tract].
 - c. Airports.
 - d. Churches and related facilities.
 - e. Cemeteries and crematoriums.
 - f. Public schools.
 - g. Radio and television towers and accessory buildings.
 - h. Temporary structures incidental to construction work but not extending beyond the period of such work.

3. Area and Density Requirements: All Area and Density Requirements set forth in Table SIX(A) (3 & 4 & 5) plus the following:
 - a. The minimum lot size shall be ten (10) acres.
 - b. No more than two (2) Dwelling Units within any contiguous 160 acre tract within the same section of land.

4. Building Height/Size Limits: All Building Height/Size Requirements set forth in Table SIX(A) (3 & 4 & 5) plus the following:
- a. For residential uses, the maximum height of structures shall be two and one-half (2.5) stories or 35 feet [but never more than 40 feet above the flood plain].
5. Setback Requirements: All Setback Requirements set forth in Table SIX(A) (3 & 4 & 5) plus the following:
- a. The minimum setback from road and highway rights-of-way shall be **75** feet.
 - b. There shall be a minimum side and rear yard of 10 feet with no building line closer than 20 feet to another structure on an adjacent lot.

Table SIX(A) (1 & 2) Permitted Uses and Conditional Uses for		
Description of Use Based on Definitions in Section ONE L	Permitted Use in District [yes or no]	Conditional Use Permit in District [yes or no]
1. Agricultural Service Establishment	no	no
2. Automobile and Truck Body Repair Shop	no	yes
3. Automotive Repair Shop	no	no
4. Club or Lodge	no	no
5. Commercial Agriculture	yes	n/a
6. Concentrated feeding operation (CAFO)	No	yes
7. Day Care Facility	no	yes
8. Dwelling, Farm	yes	n/a
9. Dwelling, Single Family	No	yes
10. Dwelling, Multiple	no	no
11. Essential Services	yes	n/a
12. Farm	yes	n/a
13. Farming or Ranching	yes	n/a

Table SIX(A) (1 & 2) Permitted Uses and Conditional Uses for		
14. Feedlot	no	yes
15. Home for Temporary Lodging and Meals	no	yes
16. Home Occupation	yes	n/
17. Hotel (Motel)	no	no
18. Kennel	no	no
19. Neighborhood Commercial Establishments	no	no
20. Nursing Home (Rest and Convalescent Homes)	no	no
21. Poultry Lot	yes	n/
22. Ranching or Farming	yes	n/
23. Salvage Yard	no	no
24. Service Station (Gas	no	no
25. Warehouse	no	no

Table SIX(A) (3 & 4 & 5) Minimum Lot Size, Yard Requirements, Spacing Requirements, and Access Points for Open Space and Agricultural Conservation District ["OAg"]	
Lot Size	10 acres
Yard Requirements:	
Front Yard	Road Type: Setback [from centerline]: Arterial Road 175 feet Collector Road 125
Rear Yard	20 feet
Side Yard	20 feet

Table SIX(A) (3 & 4 & 5) Minimum Lot Size, Yard Requirements, Spacing Requirements, and Access Points for Open Space and Agricultural Conservation District ["OAg"]	
Distance separating access points serving any parcel or	
Local Road	100 feet
Collector Road	100 feet (Township Roads and Section lines.)
Arterial Road	200 feet (State or County Roads)
Intersections	300 feet
Special Requirements	

ENERGY CONVERSION FACILITY SITE

Buffalo Township finds that the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of this township. Therefore, it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of this Township by providing that no energy conversion facility or transmission facility shall be located, constructed, and operated within this Township without a certificate of site compatibility or a route permit acquired pursuant to this chapter. The Township hereby declares it to be the policy to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, sites and routes shall be chosen which minimize adverse human and environmental impact.

A conditional use permit shall therefore be required prior to construction, lying out proposed route, altitude, voltage, siting, megawatt rating, decibel rating and such other pertinent details at the discretion and for consideration by the Zoning Board. Buffalo Township shall issue such Permit only if all shall appear in order after a zoning board hearing is held and passed by the Township Board of Supervisors.

BUFFALO TOWNSHIP ZONING AMENDMENT

WIND ENERGY FACILITIES

ARTICLE 2 RULES AND DEFINITIONS

2.2 Definitions

2.2.05 “Abandonment” means the cessation of use of for at least the minimum period of time specified under this ordinance.

2.2.1 “Accessory Building and Uses” shall be removed and replaced with:

2.2.1a “Accessory Building or Accessory Structure ” means a building that is located on the same parcel of property or manufactured home or recreational vehicle park space as the principal structure or use. This includes the use of which is incidental to the use of the principal use or structure, except for accessory parking facilities located elsewhere, plus pole bars, hay sheds, grain bins, grain handling systems, feed lots, and the like qualify as accessory structures on farms or farmsteads, and may or may not be located on the same parcel as the farm, residential dwelling or shop building. Garages, carports and shops are common accessory buildings. If a building is used for any residential, principal, or permitted use, it is not an accessory building. An accessory building can be attached to or detached from the principal structure.

2.2.9.1 “Anemometers” see “2.2.77 MET Tower” definition.

2.2.12.1 “Blade Glint” means the intermittent reflection of the sun off the surface of the blades of one or more wind turbines.

2.2.75.1 “Maintenance” means the cleaning, painting, repair, or replacement of defective parts (including plumbing, electrical, or mechanical work that might require a building permit) in a manner that does not alter the basic design or composition of a structure.

2.2.79.1 “Modification or Modify” means any change, addition, swap-out, exchange, and the like that does not qualify as “Repairs and maintenance” is a modification. Also included is any change, addition, swap-out, exchange, and the like that requires or results in changes and/or upgrades to the structural integrity of a structure.

2.2.81.1 “Nuisance” A nuisance consists in unlawfully doing an act or omitting to perform a duty, which act or omission:

1. Annoys, injures, or endangers the comfort, repose, health, or safety of others;
2. Offends decency;
3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake, navigable river, bay, stream, canal, basin, public park, square, street, or highway;
- or 4. In any way renders other persons insecure in life or in the use of property. (NDCC 42-01-01)

2.2.96.1 “Repair” means the replacement of a defective part or product, or existing work with the same kind of material used in the existing work, not including additional work that would change the structural safety of the structure or that would affect or change required existing facilities, a vital element of an elevator, plumbing, gas piping, wiring, or heating installations, or that would be in violation of a provision of law or ordinance. The term “repair” or “repairs” shall not apply to any change in construction.

2.2.99.1 “Shadow Flicker” means the visual effect that results when the blades of an operating wind energy facility pass between the sun and an object and cast a readily observable, moving shadow on a person or property and the immediate vicinity.

2.2.124.1 “Wind Energy Facility, Large System” means a wind energy facility that has a rated capacity of more than twenty-five (25) kilowatts (kw) and less than one thousand (1,000) kw+.

2.2.124.2 “Wind Energy Facility, Small System” means a wind energy facility that has a rated capacity of not more than twenty-five (25) kw. Such a facility is used primarily for on-site consumption, and consists of no more than one wind turbine and any associated tower, control and /or conversion electronics.

2.2.124.3 “Wind Energy Facility, Utility-Scale” means a wind energy facility that has a related capacity of one thousand (1,000) kw or more.

2.2.126.1 “Wind Farm” means the same as 2.2.124.3 Wind Energy Facility, Utility-Scale.

ARTICLE 6 SPECIAL PROVISIONS

Section 6.11 Wind Energy Facility

6.14 Wind Energy Facilities

6.14.1 Purpose

This ordinance provides a framework for siting, construction, operation, abandonment and decommissioning of a wind energy facility in Buffalo Township that will preserve the safety and well-being of the residents, future residents, environment and facilitate equitable and orderly development.

6.14.2 Regulatory Framework

A wind energy facility may only be constructed in Buffalo Township if the Applicant first obtains a permit and complies with the conditions of this ordinance.

6.14.3 Applicability

This ordinance governs the development and use of all land and structures for wind energy facilities. No building, structure, or land shall be used, occupied or altered, and no building, structure, or part thereof shall be erected, constructed, reconstructed, moved, enlarged, or structurally altered, unless in conformity with all the provisions of this regulation and all other applicable regulations, except as otherwise provided by this ordinance.

6.14.4 Wind Energy Permit Availability by Zone

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

Zoning District	Not Permitted	Conditional Use Permitted
Agricultural (A)		Yes
Rural Residential Zone (RR)	No	
Commercial Zone (C)	No	
Industrial Zone (I)	No	

Recreational/Open Space Zone (R/O)	No	
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6.14.5 Anemometers or Other Meteorological towers

Towers 100 feet or more tall must be marked in a way that satisfies FAA advice set out in FAA Advisory Circulars 47 CFR §§ 17.21-17.58 or their successors. <http://wireless.fcc.gov/antenna/documentation/faadocs/7460-1K.pdf> The drafters of this ordinance understand perfectly well that the FAA only requires painting for towers 200' or taller. Those who erect, maintain, own or operate a MET tower in Buffalo Township that is 100 feet or taller must apply the advice, methods and guidance in the FAA circulars to any tower 100 feet or higher. Neither an environmental statement nor assessment is required. In lieu of lighting, using the following combination of balls, flags, and sleeves is allowed.

- 1) One high visibility cable ball at least 21" (53 cm) in diameter on each outer guy-wire placed at about half the height of the MET tower;
- 2) Four high visibility flags at least 24" x 12" (78cm x 40cm) on each outer guy-wire placed at intervals that segment the guy-wire evenly;
- 3) High visibility sleeves, one per each anchor and one installed at 26 feet or (7.93m) height on each of the guy-wires.

6.14.6 Permit Application Information

- 1) The complete name, legal address and phone number of the prospective Applicant and responsible contact person.
- 2) A narrative overview of the project. In the contents of the narration there shall be, including but not limited to, a list of future prospective buyer(s) of the facility, the schedule for the proposed start and completion of construction, the generating capacity of the Wind Energy Facility (WEF), summary of all leases in the footprint and agreements one (1) mile outside of the footprint, and a five (5) year plan (every five (5) years throughout the duration of the WEF) are some items required.
- 3) A tabulation describing the specific number, types, and height of each wind turbine to be constructed, including their generating capacity, dimensions and respective manufacturers, and appurtenant structures and/or facilities.
- 4) Identification of the property on which the proposed WEF will be located.
- 5) A site plan showing the following:
 - a. Planned location of each wind turbine.
 - b. All property lines within two miles of the property lines (footprint) of the proposed site.
 - c. Setback lines.
 - d. Access roads and turnout locations.
 - e. Substations
 - f. Electrical cabling from the WEF to the substation(s) and from the substation(s) to where the electricity will leave the site.
 - g. Auxiliary equipment, buildings, and structures, including permanent meteorological towers.
 - h. Associated transmission lines
 - i. Conservation areas, including natural areas protected by law, such as wetlands

that meet the definition in the Clean Water Act; shore land areas; water bodies; riparian buffers; populations of endangered or threatened species, or habitat for such species; archaeological sites, cemeteries, and burial grounds; important local historic sites; native forests.

j. Location of all structures and properties within the geographical boundaries of any applicable setback.

6) For Utility-scale Wind Energy Facilities, an environmental impact study shall be submitted which includes review comments from all applicable state and federal agencies, including at least a division of the government that deals with natural resources, wildlife, health and human services, and waterways or bodies of water.

The study shall cover, at a minimum, the potential impacts on the human population (such as audible and inaudible sound, shadow flicker and blade glint, viewsheds, blade throw, and ice and wind resistance, etc.), topsoil and subsoil conditions, as well as the animal populations, migratory areas used by waterfowl, the location of any and all air routes recognized by the FAA and /or established by any agency of the Department of Defense, land, and water (including impacts on groundwater resources due to foundations, pilings, etc.), and air. The study area shall include at least the two miles surrounding the footprint of the proposed WEF.

The Applicant shall provide Township Zoning Commission with an Escrow Account (referenced in Section 6.14.12) to cover all costs and expenses incurred related to the study for the WEF. The Township Zoning Commission shall use the Escrow Account funds to hire independent qualified experts, as needed, to conduct the tests specified below:

- a. The location of any of the following found within the confines of, or within two miles from the perimeter of, any proposed WEF shall be identified: open drainage courses, streams, wetlands, and other important natural areas and site features, including, but not limited to, floodplains, deer wintering areas, wildlife habitats or sanctuaries, habitat of rare and endangered plants and animals, unique natural areas, sand and gravel aquifers, wells, and historic and /or archaeological resources. Together with a description of such features.
- b. Pre-construction and post-construction field studies shall be conducted using the most advanced techniques available. Independent experts shall be chosen by the Township Zoning Commission and funded through the WEF Escrow Account. If the pre-construction field studies demonstrate significant adverse effect to the topsoil or subsoil, or to birds, bats, game animals, water resources, or habitat fragmentation, Township Zoning Commission and the WEF Applicant (includes Owner or Operator) shall develop an appropriate mitigation plan. It is acknowledged and accepted by the Applicant that some environmental impacts cannot be satisfactorily mitigated and that some of those projects will not be approved.
- c. In determining the nature and effectiveness of such mitigation plans, the Township Zoning Commission will be guided by its own consultants, the appropriate state and federal agencies, and applicable state and federal laws and regulations. The WEF Applicant will be responsible for the full cost of implementing the mitigation plan under the supervision of the Township Zoning Commission and its designated agents.
- d. After implementation of any mitigation plan, the Township Zoning Commission will review the plan to determine its effectiveness. Should Township Zoning Commission find the mitigation efforts inadequate, the WEF Applicant will be given 60 days from that finding, to resolve the deficiencies. In the absence of a successful resolution, Township Zoning Commission (at its discretion) shall have the right to: deny the WEF Permit.

- e. The Applicant must provide a written memorandum from the appropriate state and federal agencies detailing their assessment of the proposed WEF.
- f. The Applicant must demonstrate, to the satisfaction of Township Zoning Commission, that the proposed WEF will not have an undue adverse effect on: the proposed sites geological stability; topsoil and subsoil; surface or subterranean water resources; rare, threatened, or endangered wildlife; raptor habitat; threatened or endangered plants and rare and exemplary natural plant communities and ecosystems; and will not substantially increase storm water runoff.
- g. The Applicant must provide a cumulative-impact assessment of the proposal in the context of other WEF's in the region, including migratory bird, bat and large mammal corridors, and demonstrate that the WEF is not located in an area that will result in degradation of important wildlife corridors.

7) The United States Fish & Wildlife Service (USFWS) Land-based Wind Energy Guidelines (WEG) will be reviewed by the WEF and acknowledgement that the WEF will follow these guidelines as closely as possible. Other relevant studies, reports, certifications, and approvals as may be reasonably requested by the Township Zoning Commission to ensure compliance with this ordinance.

8) Decommissioning Plan (referenced in Section 6.14.16): A description of how the structural and turbine materials will be disposed of and how the site (land, roads, etc.) will be restored to the pre-existing WEF condition documented by the studies, reports and other documentation presented in the permit application, as well as

- a. Anticipated life of the WEF
- b. Estimated decommissioning costs (in current dollars), as provided by an appropriate licensed engineer or designee, including contingency costs of at least 10%.
- c. Method for ensuring that funds will be available for decommissioning and restoration as set forth in Section 6.14.18
- d. A verifiable means of determining if the decommissioning plan needs to be activated due to abandonment, such as a letter from the electric utility that wheels the power stating that it will notify the Zoning Administrator within 10 business days when electricity is not received from the WEF for any 30 consecutive days.

9) Stand-down Plan: the Applicant shall certify that the proposal is for wind turbines rated for the wind and turbulence specifications that meet the North Dakota Building Code and/or are of the class recommended by the governing body that sets such standards. A stand-down plan for high wind conditions shall be included along with any other materials needed for the certification.

10) Potential impacts on property values report shall be provided by the Applicant showing competent evidence that the proposed project will not degrade or diminish values of surrounding real properties within two miles of the boundary of the footprint of the WEF project. (referenced in Section 6.14.22)

11) If any portion of a proposal will be more than 200 feet tall, the Applicant shall provide a copy of a FAA determination as a result of filing the FAA Form 7460-1 *Notice of Proposed Construction or Alteration of an Object that may Affect the Navigable Airspace*. The Applicant shall establish to the satisfaction of the Township Zoning Commission that the proposed WEF will not adversely impact the restricted air space.

12) The Applicant shall conduct preventive maintenance inspections on every structure

other than accessory buildings at least once every year and again after any wind or weather event which could potentially shorten the life expectancy, the integrity, or the maximum efficiency of the wind turbine or other accessories. Each inspection shall look for such things as metal fatigue, nut loosening, oil leaks and other potential failures that might impact the public health and safety, wildlife, soil contamination, air pollution, noise levels or other such injuries to the surrounding area. Such inspection reports shall be provided to the Zoning Administrator or designee within 30 days of the inspection.

The Applicant shall detail the maintenance schedule and non-maintenance actions that will be taken to keep the WEF operating quietly, efficiently, and non-polluting of the land, water, and air. Including, but not limited to, the minimization of loud or high-pitched sound, low frequency sound or vibration, blade glint, and fluid leaks.

13) WEF shall follow the Best Practices of the National Institute of Occupational Safety & Health. Hearing loss and health issues associated with the constant low frequency and intermediary high decibels caused by a wind turbine will be paid special attention to by the Applicant/owner/or operator. In addition, no WEF will run at over 55 decibels for a period of over 48 hours and at 82 decibels for more than 8 hours. This can be monitored at any time at the Township Zoning Commission's request and must be accurately measured at a location(s) designated by the Township Zoning Commission. If safety or health issues are brought to light, the Township Zoning Commission has the right to shut all or parts of the WEF down (discontinued use of the turbines) until the those issues are corrected.

14) Visual Impacts shall be reviewed by the Township Zoning Commission on a case by case basis during the permitting process. The Applicant shall produce documentation (maps, pictures, etc.) that proves there are no visual impacts throughout the WEF. Applicant shall not install any lighting that exceeds the minimum required by the FAA. Where alternatives to strobe lighting are available from the FAA, such as sensor lighting, strobe lighting shall be the last resort and only if required by the FAA in the footprint.

15) If there are surrounding communities within a 3 mile radius of the footprint of the WEF, written notification of the application must be given to the governing body by that Applicant.

16) The Township Zoning Commission may deny an application for any of the following reasons:

- a. Conflict with safety and safety related codes and requirements.
- b. The use or construction of a WEF that is contrary to an already stated purpose of a specific zoning or land use designation.
- c. The placement and location of a WEF that would create an unacceptable risk to residents or the public including noise impacts, visual impacts, impacts on surrounding communities, and/or adverse impacts identified in an environmental impact report.
- d. The placement and location of a WEF would result in a conflict with, or compromise or change in, the nature or character of the surrounding area.
- e. Conflicts with the provisions of this ordinance.
- f. Failure to submit a complete application as required under this ordinance, including an incomplete or inadequate (as determined by Township Zoning Commission) Decommissioning Plan, Stand-down Plan, Maintenance Plan, and/or Road Analysis.
- g. Conflicts with restricted air space or fly zone.

h. WEF creates a nuisance.

17) The permit approval shall be valid for a period of one year, with the option to extend the permit one time for another year. The same fees attached to the original application shall apply to the application for an extension. An approval of the application means that the Applicant has the authority to move forward with the WEF. The application will expire if an extension hasn't been requested or the WEF has not moved forward towards the project end goals. (Paperwork in order, construction begins, electrical connection system being put into place, ect.)

6.14.7 Setbacks

The following setbacks and separation requirements shall apply to all Wind Turbines in the WEF. Such minimum setbacks for the Wind Turbine shall be measured from its outermost extension (whether blade tip, nacelle/turbine housing, or tower/pole edge) to the closest near vertical surface of the occupied or unoccupied structure, improvement, feed lot, or the nearest point of a boundary, bridge, line, or the center line of the improved surface of a road or airstrip.

- 1) Occupied Structures and Facilities: Each Wind Turbine shall be set back from the nearest occupied dwelling, accessory building, feed lot, commercial building, publicly used structure or facility at a distance of not less than one (1) mile. This setback applies whether the occupied dwelling, accessory building, feed lot, commercial building, publicly used structure or facility is inside the footprint or outside of the footprint.
- 2) Public Roads and Above Ground Communication and Electrical Lines: Each Wind Turbine shall be set back from the nearest public road or above ground communication and electrical lines at a minimum distance of 1.1 times the height of the tower at its highest point including the blades determined at the center of the existing right-of-way. A minimum of 75 feet clearance must be maintained from the ground at the lowest point of the blades.
- 3) Wind Energy Facility Perimeter (Footprint): Each Wind Turbine shall be set back from the Wind Energy Facility Perimeter at a minimum distance of one thousand (1000) feet except if it falls under the Occupied Structures and Facilities setback. A variance may be requested if an authorized representative or agent of the Applicant and those affected parties on adjoining properties with associated wind rights, sign a formal and legally binding agreement expressing all parties' support for a variance that waives or reduces the setback requirement.

6.14.8 Variance to a Setback Request

A variance may be requested if an authorized representative or agent of the Applicant and those affected parties sign a formal and legally binding agreement expressing all parties' support for a variance that waives or reduces the setback requirement.

6.14.9 Notice of Hearing on Application for Variance Setback

It is the obligation of the party seeking the variance to the setback requirement to serve notice of the initial hearing on the application, in accord with the ND Rules of Civil Procedure, to all property owners whose land is located inside the setback area sought to be diminished. Proof of

service must be filed with the Township Zoning Commission prior to the hearing.

Where the provisions for variances on wind turbines differ from the general variance provision in this ordinance, this wind turbines special provision governs for wind turbine issues.

The property owner may apply for a variance from a setback requirement involving an occupied structure, unoccupied structure, improvement, feed lot, antenna, tower, road, or bridge.

6.14.10 Contents of Setback Waiver

The party seeking the variance from the setback must attempt to obtain from the affected property owner, and should provide to the Township Zoning Commission, a waiver executed by each affected owner sought to be removed from the applicable setback protection. The waiver shall only be in effect for the length of the WEF permit.

The setback waiver signed by the affected property owner must describe how the proposed wind turbine location is not in compliance with the setback, and clearly state that consent is granted for the wind turbine or accessory to be closer to the owner's property than allowed by the ordinance.

Legal counsel should be sought before signing a setback waiver.

6.14.11 Required Dignities of Valid Variance

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

6.14.12 Escrow Account

The Applicant shall pay to Buffalo Township a fee as set forth in the fee schedule. The Township Zoning Commission reserves the right to obtain engineering, economic impact, aviation impact, or other professional services to aid it in the review of any submitted application. The Applicant shall reimburse Buffalo Township for the cost thereof prior to receiving the decision of the Township Zoning Commission on the application.

- 1) The Applicant shall reimburse Buffalo Township for all oversight expenses incurred related to the WEF from application through decommissioning.
- 2) These WEF related oversight expenses include, but are not limited to, amounts required for Building Permits, Licensing, Re-Licensing, and Decommissioning – e.g. administration, engineering, expert health and wildlife evaluations, handling complaints, legal, etc. “Legal” includes reasonable attorney fees for Buffalo Township if Buffalo Township has to sue the Applicant.
- 3) Any interest accruing to the Escrow Account shall stay with the account and be considered new principle.
- 4) This Escrow Account will be setup by the Applicant at the time of the WEF permit application. This Escrow Account will be at a financial institution approved by Buffalo Township, solely in the name of Buffalo Township, to be managed by Buffalo Township Treasurer and the Township Zoning Commission. The Applicant will make an initial deposit of \$50,000. A WEF application will not be processed until consent to these terms and proof of deposit has been provided by the Applicant.

- 5) If the WEF application is denied, all Escrow Account funds will be returned to the Applicant, less related expenses incurred by Buffalo Township. The money will be returned, along with a statement as to these costs, within 30 day of the application being formally denied or receipt of a Letter of Withdrawal by the Applicant.
- 6) This Escrow Account will be maintained during the life of the WEF by the Applicant/owner/operator. The Applicant/owner/operator will replenish any Escrow funds used by Buffalo Township within 14 days of being sent written notification (and explanation) of said withdrawals. Failure to maintain the Escrow Account at \$50,000 shall be cause for revocation (or denial of renewal) of the WEF permit.
- 7) If the WEF is decommissioned to the satisfaction of the Township Zoning Commission, all Escrow Account funds will be returned to the Applicant/owner/operator, less related expenses incurred by Buffalo Township. The money will be returned, along with a statement as to these costs, within 30 days of the decommissioning process being completed.

6.14.13 Installation and Design

- 1) The electrical connection system from the wind turbines to a collection point or substation shall, to the maximum extent possible, be placed underground. The power from that collection point or substation may use overhead transmission lines, if approved by the Township Zoning Commission.
- 2) In order to preserve the integrity of fields and capacity for efficient tilling, planting, and harvesting of crops, access roads to each tower should be built parallel or perpendicular to existing roads, not diagonally across fields for mere convenience of the shortest route to a turbine.
- 3) The Applicant shall certify that the proposal is for wind turbines rated for the wind and turbulence specifications that meet the North Dakota Building Code and/or are of the class recommended by the governing body that sets such standards.

6.14.14 The WEF shall:

- 1) Be a non-obtrusive color (such as light blue, off-white, or light gray) that blends with the sky, as determined by the Township Zoning Commission.
- 2) Not be artificially lighted, except to the extent required by the FAA or other applicable authority that regulates air safety.
- 3) Not contain any signs or other advertising. Each wind turbine will be marked with an identification number large enough to assist identification of the turbine number in an emergency.
- 4) Be sited and operated so as to not interfere with television, internet service, telephone (cellular or digital), microwave, satellite dish, navigational, or radio reception in neighboring areas. the Applicant/owner/operator of the WEF shall be responsible for the full cost of any remediation necessary to provide the same service or correct any problems; including relocation or removal of the facility causing or exacerbated by the operation of such equipment and any and all related transmission lines, transformers, and other components related thereto.
- 5) Have a leak containment system for oil, hydraulic fluids, and other non-solids that is certified by an expert (such as an engineer, OSHA, turbine manufacturer, etc.)

acceptable to the Township Zoning Commission that all such fluids will be captured before they reach the ground. The Applicant shall pay the cost of the expert.

6.14.15 Roads:

The Applicant shall reimburse Buffalo Township for any and all repairs and reconstruction to roads that are necessary due to the construction, decommissioning or maintenance of the WEF. A qualified independent third party or other qualified person who has been agreed upon by the Township Zoning Commission and the Applicant shall be hired to pre-inspect the roadways to be used during construction and/or decommissioning. This third party shall be hired to evaluate, document, and rate the roads condition prior to construction or decommissioning of the WEF and again 30 days after the WEF is completed or removed.

Any road damage during construction that is done by the Applicant and/or one or more of its contractors or subcontractors that is identified by the third party shall be repaired or reconstructed to the satisfaction of the Township Zoning Commission at the Applicant's expense prior to the final inspection.

The surety for removal of a decommissioned WEF shall not be released until the Township Zoning Commission is satisfied that any road damage that is identified by this third party during and after decommissioning that is done by the Applicant and /or one or more of its contractors or subcontractors that is identified by the third party shall be repaired or reconstructed to the satisfaction of the Township Zoning Commission at the Applicant's expense. In addition, the Applicant shall pay for all costs related to work of this third party's inspection prior to receipt of the release of the surety. (referenced in Section 6.14.18)

The Applicant/owner/operator is also responsible for any grading maintenance, to be determined by the Buffalo Township Supervisors, needed during the use of Buffalo Township's roads for the construction, decommissioning and maintenance of the WEF.

If the WEF is needing snow removal on a township road, the Buffalo Township Supervisors shall be contacted and arrangements may be made with their approval for the removal of snow at the cost of the Applicant, if the snow removal is at the request of the Applicant/owner/operator and solely for WEF access.

6.14.16 The Applicant shall provide a shadow flicker and blade glint report for each proposed wind energy facility. The report shall:

- 1) Evaluate the worst case scenarios of wind constancy, sunshine constancy, and wind directions and speeds.
- 2) Map and describe the zones where shadow flicker and blade glint will likely be present within the project boundary and a two (2) mile radius beyond the project boundary.
- 3) Identify existing residences and the locations of their windows, locations of other structures and feed lots, wind speeds and directions, and existing vegetation and roadways.
- 4) Calculate the locations of shadow flicker caused by the WEF and the expected durations of the flicker at these locations.
- 5) Calculate the total number of hours per year of flicker at all locations.
- 6) Identify problem zones within a two (2) mile radius where shadow flicker will interfere with existing or future residences and roadways and describe proposed measures to mitigate these problems.

Based upon the findings of the report, the WEF shall be designed so that shadow flicker or blade glint will not fall on or in any roadway, occupied property, or feed lot unless approved by the Township Zoning Commission and or the property owner. This decision will weigh on the property owner's statements of approval or disapproval.

If the flicker or blade glint exceeds any of the conditions agreed upon by the Applicant and the Township Zoning Commission, the source of the issue (turbine or turbines) will be shut down until the flicker or glint problem is remedied. Each such occurrence shall be a separate violation of this ordinance and the penalties shall be cumulative.

6.14.17 Decommissioning or Abandonment:

If the chief building official or designee of the WEF condemns any portion of WEF, or, if no electricity is generated for three (3) consecutive months from any wind turbine, the WEF owner and /or property owner shall have three (3) months to remedy the issues or complete the decommissioning of all or portions of the WEF according to the approved plan.

- 1) The Township Zoning Commission may grant extensions of time for repair and/or maintenance, for good cause, such as the parts being back-ordered from the manufacturer or supplier, contractors not available, or the need to repair a wind turbine damaged by high winds, tornados or ice storm.
- 2) Decommissioning shall include the complete removal of wind turbines, buildings, cabling, electrical components, accessory roads, and any other associated facilities and/or structures, including below ground (grade) items such as foundations and power lines.
- 3) Disturbed earth shall be graded to the original grade prior to the WEF or re-seeded (if in that condition prior to the WEF). The soil shall be put back into the same condition as it was prior to the WEF. The soil samples taken prior to the WEF will serve as the recipe for restoring the soil to its original condition prior to the WEF construction.

6.14.18 Surety for Removal of the WEF if Decommissioned or Abandoned:

The Applicant shall place with Buffalo Township an acceptable letter-of-credit, bond, or other form of security that is sufficient to cover the cost of removal at the end of the facility's useful life, as detailed in the decommissioning plan. Such surety shall be a least \$250,000 for each wind turbine. The Applicant will have to request approval from the Township Zoning Commission if they wish to reduce this amount.

The surety shall be used by Buffalo Township to assure the faithful performance of the terms and conditions of this law and conditions of this ordinance, as well as to serve as a removal security to prevent the taxpayers from bearing the cost of removal in the event of the abandonment or cessation of use for more than 90 consecutive days. The full amount of the bond or security shall remain in full force and effect until any and all necessary site restoration is completed to restore the site to the pre-existing WEF condition documented by the studies, reports and other documentation presented in the permit application.

6.14.19 Reservation of Authority to Inspect WEF

In order to verify that the holder of a permit for a wind energy facility and any owners, all lessees, renters, and /or licensees of it, have placed and constructed such facilities in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, Buffalo Township may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification, and maintenance of such facilities, including all towers, buildings, and other

structures constructed or located on the WEF site.

6.14.20 The holder of a permit for a WEF shall secure and maintain for the duration of the permit public liability insurance as follows:

Commercial general liability covering personal injuries, death and property damage of \$1,000,000 per occurrence – \$2,000,000 aggregate which shall specifically include Rose Township Officers or agents or consultants as additional names insured.

Umbrella coverage for \$3,000,000.

- a. The insurance policies shall contain an endorsement obligating the insurance company to furnish Buffalo Township with at least 30 days prior written notice in advance of a cancellation
- b. A copy of the insurance policy must be in Buffalo Township's possession before construction is initiated.
- c. A certificate of insurance that states that it is for informational purposes only and does not confer rights upon Buffalo Township shall not be deemed to comply with this ordinance.

6.14.21 Indemnification

Any application for a WEF within Buffalo Township's boundary shall contain an indemnification provision. The provision shall require the Applicant to at all times defend, indemnify, protect, save, hold harmless, and exempt Buffalo Township and its officers, agents or consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said WEF.

6.14.22 Real Property Value Protection Plan:

The WEF Applicant/owner/operator or all, shall assure Buffalo Township that there will be no loss in real property value within two (2) miles of each wind turbine within their WEF. To legally support this claim, the Applicant/owner/operator shall consent in writing to a Real Property Value Protection Agreement as a condition of approval for the WEF. This agreement shall provide assurance to non-participating real property owners (i.e. those with no turbines on their property) near the WEF, that they have some protection from WEF related real property values losses. The Applicant shall agree to guarantee the property values of all real property partially or fully within two (2) miles of the WEF. Any real property owner(s) included in that area who believe that their property may have been devalued due to the WEF, may elect to exercise the following option:

- 1) All appraiser costs are paid by the Applicant/owner/operator from the Escrow Account. Applicant/owner/operator and the property owner shall each select a licensed appraiser. Each appraiser shall provide a detailed written explanation of the reduction, if any, in value to the real property (Diminution Value) caused by the proximity to the WEF. This shall be determined by calculating the difference between the current Fair Market Value (FMV) of the real property and what the FMV would have been at the time of exercising this option, assuming no WEF was proposed or constructed.

- a. If the higher of the Diminution Valuations submitted is equal to or less than 25% more than the other, the two values shall be averaged (Average Diminution Value or ADV).
- b. If the higher of the Diminution Valuations submitted is more than 25% higher than the other, then the two appraisers will select a third licensed appraiser, who shall present to Applicant/owner/operator and property owner a written appraisal report as to the Diminution Valuations for the real property. The parties agree that the resulting average of the two highest Diminution Valuations shall constitute the ADV.
- c. In either case, the property owner may elect to receive payment from the Applicant/owner/operator of the ADV. The Applicant/owner/operator is required to make this payment within 60 days of receiving said written election from the property owner to have such payment made.

2) Other Agreement Conditions:

- a. If a property owner wants to exercise this option, they must do so within 10 years of the WEF receiving final permitted approval from Rose Township
- b. A property owner may elect to exercise this option only once.
- c. The Applicant/owner/operator and the property owner may accept mutually agreeable modifications of this agreement.
- d. This agreement applies to the property owner of record as of the date of the WEF application, and is not transferrable to subsequent owners.
- e. The property owner of record as of the date of the WEF application must reasonably maintain the property from that time until they choose to elect this option.
- f. The property owner must permit full access to the property by the appraisers as needed to perform the appraisals.
- g. The property owner must inform the appraisers of all known defects of the property as may be required by law as well as all consequential modifications or changes to the property subsequent to the date of the WEF application.
- h. This agreement will be guaranteed by the Applicant/owner/operator (and all its successors and assigns) for 10 years following the WEF receiving final approval from Buffalo Township by providing a bond (or other surety) in an amount determined to be acceptable by Buffalo Township.
- i. Payment by the Applicant/owner/operator not made within 60 days will accrue an interest penalty. This will be 10% annually from the date of the written election from property owner.
- j. For any litigation regarding this matter, all reasonable legal fees and court costs will be paid by the Applicant/owner/operator.
- k. Upon application, Applicant shall provide a performance bond (or equivalent) in an amount determined by Buffalo Township and held by Buffalo Township. This surety account will ensure execution of all aspects of this agreement including compensation of eligible property owners in the case of default by Applicant/owner/operator. Failure to maintain this surety account shall be cause for revocation or denial or renewal of the WEF Permit.

6.14.23 Transfer of Wind Energy Facility Siting Permit

In the event of a change in ownership or controlling interest in a WEF and the transfer of the

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

APPROVED AND ADOPTED ____ DAY OF APRIL, 2017
BUFFALO TOWNSHIP

BY _____

CLERK _____

CHAPTER 3

BUFFALO TOWNSHIP ANIMAL FEEDING OPERATION ORDINANCE

SECTION 1: INTENT AND PURPOSE

These regulations are designed to allow Animal Feeding Operations for feeding livestock, furbearers and poultry and at the same time protect the adjoining uses against odor, noise and other incompatible characteristics with animal feeding operations.

SECTION 2: DEFINITIONS

1. For the purpose of this Ordinance, certain terms or words used herein shall be interpreted as follows:

- A. The word "shall" is mandatory, and not discretionary; the word "may" is permissive.
- B. Words used in the present tense shall include the future; and words used in the singular shall include the plural, and the plural the singular.
- C. Words shall be given their common usage if not defined.
- D. The word "Board" includes the "Buffalo Township Board" or any other word or words meaning the "Buffalo Township Board".
- E. The word "Commission" includes the "Buffalo Township Zoning and Planning Commission" or any other words or word meaning the "Buffalo Township Zoning and Planning Commission ."
- F. The word "person" includes a firm, association, organization, partnership, trust, company, cooperative, corporation, or individual.

2. Animal Feeding Operation (AFO). Means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

- A. Animals, other than aquatic animals, have been or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and
- B. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

3. Animal Unit (AU). A unit of measure used to compare differences in the production of animal manures that employs as a standard the average weight of the animal divided by 1,000 pounds. The total number of animal units subject to permit or registration shall be determined by including operations under common ownership or management and which utilize a common area or system for manure disposal. For purposes of this ordinance, the following equivalents shall apply (taken from ND century code 58-03-11.1. section 2) For purposes of this section animal units are determined as follows:

- A. One mature dairy cow, whether milking or dry, equals

1.33 animal units:

- B. One dairy cow, heifer, or bull, other than an animal described in subdivision a equals 1.0 animal unit;
- C. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
- D. One cow-calf pair equals 1.0 animal unit;
- E. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
- F. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
- G. One horse equals 2.0 animal units;
- H. One sheep or lamb equals 0.1 animal unit;
- I. One turkey equals 0.0182 animal unit;
- J. One chicken, other than a laying hen, equals 0.008 animal unit.

4. Animal Wintering Operation. A parcel of land where animals are sheltered incidental to farming at any time between October 15 and May 15 of cash production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing. This term includes weaned offspring of cattle and sheep, but it does not include (1) breeding operations of more than 1,000 animal units or (2) weaned offspring which are kept longer than 120 days and that are not retained for breeding purposes. For purposes of numbers, two or more animal wintering operations under common ownership are considered to be a single animal wintering operation if they adjoin each other or if they use a common area or system for manure handling or disposal.

5. Board. The Buffalo Township Board of Supervisors.

6. Building, Agricultural. All buildings, other than dwellings, which are incidental to a farming operation.

7. Concentrated Animal Feeding Operation (CAFO). Means an animal feeding operation that is defined as a large concentrated animal feeding operation, as a medium concentrated animal feeding operation, or is a small or other type of animal feeding operation designated as a concentrated animal feeding operation in accordance with section 33-16-03.1-04 of the North Dakota Administrative Code. For purposes of determining animal numbers, two or more feeding operations under common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes. All concentrated animal

feeding operations are required to obtain a North Dakota pollutant discharge elimination system permit pursuant to chapter 33-16-01 of the North Dakota Administrative Code.

For the purpose of these regulations. Animal Feeding Operations and Concentrated Animal Feeding Operations are divided into small, medium and large Animal Feeding Operations and Concentrated Animal Feeding Operations as set forth in N.D.A.C. § 33-16-03.1-03.

- 8. Farm.** A tract of land which is principally used for agricultural activities such as the production or cash crops, livestock or poultry farming.
- 9. Feedlot.** Is a parcel of land which contains an animal feeding operation or a confined animal feeding operation as defined by this ordinance.
- 10. Modification.** Any change in the feedlot operation that does not result in an increase in animal numbers.
- 11. NDDH.** North Dakota Department of Health.
- 12. Owner/Operator.** Any person having possession, control or title to a animal feeding unit.
- 13. Parcel.** A contiguous quantity of land legally described and recorded with the County Register of Deeds as the property of a person.
- 14. Pastures.** Areas where grass or other growing plants are used for grazing, and where the concentration of animals is such that a vegetative ground cover is maintained during the growing season except in the immediate vicinity of temporary supplemental feeding or watering devices.
- 15. Permit, State.** A document issued by the NDDH which contains requirements, conditions, and compliance schedules relating to the discharge of animal manure pollutants, and, issued to the contractor, owner or operator, cooperative. stating that the feedlot meets the minimum standards as required by this Ordinance and the NDDH.
- 16. Permit, Township.** A document issued by Buffalo Township which contains conditions and compliance schedules relating to the discharge of animal pollutants, and, issued to the contractor, owner or operator, cooperative, stating the feedlot meets the minimum standards as required by this Ordinance and the NDDH.
- 17. Setback.** The distance from a property boundary enclosing a concentrated animal feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or non-ranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes.
- 18. Surface Waters.** Waters of the State which include, but are not limited to rivers, streams, creeks, coulees, ponds, intermittent streams, and wetlands.

19. USDA. United States Department of Agriculture.

SECTION 3: GENERAL PROVISIONS AND REQUIREMENTS

1. **Jurisdiction.** The jurisdiction of this Ordinance shall apply to all the areas of Buffalo Township.
2. **Scope.** From and after the effective of this Ordinance and subsequent amendments, all existing or proposed animal feeding operations shall be in conformity with the provisions of this ordinance.
3. **Application.**
 - A. In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements to satisfy the intent and purpose of this ordinance.
 - B. Where the conditions imposed by any provision of this ordinance are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail.
4. Animal feeding Operations are only permitted as conditional uses subject to the provisions of this ordinance and the requirements and permitting of the NDDH. A conditional use permit must be obtained and submitted to the Board for its approval.
5. In addition to the requirements for a conditional use permit elsewhere contained in this ordinance, an Applicant must provide the following documents in order for its application to be deemed complete:
 - A. The application for a conditional use permit to operate a facility for an animal feeding operation shall include a scaled site plan. If the facility will handle more than 1,000 animal units, the scaled site plan shall be prepared by a registered land surveyor, a civil engineer or other person having comparable experience or

qualifications. The Township may require any or all of the following elements, or require additional elements, in its site plan review process when needed to determine the nature and scope of the animal feeding operation:

1. Proposed number of animal units.
 - u. Legal descriptions of the site and its associated lands.
 111. Existing and proposed roads and access ways within and adjacent to the site of the facility.
 - 1v. Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.
 - v. A copy of the permit application submitted by the applicant to the Department of Health.
6. In the event of a violation of this ordinance or a judgement on a civil action by the NDDH, the office of the Attorney General, or a person authorized to maintain an action under N.D.C.C. § 42-01-08, then the Township, after due process, can order cessation of a facility for animal feeding within a reasonable period of time and until such time as the owner/operator corrects or abates the cause(s) of the violation. If the causes(s) of the violation are not remedied within a reasonable period of time as set by the Township, the permit may be revoked.

SECTION 4: REQUIRED SETBACKS AND SEPARATION DISTANCES FOR ANIMAL FEEDING OPERATIONS AND THOSE EXPANDING

1. Required Setbacks and Separation Distances for New Animal Feeding Operation: The owner/operator of a new animal feeding operation shall locate the site of that operation pursuant to the distances set forth below from existing residences, businesses, churches, schools, and public parks as well as areas of property that are zoned residential, recreational, or commercial:

1. If there are fewer than three hundred animal units, there is no minimum setback requirement.
11. If there are at least three hundred animal units but no more than one thousand animal units. the setback for any animal operation is .75 miles.
111. If there are at least one thousand one animal units but no more than two thousand

animal units, the setback for a hog operation is 1.125 miles and the setback for any other animal operation is .75 miles.

- 1v. **If** there are at least two thousand one animal units but no more **than** five thousand animal units, the setback for a hog operation is 1.50 miles and the setback for any other animal operation is 1.125 miles.
- v. **If** there are five thousand one or more animal units, the setback for a hog operation is 2.25 miles and the setback for any other animal operation is 1.50 miles.

The distance of the setback is calculated from the property line of the preexisting use to the facility. In areas agricultural zoned land. the setback distance shall be calculated from the area of residential use.

In addition to the above guidelines, all animal feeding operations shall maintain a setback of one quarter mile (1/4 mi.) from all federal or state highway rights-of-way.. A one hundred fifty foot (150') setback from all county and township road rights-of-way and adjacent property lines shall be maintained .

2. Existing Animal Feeding Operations.

- 1. An individual or entity who wishes to establish a residence, business, church, school, public park or zone for residential use, must comply with the above- referenced setbacks so as to provide a separation distance from any existing animal feeding operation.
- 11. An owner/operator of an existing animal feeding operation may locate the owner's residence or business within the setbacks.
- m. Expansion of permitted animal units up to twenty-five percent shall require notification of the Buffalo Township Board of Supervisors within ten (10) days of expansion.
- 1v. **If** notified **in** writing by an owner/operator of a planned future expansion of an animal feeding operation, the Township may implement the corresponding odor setback for a temporary time period not to exceed two years, after which time the setback will remain in effect

only if the expansion was completed.

Signs: No outdoor advertising sign shall be erected, constructed or maintained within the boundaries of Buffalo Township without first obtaining a permit from the Clerk of the Township Board. The fee for such a permit shall be one dollar. (\$1.00)

Non-Conforming Uses: The lawful use of land or building existing at the date of adoption of these regulations, although such use does not conform to the provisions hereof may be continued, but if such non-conforming use is discontinued for an interval of Two (2) years, any further use of said premises shall be in conformity with the provisions of this Ordinance.

Appeals: Any person aggrieved by the regulations of this Zoning Ordinance may appeal to the Board of Adjustment. The Zoning Commission shall act as the Board of Adjustment and see that if any charges are made that the intent and purpose of the zoning regulations are carried out.

Inforcement and Administration: It shall be the duty of the Clerk of the Buffalo Township Board to see that the provisions of this Ordinance are properly enforced.

Permits and Fee: Permits issued by the Buffalo Township Clerk showing authorization and conformity with these Regulations and Ordinances shall be issued in suitable form under the

authority of the Zoning Board. The fee for such Permit shall be one-hundred (\$100) dollars plus one dollar (\$1.00) for each \$1,000 over \$250,000 value. House remodeling not to be included.

Conditional Use Permit Applications: Costs and Attorneys Fees

Pending and future applicants for a Conditional Use Permit shall be liable for and pay to the Township Clerk sufficient sums of money to pay for and cover all costs incurred by the Township for the processing of such application, including, but not limited to: publication costs, attorney' s fees and costs, mileage, copy expense, investigation expense, hearing recording expense, transcription expense, appeal expense, etc.

1. No Conditional Use Permit shall be issued until all such cost and fees prescribed herein have been paid by the applicant, unless the Township Zoning Board has otherwise provided by resolution for a particular case.
2. Pending Conditional Use Permit applicants are required to pay and are liable for costs and fees incurred after the effective date of this ordinance. Applicants are not required to pay for and are not liable for costs and fees incurred by the Township before the effective date of the ordinance.
3. No portion of the costs or attorney fees shall be refundable, regardless of whether the application is granted or denied.

Pipelines:

A permit shall be required prior to construction, the application therefore showing the proposed route, area, product, depth, and such other pertinent data at the discretion and for consideration of the Zoning Board, which Board shall issue such Permit only if all shall appear in order.

Wells, Excess Flow:

A permit shall be required prior to digging an artesian well, to assure that any resultant over-flow shall be directed into a natural drain or adequate reservoir. It is expressly declared road ditches, as such, do not constitute a "natural drain".

Gravel Extraction:

Any person who leases, sells, or otherwise disposes of gravel for commercial use shall, as a pre-requisite thereto, require authorization from the Zoning Board as to the use of an appropriate route for the hauling thereof and shall provide and spread a gravel bed across such route and restore it to a comparable condition as prior to when taken without cost to the Township.

Interpretation and Application of Regulations : In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum for the promotion of the public safety, health, convenience, comfort, prosperity and general welfare. It is not intended by these provisions to interfere with or abrogate or annul rules or permits previously adopted according to the law relating to the use of buildings or premises, nor to interfere with, abrogate or annul any easements, covenants or agreements between parties, provided however, that where these provisions impose greater restrictions as to use or require larger open spaces or less height than are required by such rules or permits or by easements, covenants or agreements, the provisions of this Ordinance shall control.

Saving Clause: If any section , subsection , sentence , clause or phrase of the above Ordinance is for any reason held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of said Ordinance.

Penalty: Any person , firm or corporation violating any of the provisions of this Ordinance shall , upon conviction thereof , be punished by a fine of not more than One Hundred Dollars, (\$100.00) , or by imprisonment for not more than Ninety (90) days, or by both such fine and imprisonment. Each and every day that a violation of this Ordinance shall be continued shall constitute and be considered a separate offense.

This ordinance shall take effect immediately upon final passage.

Approved and adopted this ___ day of _____, 2017

Buffalo Township Officer

Attest:

Clerk