

# FILLMORE COUNTY ZONING ORDINANCE

ADOPTED SEPTEMBER 19, 1989

AMENDED JULY 1990  
AMENDED MAY 4, 1993  
AMENDED JULY 25, 1994  
AMENDED JANUARY 5, 1995  
AMENDED AUGUST 6, 1996  
AMENDED SEPTEMBER 3, 1996  
AMENDED OCTOBER 1, 1996  
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AMENDED JANUARY 27, 1998  
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AMENDED APRIL 6, 1999  
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AMENDED JULY 17, 2001  
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AMENDED DECEMBER 2, 2003  
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OCTOBER 2, 2012  
AMENDED NOVEMBER 6, 2012  
AMENDED NOVEMBER 27, 2012

# Fillmore County Zoning Ordinance

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## **SECTION 3**

### **Rules and Definitions**

#### **301. Rules**

##### **301.01. Word Usage**

**Board:** The word “Board” includes the County Commissioners, the Board of County Commissioners or any other word or words meaning the Fillmore County Board of Commissioners.

**Board of Adjustment:** The “Board of Adjustment” shall mean the Fillmore County Board of Adjustment.

**Commission:** The “Commission” shall mean the Fillmore County Planning Advisory Commission.

**Distances:** Unless otherwise specified, distances shall be measured horizontally.

**Fractions of Measurement:** All stated and measured distances shall be taken to the nearest integral foot. If a fraction is one-half (1/2) or less, the integral foot next below shall be taken.

**Lot:** The word “lot” shall include the words piece, parcel, and plot.

**Masculine and Feminine Gender:** The masculine gender includes the feminine and neuter genders.

**Person:** The word “person” includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.

**Shall and May:** The word “shall” is mandatory and not discretionary; the word “may” is permissive.

**Singular and Plural:** Words used in the singular shall include the plural and the plural the singular.

**Tenses:** Words used in the present tense shall include the future. In the event of conflicting provisions, the more restrictive provision shall apply. All words not specifically defined herein shall be defined according to common usage.

#### **302. Definitions**

1) **Accessory Dwelling Unit:** A home used temporarily by a person who knows that the home must be moved from the site within a certain time period or when a certain job is

accomplished.

- 2) **Accessory Use or Structure:** A use or structure, or portion of a structure, subordinate to and serving the principal use of a structure on the same lot and customarily incidental thereto.
- 3) **Agricultural Use:** The use of land for the growing and/or production of trees, crops, livestock, and livestock products for the production of income including but not limited to the following:
  - a. trees, when enrolled in a tree farm program authorized by the DNR and operated under a forest management program;
  - b. crops, including but not limited to: barley, soybeans, corn, hay, oats, potatoes, rye, sorghum, sunflowers, and wheat;
  - c. livestock, including but not limited to: dairy and beef cattle, goats, horses, sheep, hogs, poultry, game birds, and other animals including dogs, ponies, rabbits, and mink;
  - d. livestock products including but not limited to: milk, butter, cheese, eggs, meat, fur, and honey.
- 4) **Agricultural Building or Structure:** Any building or structure existing or erected, which is used principally for agricultural purposes, with the exception of dwelling units.
- 5) **Alternative Support Structure:** Any structures including but not limited to clock towers, steeples, silos, light poles, water towers, free-standing chimneys, utility poles and towers, towers, buildings or similar structures that may support telecommunications facilities.
- 6) **Animal Feedlot:** A lot or building, or combination of lots and buildings, intended for the confined feeding, breeding, raising, or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. For purposes of these parts, open lots used for the feeding and rearing of poultry (poultry ranges) shall be considered to be animal feedlots. Pastures shall not be considered animal feedlots under these parts.
- 7) **Animal Manure:** Animal manure means poultry, livestock, or other animal excreta or a mixture of excreta with feed, bedding, precipitation, or other materials.
- 8) **Animal Unit:** A unit of measure used to compare differences in the production of animal manure that employs as a standard the amount of manure produced on a regular basis by a slaughter steer or heifer for an animal feedlot or a manure storage area, calculated by multiplying the number of animals of each type in items A to I by the respective multiplication factor and summing the resulting values for the total number of animal units. For purposes of this definition, the following multiplication factors shall apply:
  - A. Dairy cattle:
    - (1) one mature cow (whether milked or dry);
      - (a) over 1,000 pounds, 1.4 animal units; or
      - (b) under 1,000 pounds, 1.0 animal unit;
    - (2) One heifer, 0.7 animal unit; and
    - (3) One calf, 0.2 animal unit;
  - B. Beef cattle:
    - (1) one slaughter steer or stock cow, 1.0 animal unit;

- (2) one feeder cattle (stocker or backgrounding) or heifer, 0.7 animal units;
- (3) one cow and calf pair, 1.2 animals units; and
- (4) one calf, .02 animal unit;
- C. One head of swine:
  - (1) over 300 pounds, 0.4 animal unit;
  - (2) between 55 and 300 pounds, 0.3 animal unit; and
  - (3) under 55 pounds, 0.05 animal unit;
- D. One horse, 1.0 animal unit
- E. One sheep or lamb, 0.1 animal unit;
- F. Chickens:
  - (1) one laying hen or broiler, if the facility has a liquid manure system, 0.033 animal unit;
  - (2) one chicken if the facility has a dry manure system:
    - (a) over five pounds, 0.005 animal unit; or
    - (b) under five pounds, 0.003 animal unit;
- G. One turkey:
  - (1) over five pounds, 0.018 animal unit; or
  - (2) under five pounds, 0.005 animal unit; and
- H. One duck, 0.01 animal unit; and
- I. For animals not listed in items A to H, the number of animal units is the average weight of the animal in pounds divided by 1,000 pounds.

**9) Antenna:** Any system of wires, poles, rods, reflecting discs, or similar devices used for the transmission or reception of electromagnetic waves when such system is either external to or attached to the exterior of a structure. Antennas shall include devices having active elements extending in any direction, and directional beam type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be a part of the antenna.

**10) Antenna Building Mounted:** Any antenna, other than an antenna with its supports resting on the ground, directly attached or affixed to a building.

**11) Antenna Ground Mounted:** Any antenna with its base placed directly on the ground.

**12) Area:** See Buildable Area or Lot Area.

**13) Barnyard Waste:** Any animal by-products or affiliated waste material.

**14) Basement:** A portion of a building located partly underground but having half or more of its floor-to-ceiling height below the average grade of the adjoining ground.

**15) Bed and Breakfast Establishment:** A dwelling which provides lodging and meals for overnight registered paying guests.

**16) Berm:** A mound of earth or the act of pushing earth into a mound.

**17) Bluff (Bluffland):** A high embankment or bold headland with a broad, precipitous, sometimes rounded cliff-face overlooking a plain or body of water, especially on the outside

of a stream or meander-river bluff that rises or drops fifty (50) feet from the horizontal and the slope averages thirty (30) percent or greater. Within a Shoreland District it shall include a topographic feature such as a hill, cliff, or embankment having the following characteristics:

- a. Part or the entire feature is located in a shoreland or Blufflands area.
- b. The slope rises at least twenty-five (25) feet above the plain or ordinary high water level of the waterbody;
- c. The grade of the slope from the top of the bluff to a point twenty-five (25) feet or more above the ordinary high water level or a plain averages thirty (30) percent or greater;
- d. The slope must drain toward the waterbody or plain (an area with an average slope of more than eighteen (18%) over a distance of fifty (50) feet or more shall be considered a part of the bluff).

**18) Bluff (Shoreland):** A topographic feature such as a hill, cliff, or embankment having the following characteristics (an area with an average slope of more than eighteen (18%) over a distance of fifty (50) feet or more shall be considered a part of the bluff):

- a. Part or the entire feature is located in a shoreland area;
- b. The slope rises at least twenty-five (25) feet above the ordinary high water level of the waterbody;
- c. The grade of the slope from the top of the bluff to a point twenty-five (25) feet or more above the ordinary high water level averages thirty (30) percent or greater;
- d. The slope must drain toward the waterbody.

**19) Bluff Impact Zone (Shoreland):** The bluff and land located within twenty (20) feet of the top of a bluff.

**20) Bluff Impact Zone (Bluffland):** The bluff and land located within fifty (50) feet of the top of a bluff and within thirty (30) feet of the toe of the bluff.

**21) Bluffland Areas:** Any land formation in Fillmore County where the geomorphic features of the land conform to the definition of "Bluff" as found in Section 302.

**22) Bluffland Protection District:** All land distally two-hundred (200) feet from the top of the Bluff and one-hundred (100) feet distally from the Toe of the Bluff plus all lands between the Top of the Bluff and Toe of the Bluff.

**23) Buildable Area:** The area of a lot remaining after the minimum yard requirements of this Ordinance have been met.

**24) Building:** Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods, or material of any kind.

**25) Building Site:** A parcel or part of a parcel of land where buildings are located.

**26) Building, Agricultural:** All buildings, other than dwellings, which are incidental to Agricultural Uses.

**27) Building Height:** Height is determined by the average elevation of the dirt surrounding a

dwelling and the average elevation, of all four (4) sides of the dwelling, between the tallest peak of the dwelling and the tallest plate holding that peak.

**28) Building Setback Line:** A line parallel to the street right of way and side and rear lot lines at any story level of a building and representing the minimum distance which all or any part of the building is set back from said property line.

**29) Business:** Any occupation, employment or enterprise wherein merchandise is exhibited or sold, or where services are offered for compensation.

**30) Cabin:** A single family dwelling.

**31) Camouflaged Tower:** Any telecommunications tower that due to design or appearance hides, obscures, or conceals the presence of the tower and antennas. Camouflaging may be accomplished by a suitable combination of the following examples: lack of lighting, low tower height, non-contrasting colors, screening and landscaping, and others.

**32) Campground:** A plot of ground upon which five or more camp-sites are located, established or maintained for occupancy by the general public as temporary living quarters for recreation, education, or vacation purposes. A campground is not a PUD.

**33) Camping Cabin:** A building or structure owned by the campground, intended to be rented out, which has been constructed or located in a permitted campground for use as an alternative to tents and recreational camping vehicles. This includes park model campers. The density allowed for camping cabins is one (1) cabin per every six (6) recreational camping vehicles.

**34) Campsite:** A location upon which one temporary dwelling is located to include recreational camping vehicles, tents, camping cabins.

**35) Carcass:** The remains of a dead animal.

**36) Carrier:** Any company licensed by the Federal Communications Commission (FCC) to build personal wireless telecommunications facilities and operate personal wireless telecommunications services. Also called a provider.

**37) Cemetery:** Property used for the interment of the dead.

**38) Church:** A building where persons regularly assemble for religious service and which is maintained and controlled by an organized group for public worship.

**39) Clear-Cutting:** The entire removal of a stand of vegetation.

**40) Clustering/Cluster Housing:** A development pattern and technique whereby structures are arranged in closely related groups to make the most efficient use of the natural amenities of the land.

**41) Co-location:** Any telecommunications facility comprised of a single telecommunications tower or building supporting multiple antennas, dishes, or similar devices owned or used by



more than one public or private entity.

- 42) Commercial Use:** The principal use of land or building for the sale, lease, rental, or trade of products, goods, and services.
- 43) Commissioner:** For the purposes of Sections 610 and 612 the term “Commissioner” shall mean the Commissioner of the Department of Natural Resources.
- 44) Community Water and Sewer System:** Utilities systems serving a group of buildings, lots, or an area of the county, with the design and construction of such utility systems as approved by the county and the State of Minnesota.
- 45) Conditional Use:** A use classified as conditional generally may be appropriate or desirable in a specified zone, but requires special approval because if not carefully located or designed it may create special problems such as excessive height or bulk or abnormal traffic congestion.
- 46) Condominium:** A form of individual ownership with a multiple family dwelling unit with joint responsibility for maintenance and repairs. In a condominium, each apartment or townhouse is owned outright by its occupant, and each occupant owns a share of the land and other common property of the building.
- 47) Construction Debris:** Waste building materials resulting from construction, remodeling, repair and/or demolition operations.
- 48) Cooperative:** A multiple family dwelling unit development operated for and owned by its occupants. Individual occupants do not own their specific housing unit outright as in a condominium, but they own shares in the enterprise.
- 49) Corner Lot:** A lot situated at the junction of and fronting on two or more roads or highways.
- 50) Country Inn:** A dwelling, which provides lodging, meals, special facilities, catering, and other, organized activities for overnight registered guests.
- 51) County:** Fillmore County, Minnesota.
- 52) Crop Land:** The use of land for the production of, but not limited to, adopted row or close sown crops, fruits, and nuts.
- 53) Days:** Defined as calendar, unless specified otherwise.
- 54) Deck:** A horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site and at any point extending above the ground.
- 55) Decorah Shale:** The Decorah shale is a geologic unit of green-gray shale found above the Platteville and Glenwood formations (which is above the St. Peter sandstone) and below the Cummingsville formation of limestone and shale. The edge of this formation is found where

erosion has removed the overlying Cummingsville formation exposing the Decorah shale in an outcrop or so that it is the first encountered bedrock.

- 56) Depth of Lot:** The mean horizontal distance between the mean front street line and the mean rear lot line. The greater frontage of a corner lot is its depth, and its lesser frontage is its width.
- 57) Depth of Rear Yard:** The mean horizontal distance between the rear building line and the rear lot line.
- 58) Detrimental:** Causing damage or harm, injurious.
- 59) Development:** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation, or drilling operation.
- 60) Disposal System:** A system for disposing of sewage, industrial waste and other wastes, and includes sewer systems and treatment works
- 61) Dredging:** The process by which soils, mostly in the form of silt, or other surficial materials which are transported by surface water as a product of erosion into a body of water are removed for the purpose of deepening the body of water.
- 62) Dwelling:** The house or other structure in which a person or persons live or use as a place of shelter or habitation on a temporary, seasonal, or permanent basis.
- 63) Dwelling Site:** A designated location for residential use by one or more persons using a permanent or temporary shelter. The shelter may be affixed or movable, including camping and recreational camping vehicles.
- 64) Dwelling Unit:** A residential building or portion thereof intended for occupancy by a single family but not including hotels, motels, boarding or rooming houses. There are three (3) principal types:
- a. Single-family Detached: A free standing residence structure for or occupied by one (1) family only and containing no common party walls.
  - b. Single-family Attached: A residential building containing two (2) or more dwelling units with one or more common walls, but providing separate cooking and bathing facilities.
    1. Duplex: A residence designed for or occupied by two (2) families only, with separate housekeeping and cooking facilities for each.
    2. Townhouse: A residential building containing two (2) or more dwelling units with at least one (1) common wall, each unit so oriented as to have all exits open to the outside.
  - c. Multiple Family: A residence designed for or occupied by three (3) or more families, either wholly (attached) or partially a part of a large (detached), with separate sanitary and cooking facilities for each family.
- 65) Easement:** A grant of one or more of the property rights by the property owner to and/or for the use by the public, a corporation, or another person or entity.

- 66) Electrical Distribution Line:** That portion of an electric system, not including buildings, used to deliver electric energy from points on a transmission line or bulk power system to a consumer and carrying 30,000 volts or less.
- 67) Electrical Transmission Line:** That portion of an electric system, not including buildings, used to transfer electricity in bulk. The line ends when it is transformed to a distribution line for distribution to ultimate consumers.
- 68) Essential Services:** The erection, construction, alteration, or maintenance of underground, surface or overhead electrical, gas, steam, water and sewerage transmission, distribution and collection systems and distribution, and the equipment and appurtenances necessary for such systems to furnish an adequate level of public service, but not to include any buildings.
- 69) Excavation:** The act by which soil, earth, sand, gravel, rock, or any similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated, or bulldozed and shall include the conditions resulting there from.
- 70) Exterior Storage:** (Includes Open Storage) The storage of goods, materials, equipment, manufactured products and similar items not fully enclosed by a building.
- 71) Extractive Use:** The use of land for surface or subsurface removal of sand, gravel, rock, industrial minerals, other non-metallic minerals, and peat not regulated under Minnesota Statutes, Sections 93.44 to 93.51.
- 72) Family:** An individual or two or more persons living together as a single housekeeping unit in a dwelling unit.
- 73) Farmers Market:** An organized site where three (3) or more producers of locally produced products, including but not limited to, crafts, garden produce, plants, flowers, non-potentially hazardous food products or food sold from a licensed concession stand or mobile retail food vehicle, are sold.
- 74) Fill:** Any act, by which soil, earth, sand, gravel, rock, or any similar material is deposited, placed, pushed, pulled, or transported and shall include the conditions resulting therefrom.
- 75) Flood Fringe:** That portion of the flood plain outside of the floodway.
- 76) Flood Plain:** The channel or beds proper and the areas adjoining a wetland, lake, or watercourse, which have been, or hereafter may be covered by the regional flood. Flood plain areas within Fillmore County shall encompass all areas designated as Zone A on the Flood Insurance Rate Map.
- 77) Flood Proofing:** A combination of structural provisions, changes or adjustments to properties and structures subject to flooding primarily for the reduction or elimination of flood damages.
- 78) Floodway:** The bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood

discharge.

- 79) Floor Area:** The sum of the gross horizontal areas of several floors of a building measured from the exterior walls, including basements and attached accessory buildings.
- 80) Forest Land Conversion:** The clear cutting of forest lands to prepare for a new land use other than the re-establishment of a subsequent forestland.
- 81) Garage, Private:** An accessory structure designed to store power driven vehicles.
- 82) Garage, Public:** Any structure, except those described as a private garage, used for the storage or care of power driven vehicles, or where any such vehicles are equipped for operation, repair, or are kept for remuneration, hire, or sale.
- 83) Garbage:** Putrescent animal or vegetable wastes resulting from the handling, preparation, cooking, serving, or consumption of food, and including food containers.
- 84) Grade:** The average of the finished level at the center of the exterior walls of the building. For an earth sheltered building grade means the average of the finished level at the center of the lot. For a building with earth berms but less than 50 percent earth covering, grade means the average of the finished level at the center of the building at the beginning of the earth berm.
- 85) Grass Buffer:** Grass or other dense vegetation planted for the purpose of diverting or filtering materials.
- 86) Greenbelt:** A planting strip of grass, trees and shrubs established and maintained for the purpose of screening or limiting the view of certain property uses from the general public.
- 87) Greywater System:** An Individual Sewage Treatment System that does not contain toilet waste.
- 88) Groundwater:** The supply of fresh water under the earth's surface that forms a natural reservoir.
- 89) Guest Cottage:** A dwelling.
- 90) Guyed structure:** Any telecommunications tower that is supported in whole or in part by guy wires and ground anchors or other means of support besides the superstructure of the tower itself.
- 91) Hazardous Waste:** Waste designated as hazardous by the United States Environmental Agency or appropriate State Agency.
- 92) Height, Telecommunications Tower:** The distance measured from the original grade at the base of the tower to the highest point of the tower. This measurement excludes any attached antennas, and lighting.
- 93) Historical Structure:** A structure, which is listed on the National Register of Historic

Places.

**94) Home:** A dwelling.

**95) Home Occupation:** Any gainful occupation or profession engaged in by the occupant of a dwelling at or from the dwelling when carried on within a dwelling unit. Such units include professional offices, minor repair shops, photo or art studios, dressmaking, barbershops, beauty shops, bed and breakfast establishments, or uses deemed similar by the Planning Commission or City Council.

**96) Hunting Shack:** A dwelling.

**97) Imminent Public Health Threat:** Means situations with the potential to immediately and adversely effect or threaten public health or safety. At a minimum, this means ground surface or surface water discharges and sewage backup into a dwelling or other establishment.

**98) Impounded Waters:** Water that is stored in an open pit.

**99) Industrial Waste:** Any liquid, gaseous or solid waste substance resulting from any process of industry, manufacturing trade or business or from the development of any natural resource.

**100) Intensive Vegetative Clearing:** The complete removal of trees or shrubs in a contiguous patch, strip, row, or block.

**101) Irregular Parcel:** Any piece of land less than 5.0 acres that has been created by the construction of a public roadway.

**102) ISTS:** An Individual Sewage Treatment System including a tank and associated pumps and pipes.

**103) Junk Yard:** Land or buildings where waste, discarded or salvaged materials are brought, sold, exchanged, stored, cleaned, packed, disassembled or handled, including but not limited to: scrap metal, rags, paper, rubber products, glass products, lumber products, and products resulting from the wrecking of automobiles or three (3) or more inoperative motor vehicles or trailers for a period in excess of three (3) months shall also be considered a junk yard.

**104) Karst Topography:** A terrain generally underlain by limestone in which the topography is chiefly formed by the dissolving of rock, which is commonly characterized by channeling, closed depressions, subterranean drainage, and caves.

**105) Kennel:** Any structure or premises on which four (4) or more dogs over four (4) months of age are kept for sale, breeding, profit, etc.

**106) Kindred, Degree of:** Degrees of Kindred shall be defined as follows:

1. First Degree is parent or child.
2. Second Degree is brother, sister, grandparent or grandchild.

3. Third Degree is uncle or aunt, nephew or niece, grandparent or grandchild.
4. Fourth Degree is first cousin, granduncle or aunt, grandnephew or niece, or great-great grandparent or great-great grandchild.

Relatives of the half blood inherit the same share they would inherit if they were of the whole blood. (MN Stat. 524.2-107)

- 107) Land Occupier:** Any person, firm, corporation, municipality, or other legal entity who holds title to, or is in possession of any lands lying within the district, whether as owner, lessee, renter, tenant, or otherwise. Where the term “land occupier” is used in this ordinance, the term shall include both the owner and the occupier of the land when they are not the same.
- 108) Land Owner:** Any person, firm, corporation, municipality, or other legal entity that holds title to or is in possession of any land.
- 109) Large Assemblies:** Any public or private gathering of one thousand (1,000) or more persons at any single time or at any location in the Agricultural District for the purpose of musical, racing, promotional, social, entertainment or other similar type of activity. Large assemblies include the activities of permitting, maintaining, promoting, conducting, advertising, acting as entrepreneur, undertaking, organizing, managing, selling and/or giving tickets to an actual or reasonably anticipated assembly of one thousand (1,000) or more people. This shall not apply to:
- a. Any permanent place of worship or auctions conducted by licensed auctioneers.
- 110) Lattice Structure:** A telecommunications tower that consists of vertical and horizontal supports and crossed metal braces.
- 111) Livestock:** Farm animals kept for use and/or sale (livestock = animal units as defined under “animal units”).
- 112) Livestock Waste Lagoon:** A diked enclosure for disposal of livestock wastes by natural process.
- 113) Living Space:** That area of a building normally used by humans as part of their habitation and shelter, which shall include all areas normally and regularly used for sheltering human beings or their personal property. Basements, whether finished or unfinished, shall be considered living space. Attics, unless finished and used as additional habitation, shall not be included. Garages designed and/or used for the sheltering of automobiles shall not be included.
- 114) Lot:** A parcel or portion of land in a subdivision or plat of land, separated from other parcels or portions by description as on a subdivision of record or survey map, for the purpose of sale or lease or separate use thereof. A lot need not be a lot of existing record.
- 115) Lot of Record:** Any lot which is one unit of a plat heretofore duly approved and filed or one unit of an Auditor’s Subdivision or a Registered Land Survey that has been recorded in the office of the County Recorder for Fillmore County, Minnesota prior to the effective date of this Ordinance.

- 116) Lot Area:** The area of a lot in a horizontal plane bounded by the lot lines.
- 117) Lot, Corner:** A lot situated at the junction of, and abutting on two or more intersecting streets, or a lot at the point of deflection in alignment of a continuous street, the interior angle of which does not exceed one hundred thirty-five (135) degrees.
- 118) Lot Coverage:** The area of the zoning lot occupied by the principal buildings and accessory buildings. Earth berms are not to be included in calculating lot coverage. Only the above grade portions of an earth-sheltered building should be included in lot coverage calculations.
- 119) Lot Depth:** The mean horizontal distance between the front lot line and the rear lot line of a lot.
- 120) Lot Line:** The property line bordering a lot except that where any portion of a lot extends into the public right-of-way, the right-of-way line shall be the lot line for purposes of this Ordinance.
- 121) Lot Line, Front:** That boundary of a lot, which abuts an existing or dedicated public street and in the case of a corner lot it shall be the shortest dimension on a public street.
- 122) Lot Line, Rear:** That boundary of a lot, which is opposite, the front lot line. If the rear line is less than ten (10) feet in length, or if the lot forms a point at the rear, the rear lot line shall be a line ten (10) feet in length within the lot, parallel to, and at the maximum distance from the front lot line. Every lot shall have a rear lot line.
- 123) Lot Line, Side:** Any boundary of a lot, which is not a front lot line or a rear lot line.
- 124) Lot, Substandard:** A lot or parcel of land for which a deed has been recorded in the office of the Fillmore County Recorder upon or prior to the effective date of this Ordinance which does not meet the minimum lot area, structure setbacks or other dimensional standards of this Ordinance.
- 125) Lot Width:** The maximum horizontal distance between the side lot lines of a lot measured within the first thirty (30) feet of the lot depth.
- 126) Manufactured Home:** “Manufactured home” means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty (40) body feet or more in length, or when erected on site, is three-hundred twenty (320) or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein; except that the term includes any structure which meets all the requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the U.S. Department of Housing and Urban Development and complies with the standards established under Minnesota Statute Chapter 327.
- 127) Manufactured Home Park:** Any site, lot, field, or tract of land under single ownership, designed, maintained or intended for the placement of two (2) or more occupied

manufactured homes. “Manufactured Home Park” shall include any buildings, structure, vehicle, or enclosure intended for use as part of the equipment of such manufactured home park.

- 128) Manufactured Home Stand:** The part of an individual manufactured home lot, which has been reserved for placement of the manufactured home, appurtenant structures, or additions.
- 129) Manufactured Home Subdivision:** A subdivision intended for placement of manufactured homes or conventional homes, having a minimum of ten (10) lots and at least thirty (30%) percent of the lots must be occupied by manufactured homes.
- 130) Manure Storage Area:** Manure storage area means an area where animal manure or process wastewaters are stored or processed. Short-term and permanent stockpile sites and composting sites are manure storage areas.
- 131) Metes and Bounds:** A method of property description by means of their direction and distance from an easily identifiable point.
- 132) Mobile Home:** A Manufactured Home.
- 133) Mobile Home Park:** A Manufactured Home Park.
- 134) Modular Home:** A non-mobile dwelling unit that is basically fabricated at a central factory and transported to a building site where final installations are made, permanently affixing the module to the site.
- 135) Monopole Structure:** A telecommunications tower of a single pole design.
- 136) Motel (Motor Court):** A building or group of detached, semi-detached or attached buildings containing guest rooms or dwellings, with garage or parking space conveniently located to each unit, and which is designed, used or intended to be used primarily for the accommodation of automobile transients.
- 137) Motor Home or Recreation Vehicle:** A Recreational Camping Vehicle.
- 138) Non-Conforming Uses:** A use lawfully in existence on the effective date of this Ordinance and not conforming to the regulations for the district in which it is situated.
- 139) Non-riparian lot:** A lot, which has no area fronting a surface-water feature.
- 140) Notification:** Notification means all landowners within the notice or affected area as defined in Sections 504, 505, and 506 pertaining to conditional uses, variances, and requests for zoning amendments, respectfully, shall be sent a letter by First Class mail identifying a public hearing to take place.
- 141) Nuisance:** Any noise, odor, vibration, smoke, air pollution, liquid or solid waste, glare, heat, or dust condition which exceeds adopted standards and creates an irritation, annoyance, or health hazard.



- 142) Nursery, Landscape:** A business growing and selling trees, flowering and decorative plants and shrubs and which may be conducted within a building or without, for the purpose of landscape construction.
- 143) Nursing Home:** A building with facilities for the care of children, the aged, infirm, or place of rest for those suffering bodily and/or mental disorders. Said nursing home shall be licensed by the State Board of Health as provided for in Minnesota Statutes, § Section 144.A01, subd. 5.
- 144) Obstruction:** (Waterway) Any dam, wall, wharf, embankment, levee, dike, pike, abutment, projection, excavation, dredged spoil channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure or matter in, along, across, or projecting into any channel, watercourse, lake bed, or regulatory flood plain which may impede, retard or change the direction of the flow, either in itself or by catching or collecting debris carried by flood water.
- 145) Off-Street Loading Space:** A space accessible from a street, alley, or driveway for the use of trucks or other vehicles while loading or unloading merchandise or materials. Such space shall be of size as to accommodate one (1) vehicle of the type typically used in the particular business.
- 146) Open Pit:** The area of land created by moving the earth.
- 147) Open Sales Lot:** (Exterior Storage) Any land used or occupied for the purpose of buying and selling any goods, materials or merchandise and for storing of same under the open sky prior to sale.
- 148) Operation:** Operation means other than nominal use; when a facility is used regularly as an integral part of an active system of telecommunications, or for other business related activities, it shall be deemed in operation.
- 149) Ordinary High Water Level:** The boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to terrestrial. For watercourses, it is the elevation of the top of the bank of the channel.
- 150) Parking Space:** A suitably surfaced and permanently maintained area on privately owned property either within or outside of a building of sufficient size to store one (1) standard automobile.
- 151) Pedestrian Way:** A public or private right-of-way across or within a block, to be used by pedestrians.
- 152) Pesticides:** Any substance used to prevent, destroy, or repel undesirable plants or animals, including herbicides, insecticides, fungicides, and rodenticides.
- 153) Planned Unit Development:** A development of a unified site whereby dwelling units or

dwelling sites are grouped or clustered in and around common open space areas, whether for sale, rent, or lease in accordance with a pre-arranged site plan submitted by a developer and requiring membership in an association. A campground is not a PUD.

- 154) Portable Building:** A structure that can be moved when empty.
- 155) Practical Difficulties:** Practical difficulties, as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.
- 156) Prime Land:** Land classified as A, A-, B, or B- land as of 1994 or land with crop equivalency rating of 65 or greater.
- 157) Principal Structure or Use:** One that determines the predominant use as contrasted to accessory use or structure.
- 158) Private Game Farm:** A parcel of land or part of a parcel of land where upon the land occupier raises animals and fences them in or encages said animals for the purpose of allowing individuals to hunt, trap, or capture them for barter, fee, or any other form of compensation.
- 159) Property Line:** The legal boundaries of a parcel of property, which may also coincide, with a right-of-way line of a road, cartway, and the like.
- 160) Property Owner:** Any person, association or corporation having a freehold estate interest, leasehold interest extending for a term or having renewal options for a term in excess of one year, a dominant easement interest, or an option to purchase any of same, but not including owners or interests held for security purposes only.
- 161) Protective Covenant:** A contract entered into between private parties, which constitute a restriction of the use of a particular parcel of property. Such covenants shall be considered valid only when they are recorded and filed in the office of the Fillmore County Recorder.
- 162) Provider:** See Carrier.
- 163) Public Land:** Land owned or operated by municipal, school district, county, state, or other governmental units.
- 164) Public Waters:** Any waters as defined in Minnesota Statutes, Section 103 G.005, Subd 15.
- 165) Qualified Employee:** An individual employed by a unit of government who is certified to inspect ISTS work.
- 166) Ravines:** A small narrow steep-sided valley that is larger than a gully and smaller than a canyon and is worn by running water.

- 167) Recreational Camping Area:** Campground.
- 168) Recreational Camping Vehicle (RCV):** Recreational Camping Vehicle includes any of the following:
- a. any vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, or vacation use;
  - b. any structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation, and vacation;
  - c. any portable, temporary dwelling to be used for travel, recreation, and vacation, constructed as an integral part of a self-propelled vehicle; and
  - d. any folding structure mounted on wheels and designed for travel, recreation, and vacation use.
- 169) Recreation, Commercial:** Includes all uses such as bowling alleys, roller and ice-skating rinks, driving ranges and movie theaters that are privately owned and operated with the intention of earning a profit by providing entertainment to the public.
- 170) Recreation, Public:** Includes all uses such as tennis courts, ball fields, picnic areas and the like that are commonly provided for the public at parks, playgrounds, community centers, and other sites owned and operated by a unit of government for the purpose of providing recreation.
- 171) Refuse:** Discarded waste materials in a solid or semi-liquid state consisting of garbage, rubbish, or a combination thereof.
- 172) Registered Land Survey:** A survey map of registered land designed to simplify a complicated metes and bounds description, designating the same into a tract or tracts of Registered Land Survey Number (see Minnesota Statutes 508.47).
- 173) Regional Flood:** A flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term “base flood” used in the Flood Insurance Rate Map.
- 174) Regulatory Flood Protection Elevation:** An elevation no lower than one (1) foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the Flood Plain that result from designation of a floodway.
- 175) Residence:** A dwelling.
- 176) Residential Planned Unit Development:** A PUD where the nature of residency is non-transient and the primary focus of the development is not service oriented.
- 177) Resort:** A development consisting of buildings, campsites, parking areas, or recreation areas, for lease or rent for temporary dwellings, on one tract of land, under one ownership for the purpose of vacationing, relaxation, or recreation.
- 178) Riparian Lot:** A Lot with area fronting a surface water feature.

- 179) Road:** A public right-of-way affording primary access by pedestrians and vehicles to abutting properties, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place, or however otherwise designated.
- 180) Rock Crushing:** The process whereby rock is reduced in size by mechanical means.
- 181) Rock Quarry:** A parcel of land or part of a parcel of land where mining activities are undertaken to extract rock or other minerals from the subsurface terrain. Said rock or other minerals being removed from the ground with the use of explosives and heavy equipment is reduced in size so as to be made useful for the public.
- 182) Rubbish:** Non-putrescible solid waste including ashes consisting of both combustible and non-combustible waste such as paper, cardboard tin cans, yard clippings, wood, glass, bedding, crockery, or litter of any kind.
- 183) Roadside Stand:** An unenclosed temporary structure used for the sale of goods and so designed and constructed that the structure is easily portable and can be readily removed.
- 184) Rural Home Based Business:** Any commercial or industrial business carried on in the Ag District, as outlined in Section 734.
- 185) Sand Pit:** A parcel of land or part of a parcel of land where mining activities are undertaken to extract sand from the subsurface terrain. Said sand being removed from the ground with the use of heavy equipment is piled and stored for sale to the public.
- 186) Sanitary Landfill:** A method of disposing of solid wastes on land without creating nuisances or hazards to public health or safety, by utilizing the principles of engineering to confine the solid waste to the smallest practical volume, and to cover it with a layer of earth at the conclusion of each day's operation, or at such more frequent intervals as may be necessary.
- 187) Satellite Dish Antenna:** An apparatus specifically designed and capable of receiving and/or sending communications from a transmitter or transmitter relay located in planetary orbit.
- 188) Satellite Dish:** A device incorporating a reflective surface that is solid, open mesh, or bar configured that is shallow dish, cone, horn, or cornucopia shaped and is used to transmit or receive electromagnetic signals. This definition is meant to include, but is not limited to, what are commonly referred to as satellite earth stations, TVROs and satellite microwave antennas.
- 189) Selective Cutting:** The removal of single scattered trees.
- 190) Semi-Public Uses:** The use of land by a private, non-profit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.
- 191) Sensitive Resource Management:** The preservation and management of areas unsuitable

for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding, or occurrence of flora or fauna in need of special protection.

- 192) Septic System:** A system of treating human waste by the use of a septic tank and drainfield or other individual or cluster type sewage treatment system as described and regulated in Minnesota Rule 7080 Sewage Treatment System.
- 193) Setback:** The minimum horizontal distance between a structure or sewage treatment system or other facility and a property line, ordinary high water level, top of bluff, road or other facility as found in Minnesota Rule 6120.2500.
- 194) Sewage:** The water carried waste products from residences, public buildings, institutions or other buildings, including the excrementitious or other discharge from the bodies of human beings or animals, together with such groundwater infiltration and surface water as may be present.
- 195) Sewer System, Central:** Any sanitary sewer system, public or private, serving a group of buildings, lots, or an area of the County discharged to a common treatment and disposal structure and meets the County and State Health and Sanitation Regulations.
- 196) Sewer System, Community:** A sanitary sewer system comprised of lateral and/or trunk sewer lines connecting a house, building or structure with and consisting in part of a sewage treatment facility, owned by a homeowners association or other group, organization, company or cooperative other than a government agency. Such system must be approved by the County Zoning Administrator and the State Health Department. Such systems may consist of a common or community septic system when the number of units so attached and soil conditions, topography, water table and subsoil structure so permits.
- 197) Sewer System, Municipality:** A sanitary sewer system of lateral and/or trunk sewer lines connecting a group of buildings or an area to a central treatment plant owned and operated by such municipality or Sewer District under a Joint Power Agreement.
- 198) Shore Impact Zone:** Land located between the ordinary high water level of public water and a line parallel to it at a setback of fifty (50) percent of the building setback.
- 199) Shoreland:** Means land located within the following distances from public waters. (1) one-thousand (1,000) feet from the ordinary high water level of a lake, pond, or flowage; and (2) three-hundred (300) feet from a river or stream, or the landward extent of a flood plain designated by ordinance on such a river or stream, whichever is greater. The practical limits of shorelands may be less than the statutory limits whenever the waters involved are bounded by natural topographic divides which extend landward from the waters for lesser distances and when approved by the Commissioner of the Department of Natural Resources.
- 200) Sign:** Any letters, figures, design, symbol, trademark, architectural or illuminating device intended to attract attention to any place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever and painted, printed, or constructed and displayed in any manner whatsoever for recognized advertising purposes.

For purposes of this Ordinance, a flag constitutes a sign, but not including an emblem, or insignia of a government, school or religious group when displayed for official purposes.

- 201) **Sign, Advertising:** A sign, which directs attention to business, commodity, service, activity, or entertainment not necessarily, conducted, sold, or offered upon the premises where such a sign is located.
- 202) **Sign, Business:** A sign, which directs attention to a business or profession or to a commodity, service, or entertainment, sold or offered upon the premises where such a sign is located.
- 203) **Sign, Flashing:** Any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use.
- 204) **Sign, Flat Wall:** A sign affixed directly to the exterior wall and confined within the limits thereof of any building and which projects from that surface less than eighteen (18) inches at all points.
- 205) **Sign, Projecting:** A sign, other than a wall sign, which projects from and is supported by a wall of a building or structure.
- 206) **Sign, Pylon:** A freestanding sign erected upon a single pylon or post, which is in excess of ten (10) feet in height, with a sign mounted on top thereof.
- 207) **Sign, Rotating:** A sign, which revolves or rotates on its axis by mechanical means.
- 208) **Sign, Surface Area Of:** The entire area within a single continuous perimeter enclosing the extreme limits of the actual sign surface. It does not include any structural elements outside of the limits of such sign and not forming an integral part of the display.
- 209) **Sign, Temporary:** A banner, pennant, poster, or advertising display constructed of cloth, canvas, plastic sheet, cardboard, wall board, or similar material and intended to be displayed for a limited period of time.
- 210) **Significant:** Having or likely to have a major effect. May also mean important.
- 211) **Sinkhole:** A surface depression that is formed by the erosion of material into or the collapse of underlying cavernous bedrock (generally limestone or dolomite).
- 212) **Site Development Plan:** A site development plan for construction which shall include at a minimum, the proposed location of the structure, the site elevations and the height of the structure, the location of the sewer and well, a construction erosion control plan if the site is over twelve (12%) slope.
- 213) **Soil Survey:** A soil map or inventory of the soils of an area and a report of text describing the kinds of soils shown on the map and summarizing what is known about these soils, including their classification and capabilities.
- 214) **Solar Access Space:** That airspace above all lots within the District necessary to prevent

any improvement, vegetation, or tree located on said lots from casting a shadow upon any Solar Device located within said zone greater than the shadow cast by a hypothetical vertical wall ten (10) feet high located along the property lines of said lots between the hours of 9:30 a.m. and 3:30 p.m., Central Standard Time on December 21, PROVIDED, HOWEVER, this Ordinance shall not apply to any improvement or tree which casts a shadow upon a Solar Device at the time of the installation of said device or to vegetation exiting at the time of installation of said Solar Device.

- 215) Solar Collector:** A device or combination of devices, structure, or part of a device or structure that transforms direct solar energy into thermal, chemical, or electrical energy and that contributes significantly to a structure's energy supply.
- 216) Solar Energy System:** A complete design or assembly consisting of a solar energy collector, an energy storage facility (where used), and components to the distribution of transformed energy (to the extent they cannot be used jointly with a conventional energy system), to qualify as a solar energy system, the system must be permanently located for not less than ninety (90) days in any calendar year beginning with the first calendar year after completion of construction. Passive solar energy systems are included in this definition but not to the extent that they fulfill other functions such as structural and recreational.
- 217) Solar Skyspace:** The space between a solar energy collector and the sun, which must be free of obstructions that shade the collector to an extent, which precludes its cost effective operation.
- 218) Solar Skyspace Easement:** A right, expressed as an easement, covenant, condition or other property interest in any deed or other instrument executed by or on behalf of any landowner, which protects the solar sky space of an actual, proposed or designated solar energy collector at a described location by forbidding or limited activities or land uses that interfere with access to solar energy. The solar sky space must be described as the three dimensional space in which obstruction is prohibited or limited, or as the times of day during which direct sunlight to the solar collector may not be obstructed, or as a combination of the two (2) methods.
- 219) Solar Structure:** A structure designed to utilize solar energy as an alternate for, or supplement to conventional mechanical heating system.
- 220) Solid Waste:** Garbage, refuse and other discarded solid materials, except animal waste used as fertilizer, including solid waste materials resulting from industrial, commercial, and agricultural operations and from community activities. Solid waste does not include earthen fill, boulders, rock and other materials normally handled in construction operations, solid or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows, or other common water pollutants.
- 221) Steep Slope:** Land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the sites soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and Ag practices are used in accordance

with the provisions of this Ordinance. Where specific information is not available, steep slopes are lands having average slopes of over twelve percent (12%) as measured on horizontal distances of fifty (50) feet or more that are not bluffs.

- 222) Story:** That portion of a building included between the surface of any floor and the surface of the next floor above, including below ground portions of earth-sheltered buildings.
- 223) Story, Half:** A half story is an upper most story lying under a sloping roof, the usable floor area of which does not exceed seventy-five (75%) percent of the floor area of the story immediately below it, and not used, or designed, arranged or intended to be used, in whole or in part, as an independent housekeeping unit or dwelling. A half story containing independent apartments or living quarters shall be deemed a full story.
- 224) Street:** A public right-of-way, which affords primary means of access to abutting property and shall also include avenue, highway, road, or way.
- 225) Street, Pavement:** The wearing or exposed surface of the roadway used by vehicular traffic.
- 226) Street Width:** The width of the right-of-way, measured at right angles to the centerline of the street.
- 227) Structure:** Anything constructed, placed, or erected, the use of which requires location on, in, or under the ground or attachment to something having a location on, in, or under the ground. Includes but not limited to buildings, poles, cables, pipes, bridges, and portable living quarters. For the purposes of this Ordinance, the pouring of cement or asphalt flat on the ground shall not be considered a structure.
- 228) Structural Alterations:** Any change in the supporting members of a building, such as bearing walls, columns, beams, or girders.
- 229) Subdivision:** Is a described tract of land, which is to be, or has been divided into three or more lots for the purpose of immediate or future transfer of ownership for the purpose of sale or of building development, including the re-subdivision or re-platting of land or lots.
- 230) Surface Water Oriented Commercial Use:** The use of land for commercial purposes where access to and use of a surface water feature is an integral part of the normal conductance of business, such as marinas, resorts, and restaurants with transient docking
- 231) "T":** The tolerable soil loss level as defined in Section 2 of the Soil Conservation Technical Guide.
- 232) Telecommunications Facility:** A facility, site, or location that contains one or more antennas, telecommunications towers, alternative support structures, satellite dish antennas, other similar communication devices, and support equipment which is used for transmitting, receiving, or relaying telecommunications signals, excluding facilities exempted under Section 3.
- 233) Telecommunications Facility Structure:** A telecommunications tower or alternative



support structure on which telecommunications antenna(s) may be mounted.

- 234) Telecommunications Tower:** Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including camouflaged towers, lattice towers, guy towers, or monopole towers. This includes radio and television transmission towers, microwave towers, and common-carrier towers. It shall exclude alternative support structures and those facilities exempted under 733.03.
- 235) Toe of the Bluff:** The point on a bluff where there is, as visually observed, a clearly identifiable break in the slope from gentler to steeper slope above. If no break in the slope is apparent, the toe of bluff shall be determined to be the lower end of a fifty (50) foot segment measured on the ground with an average slope exceeding eighteen (18%) percent.
- 236) Top of the Bluff:** The point on a bluff where there is, as visually observed, a clearly identifiable break in the slope from steeper to gentler slope above. If no break in the slope is apparent, the top of bluff shall be determined to be the upper end of a fifty (50) foot segment measured on the ground with an average slope exceeding eighteen (18%) percent.
- 237) Townhouse:** A single-family building attached by party walls with other single-family buildings, and oriented so that all exits open to the outside.
- 238) Travel Trailer:** A recreational camping vehicle.
- 239) Use:** The purpose or activity, for which the land or building thereon is designated, arranged, or intended, or for which it is occupied, utilized, or maintained.
- 240) Use, Accessory:** A use secondary to and serving the principal use or structure on the same lot and customarily incidental thereto.
- 241) Use, Permitted:** A public or private use which of itself conforms with the purposes, objectives, requirements, regulations, and performance standards of a particular district.
- 242) Use, Principal:** The main use of land or buildings as distinguished from subordinate or accessory use. A "principal use" may be either permitted or conditional.
- 243) Utility:** See Essential Service.
- 244) Utility Pole Mounted Antenna:** An antenna attached to or upon an existing or replacement electric transmission or distribution pole, streetlight, traffic signal, athletic field light, or other approved similar structure.
- 245) Variance:** A modification or variation of the provisions of this Ordinance where it is determined that, by reason of exceptional circumstances, the strict enforcement of the official controls would cause unnecessary hardship.
- 246) Warrantied Systems:** Warrantied Systems are wastewater technologies or designs (new or existing) for which documentation and a warranty has been submitted to the Minnesota Pollution Control Agency (MPCA). Warrantied Systems are not standard, alternative, or experimental systems as defined in Minnesota Rules Chapter 7080.

- 247) Water Bottling:** The act of putting water in a container for the purpose of selling or distribution to the general public.
- 248) Water Oriented Accessory Structure:** A small, above ground building or other improvement, except stairways, fences, docks, and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to a public waters than normal structure setback. Examples of such structures include boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks.
- 249) Wetland:** Land which is annually subject to periodic or continual inundation by water and commonly referred to as bog, swamp, or marsh.
- 250) Wildlife Management Areas:** Wetland, uplands, or woods owned and managed for wildlife by the Department of Natural Resources (DNR) where hunting is open to the public during regular season.
- 251) Yard:** A required open space on a lot which is unoccupied and unobstructed by a structure from its lowest level to the sky except as permitted in this Ordinance. The yard extends along the lot line at right angles to such lot line to a depth or width specified in the setback regulations for the zoning district in which such lot is located. For earth sheltered buildings and buildings covered with earth berms, the line of the building is measured from the exterior surface of the building regardless of whether it is above or below grade.
- 252) Yard, Front:** A yard extending along the full width of the front lot line between side lot lines and extending from the abutting street right-of-way line to a depth required in the setback regulations for the zoning district in which such lot is located.
- 253) Yard, Rear:** The portion of the yard on the same lot with the principal building located between the rear lot line and a line at a distance specified by these regulations and extending for the full width of the lot.
- 254) Yard, Side:** The yard extending along the side lot line between the front yard and rear yards to a depth or width required by setback regulations for the zoning district in which such lot is located.
- 255) Zoning Amendment:** A change authorized by the County either in the allowed use within a district or in the boundaries of a district, the Zoning Ordinances, and/or the zoning map.
- 256) Zoning District:** An area or areas within the limits of the County for which the regulations and requirements governing use are uniform.
- 257) Zoning Map:** The map bearing the description “Official Zoning Map for Fillmore County” together with all proper notations, references and other information shown thereon.



## **SECTION 4**

### **General Provisions**

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#### **402. Application**

This Ordinance shall be applicable to all lands, structures, and waters within the boundaries specified under the jurisdiction section above.

- 1) In their interpretation and application, the provisions of this Ordinance shall be held to the minimum requirements for the promotion of the public health, safety and welfare.
- 2) 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.
- 3) Except as this Ordinance specifically provides, no structure shall be erected, converted, enlarged, reconstructed or altered; and no structure or land shall be used for any purpose or in any manner that is not in conformity with this Ordinance. Temporary buildings that are used in conjunction with construction work, including trailers and manufactured/mobile homes used as offices and for tool storage, may be permitted in any district during the period that construction is taking place, but such temporary buildings shall be removed within thirty (30) days after completion of construction work. Portable agricultural buildings placed on skids shall also be exempt from obtaining a building permit.

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#### **404. Zoning Permits**

A zoning permit shall be obtained prior to erecting, installing, altering, converting, moving any building or structure or part thereof, or demolition of any historically significant structure, within areas regulated by this Ordinance in Fillmore County. Before a zoning permit is issued, the terms of this Ordinance shall be met.

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#### **407. Uses not provided for in any Zoning District**

Whenever a use is neither specifically permitted nor denied, the use shall be considered prohibited. If a property owner were to submit a request to establish such a use, the Planning Commission may conduct a study to determine if the use is appropriate for the district in which the property is located, or if not, whether the use would be appropriate to one of the County's other districts. The County Board or Planning Commission, upon receipt of the study, shall initiate an amendment to the Zoning Ordinance, if appropriate, to provide for the use under consideration or shall determine the use is not compatible in the County.

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## **504. Conditional Use Permits**

### **504.01. Criteria for Granting Conditional Use Permits**

In granting a conditional use permit, the Fillmore County Board shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use upon the health, safety, and general welfare of occupants of surrounding lands. Among other things, the following findings shall be considered.

- 1) The use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities that serve or are proposed to serve the area.
- 2) The use will be sufficiently compatible or separated by distance or screening from adjacent agricultural or residentially zoned or used land so that existing properties will not be depreciated in value and there will be no deterrence to the development of vacant land.
- 3) The structure and site shall have an appearance that will not have an adverse effect upon adjacent properties.
- 4) The use in the opinion of the County Board is reasonably related to the overall needs of the County and to the existing land use.
- 5) The use is consistent with the purposes of the Zoning Ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use.
- 6) The use will not cause traffic hazards or congestion.
- 7) Existing businesses nearby will not be adversely affected because of curtailment of customer trade brought about by intrusion of noise, glare, vibration or other nuisances.
- 8) Adequate utilities, access roads, drainage and necessary facilities have been or will be provided.
- 9) If the Conditional Use Permit is for a use within the shoreland area of a public water, an evaluation of the waterbody and the topographic, vegetative, and soils conditions on the site must be made to ensure:
  - a. the prevention of soil erosion or other possible pollution of public waters, both during and after construction; and
  - b. the visibility of structures and other facilities as viewed from public waters is limited; and
  - c. the site is adequate for water supply and onsite sewage treatment.
- 10) No Conditional Use Permit shall be granted if such permit may have the potential for significant effect to:
  - a. the environment; or

- b. the protection of the public health, safety, comfort, convenience, and general welfare of the public; or
- c. the County's promotion of the orderly development and/or maintenance of agricultural, residential, recreational and public areas; or
- d. the compatibility of different land uses and the most appropriate use of land throughout the county; or
- e. the value of property.

#### **504.02. Additional Conditions**

In permitting a new conditional use or the alteration of an existing conditional use, the Planning Commission may recommend the imposition, in addition to the standards and requirements expressly specified by this Ordinance, of additional conditions, which the Planning Commission considers necessary to protect the best interest of the surrounding area or the county as a whole. These conditions may include, but are not limited to the following:

- 1) Increasing the required lot size or yard dimension.
- 2) Limiting the height, size or location of buildings.
- 3) Controlling the location and number of vehicle access points.
- 4) Increasing the street width.
- 5) Increasing the number of required off-street parking spaces.
- 6) Limiting the number, size, location or lighting of signs.
- 7) Requiring diking, fencing, screening, landscaping or other facilities to protect adjacent or nearby property.
- 8) Designating sites for open space.
- 9) Increased setbacks from the ordinary high water level.
- 10) Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted.

Any change involving structural alterations, enlargement, intensification of use, or similar change not specifically permitted by the conditional use permit issued shall require an amended conditional use permit and all procedures shall apply as if a new permit were being issued. The Zoning Administrator shall maintain a record of all conditional use permits issued including information on the use, location, and conditions imposed by the County Board and time limits, review dates, and such other information as may be appropriate.

#### **504.03. Required Exhibits for Conditional Use Permits**

- 1) A preliminary building or structure and site development plan. The site plan shall include, but not be limited to soils information, neighboring land and water uses, existing and proposed structures, architectural plans, driveway locations, parking areas, highway access, traffic generation and circulation, drainage, waste disposal, sewage disposal systems, water supply systems.
- 2) Evidence of ownership or enforceable option or easements on the property.

#### **504.04. Procedures**

The procedure for obtaining a Conditional Use Permit is as follows:

- 1) The property owner or his/her agent shall meet with the Zoning Administrator to explain the situation, learn the procedures and obtain an application form.
- 2) The applicant shall file the completed application form together with the required exhibits with the Zoning Administrator and shall pay a filing fee as established by the County Board and on file in the Zoning Office.
- 3) The Zoning Administrator shall refer the application to the Planning Commission for review.
- 4) The Planning Commission shall hold a public hearing on the proposal. Notice of the public hearing shall be published in the official newspaper designated by the County Board at least ten (10) days prior to the hearing. Notice of the hearing shall also be submitted to the governing bodies of all towns and municipalities within two (2) miles of the affected property. In unincorporated areas of the County, property owners of record within one-quarter miles of the affected property or the ten (10) properties nearest to the affected property, whichever is the greatest number of property owners, shall be notified in writing of the public hearing on the request for a conditional use permit. In the case of feedlots over five-hundred (500) animal units, property owners within one (1) mile shall be notified. In incorporated areas of the County, property owners of record within five hundred (500) feet of the property in question shall be notified in writing of the public hearing on the request for a conditional use permit. In the case of rock quarries, notice shall be sent to property owners of record as follows:
  - a. In incorporated areas to all owners of record within five hundred (500) feet of the affected property.
  - b. In unincorporated areas to all residences within one (1) mile of the new or existing quarry or the nearest ten (10) landowners whichever is greatest.
- 5) The Planning Commission shall hold the public hearing and then shall study the application to determine possible adverse effects of the proposed conditional use and to determine what additional requirements may be necessary to reduce such adverse effects and recommend one (1) of three (3) actions to the County Board at its next regular meeting: approval, denial, or approval with special conditions.
- 6) The County Board shall take action on the conditional use permit application following receipt of the findings and recommendations by the Planning Commission. The person making application for the conditional use permit shall be notified in writing of the Board's action. If it grants the conditional use permit, the County Board may impose conditions (including time limits) it considers necessary to protect the public health, safety and welfare and such conditions may include a time limit for the use to exist or operate.
- 7) All appeals from the decision of the County Board relating to Conditional Use Permits shall be filed within thirty (30) days of the board's decision with a court of competent jurisdiction.

- 8) Revocation of Conditional Use Permits. Where a Conditional Use Permit has been issued pursuant to the provision of this Ordinance, such permit shall become null and void without further action by the Planning Commission or the County Board unless work thereon is substantially complete within twelve (12) months of the date granting such conditional use. The Conditional Use Permit may be assignable only after the original applicant has begun the use and such transfer shall be reviewed and approved by the Zoning Administrator. A Conditional Use Permit shall be deemed to authorize one (1) particular use and shall expire if that use shall cease for more than six (6) consecutive months.
- 9) In the event that the applicant violates any of the conditions set forth in the conditional use permit, or the section of the Fillmore County Zoning Ordinance governing the conditional use, the County Board shall have the authority to revoke the conditional use permit.
- 10) The Planning Commission shall review all Conditional Use Permits at least one (1) time within 24 months of permit issuance to monitor compliance with the provisions of the Conditional Use Permit. Any violations of the conditions of the permit shall be cause for consideration for revocation of the permit.
- 11) Conditional Use permits shall be valid until their expiration pursuant to Paragraph 10 above unless a shorter or lesser time is specified in the permit.
- 12) No application of a property owner for a conditional use shall be considered by the Planning Commission within a one (1) year period following a denial for such a request, except the Planning Commission may permit a new application, if in its opinion, new evidence or a change in circumstances warrants it.

#### **504.05. Terms of Receiving a Permit**

Once an applicant receives a Conditional Use Permit, said permit holder agrees that:

- 1) The permit holder must undertake the project according to plans and specifications submitted to the county with the application.
- 2) If this Conditional Use Permit is not acted upon for the purpose specified in the application within one year, the permit becomes null and void.
- 3) This permit will be periodically reviewed by the county to assure compliance with the permit and permit conditions.
- 4) The county may enter onto the premises at a reasonable time and in a reasonable manner to ensure the permit holder is in compliance with the conditions and all other applicable statutes, rules, and ordinances.



#### **504.06. Transfers (Rock Quarries, Sand Pits and Feedlots)**

The Zoning Office must be notified of all transfers of ownership of properties and/or conditional use permits involving only gravel pits and quarries that have a conditional use attached to such property. It shall be the duty of the landowner and/or the operator of the conditional use to:

- 1) Complete a Change in Ownership of a Conditional Use Transfer application.
- 2) Pay a fee as established by the County Board for the transfer. This fee is meant to cover the County's administrative costs for ensuring compliance of the conditional use as well as for record keeping expenses the County may incur.

A public hearing is not needed or required unless there is a change in the use of the conditional use. Any change in the use of the conditional use, such as but not limited to the use, size, and/or change in animal units will require a new conditional use application as well as a public hearing, as shown in section 504.04. All applicants are required to provide the necessary exhibits needed for a conditional use as shown in sections 504.02 and 504.03.

Failure to apply for the conditional use transfer of ownership within thirty (30) days will result in a monetary penalty as set by the County Board and on file in the Zoning Office.

#### **504.07. Revocation Procedures**

A conditional use permit shall be revocable by the County Board, either by petitioning a court of law or through this section, at any time due to failure of the permittee to observe any condition specified or failure to observe other requirements of the Fillmore County Zoning Ordinance in regards to the maintenance of improvements or conduct of the use or business as approved. The county shall also have a right of action to compel offending structures or uses to be removed at the cost of the violator or owner.

No conditional use permit shall be revoked until a hearing is held by the Planning Commission. The permittee shall be notified in writing of such hearing. The notification shall state the grounds for the complaint or reasons for revocation, and the time and location at which the hearing is to be held. At the hearing, the permittee shall be given an opportunity to be heard. The permittee may call witnesses and present evidence. Upon conclusion of the hearing, the Planning Commission shall make a recommendation to the County Commissioners about whether the permit should be revoked.

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**SECTION 6**  
**Zoning Districts and Provisions**

**601. Zoning Districts**

The zoning districts are so designed as to assist in carrying out the intents and purposes of this Zoning Ordinance.

For purposes of this Ordinance, Fillmore County is hereby divided into the following Zoning Districts:

| <u>Symbol</u> | <u>Name</u>                       |
|---------------|-----------------------------------|
| A             | Agricultural District             |
| RA            | Residential Agricultural District |
| R-1           | Single and Two Family District    |
| B-1           | General Commercial District       |
| I-1           | General Industrial District       |

**602. Overlay Zoning Districts and Shoreland Classification System**

**602.01. Zoning Overlay Districts**

The following overlay districts are also made part of the Zoning Ordinance on property where both the zoning district (Section 601) and the overlay district would apply. The use or development of such a property shall comply with both districts. The following symbols and names shall represent Fillmore County's overlay districts:

| <u>Symbol</u> | <u>Name</u>           |
|---------------|-----------------------|
| FP            | Flood Plain District  |
| ST            | Scenic Trail District |
| SH            | Shoreland District    |
| BL            | Bluffland             |
| DS            | Decorah Shale         |

**602.02. Shoreland Classification**

The public waters of Fillmore County have been classified below consistent with the criteria found in Minnesota Regulations, Part 6120.3300 and the Protected Waters Inventory Map for Fillmore County, Minnesota.

Classification

Legal Descriptions

A. Transition

|                   | <b>From</b>          | <b>From Section</b> | <b>From Twp.</b> | <b>From Range</b> | <b>To</b>             | <b>To Section</b> | <b>To Twp.</b> | <b>To Range</b> |
|-------------------|----------------------|---------------------|------------------|-------------------|-----------------------|-------------------|----------------|-----------------|
| Root River        | West Sec. Line       | 27                  | 104              | 10W               | Confluence S Br. R.R. | 7                 | 103N           | 9W              |
| S. Br. Root River | Bridge on Co. Road 5 | 22                  | 102N             | 12W               | Bridge                | 4                 | 102N           | 11W             |
| Deer Creek        | Bridge on Co. Road 1 | 9                   | 103N             | 13W               | Co. Rd. 8 Bridge E ½  | 8                 | 103N           | 12W             |

B. Agriculture

|                       | <b>From</b>                         | <b>From Section</b> | <b>From Twp.</b> | <b>From Range</b> | <b>To</b>                  | <b>To Section</b> | <b>To Twp.</b> | <b>To Range</b> |
|-----------------------|-------------------------------------|---------------------|------------------|-------------------|----------------------------|-------------------|----------------|-----------------|
| North Br. Root River  | North Sec. Line                     | 1                   | 104N             | 12W               | Conflu. With Mid. Br. R.R. | 17                | 104N           | 11W             |
| Deer Creek            | West Sec. Line                      | 18                  | 103N             | 13W               | Bridge on Co. Rd. 1        | 9                 | 103N           | 13W             |
| Middle Br. Root River | Co. Rd. #8 Bridge E ½               | 8                   | 103N             | 12W               | Conflu. With N. Br. R.R.   | 17                | 104N           | 12W             |
| Root River            | Conflu. With N. Root & Mid Br. R.R. | 17                  | 104N             | 11W               | East Section Line          | 28                | 104N           | 10W             |
| Root River            | Conflu. With S. Br. R.R.            | 7                   | 103N             | 9W                | East Section Line          | 24                | 104N           | 8W              |
| South Br. Root River  | West Sec. Line                      | 18                  | 102N             | 13W               | Bridge on Co. Hwy. #5      | 22                | 102N           | 12W             |
| South Br. Root River  | Bridge                              | 4                   | 102N             | 11W               | Conflu. With Root River    | 7                 | 103N           | 9W              |
| South Fork Root River | Co. Rd. Bridge                      | 1                   | 101N             | 10W               | East Section Line          | 36                | 103N           | 8W              |

C. Natural Environment Trout Streams

|                           | <b>From</b> | <b>From Section</b> | <b>From Twp.</b> | <b>From Range</b> | <b>To</b> | <b>To Section</b> | <b>To Twp.</b> | <b>To Range</b> |
|---------------------------|-------------|---------------------|------------------|-------------------|-----------|-------------------|----------------|-----------------|
| Riceford Creek            |             | 24                  | 101N             | 8W                |           | 24                | 101N           | 8W              |
| Riceford Creek            |             | 13                  | 101N             | 8W                |           | 12                | 101N           | 8W              |
| Riceford Creek            |             | 12                  | 101N             | 8W                |           | 1                 | 101N           | 8W              |
| Unnamed to Riceford Creek |             | 1                   | 101N             | 8W                |           | 1                 | 101N           | 8W              |
| Canfield Creek            |             | 25                  | 102N             | 12W               |           | 24                | 102N           | 12W             |
| Forestville Creek         |             | 15                  | 102N             | 12W               |           | 13                | 102N           | 12W             |
| Willow Creek              |             | 13                  | 102N             | 11W               |           | 1                 | 102N           | 11W             |
| Camp Creek                |             | 5                   | 101N             | 10W               |           | 5                 | 101N           | 10W             |

|                             |  |    |      |     |  |    |      |     |
|-----------------------------|--|----|------|-----|--|----|------|-----|
| Camp Creek                  |  | 17 | 102N | 10W |  | 5  | 102N | 10W |
| Watson Creek                |  | 30 | 103N | 11W |  | 29 | 103N | 11W |
| Duschee Creek               |  | 1  | 102N | 10W |  | 24 | 103N | 10W |
| Unnamed to<br>Duschee Creek |  | 35 | 103N | 10W |  | 1  | 102N | 10W |
| Shady Creek                 |  | 31 | 104N | 11W |  | 20 | 104N | 11W |
| Spring Valley<br>Creek      |  | 29 | 103N | 13W |  | 8  | 103N | 12W |
| Kedron Creek                |  | 36 | 104N | 13W |  | 36 | 104N | 13W |
| Carson Creek                |  | 21 | 104N | 12W |  | 27 | 104N | 12W |
| Upper Bear<br>Creek         |  | 8  | 104N | 12W |  | 15 | 104N | 12W |
| Upper Bear<br>Creek         |  | 18 | 104N | 11W |  | 18 | 104N | 11W |
| Lynch Creek                 |  | 2  | 104N | 11W |  | 14 | 104N | 11W |
| Rice Creek                  |  | 3  | 103N | 11W |  | 33 | 104N | 11W |
| Rice Creek                  |  | 22 | 104N | 11W |  | 14 | 104N | 11W |
| Trout Run                   |  | 5  | 104N | 10W |  | 20 | 104N | 10W |
| Torkelson<br>Creek          |  | 25 | 104N | 10W |  | 36 | 104N | 10W |
| Gibbon Creek                |  | 27 | 103N | 9W  |  | 9  | 103N | 9W  |
| Unnamed to<br>Gibbon Creek  |  | 33 | 103N | 9W  |  | 28 | 103N | 9W  |
| Diamond<br>Creek            |  | 13 | 103N | 9W  |  | 2  | 103N | 9W  |
| Unnamed to<br>Diamond Cr.   |  | 24 | 103N | 9W  |  | 13 | 103N | 9W  |
| Big Springs<br>Creek        |  | 15 | 104N | 9W  |  | 24 | 104N | 9W  |
| Pine Creek                  |  | 2  | 104N | 9W  |  | 2  | 104N | 9W  |
| Wisel Creek                 |  | 5  | 101N | 8W  |  | 19 | 102N | 8W  |
| Unnamed to<br>Wisel Creek   |  | 8  | 101N | 8W  |  | 5  | 101N | 8W  |
| Vesta Creek                 |  | 14 | 102N | 8W  |  | 11 | 102N | 8W  |
| Unnamed to<br>S. Fork R.R.  |  | 27 | 103N | 8W  |  | 10 | 102N | 8W  |
| Unnamed to<br>S. Fork R.R.  |  | 35 | 103N | 8W  |  | 36 | 103N | 8W  |

#### D. Tributary

This classification applies to all remaining non-classified protected watercourses in Fillmore County as shown on the Protected Waters Inventory Map, a copy that is hereby adopted by reference.

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## **604. Ag District**

### **604.01. Purpose**

To provide a district, whose primary purpose is to maintain, conserve and enhance agricultural land that has historically been tilled on a continuous basis and to provide for orderly development of dwellings and rural home based businesses.

### **604.02. Permitted Uses**

- 1) Dwellings. There shall be no more than a total of 2 (two) dwellings per quarter of a quarter section of land in the Ag District. The following rules must be followed:
  - All accesses and driveways to the dwelling must be at a grade that can be traversed by an emergency vehicle.
  - Dwellings and accessory structures shall not be permitted in areas classified as wetlands, floodplain, and other areas of poor drainage.
  - All dwellings constructed must adhere to the Bluffland and Shoreland Ordinances and be reviewed for Decorah Shale Outcroppings.
  - There shall be a minimum buildable lot size of 2.5 acres or more.
- 2) Agricultural Uses
  - Raising crops to include but not limited to corn, beans, oats, grasses and legumes, sunflowers, wheat, and sorghum.
  - Raising livestock (500 animal units or less) to include but not be limited to dairy cattle, beef cattle, horses, mules, donkeys, lama, emu, deer, elk, swine, sheep, goats, ducks, chickens, turkeys, chinchilla, bees, and buffalo.
  - Horticulture and other similar agriculturally related uses.
- 3) Accessory structures and uses customarily incidental to any of the above permitted uses when located on the same property.
- 4) Drainage systems, flood control and watershed structures and erosion control devices provided each will meet the appropriate safety laws and regulations.
- 5) Temporary or seasonal roadside stands with adequate off street parking.
- 6) Forestry and Wildlife Management Areas.
- 7) Home occupations.
- 8) Electrical distribution lines and other essential services in accordance with Section 733.
- 9) Cemetery Expansions.
- 10) Kennels provided they are a part of an existing building site.
- 11) Stables provided they are a part of an existing building site.
- 12) One room school houses.
- 13) Publicly owned and operated buildings except when operated for commercial purposes.
- 14) One, two, or three-day celebration events held once a year or less.
- 15) Bed and Breakfast Establishments.
- 16) Commercial Storage Units. Only the use of existing buildings with no extensions are permitted and only the interior of the building may be remodeled.
- 17) Rural Home Based Businesses.
- 18) Sale of dwellings.
- 19) Sawmills when operated for personal use.
- 20) Farmers markets.

21) Electric transmission lines.

#### **604.03. Conditional Uses**

- 1) Mining or extraction of minerals and raw materials regulated in Section 721.
- 2) Public, Private, and Parochial Schools and Learning Centers.
- 3) Churches and similar places of worship and instruction.
- 4) Cemeteries, including mausoleums and crematories:
  - Cemeteries shall contain a minimum of two (2) acres and include necessary parking area.
  - No burial sites within forty (40) feet of a right of way.
  - Mausoleums shall be located at least two hundred (200) feet from a property line.
- 5) Public parks.
- 6) Golf Courses.
- 7) Airports and landing fields for the operation of aircraft.
- 8) Sawmills when used for the industrial sawing of logs.
- 9) Commercial radio and television towers and transmitters.
- 10) Public utility buildings and structures such as substations, transformer stations and communications stations.
- 11) Campgrounds.
- 12) Temporary or portable machinery that is used to make, crush, or otherwise process concrete, asphalt, rocks, sand, gravel, or other like materials.
- 13) Commercial or industrial uses primarily intended to serve agricultural uses.
- 14) Celebrations other than one, two, or three-day celebration events held once a year or less.
- 15) Feedlots greater than 500 animal units.
- 16) Country Inns.
- 17) WECS (Wind Energy Conversion Systems).
- 18) Ponds (not intended for Agricultural Use).
- 19) Extraction of water for bottling purposes.

#### **604.04. Prohibited Uses**

- 1) Any activity that would require a change in the Zoning Map from the Ag District to a Commercial District or an Industrial District unless it is within ½ mile of city limits.
- 2) Commercially operated race tracks, ATV and motorbike off road courses or similar activities.
- 3) Manufactured Home Parks.
- 4) Multiple Family Dwelling Unit Structures.
- 5) Private Game Farms.
- 6) Subdivisions.
- 7) Residential PUDs.
- 8) PUDs.
- 9) Large Assemblies.

## 604.05. Performance Standards

- 1) Height Regulations (Height is determined by the average elevation of the dirt surrounding a dwelling and the average elevation between the tallest peak of the dwelling and the tallest plate holding that peak).
  - a. Dwellings shall not exceed a height of thirty-five (35) feet.
  - b. Accessory buildings shall not exceed a height of seventy (70) feet except silos and grain bins.
  - c. Non-agricultural structures shall not exceed a height of one hundred (100) feet unless as a part of a Conditional Use Permit or a Variance.
  - d. Public or semi-public buildings, churches, cathedrals, temples, or schools may be erected to a maximum height of fifty-five (55) feet. In this instance, setback requirements shall increase at a rate of one (1) foot for each foot of height exceeding thirty-five (35) feet.
  
- 2) Front Yard Regulations
  - a. There shall be a front yard setback of not less than seventy-three (73) feet from the centerline of the public road and forty (40) feet from the road right of way for all permanent buildings and dwellings. In the instance of a corner lot, there shall be two front yard requirements along the street sides. Where highway safety and/or back slope easements are factors, the setback shall be as determined by the County Highway Engineer and Zoning Administrator, but not less than the above minimum.
  - b. No structure shall be allowed within seventy-three (73) feet of the centerline of a public road and forty (40) feet from the road right of way. All utilities must cross this area at right angles to the road easement or as close to right angles as practical. Any sewer installed must be located back of the Right of Way and may be closer to the road than 73 feet with the approval of the County Engineer.
  - c. In cases where an accessory building is attached to the main building, it shall be considered as structurally a part thereof and shall comply in all respects with the requirements of this Ordinance applicable to the main building. An accessory building, unless attached to and made a part of the main building as above provided, shall not be closer than eight (8) feet to the main building.
  
- 3) Side Yard Regulations
  - a. There shall be a minimum interior side yard setback of ten (10) feet.
  
- 4) Rear Yard Regulations
  - a. There shall be a minimum rear yard of not less than ten (10) feet.
  
- 5) Lot Width Regulations
  - a. Each lot shall have a minimum width of one hundred fifty (150) feet at the front of the proposed building site.
  - b. Each lot shall be provided with either sixty-six (66) feet of public road frontage or a recorded private easement of not less than sixty-six (66) feet for access to the building site.
  
- 6) No landowner may have more than one (1) access in each quarter mile unless such field is divided by natural drainage ways that prohibit access to all parts of the field.

- 7) Upon re-grading of a road, no agricultural lot of forty (40) acres or more may have more than two (2) access driveways.
- 8) The construction of all new dwellings must be at least one thousand (1,000) feet from a feedlot measured from the nearest point of the dwelling to the border of the feedlot as determined and measured by the Fillmore County Feedlot Officer unless:
  - a. the dwelling owner and feedlot owner are first, second, third, or fourth degree kindred; or
  - b. the dwelling is being located on an existing building site.
- 9) The construction of all new dwellings must be sited on an existing or former permanent dwelling site, on land classified for more than ten (10) years by the Fillmore County Assessor as pasture, wasteland, woodland or on land having a Crop Equivalency Rating of 65 or less, only if it meets all other requirements of the Ordinance, with the following exception:
  - Any landowner, who owns eighty (80) or more contiguous acres of land, may elect to place a dwelling on land with a CER of 66 or greater, only if it meets all other requirements of this Ordinance and only if there are no other possible dwelling sites on that parcel that would NOT be on land with a CER of 65 or less.
- 10) No new dwelling unit or existing dwelling unit may be located within one thousand (1,000) feet of the surveyed boundaries of a rock quarry.
- 11) Cement or asphalt may be poured up to the property line provided runoff does not adversely impact or pollute neighboring property or waters of the State.
- 12) All newly planted trees and shrubs must be set back from all property lines and Right-of-Way lines at least one half (½) the crown size of the tree at maturity.
- 13) General Regulations. Additional requirements for signs, parking, water supply, waste disposal, and sewage disposal are set forth in Section 7.
- 14) New Cemeteries:
  - a. Shall contain a minimum of two (2) acres and include necessary parking area.
  - b. No burial sites within forty (40) feet of a right-of-way.
  - c. Mausoleums shall be located at least two hundred (200) feet from a property line.

## **605. Residential Agricultural District (RA)**

### **605.01. Purpose**

To provide suitable areas of low-density residential development in areas of existing development which occur in unincorporated areas.

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## **608. General Industrial District (I-1)**

### **608.01. Purpose**

This district is intended to provide for the establishment of industrial and manufacturing uses, which because of the nature of the product, requires isolation from residential or commercial uses.

### **608.02. Permitted Uses**

- 1) Building materials storage yards, lumberyards, machinery lots, car lots, and agricultural products yards.
- 2) Contractors' equipment rental and storage yards. \*
- 3) Wholesale businesses, including warehousing and storage buildings. \*
- 4) Commercial laundries and dry cleaning plants. \*
- 5) Light manufacture, compounding and treatment of such products as bakery goods, candies, cosmetics, dairy products, food products, drugs, perfumes, pharmaceuticals, soap, toiletries and wineries. \*
- 6) Light manufacture, compounding treatment and assembly of articles or merchandise previously manufactured elsewhere. \*
- 7) Manufacturing processes and treatments of products using light machinery such as tool and die shops, metal fabricating plants and welding shops.
- 8) Public utility service buildings and yards, electrical transformer stations, sub-stations and gas regulator stations.
- 9) Buildings and uses customarily necessary to the aforementioned permitted uses. \*
- 10) Monument works.
- 11) Dwellings for watchmen or custodians of industrially used property only.
- 12) Automobile service stations.
- 13) Outdoor storage of vehicles or materials or open sales lot, farm implement sales.
- 14) Restaurants, lunch counters, and confectioneries.
- 15) \*Retail sales incidental to and in connection with the aforementioned permitted uses.
- 16) Accessory uses shall be off-street parking, storage garage, and buildings and loading docks as regulated in this Ordinance; buildings temporarily located for purposes of construction, essential security and safety facilities as approved by the County and offices accessory to the principal use.
- 17) Electrical distribution and transmission lines, substations, and other essential services in accordance with Section 733.

\* Uses permitted in those items noted above shall be conducted entirely within a building with a landscaped front yard and with side and rear yards used for loading, unloading, and parking. Visitor parking may be allowed in the front yard.

### **608.03. Conditional Uses**

- 1) Grain elevators and warehouses.

- 2) Manufacturing of cement, concrete, lime, gypsum or plaster.
- 3) Distillation of bone, coal, tar, petroleum, refuse, grain, or wood.
- 4) Explosive manufacture or storage.
- 5) Fertilizer manufacturing, compost or storage.
- 6) Garbage, offal, dead animals, refuse, rancid fats, incineration, glue manufacturing, size or gelatine manufacturing where the processes include the refining or recover of products from animal refuse or offal.
- 7) Petroleum or asphalt refining, manufacturing or storage.
- 8) Smelting or refining of metals from ores.
- 9) Storing, curing and tanning of raw, green or salted hides or skins.
- 10) Corrosive acid manufacturing or bulk storage thereof.
- 11) Junkyards.

#### **608.04. Storage of Materials**

- 1) All activities involving the manufacturing, fabricating, repairing, storing, cleaning, servicing, and testing of materials shall be within completely enclosed buildings; or
- 2) May be outdoors if completely screened by a solid wall or uniformly painted solid fence or suitable substitute at least eight (8) feet in height.
- 3) No open storage at a greater height than that of the screening element.
- 4) No storage of equipment or materials in road or street right-of-way.

#### **608.05. Performance Standards**

- 1) Height Regulations (Height is determined by the average elevation of the dirt surrounding a building and the average elevation between the tallest peak of the building and the tallest plate holding that peak).
  - a. No building shall be erected or structurally altered to exceed sixty (60) feet in height.
- 2) Front Yard Regulations
  - a. The minimum front yard required shall be thirty (30) feet from lot line or road right-of-way. No structure shall be allowed within thirty (30) feet of any public road right-of-way. All utilities must cross the thirty (30) foot setback at right angles to the road easement, or as close to right angles as practical.
- 3) Side and Rear Yard Regulations
  - a. The minimum of each side yard shall be twenty (20) feet and a rear yard of thirty (30) feet.
- 4) Lot Area and Width Regulations
  - a. The minimum lot area shall be one acre.
- 5) Screening and Fencing
  - a. The County may require the screening or fencing of industrial side and rear yards, which abut a Residential District.
- 6) No access drives shall exceed thirty-two (32) feet in width.

- 7) All curb and gutter construction required must meet the Department of Transportation State Aid Standards.
- 8) General Regulations. Standards and regulations related to signs, parking, etc. are set forth in Section 7.

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## **610. Flood Plain District (FP)**

### **610.01. Statutory Authorization, Findings of Fact and Purpose**

The Legislature of the State of Minnesota has, in Minnesota Statutes Chapters 104 and Chapter (394 for counties or 462 for municipalities) delegated the authority to local governmental units to adopt regulations designed to minimize flood losses. Minnesota Statute, Chapter 104 further stipulates that communities subject to recurrent flooding must participate and maintain eligibility in the National Flood Insurance Program. Therefore, Fillmore County, Minnesota does ordain as follows.

- 1) Statement of Purpose. The purpose of this section of the Fillmore County Zoning Ordinance is to maintain the county's eligibility in the National Flood Insurance Program and to minimize potential losses due to periodic flooding including loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- 2) Warning of Disclaimer of Liability. This ordinance does not imply that areas outside of the flood plain district or land uses permitted within such districts will be free from flooding and flood damages. This ordinance shall not create liability on the part of Fillmore County or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decisions lawfully made hereunder.

### **610.02. General Provisions**

- 1) Adoption of Flood Insurance Rate Map. The Flood Insurance Rate Map for Fillmore County, dated September 18, 1987, or subsequent updates, developed by the Federal Emergency Management Agency is hereby adopted by reference as the Official Flood Plain Zoning District Map and made a part of this ordinance.
- 2) Lands to Which Ordinance Applies. This ordinance shall apply to all lands designated as flood plain within the jurisdiction of Fillmore County.
- 3) Interpretation. The boundaries of the flood plain district shall be determined by scaling distances on the Official Flood Plain Zoning District Map. Where interpretation is needed as to the exact location of the boundaries of the flood plain district, the Zoning Administrator shall make the necessary interpretation based on elevations on the regional (100-year) flood profile, if available. If 100-year flood elevations are not available, the county shall: 1) require a floodplain evaluation consistent with Section 610.04(3) of this ordinance to determine a 100-year flood elevation for the site; or 2) base its decision on available hydraulic/hydrologic or site elevation survey data which demonstrates the likelihood the site is within or outside of the flood plain.

### **610.03. Conflict with Pre-Existing Zoning Regulations and General Compliance**

- 1) The Flood Plain District as Overlay Zoning District. The flood plain zoning district shall be considered an overlay-zoning district to all existing land use regulations of the county. The uses permitted in Sections 610.04 and 610.05 of this ordinance shall be permitted only if not prohibited by any established, underlying zoning district. The requirements of this ordinance shall apply in addition to other legally established regulations of the community and where this ordinance imposes greater restrictions, the provisions of this ordinance shall apply.
- 2) Compliance. No new structure or land shall hereafter be used and no structure shall be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations, which apply to uses within the jurisdiction of this ordinance. Within the Floodway and Flood Fringe, all uses not listed, as permitted uses in Section 610.04 and 610.05 shall be prohibited.
  - a. New manufactured homes, replacement manufactured homes and Recreational Camping Vehicles are subject to the general provisions of this ordinance and specifically Sections 610.04 and 610.12;
  - b. Modifications, additions, structural alterations or repair after damage to existing non-conforming structures and non-conforming uses of structures or land are regulated by the general provisions of this ordinance and specifically Section 610.09; and
  - c. As-built elevations for elevated structures must be certified by ground surveys as stated in Section 610.07 of this ordinance.

### **610.04. Permitted Uses, Standards, and Flood Plain Evaluation Criteria**

- 1) Permitted Uses in the Flood Plain. The following uses of land are permitted uses in the flood plain district:
  - a. Any use of land which does not involve a structure, an addition to the outside dimensions to an existing structure or an obstruction to flood flows such as fill, excavation, or storage of materials or equipment.
  - b. Any use of land involving the construction of new structures, the placement or replacement of manufactured homes, the addition to the outside dimensions of an existing structure or obstructions such as fill or storage of materials or equipment, provided these activities are located in the flood fringe portion of the flood plain and provided the structure is not a dwelling. These uses shall be subject to the development standards in Section 610.04(2) of this ordinance and the flood plain evaluation criteria in Section 610.04(3) of this ordinance for determining floodway and flood fringe boundaries.
  - c. New dwellings are not allowed in the Ag District within any portion of the 100-year flood plain, including the floodway and flood fringe, whether elevated above the 100-year flood plain or not.
  - d. Recreational Camping Vehicles are subject to Section 610.12 of this ordinance.
- 2) Standards for Flood Plain Permitted Uses:
  - a. Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency

- Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
- b. Storage of Materials and Equipment:
    - i) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
    - ii) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning or if placed on fill to the Regulatory Flood Protection Elevation.
  - c. No use shall be permitted which will adversely affect the capacity of the channels or floodways of any tributary to the main stream, or of any drainage ditch, or any other drainage facility or system.
  - d. All structures, including accessory structures, additions to existing structures shall be constructed on fill so that the basement floor, or first floor if there is no basement, is at or above the Regulatory Flood Protection Elevation. The finished fill elevation must be no lower than one (1) foot below the Regulatory Flood Protection Elevation and shall extend at such elevation at least fifteen (15') beyond the limits of the structure constructed thereon.
  - e. All Uses. Uses that do not have vehicular access at or above an elevation not more than two (2) feet below the Regulatory Flood Protection Elevation to lands outside of the flood plain shall not be permitted unless granted a variance by the Board of Adjustment. In granting a variance, the Board shall specify limitations on the period of use or occupancy of the use and only after determining that adequate flood warning time and local emergency response and recovery procedures exist.
  - f. Commercial and Manufacturing Uses. Accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the Regulatory Flood Protection Elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth greater than two (2) feet or be subject to flood velocities greater than four (4) feet per second upon occurrence of the regional flood.
  - g. On-site Sewage Treatment and Water Supply Systems. Where public utilities are not provided:
    - i. on-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and
    - ii. new or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into floodwaters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.
  - h. All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

- 3) Flood Plain Evaluation:
  - a. Upon receipt of an application for a permit, manufactured home park development or subdivision approval within the flood plain district, the Zoning Administrator shall require the applicant to furnish sufficient site development plans and a hydrologic/hydraulic analysis by a qualified engineer or hydrologist specifying the nature of the development and whether the proposed use is located in the floodway or flood fringe and the Regulator Flood Protection Elevation for the site. Procedures consistent with Minnesota Rules 1983 Parts 6120.5600 (Technical Standards and Requirements for Floodplain Evaluation) and 6120.5700 (Minimum Floodplain Management Standards for Local Ordinance) shall be followed during the technical evaluation and review of the development proposal.
  - b. The Zoning Administrator shall submit one (1) copy of all information required by Section 612 of this ordinance to the respective Department of Natural Resources' Area Hydrologist for review and comment at least twenty (20) days prior to the granting of a permit or manufactured home park development/subdivision approval by the county. The Zoning Administrator shall notify the respective Department of Natural Resources Area Hydrologist within ten (10) days after a permit or manufactured home park development/subdivision approval is granted.

#### **610.05. Utilities, Railroads, Roads, and Bridges in the Flood Plain District**

All utilities and transportation facilities, including railroad tracks, roads, and bridges, shall be constructed in accordance with state flood plain management standards contained in Minnesota Rules 1983 Parts 6120.5000 - 6120.6200.

#### **610.06. Subdivisions**

No subdivisions or manufactured home park shall be developed or expanded in the Floodplain.

#### **610.07. Administration**

- 1) Permit Required. A permit issued by the Zoning Administrator shall be secured prior to the construction, addition, or alteration of any building or structure; prior to the use or change of use of a building, structure, or land; prior to the change or extension of a non-conforming use; and prior to excavation or the placement of an obstruction within the flood plain.
- 2) State and Federal Permits. Prior to granting a permit or processing an application for a variance, the Zoning Administrator shall determine that the applicant has obtained all necessary State and Federal permit(s).
- 3) Certification of Lowest Floor Elevations. The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance. The Zoning Administrator shall maintain a record of the elevation of the lowest floor (including basement) for all new structures and alterations to existing structures in the flood plain district.

### **610.08. Variance**

- 1) No variance shall allow in any district a use prohibited in that district or permit a lower degree of flood protection than the Regulatory Flood Protection Elevation. Variances may be used to modify permissible methods of flood protection.
- 2) The Board shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variance sufficiently in advance so that the Commissioner will receive at least ten (10) days notice of the hearing. A copy of all decisions granting a variance shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.
- 3) Appeals. Appeals from any decision of the Board may be made pursuant to Section 505.03.
- 4) Flood Insurance Notice and Record keeping. The Zoning Administrator shall notify the applicant for a variance that:
  - a. the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
  - b. such construction below the 100-year or regional flood level increases the risks to life and property. Such notification shall be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

### **610.09. Non-Conformities**

A structure or the use of a structure or premises which was lawful before the passage or amendment of this ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:

- 1) No such use shall be expanded, changed, enlarged, or altered in a way, which increases its non-conformity.
- 2) An alteration within the inside dimensions of a non-conforming use or structure is permissible provided it will not result in increasing the flood damage potential of that use or structure.
- 3) The cost of all structural alterations or additions both inside and outside of a structure to any non-conforming structure over the life of the structure shall not exceed fifty (50) percent of the market value of the structure unless the conditions of this Section are satisfied. The cost of all structural alterations and additions constructed since the adoption of the County's initial flood plain controls must be calculated into today's current cost which will include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the current cost of all previous and proposed alterations and additions exceeds fifty (50) percent of the current market value of the structure, then the structure must meet the standards of Section 610.04 of this ordinance for new structures.
- 4) If any non-conforming use of a structure or land or non-conforming structure is destroyed

by any means, including floods, to an extent of fifty (50) percent or more of its market value at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance. The County Board may issue a permit for reconstruction if the use is located outside the Floodway and, upon reconstruction, is adequately elevated on fill in conformity with the provisions of this ordinance.

#### **610.10. Penalties for Violation**

A violation of the provision of this section or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances) shall constitute a misdemeanor.

- 1) In responding to a suspected ordinance violation, the Zoning Administrator and local government may utilize the full array of enforcement actions available to it including, but not limited to, prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The county must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.
- 2) When an ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources and Federal Emergency Management Agency Regional Office along with the county's plan of action to correct the violation to the degree possible.
- 3) The Zoning Administrator shall notify the suspected party of the requirements of this ordinance and all other Official Controls and the nature and extent of the suspected violation of these controls. If the structure and/or use are under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the county. If the construction or development is already completed, then the Zoning Administrator may either:
  - a. issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls; or
  - b. notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed thirty (30) days.
- 4) If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this ordinance and shall be prosecuted accordingly. The Zoning Administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition that existed prior to the violation of this ordinance.

#### **610.11. Amendments**

All amendments to this ordinance, including revisions to the Official Flood Plain Zoning District



Map, shall be submitted to and approved by the Commissioner of Natural Resources prior to adoption. The flood plain designation on the Official Flood Plain Zoning District Map shall not be removed unless the areas is filled to an elevation at or above the Regulatory Flood Protection Elevation and is contiguous to lands outside of the flood plain. Changes in the Official Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given ten (10) days written notice of all hearings to consider an amendment to this ordinance and said notice shall include a draft of the ordinance amendment or technical study under consideration.

## **610.12. Recreational Camping Vehicles**

Recreational camping vehicles that do not meet the exemption criteria specified in Section 610.12(1) below shall be subject to the provisions of this ordinance and as specifically spelled out in Sections 610.12(3)(4) below.

- 1) Exemption: Recreational Camping Vehicles are exempt from the provision of this section if they are placed in any of the areas listed in Section 610.12(1) below and further they meet the following criteria:
  - a. Must have current licenses required for highway use;
  - b. Must be highway ready meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and trailer parks and the recreational camping vehicle has no permanent structural type additions attached to it; and
  - c. The recreational camping vehicle and associated use must be permissible in any pre-existing, underlying zoning use district.
- 2) Areas Exempted for Placement of Recreational Camping Vehicles:
  - a. Individual lots.
  - b. Existing commercial recreational vehicle parks or campgrounds.
  - c. Existing condominium type associations.
- 3) Recreational Camping Vehicles exempted in Section 610.12(1) lose this exemption when development occurs on the parcel exceeding five hundred (\$500) dollars for a structural addition to the recreational camping vehicle or an accessory structure such as a garage or storage building. The recreational camping vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation requirements and the use of land restrictions specified in Section 610.04 of this ordinance.
- 4) New commercial recreational camping vehicle parks or campgrounds and new residential type Subdivisions and condominium associations and the expansion of any existing similar use exceeding five (5) units or dwelling sites shall be subject to the following:
  - a. Any new or replacement recreational camping vehicle will be allowed in the floodway or Flood Fringe Districts provided said trailer or vehicle and its contents are placed on fill above the Regulatory Flood Protection Elevation determined in accordance with the provisions of Section 610.04(3) of this ordinance and proper elevated road access to the site exists in accordance with Section 610.04 of this ordinance. No fill placed in the floodway to meet the requirements of this section shall increase flood stages of the 100-year or regional flood.
  - b. All new or replacement recreational camping vehicles not meeting the criteria of (a)

above may, as an alternative, be allowed if in accordance with the following provisions. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100-year flood. Said plan shall be prepared by a registered engineer or other qualified individual and shall demonstrate that adequate time and personnel exist to carry out the evacuation. All attendant sewage and water facilities for new or replacement recreational camping vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with Section 610.04(2)(g).

## **611. Scenic Trail District (ST)**

### **611.01. Purpose**

This section is intended to allow for the orderly development of the land surrounding and along a DNR Trail.

### **611.02. Policy**

It is the policy of the Fillmore County Board of Commissioners to provide for the orderly development of the county lands by establishing a fair and uniform Land Use Policy.

### **611.03. Definitions**

For the purpose of this Section the following definitions shall apply.

- 1) Commercial Business. The selling or vending of any item or service to include but not limited to food, beverages, souvenirs, craft items, repair services, or any other saleable item or service. This definition shall not include electric transmission lines or any public utility line or service.
- 2) DNR Trail. That strip of land owned by the DNR that is mostly 100' wide and follows closely the route of the Chicago, Milwaukee, St. Paul and Pacific Railroad. Branches of the trail include:
  - a. First branch extending from Fountain through Isinours, Lanesboro, Whalan, Peterson, and Rushford to the Fillmore/Houston County line.
  - b. Second branch extending from the SE ¼ of the NW ¼ of Section 21 Carrolton Township commonly referred to as Isinours Junction to the City of Preston.
  - c. Third branch extending from Preston to Harmony as per recorded deeds with the Fillmore County Recorders Office.

### **611.04. Prohibited Uses**

There shall be no commercial business conducted within two-hundred (200) feet of the centerline of a DNR Trail in an Agriculture District with the exception of those facilities permitted before the effective date of this Ordinance.

There shall be no industrial business conducted within two-hundred (200) feet of the centerline

of a DNR Trail in an Agriculture District with the exception of those facilities permitted before the effective date of this Ordinance.

There shall be no construction of any residence within two-hundred (200) feet of the centerline of a DNR Trail in an Agricultural District except for the replacement of a dwelling that was constructed before the effective date of this ordinance.

#### **611.05. Prohibited Signs**

There shall be no advertising signs or advertisements of any other nature within two-hundred (200) feet of the centerline of a DNR Trail in an Agriculture District, unless such signs or advertisements conform to the natural appearance of its surroundings, and no other colors than white, green, and/or brown are used. No sign so permitted shall have an advertising area greater than two-hundred (200) square inches. No sign shall be placed within one thousand three hundred twenty (1,320) feet of another sign on the same side of the trail.

#### **611.06. Incorporated Areas**

The establishment of a commercial business conducted within two-hundred (200) feet of the centerline of a DNR Trail in a commercial or industrial district, in an incorporated municipality, may be established if approved by the municipality and Zoning Administrator.

#### **611.07. Residential Areas**

The establishment of a commercial business conducted within two-hundred (200) feet of the centerline of a DNR Trail in a residential district may be established only if approved by the municipality and zoning administrator.

#### **611.08. Exemptions**

Dwellings in the Ag District that are built before January 1, 1996, and that are located within two-hundred (200) feet of a DNR Trail, will be allowed to carry on non-commercial and non-industrial activities in a manner consistent with activities found in the Ag District or Residential District.

### **612. Shoreland District (SH)**

#### **612.01. General Provisions**

- 1) Lands to which this Section Applies: This Section shall apply to all land designated as Shoreland area within the jurisdiction of Fillmore County. This area includes lands three hundred (300) feet landward from the ordinary high water level of all protected watercourses as identified on the Protected Waters and Wetlands Map and listed in Section 602.02 of this Ordinance.

- 2) Compliance: The use of any shoreland, the size and shape of lots, the building of new or the alteration of existing structures, the installation and maintenance of water supply or sewage treatment systems shall be in full compliance with the terms of this Ordinance and other applicable regulations.
- 3) Interpretation: In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statute.

## **612.02. Purpose**

To provide an overlay district to preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shoreland, and provide for the wise use of waters and related land resources.

## **612.03. Permitted Uses**

- 1) In the Ag District:
  - a. Ag Buildings.
  - b. Dwellings.
  - c. General Ag Use.
    - Raising crops
    - Livestock (provided they do not constitute an animal feedlot)
    - Poultry
    - Dairy
    - Horticulture
    - And other similar agriculturally related uses
  - d. Drainage systems, flood control and watershed structures and erosion control devices provided each will meet the appropriate safety laws and regulations.
  - e. Temporary or seasonal roadside stands not to exceed one (1) stand per Ag lot and with adequate off-street parking.
  - f. Forest and Game Management areas.
  - g. Home Occupations.
  - h. Accessory uses incidental to any of the above permitted uses when located on the same property.
  - i. Electrical distribution and transmission lines and other essential services in accordance with Section 733.
  - j. Kennels.
  - k. Stables.
  - l. Publicly owned and operated buildings.
- 2) In the Rural Residential District (RA):
  - a. One single family dwelling per lot.
  - b. Keeping and raising of livestock or poultry, provided they are housed and fenced so as not to become a nuisance; and
    - Clearly not commercial in nature;

- Animal density shall not be greater than one (1) animal unit per acre of pasture. See definition in Section 302(8).
  - No structure for housing poultry or livestock may be located nearer than fifty (50) feet to any property line.
- c. Public or private schools provided no building shall be located within fifty (50) feet of any lot line of a residential use.
  - d. Churches.
  - e. Limited ag use and truck gardening activities to include, but not be limited to, carrots, radishes, sweet corn, potatoes, beans, rhubarb, cabbage, lettuce, pumpkins, watermelon, corn, beans, and hay.
  - f. Home Occupations.
  - g. Accessory structures and uses customarily incidental to any of the above permitted uses when located on the same property.
  - h. Electrical distribution and transmission lines and other essential services in accordance with Section 733.
- 3) In the Single and Two Family Residential District (R-1):
- a. One and two family residential dwellings.
  - b. Public and parochial schools of general instruction.
  - c. Essential services and electrical distribution and transmission lines in accordance with Section 733.
  - d. Churches and Chapels, including parish houses.
  - e. Home Occupations.
  - f. Accessory structures and uses customarily incidental to any of the above permitted uses when located on the same property.
  - g. Electrical transmission lines and substations.

#### **612.04. Conditional Uses**

- 1) In the Ag District:
  - a. Mining or extraction of minerals or raw materials regulated in Section 721.
  - b. Public Parks.
  - c. Commercial and industrial uses primarily intended to serve the agricultural uses.
  - d. Animal feedlots exceeding five hundred (500) animal units as defined in Section 302 (8). No new animal feedlots are allowed within three hundred (300) feet of a public water course, nor are existing animal feedlots allowed to encroach further within three hundred (300) feet of a public water course. Setbacks from a feedlot shall be from the nearest point of the dwelling to the border of the feedlot as determined and measured by the Fillmore County Feedlot Officer. Setback from the public waters shall be measured on a horizontal plane from the river bank to the dwelling.
  - e. Public Utility Buildings and Structures such as substations, transformer stations, regular stations, and communications stations.
  - f. Accessory Structures and Uses customarily incidental of any of the above conditional uses when located on the same property.
  - g. Campgrounds, including recreational camping vehicle, trailer and tent camps.
  - h. Planned Unit Development.

- 2) In the Rural Residential District (RA):
  - a. Railroad Rights of Way, but not including railroad yards.
  - b. Public Utility Buildings and structures as specified in 604.03(10).
  - c. Accessory Structures and Uses customarily incidental to any of the above conditional uses when located on the same property.
  - d. Electrical Distribution Lines and Substations.
  - e. Parks and Recreation Areas owned or operated by government agency.
  - f. Planned Unit Development.
  
- 3) In the Single and Two Family Residential District (R-1):
  - a. Municipal Office Buildings and Day Care Centers.
  - b. Multiple Family Dwellings for any number of families, including row houses and terrace dwellings.
  - c. Cemeteries, Memorial Gardens and Funeral Homes meeting the conditions of Section 604.03(4).
  - d. Boarding or Rental of Rooms including Bed and Breakfast Establishments.
  - e. City buildings and structures including police and fire stations, libraries, museums, and art galleries.
  - f. Nursing homes, hospitals and sanitariums, water supply buildings and reservoirs, elevated tanks, utility buildings, substations, and transformer stations.
  - g. Planned Unit Development (PUD).
  - h. Professional Offices limited to a maximum of two (2) employees.
  - i. Semi-private Recreation Areas. Clubs, Lodges, and Centers including country clubs, swimming pools and golf courses but not including such uses as camping areas, miniature golf courses, or private driving tees which are operated for commercial purposes.
  - j. Manufactured Home Parks
  - k. Any other use of the same character as those listed as permitted uses.
  
- 4) In the General Commercial District (B-1):
  - a. Business Services including banks, offices and postal stations.
  - b. Clothing Services including dry cleaning and laundry establishments, Laundromats, dressmaking, millinery and tailor shops, shoe repair shops.
  - c. Equipment Services including radio and television shops, electrical appliance shops, showroom of a plumber, decorator or similar trade. Food Services including grocery stores, fruit, vegetable and meat markets, supermarkets, restaurants, delicatessen, candy shops, and bakeries whose products are sold only at retail on the premises.
  - d. Personal Services including barber and beauty shops, reducing salons, photographic shops and funeral homes.
  - e. Retail Services including drug stores, hardware stores, haberdasher, stationery and book stores, new shops, apparel shops, showroom for articles to be sold at retail, flower shops, and commercial greenhouses.
  - f. Electrical Distribution and Transmission Lines, Substations and other Essential Services.
  - g. Automobile Services including auto equipment sales, car wash service, new and used car sales lot, trailer sales areas, gasoline service station and auto repair garages.
  - h. Drive-in restaurants, drive-in banks and other drive in services.
  - i. Open Air Display Areas for the sale of products such as garden furniture, hardware items, nursery stock or automobiles or areas used to display rental equipment such as

- tools or trailers.
  - j. Accessory Structures and Uses customarily incidental to any of the above conditional uses when located on the same property.
  - k. Planned Unit Development.
- 5) In the General Industrial District (I-1):
- a. Building materials storage yards, lumber yards, machinery lots, car lots, contractor(s) equipment rental and storage yards. \*
  - b. Wholesale Businesses including warehousing and storage buildings, Light Manufacture, Compounding Treatment and Assembly of Articles or merchandise previously manufactured elsewhere. \*
  - c. Manufacturing Processes and Treatments of Products using light machinery such as tool and die shops, metal fabricating plants and welding shops.
  - d. Public Utility Service Buildings and Yards, Electrical Transformer Stations, Substations, and Gas Regulator Stations.
  - e. Dwellings for Watchmen or Custodians of industrially used property only.
  - f. Automobile Service Stations.
  - g. Outdoor Storage of Vehicles or Materials or Open Sales Lot, Farm Implement Sales.
  - h. Restaurants, Lunch Counters, Confectioneries to serve the employees of the district.
  - i. Retail Sales incidental to and in connection with the aforementioned permitted uses. These uses shall be conducted wholly within a building with a landscaped front yard and with side and rear yard used for loading, unloading and parking. Visitor parking may be allowed in the front yard.
  - j. Accessory Uses shall be: Off-street parking, storage garages, and building and loading facilities as regulated in this Ordinance. Buildings temporarily located for purposes of construction. Essential security and safety facilities as approved by the County. Offices accessory to the principal use.
  - k. Electrical Distribution and Transmission Lines, Substations and other Essential Services in accordance with Section 733.
  - l. Planned Unit Development.

\* Uses permitted in those items noted above shall be conducted entirely within a building with a landscaped front yard and with side and rear yards used for loading, unloading, and parking. Visitor parking may be allowed in the front yard.

**612.05. Performance Standards**

- 1) Lot Area-Refer to the Underlying District.
- 2) Lot Width for Public Waters by Classification (in feet).
 

| Number of Units | Transition | Trout  | Agricultural | Tributary |
|-----------------|------------|--------|--------------|-----------|
| Single          | 250'       | 250'   | 150'         | 150'      |
| Two             | 375'       | 375'   | 225'         | 150'      |
| Three           | 500'       | 500'   | 300'         | 200'      |
| For Each        |            |        |              |           |
| Additional Unit | + 125'     | + 125' | + 75'        | + 50'     |
| (Add)           |            |        |              |           |
- 3) Height regulations refer to the underlying District.

- 4) Front, Side, and Rear Yard Setbacks from OHWL to nearest point of a structure.
  - a. Refer to the Underlying District.
  - b. Setbacks from Ordinary High Water Level

| Public Waters Classification | Structures Unsewered | Structures Sewered | Sewage Treatment System |
|------------------------------|----------------------|--------------------|-------------------------|
| Transition or Trout Streams  | 150'                 | 150'               | 100'                    |
| Agricultural or Tributary    | 100'                 | 50'                | 75'                     |

**Additional Structure Setbacks**

| Setback from                        | Setback |
|-------------------------------------|---------|
| 1) Top of Bluff                     | 80'     |
| 2) Unplatted Cemetery               | 50'     |
| 3) Road Right-of-Way-Federal, State |         |
| Co. Hwy                             | 100'    |
| All others                          | 100'    |
| 4) Ordinary High Water Level        |         |
| New animal feedlots                 | 300'    |

**612.06. Special Provisions Applicable to Lot Area and Width Standards**

- 1) Residential subdivisions with dwelling densities exceeding these established in the performance standards of each land use district can only be allowed if designed and approved as residential PUD's.
- 2) Lots intended as controlled accesses to public waters or as recreation lots within PUD's are permissible and must meet or exceed the following standards:
  - a. They must meet the width and size requirements for residential lots and be suitable for the intended uses of controlled access lots.
  - b. They must be jointly owned by all purchasers of lots in the PUD and or by all purchasers of non-riparian lots in the PUD who are provided riparian access rights on the access lot.

**612.07. Design Criteria for Structure**

- 1) High Water Elevations. Structures must be placed in accordance with any flood plain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or floor proofed must be determined as follows:
  - a. For rivers and streams, by placing the lowest floor at least three (3) feet above the flood of record, if data is available. If data is not available, by placing the lowest floor at least three (3) feet above the ordinary high water level or by conducting a technical evaluation to determine effects of proposed construction upon flood stages and flood flows and to establish a flood protection elevation. Under all three approaches, technical evaluations must be done by a qualified engineer or hydrologist consistent with Minnesota Rules parts 6120.5000 to 6120.6200 governing the management of flood plain areas. If more than one approach is used, the highest



flood protection elevation determined must be used for placing structures and other facilities.

- 2) Steep Slopes. The Zoning Administrator must evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters, assuming summer, leaf on vegetation.

### **612.08. Shoreland Alterations**

Alterations of vegetation and topography will be regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, and protect fish and wildlife habitat. Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by Section 612.09 of this Ordinance are exempt from the vegetation alteration standards that follow.

- 1) Removal or alteration of vegetation, except for agricultural and forest management uses as regulated in Section 612.11 is allowed subject to the following standards:
  - a. Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is not allowed. Intensive vegetation clearing for forest land conversion to another use outside of these areas is allowable as a conditional use if an erosion control and sedimentation plan is developed and approved by the Soil and Water Conservation District in which the property is located.
  - b. In shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs and cutting, pruning, and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic area, access paths, livestock water areas, beach and watercraft access areas provided that:
    - i) the screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced.
    - ii) along rivers, existing shading of water surfaces is preserved; and
    - iii) the above provisions are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.
- 2) Use of fertilizer and pesticides in the Shoreland District must be done in such a way as to minimize run-off into the shore impact zone or public water by the use of earth, vegetation, or both.
- 3) Grading, filling, and excavations necessary for construction of structures, sewage treatment systems, and driveways under validly issued construction permits for these facilities do not require the issuance of a separate grading and filling permit. However, the grading and filling standards in this Section must be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways.
- 4) Public roads and parking areas are regulated by Section 612.09 of this Ordinance.
- 5) Notwithstanding items three (3) and four (4) above, a grading and filling permit will be required for:
  - a. the movement of more than ten (10) cubic yards of material on steep slopes or within shore or bluff impact zones; and
  - b. the movement of more than fifty (50) cubic yards of material outside of steep slopes

and shore and bluff impact zones.

- 6) The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances, and PUD approvals:
  - a. Grading or filling in any type 2, 3, 4, 5, 7, or 8 wetland must be evaluated\* to determine how extensively the proposed activity would affect the following functional qualities of the wetland:
    - i) sediment and pollutant trapping and retention;
    - ii) storage of surface run-off to prevent or reduce flood;
    - iii) fish and wildlife habitat;
    - iv) recreational use;
    - v) shoreline or bank stabilization; and
    - vi) noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals, or others.
  - b. Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible.
  - c. Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible.
  - d. Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used.
  - e. Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service.
  - f. Fill or excavated material must not be placed in a manner that creates an unstable slope.
  - g. Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of thirty (30) percent or greater.
  - h. Fill or excavated material must not be placed in bluff impact zones.
  - i. Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner under Minnesota Statutes, Section 103 G.245.
  - j. Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties.
  - k. Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three (3) feet horizontal to one (1) foot vertical, the landward extent of the riprap is within ten (10) feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three (3) feet.

\* This evaluation must also include a determination of whether the wetland alteration being proposed required permits, reviews, or approvals by other local, state, or federal agencies such as a watershed district, the Minnesota Department of Natural Resources or the United States Army Corps of Engineers.

#### **612.09. Placement and Design of Roads, Driveways, and Parking Areas**

- 1) Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters.

Documentation must be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district or other applicable technical materials.

- 2) Roads, driveways, and parking areas must meet structure setbacks and must not be placed within bluff and shore impact zones when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas and must be designed to minimize adverse impacts.
- 3) Public and private watercraft access ramps, approach roads and access related parking areas may be placed within shore impact zones provided the vegetative screening and erosion control conditions of this subpart are met. For private facilities, the grading and filling provisions of Section 612.08 of this Ordinance must be met.

#### **612.10. Stormwater Management**

- 1) When possible, existing natural drainage ways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater run-off before discharge to public waters.
- 2) Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, run-off velocities, erosion potential, and reduce and delay run-off volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.
- 3) When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater run-off using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used. Preference must be given to designs using surface drainage, vegetation, and infiltration rather than buried pipes and manmade materials and facilities.
- 4) Impervious surface coverage of lots must not exceed twenty-five (25%) percent of the lot area.
- 5) When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts.
- 6) New stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.

#### **612.11. Special Provisions for Commercial, Industrial, Public/Semi-public, Agricultural, Forestry and Extractive Uses and Mining of Metallic Minerals and Peat**

- 1) Standards for Commercial, Industrial, Public and Semi-Public Uses:
  - a. Surface water oriented commercial uses and industrial, public, or semi-public uses with similar needs, which need to have access to and use of public waters may be located on parcels or lots with frontage on public waters. Those uses with water oriented needs must meet the following standards:
    - i) In addition to meeting impervious coverage limits, setbacks, and other zoning standards in this Ordinance, the uses must be designed to incorporate topographic and vegetative screening of parking areas and structures.

- b. Uses without water oriented needs must be located on lots or parcels without public waters frontage or, if located on lots or parcels with public waters frontage, must either be setback double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.
- 2) Agriculture Use Standards:
- a. General Cultivation Ag Uses, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if steep slopes and shore and bluff impact zones are maintained in permanent vegetation or operated under an approved conservation plan, consistent with the field office technical guides of the local soil and water conservation districts or the United States Soil Conservation Service, as provided by a qualified individual or agency.
  - b. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and fifty (50) feet from the ordinary high water level.
- 3) Forest Management Standards: The harvesting of timber and associated reforestation must be conducted consistent with the provisions of the Minnesota Nonpoint Source Pollution Assessment-Forestry and the provisions of Water Quality in Forest Management “Best Management Practices in Minnesota”.
- 4) Extractive Use Standards:
- a. Site Development and Restoration Plan. An extractive use site development and restoration plan must be developed, approved by the appropriate State agency and followed over the course of operation of the site. The plan must address dust, noise, possible pollutant discharges, hours and duration of operation, and anticipated vegetation and topographic alterations. It must also identify actions to be taken during operation to mitigate adverse environmental impacts, particularly erosion, and must clearly explain how the site will be rehabilitated after extractive activities end.
  - b. Setbacks for Processing Machinery. Processing machinery must be located consistent with setback standards for structures from ordinary high water levels of public waters and from bluffs.
- 5) Mining of Metallic Minerals and Peat. Mining of metallic minerals and peat, as defined in Minnesota Statutes, Sections 93.44 to 93.51 shall be a permitted use provided the provisions of Minnesota Statutes, Sections 93.44 to 93.51, are satisfied.

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## **613. Bluffland Areas**

### **613.01. Findings and Purpose**

The purpose of this ordinance is to control through permitting and zoning regulations certain land uses within the Bluffland Areas. It is intended to protect the scenic qualities of the bluffs, to protect the sensitive natural features of the bluffs and to preserve agricultural land by controlling soil erosion. The protection of the bluffs with their rich historical background provides economic benefits to a large number of people living in the county. The citizens of Fillmore County recognize the bluffs as a unique and valuable part of the county.

### **613.02. Jurisdiction and Scope**

The provisions of Section 613 shall be enforced in those areas of Fillmore County where bluffs are found. These regulations are intended to control soil erosion and protect the visual integrity of the Bluffland Areas by regulating structure setbacks, septic system locations, and vegetation and land alterations in relation to the Bluff Impact Zone.

For the purposes of this Section, the following definition is in effect:

**Site Development Plan.** A site development plan for construction near a Bluff Impact Zone shall include the proposed location of the structure in proximity to the top of the bluff, the site elevations and the height of the structure, the location of the sewer and well, a construction erosion control plan if the site is over twelve (12) percent.

### **613.03. Construction in Bluffland Areas**

- 1) All structures must be located outside the Bluff Impact Zone. All residential structures must be eighty (80) feet back of the Top of the Bluff.
- 2) There is a fifty (50) foot structural setback from the Toe of the Bluff.
- 3) All residential construction within two hundred (200) feet distal of the top of the bluff or within one hundred (100) feet distal of the toe of the bluff must have a Site Development Plan certified by a licensed Civil Engineer or surveyor.

### **613.04. Height of Structure**

For all structures exceeding twenty-five (25) feet in height, the structure must be fifty (50) foot back of the Bluff Impact Zone plus three (3) feet for each additional foot of height over twenty-five (25) feet.

### **613.05. Access**

- 1) All access drives must be constructed at fourteen (14) percent or less slope. No access drive may be located in a Bluff Impact Zone if another alternative exists.
- 2) Soil erosion must be controlled on all access drives in the Bluff Impact Zone. An erosion control plan must be formulated on all access drives between twelve (12) percent and fourteen (14) percent slope.
- 3) All access drives must be no less than twelve (12) foot in width.

### **613.06. Development**

The establishment of all Subdivisions of land whereby any part of the Subdivision includes a Bluff Impact Zone must be done according to PUD regulations found in Section 609 of the Fillmore County Zoning Ordinance.

There shall be no structural construction in the Bluff Impact Zone except for fencing. There

shall be no filling or excavating of land in the Bluff Impact Zone except for permitted rock quarries and sandpits.

### **613.07. Campers, Recreational Camping Vehicles, and Temporary Dwellings**

The parking or placement of campers, recreational camping vehicles, or any other form of temporary housing is allowed for one (1) week.

### **613.08. Vegetation Alterations**

Removal or alteration of vegetation in a Bluff Impact Zone, except for agricultural and forest management uses is allowed subject to the following standards:

- 1) Intensive vegetation clearing within Bluff Impact Zones is not allowed.
- 2) In Bluff Impact Zones limited clearing of trees and shrubs and cutting, pruning and trimming of trees is allowed to provide a view. Removal of more than thirty (30) percent of existing trees greater than six (6) inches in diameter at four (4) feet in height is prohibited.
- 3) Trees of any size that are diseased or unsafe may be removed.
- 4) The restoration and management of natural communities in the Blufflands is allowed.

### **614. Decorah Shale Overlay District**

- 1) Purpose. To provide an overlay district to:
  - a. preserve and enhance the quality of the water flowing over the Decorah shale and recharging the St. Peter-Prairie du Chien-Jordan aquifer;
  - b. reduce damages to structures and sewage treatment systems caused when ground water flow over the Decorah shale is intercepted; and
  - c. maintain native plant communities unique to the habitat conditions created when the Decorah shale is the first encountered bedrock.
- 2) Lands to which this section applies:
  - a. This section shall apply to all land designated as the Decorah Shale Overlay District within the jurisdiction of Fillmore County. This Overlay District includes all land where the first encountered bedrock is the Decorah shale as identified on the Bedrock Geology plate of the Fillmore County Geologic Atlas or that lie within one hundred (100) feet of that boundary.
  - b. The uses in the Decorah Shale Overlay District, the size and shape of lots, the building of new or the alteration of existing structures, the installation and maintenance of water supply or sewage treatment systems shall be in full compliance with the terms of this Ordinance and other applicable regulations.
- 3) Permitted Uses. All uses permitted in the Ag District are allowed in the Decorah Shale Overlay District if the following conditions are met:
  - a. All wetland and high water table conditions within six (6) feet of the land's surface are delineated. Where these conditions exist, the areas are to be marked or fenced off to prevent disturbance of the vegetation and compaction of wet soils.
  - b. Development of roadways when necessary shall be limited to reduce disturbance of vegetation and compaction of wet soils.

- c. Soil observations (performed in an exposed pit, or by hand auguring or probing) and percolation tests are conducted where the structure(s) and individual sewage treatment system are to be located. The design of the sewage treatment system meets all requirements of Minnesota Rule Chapter 7080 for the soil conditions.
  - d. A one (1) foot vertical setback from the lowest useable floor to the seasonal high water table shall be maintained for all buildings (not to include footings and frost walls).
  - e. Any disturbance of vegetation within the setback areas must be re-established with permanent vegetation.
  - f. Intercepted ground water flow shall be reinfiltreated in a manner that mimics natural recharge processes.
  - g. Infiltration of runoff from impervious surfaces (driveways, parking areas, access roads) must be accomplished by establishing vegetated swales where runoff may be filtered. The use of wet meadow plants tolerant of occasional inundation, which are also salt-tolerant, will be acceptable.
- 4) Decorah Shale Overlay District Site Development Plan. The site development plan shall include:
- a. An evaluation of high water table conditions based on six (6) foot soil borings and a wetland delineation conducted by SWCD staff, who have completed the Minnesota Board of Water and Soil Resources Jurisdictional Delineation of Wetlands in Minnesota training, or by a licensed soil scientist. A preliminary site review may be done based on the current Fillmore County Soil Survey.
  - b. A soil map or inventory of the site and a report describing the kinds of soils on the map and summarizing what is known about these soils including their classification and capabilities;
  - c. A description of the vegetation found on the site prior to construction;
  - d. The proposed location of the structure in proximity to the wetland boundary (if present);
  - e. The location of the sewer and well;
  - f. The site elevations; and
  - g. An erosion control plan.
- 5) Development:  
The establishment of all Subdivisions of land whereby any part of the Subdivision lies within the Decorah Shale Overlay District must be done according to PUD regulations found in Section 609 of the Fillmore County Zoning Ordinance.
- 6) Extraction of Materials and Minerals, Open Pits or Impounding of Waters:  
No new quarries or sandpits are allowed within the Decorah Shale Overlay District. Existing active and inactive quarries and sandpits may operate under existing permitting requirements under the Fillmore County Zoning Ordinance.
- 7) Impoundments of water:  
Impoundments of water are prohibited except for agricultural or public utility purposes.

## **SECTION 7**

### **General Regulations and Performance Standards**

#### **701. Purpose**

The performance standards established in this Section are designed to encourage a high standard of development by providing assurance that neighboring land uses will be compatible. The performance standards are designed to prevent and eliminate those conditions that cause blight or are detrimental to the environment. All future development in all districts shall be required to meet these standards and the standards shall also apply to existing development where so stated. Before any zoning permit is approved, the Zoning Administrator shall determine whether the proposed use will conform to the performance standards. The developer or landowners shall supply data necessary to demonstrate such conformance. Such data may include a description of equipment to be used, hours of operation, method of refuse disposal, and type and location of exterior storage. If said data complies with all parts of this Ordinance, the Zoning Administrator shall issue the necessary zoning permit.

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#### **704.02. In Commercial and Industrial Districts**

- 1) In business and manufacturing districts, accessory buildings and uses may occupy any of the ground area that the principal building is permitted to occupy. Accessory buildings such as buildings for parking attendants, guard shelters, gate houses and transformer buildings, may be located in the front or side yard in I-1 Districts. Parking of automobiles and other motor vehicles is permitted in the front and side yards in I-1 Districts if screened by a greenbelt eight (8) feet in width.
- 2) Accessory buildings may be located any place to the rear of the principal buildings, subject to the building code and the fire zone regulations except where prohibited by other sections of the Ordinance.
- 3) Accessory buildings shall not be constructed prior to or in lieu of the principal building.

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#### **713. Nuisances**

##### **713.01. Nuisance Characteristics**

No noise, odors, vibration, smoke, air pollution, liquid or solid wastes, heat, glare, dust, or other such adverse influences shall be permitted in any district that will in any way have an objectionable effect upon adjacent or nearby property. All wastes in all districts shall be disposed of in a manner that is not dangerous to public health and safety nor will damage public waste transmission or disposal facilities. The following standards apply to non-industrial districts.



### **713.02. Toxic or Noxious Matter**

Any use shall be so operated so as not to discharge across the boundaries of any lot or through percolation into the atmosphere or the subsoil beyond the boundaries of the lot wherein such use is located, toxic or noxious matter in such concentration as to be detrimental to or endanger the public health, safety, comfort or welfare or cause injury or damage to property or business. All MPCA regulations relating to toxic or noxious matter shall be followed.

### **713.03. Air Pollution**

Any use shall be so operated as to control the emission of smoke or particulate matter to the degree that it is not detrimental to or shall endanger the public health, safety, comfort or general welfare of the public. For the purpose of this Ordinance, the regulations and standards adopted by the Minnesota Pollution Control Agency shall be employed.

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### **714. Glare**

In all districts, any lighting used to illuminate an off-street parking area, sign, or other structure, shall be arranged so as to deflect light away from any adjoining residential zone or from the public streets. Direct or sky-reflected glare, whether from flood lights or from high temperature processes such as combustion or welding, shall be hooded or controlled in some manner so as not to light adjacent property. Bare incandescent light bulbs shall not be permitted in view of adjacent property or public right-of-way. Any light or combination of lights, which cast light on a public street, shall not exceed one (1) foot candle (meter reading) as measured from the centerline of said street (This is not intended to apply to normal street lighting). Any light or combination of lights, which cast light on a residential property, shall not exceed 0.4 candles (meter reading) as measured from said property.

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### **717. Preservation of Natural Drainageways**

#### **717.01. Waterways**

- 1) Every effort shall be made to retain the natural drainage systems in the county including existing wetlands and ponds. Aboveground runoff disposal waterways may be constructed to augment the natural drainage system.
- 2) The width of a constructed waterway shall be sufficiently large to adequately channel runoff from a ten (10) year storm. Adequacy shall be determined by the expected runoff when full development of the drainage area is reached.
- 3) No fences or structures shall be constructed across the waterway that will reduce or restrict the flow of water.
- 4) The banks of the waterway shall be protected with permanent vegetation.
- 5) The banks of the waterway should not exceed four (4) feet horizontal to one (1) foot vertical in gradient.
- 6) The gradient of the waterway bed should not exceed a grade that will result in a velocity

that will cause erosion of the banks of the waterway.

- 7) The bend of the waterway should be protected with turf, sod or concrete. If turf or sod will not function properly, riprap may be used. Riprap shall consist of quarried limestone, fieldstone (if random rip rap is used) or construction materials of concrete. The riprap shall be no smaller than two (2) inches square or larger than two (2) feet square. Construction materials shall be used only in those areas where the waterway is not used as part of a recreation trail system.
- 8) If the flow velocity in the waterway is such that erosion of the turf sidewall will occur and said velocity cannot be decreased via velocity control structures, then other materials may replace turf on the side walls. Either gravel or rip rap would be allowed to prevent erosion at these points.

#### **717.02. Sediment Control of Waterways**

- 1) To prevent sedimentation of waterways, pervious and impervious sediment traps and other sediment control structures shall be incorporated throughout the contributing watershed.
- 2) Temporary pervious sediment traps could consist of a construction of bales of hay with a low spillway embankment section of sand and gravel that permits a slow movement of water while filtering sediment. Such structures would serve as a temporary sediment control feature during the construction state of development. Development of housing and other structures shall be restricted from the area on either side of the waterway required to channel a twenty-five (25) year storm.
- 3) Permanent impervious sediment control structures consist of sediment basins (debris basins, de-silting basins or silt traps) and shall be utilized to remove sediment from runoff prior to its disposal in any permanent body of water.

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#### **719. Access Drives and Access**

- 1) Access drives onto county roads shall require a review and approval by the County Engineer or the Assistant County Engineer in the absence of the Engineer, the Zoning Administrator and the County Board of Commissioners.
- 2) The County Highway Engineer or the Assistant County Engineer in the absence of the Engineer shall approve the location of each access drive based on sight distances, road speeds and other factors.
- 3) Access drives to principal structures that traverse wooded, steep or open field areas shall be constructed and maintained to a width and base material depth sufficient to support access by emergency vehicles. The County Highway Engineer or the Assistant County Engineer in the absence of the Engineer shall review all access drives (driveways) for compliance with accepted State Aid Standards. All driveways shall have a minimum width of twelve (12) feet with road strength capable of supporting emergency and fire vehicles.
- 4) All lots or parcels shall have a direct adequate physical access for emergency vehicles along the frontage of the roadway, or an existing private roadway approved by the County Board.

- 5) Upon the building of a new county road or the regrading of any County road, all accesses must adhere to the provisions of the Fillmore County Zoning Ordinance.

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## **721. Excavation and Mining of Construction Minerals**

### **721.01. Conditional Use Permit Required**

No person shall dig, excavate, enlarge, make, maintain or allow to be maintained, upon property owned or used by any individual or group, any open pit, rock quarry, sand pit, excavation or any impounded water, without first making an application for and obtaining from the County Board a Conditional Use Permit except as otherwise allowed in Section 721.04.

### **721.02. Definitions**

- 1) The terms excavation and mining include but are not limited to (i) any process or method of digging, excavating, mining, drilling, blasting, tunneling, dredging, stripping, or removing metals, minerals, or materials from the land surface or underground, (ii) the processing, washing, cleaning, screening, filtering, sorting, stockpiling and storage of all excavated or mined metals, minerals and materials, and (iii) the removal of all excavated and mined construction minerals. The terms excavation and mining apply to all activity occurring at excavation or mining sites, including sites identified as quarries and sand pits.
- 2) The term “construction minerals” includes natural common rock, stone, aggregate, gravel and sand that is produced and used for local construction purposes, including road pavement, unpaved road gravel or cover, concrete, asphalt, building and dimension stone, railroad ballast, decorative stone, retaining walls, revetment stone, riprap, mortar sand, construction lime, agricultural lime and bedding sand for livestock operations, sewer and septic systems, landfills, and sand blasting. The term “construction minerals” does not include “industrial minerals and metals”.

### **721.03. Activities included in a Conditional Use Permit**

A Construction Minerals Conditional Use Permit shall specify the permitted activity. A conditional use permit for a materials and minerals excavation or mining site shall permit the related activities of overburden removal, soil boring, blasting, rock crushing, stockpiling, and hauling.

Separate rock crushing activities or operation of asphalt and concrete plants not located on the site of an existing rock quarry or sand pit shall require a separate conditional use permit. A separate conditional use permit is not required for temporary rock crushing activities or asphalt plants located on the site of an existing rock quarry or sand pit that holds a valid Conditional Use Permit.

#### **721.04. Prohibited Activity**

The following excavation and mining activity is prohibited, and will not be allowed under the terms or conditions of any Construction Minerals Conditional Use Permit:

- 1) The excavation and mining of any construction minerals using any process or method that injects, drills with, applies or uses any chemical or toxic substance.
- 2) The excavation and mining of any construction minerals that causes or results in any chemicals, metals, minerals or materials leeching, spilling or flowing into any water resource, including aquifers, water tables, rivers, springs, streams or other underground or surface waters.
- 3) The excavation and mining of any construction minerals underground using tunneling, augering, shafting, hydraulic dredging, or any similar methods.
- 4) The processing of excavated or mined construction minerals with the use of any chemicals, flocculants, or additives, unless permitted by the Minnesota Pollution Control Agency and biodegradable, consisting of natural origin biopolymers. Only construction minerals excavated or mined onsite are allowed to be washed onsite unless there are contiguous properties without the use of public roads.
- 5) The excavation and mining of any industrial minerals or metals, as defined and regulated in Section 736. If the holder of a Conditional Use Permit to excavate or mine intends to excavate and mine industrial minerals or metals at the permitted excavation or mining site, the permit holder must first obtain an Industrial Minerals Conditional Use Permit, pursuant to Section 736. If the holder of a Conditional Use Permit to excavate or mine construction minerals excavates or mines more than ten (10) tons of industrial minerals or metals from such mining site without first obtaining an Industrial Minerals Conditional Use Permit, such holder will be in violation of Section 736 and will be subject to a cease and desist order and all other remedies available to the county.

#### **721.05. Excavation and Mining Site Classifications**

- 1) New Excavation or Mining Site - To be classified as a new excavation or mining site, the site must not have a valid Materials and Minerals Conditional Use Permit to operate.
- 2) Existing Excavation or Mining Site - To be classified as an existing materials and minerals excavation or mining site, the property owner and/or mining operator must (i) have a current valid Conditional Use Permit to excavate and mine, and (ii) be currently excavating or mining non-industrial materials and minerals at such site.

#### **721.06. Exceptions**

No conditional use permit shall be required for:

- 1) The excavation of earth necessary for the construction of a structure permitted by the Zoning Office.
- 2) The impounding of water in an open pit or pond designed for agricultural uses, but not

for mining or other industrial excavation.

- 3) The excavation of earth for essential services or public utility work.
- 4) Excavation used for personal or farming practices on the same property up to one (1) acre.
- 5) Any water used for residential or agricultural use.

#### **721.07. Application Requirements for a Conditional Use Permit**

The County Board, as a prerequisite to the granting of a Conditional Use Permit, shall require the applicant to whom such Conditional Use Permit is to be issued and the owner and user of the real estate on which the excavation and mining activity described in Section 721.01 are located, to:

- 1) The applicant of any excavation or mining site is required to provide Fillmore County a map and legal description of the excavation or mining. The legal description and map shall at a minimum include:
  - a. The legal surveyed boundaries as projected for the life of the excavation or mining site.
  - b. A map showing all homes that exists within one thousand (1,000) foot of the legal boundaries of the quarry.
- 2) Provide proof of all required Federal and State licenses and permits;
- 3) Provide proof of appropriate insurance coverage;
- 4) Provide proof of an ownership or leasehold interest to the Zoning Administrator;
- 5) Submit proposed plans for any known future expansion;
- 6) Provide a description of the proposed locations and volumes of onsite stockpiling;
- 7) Provide a description of the types of materials to be excavated, types of processing that will be utilized, the expected volume of the materials, and the projected lifetime of the use;
- 8) Provide a Reclamation Plan;
- 9) Submit a proposed fencing, screening, and sloping plan necessary to minimize noise, dust, erosion and other adverse effects of the activity;
- 10) All structures used to impound water except those used for agricultural purposes must be designed by a professional engineer registered in the State of Minnesota;
- 11) For all new and existing excavation and mining sites:
  - a) Applicant must provide a geologic survey.
  - b) Applicant must submit a Karst Investigation.

The County Board may require any additional information deemed necessary to protect the general health, safety, and welfare of the public or deemed necessary to determine the adverse impact or effects of the activity described in Section 721.01.

#### **721.08. Operational Requirements for Rock Quarries and Sand Pits**

All excavation and mining sites which receive a conditional use permit shall comply with the following requirements:

- 1) All blasting must comply with Bureau of Mines Standards and as described in 721.09.
- 2) There must be a one thousand (1,000) foot setback from the approved surveyed boundary and any dwelling unless the dwelling is owned by the applicant or landowner.
- 3) There must be a fifty (50) foot setback from the property lines.

- 4) A seismograph must be used during all blasting.
- 5) An approved reclamation plan must be on file in the Zoning Office and it must be implemented when the quarry or pit is exhausted or abandoned.
- 6) All excavation and mining sites adjacent to dwelling occupants and land occupiers, shall provide, within one-half (½) mile as determined by the Fillmore County Assessor's Office and the surveyed boundary, annual notification from the excavation and mining operator of their right to receive notice of a specific blasting event. Notice of a specific blasting event must then be given by the excavation and mining operator to those dwelling occupants and land occupiers within one-half (½) mile who have requested notice of the specific blasting event. The dwelling occupant or land occupier must provide the excavation and mining operator the name and address to which the notice must be sent. Notice of the specific blasting event shall be provided at least 72 hours prior to the specific blasting event. Any municipality within one-half (½) mile of the surveyed boundary of an excavation and mining site shall have the City Clerk receive the notice in lieu of individual notices sent to residents in the municipality.
- 7) An inspection and certification fee in an amount to be set by the County Board must be paid annually.
- 8) All roads used for the transportation of excavation and mining materials or minerals must be maintained to the satisfaction of the local road authority.
- 9) Excavation and mining operators will assure that all loading and unloading of trucks and equipment occurs on-site and not on the public road. Trucks and equipment cannot park on the public road, and must park on site. No truck or equipment shall be driven on a public road unless its load is securely covered according to Minnesota law and DOT requirements.
- 10) All excavation and mining operators must provide proof of an active insurance policy.
- 11) All operators must work with the SWCD to ensure all stockpiles and overburden piles are maintained so as not to cause erosion.
- 12) Properly guard and maintain the property so that it does not become a danger or nuisance.

Any conditions may be added to the Conditional Use Permit which are intended to protect the health, safety, and general welfare of the public and to reduce the adverse impact of the conditional use being permitted.

#### **721.09. Blasting Activity at Excavation and Mining Sites**

Blasting is the use of explosives and blasting agents to loosen, penetrate, move or shatter masses of solid materials, as a part of excavation and mining operations. No blasting activity will be conducted at excavation and mining sites, unless expressly approved in the conditional use permit that authorizes excavation and mining activity. All blasting activity must comply with the provisions of this section and all applicable federal and state statutes and regulations. The blaster-in-charge of each blasting event must be currently licensed by the Minnesota Department of Public Safety.

**Pre-Blasting Survey.** Any mining operator who intends to conduct authorized blasting at an excavation and mining site will first perform a pre-blasting survey to determine and map the specific location and general condition of all dwellings, buildings, monuments, wells, utilities, and other structures within a half (½) mile radius of the blasting site.

**Blasting Notification.** At least 72 hours prior to the initial blasting event at an excavation and mining site, the mining operator shall make a reasonable effort to notify all residents and land occupiers, within a radius of ½ mile of the excavation and mining site, of the impending blasting event. Thereafter, the mining operator will be required to develop and maintain a blasting call list of adjacent residents and land occupiers, who request that they be notified at least 72 hours prior to a blasting event. At least 72 hours prior to all blasting events at the mining site, the mining operator will use the call list to contact all residents and land occupiers requesting blasting notification by written notice, phone call, email or verbally in person. Prior to any blasting event at the excavation and mining site, the mining operator will also give general public notice of the impending blasting event by displaying a fluorescent flag and legible sign within 100 feet of all public roads bordering the blasting site. Additionally, a distinctive warning signal shall be sounded by horn immediately prior to the blasting event.

**Control of Adverse Effects.** The mining operator is obligated to take all reasonable actions necessary to control and minimize adverse effects of blasting events, including flyrocks, airblasts, ground vibrations and seismic damage to adjacent wells, dwellings, buildings, monuments and structures. An airblast shall not exceed 133 peak dB at the location of any dwelling, buildings, monuments, wells, utilities or other structures. All flyrocks will remain within the excavation and mining site.

The Zoning Administrator has the authority to investigate complaints that blasting activity is damaging dwellings, utilities, structures, or water wells or injuring people or livestock, and to order the mining operator to suspend blasting activity at the excavation and mining site until (i) the alleged damage is verified, (ii) the blasting activity as the cause of such damage is verified, and (iii) a solution is approved to prevent future blasting damage. The Zoning Administrator's monitoring and investigation of blasting activity relates only to permit enforcement, and not to determining potential civil or criminal liability of the mining operator for the consequences of any blasting activity.

**Blasting Log.** The mining operator shall maintain an accurate and complete blasting log of each blasting event occurring at an excavation and mining site. The blasting log will be maintained at the excavation and mining site for not less than five (5) years, and will be furnished to the Zoning Administrator upon request. Each blasting log shall include the following information: (i) Name and license number of each blaster in charge, (ii) blast location, (iii) date and time of blasting event, (iv) weather conditions at time of the blasting event, (v) diagram and cross section of blast hole layout, (vi) blast hole depth, spacing and diameter, (vii) total pounds and type of explosives used, (viii) distance to nearest inhabited dwelling, and (ix) seismic recordings of vibration and air blast levels.

**Storage of Explosives.** The mining operator will not store any explosives or blasting agents at the excavation or mining site.

#### **721.10. Reclamation of Excavation and Mining Sites**

A property owner and excavation/mining operator applying for a Construction Minerals Conditional Use Permit will submit a detailed reclamation plan identifying all proposed steps that will be taken to return the mining site to its natural condition as much as possible and to prevent the occurrence of any adverse environmental effects. No mining or excavation activity

shall begin until the County Board has approved the reclamation plan as a condition of issuing a Construction Minerals Conditional Use Permit.

The reclamation plan map shall show the adjacent area within five hundred (500) feet to the proposed excavation or mining. The map shall include (i) final grade of proposed site showing elevations and contour lines at five (5) foot intervals, (ii) location and species of vegetation to be replanted, (iii) location and nature of any structures to be erected as part of the reclamation plan. The reclamation plan shall include the following: (i) a reclamation time schedule, (ii) the method used to plug any exploratory or drill holes, (iii) the method of grading, back filling and contouring the mining site and access road, (iv) the method of waste management and disposal, including liquid and solid wastes and tailings, and (iv) the method of re-vegetation of the site. Top soil and overburden must remain at the excavation site to be used for reclamation.

If during excavation or mining operations the operator finds the characteristics of the mining area to be different than what was previously determined, changes may be made in the original reclamation plan by mutual consent of the operator and the Zoning Administrator. Such changes shall preserve, as substantially as possible, the original reclamation plan, and shall also provide for the newly discovered variations in the excavation or mining site.

#### **721.11. Bonds May Be Required**

The County Board may require either the applicant or the owner or user of the property on which the open pit or excavation of impounded waters is located to post a bond, in such form and sum as the Planning Commission or County Board may determine, with sufficient surety running to the County, conditioned to pay the County the extraordinary cost and expense of repairing, from time to time, any highways, streets, or other public ways where such repair work is made necessary by the special burden resulting from hauling and gravel, in removing materials from any pit, excavation, or impounded waters, the amount of such cost and expense to be determined by the County Engineer, and conditioned further to comply with all the requirements of this subdivision and the particular permit, and to pay any expense the County may incur by reason of doing anything required to be done by any applicant to whom a permit is issued.

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### **736 Excavation and Mining of Industrial Minerals and Metals**

#### **736.01. Purpose**

The purpose of this section on excavation and mining is to (i) protect natural landscapes from excessive excavation and mining activity, (ii) protect water resources, aquifers, streams, and rivers from excessive contamination and appropriation, (iii) minimize soil erosion, (iv) protect agricultural land and farming activity, (v) monitor and control the extraction and mining of industrial minerals and metals, and (vi) minimize land use conflicts.

#### **736.02. Definitions**



- 1) The terms excavation and mining include but are not limited to (i) any process or method of digging, excavating, mining, drilling, blasting, tunneling, dredging, stripping, or removing metals, minerals, or materials from the land surface or underground, (ii) the processing, washing, cleaning, screening, filtering, sorting, stockpiling and storage of all excavated or mined metals, minerals and materials, and (iii) the removal of all excavated and mined metals, minerals and materials. The terms excavation and mining apply to all activity occurring at excavation or mining sites, including sites identified as quarries and sand pits.
- 2) The term “construction minerals” includes natural common rock, stone, aggregate, gravel and sand that is produced and used for local construction purposes, including road pavement, unpaved road gravel or cover, concrete, asphalt, building and dimension stone, railroad ballast, decorative stone, retaining walls, revetment stone, riprap, mortar sand, construction lime, agricultural lime and bedding sand for livestock operations, sewer and septic systems, landfills, and sand blasting. The term “construction minerals” does not include “industrial minerals and metals”, which are defined and regulated in section 736.
- 3) The terms “industrial minerals and metals” include (i) all natural stone, silica sand, quartz, graphite, diamonds, gemstones, kaolin, and other similar minerals used in industrial applications, but excluding construction minerals as defined in Section 736.02, subp. 2, (ii) all petroleum, gases, fluids, (iii) subsurface water from any source related to excavation and mining, and (iv) all metallic minerals, including nickel, tin, silver, titanium, vanadium, cadmium, molybdenum, chromium, manganese, cobalt, copper, zirconium, beryllium, thorium, uranium, aluminum, radium, tantalum, niobium, gold, lead, platinum, or palladium.
- 4) New Industrial Excavation or Mining Site - To be classified as a new excavation or mining site, the site must not have a valid Industrial Minerals and Metals Conditional Use Permit to operate.
- 5) Existing Industrial Excavation or Mining Site - To be classified as an existing industrial minerals and metals excavation or mining site, the property owner and/or mining operator must (i) have a current valid Conditional Use Permit to excavate and mine, and (ii) be currently excavating or mining industrial minerals and metals at such site.

### **736.03. Industrial Minerals and Metals Conditional Use Permit Required**

No person shall excavate or mine industrial minerals or metals on any property, without first applying for and obtaining from the County Board an Industrial Minerals and Metals Conditional Use Permit. If the holder of a conditional use permit or Construction Minerals Conditional Use Permit to excavate or mine construction minerals intends to excavate and mine industrial minerals or metals at the permitted excavation or mining site, the permit holder must first obtain an Industrial Minerals Conditional Use Permit, pursuant to Section 736.

### **736.04. Prohibited Activity**

The following excavation and mining activity is prohibited, and will not be allowed under the terms or conditions of any Industrial Minerals and Metals Conditional Use Permit:

- 1) The excavation and mining of any industrial or construction minerals or metals using any process or method that injects, drills with, applies or uses any chemical or toxic substance.
- 2) The excavation and mining of any industrial or construction minerals or metals that causes or results in any chemicals, metals, minerals or materials leeching, spilling or flowing into any water resource, including aquifers, water tables, rivers, springs, streams or other underground or surface waters.
- 3) The excavation and mining of any industrial or construction minerals or metals underground using tunneling, augering, shafting, hydraulic dredging, or any similar methods.
- 4) The washing or application of any chemicals or flocculants to excavated or mined industrial minerals or metals at the mining site is prohibited. Mining operators will be entitled to dry screen and sort industrial minerals or metals at the mining site, but must transport all excavated, mined, and/or screened industrial minerals or metals to sites outside of Fillmore County for further processing or washing.
- 5) Any materials brought back to the site that have been processed with chemicals or flocculants is prohibited. Any material is subject to testing at the owner and/or operators expense.

### **736.05. Exceptions**

No conditional use permit shall be required for:

- 1) The excavation of earth necessary for the construction of a structure permitted by the Zoning Office.
- 3) The impounding of water in an open pit or pond designed for agricultural uses, but not for mining or other industrial excavation.
- 4) The excavation of earth for essential services or public utility work.
- 5) Excavation used for personal or farming practices on the same property up to one (1) acre.
- 6) Any water used for residential or agricultural use.

### **736.06. Activities Included in an Industrial Minerals and Metals Conditional Use Permit**

An Industrial Minerals and Metals Conditional Use Permit shall specify the permitted industrial minerals and metals excavation or mining activity. An Industrial Minerals and Metals Conditional Use Permit for an excavation or mining site may also permit (i) the excavation or mining of construction minerals, and (ii) the related activities of overburden removal, soil boring, blasting, rock crushing, materials removal, stockpiling, and hauling.

Separate rock crushing activities or operation of asphalt and concrete plants not located on the

site of an existing rock quarry or sand pit shall require a separate conditional use permit. A separate conditional use permit is not required for rock crushing activities, or asphalt or concrete plants located on the site of an existing rock quarry or sand pit that holds a valid conditional use permit.

### **736.07. Siting and Location Requirements**

Any new or expanded site excavating or mining industrial minerals or metals must comply with the following siting and location requirements:

- 1) No excavation or mining site shall exceed more than fifty (50) acres in size.
- 2) No excavation or mining site shall be located within one-thousand (1,000) feet of any existing dwelling from the surveyed boundary of the excavation or mining site unless the dwelling is owned by the applicant or landowner.
- 3) No excavation or mining site shall be located within the any portion of the shoreland or floodplain district, as indicated on the Fillmore County Shoreland Overlay and FEMA FIRM maps, respectively.
- 4) There must be a fifty (50) foot setback from the surveyed boundary lines of any excavation or mining site.
- 5) There shall be no more than five (5) excavation or mining sites in Fillmore County. A site shall be considered the surveyed boundary. No new sites permitted under Section 736 will be considered once five (5) sites are in existence unless an existing site has been closed, reclaimed, and verified by the Fillmore County Zoning Administrator. Closed sites must be recorded showing the Conditional Use Permit is no longer valid, filed with the Fillmore County Recorder's Office on a form provided by the Fillmore County Attorney.

### **736.08. Application Requirements for an Industrial Minerals or Metals Conditional Use Permit**

An applicant (includes both the property owner and mining operator) for an Industrial Minerals and Metals Conditional Use Permit will prepare and submit an application to the Zoning Administrator. The application will include the following information:

- 1) The applicant of any excavation or mining site is required to provide Fillmore County a map and legal description of the excavation or mining site. The legal description and map shall at a minimum include:
  - a. The legal surveyed boundaries as projected for the life of excavation or mining site.
  - b. A map showing all dwellings that exist within one thousand (1,000) feet of the legal boundaries of the quarry.
  - c. A wetland delineation.
- 2) Provide proof of all required Federal, state and local licenses and permits;
- 3) Provide a mining operation plan;
- 4) Provide proof of appropriate insurance coverage;
- 5) Provide proof of an ownership or leasehold interest to the Zoning Administrator;
- 6) Provide a description of the proposed locations and volumes of onsite stockpiling;

- 7) Provide a description of the types of industrial minerals or metals to be excavated, the expected volume of the materials, and the projected lifetime of the use;
- 8) Provide a reclamation plan, identifying proposed land use after reclamation activities are completed, showing detailed proposals to reclaim the site both during and following mining operations. Review and approval of the reclamation plan will be conducted by a technical evaluation panel comprised of the Zoning Administrator, County Highway Engineer, and science representatives from the Fillmore County Soil & Water Conservation District (SWCD), Minnesota Department of Natural Resources (DNR), and Minnesota Board of Water & Soil Resources (BWSR). The proposed reclamation plan will include an analysis of the pre-mining conditions at the site, including:
  - a. Soil type and depth of topsoil.
  - b. Hydrology.
  - c. Vegetation cover type and species.
  - d. Wetlands (soils, vegetation, and hydrology).
  - e. Wildlife habitat.
- 9) Submit a proposed fencing, screening, and sloping plan necessary to minimize noise, dust, erosion, and other adverse effects of the activity; and
- 10) For all new excavation and mining sites, and expansions of existing excavation and mining sites:
  - a. Provide a geologic survey.
  - b. Provide a karst features survey.

The Zoning Administrator or County Board may require an applicant to submit any additional information, including an environmental assessment worksheet (EAW), deemed necessary to protect the general health, safety, and welfare of the public or deemed necessary to determine the adverse impact or effects of the activity described in Section 736.06. An EAW may be required to be submitted even for mining or excavation projects that are below the state mandatory thresholds for environmental review. If applicant's responses to an EAW are determined by the Zoning Administrator to be inadequate, the Zoning Administrator may require applicant to prepare and submit additional responses in the EAW. Applicant's responses to a submitted EAW may be the basis for the County Board (i) denying the application for a conditional use permit, (ii) imposing conditions on the proposed mining activity, or (iii) approving the conditional use permit application without conditions.

### **736.09. Mining Operation Plan**

The mining operation plan submitted by an applicant for an Industrial Minerals or Metals Conditional Use Permit to the Zoning Administrator will include the following information:

- 1) Dates of the planned commencement of the excavation and mining operation.
- 2) The sequence or phasing of operations.
- 3) A reclamation plan as identified in Section 736.13.
- 4) Estimated volume of material to be extracted annually and over the life of the mining operations.
- 5) Proposed location on site of all buildings, structures, equipment, stockpiles, storage and parking areas.
- 6) Traffic plan, including:

- a. Identifying all proposed off-site trucking routes for transporting extracted materials from the site;
  - b. An analysis of all intersections of local roads and county or state highways affected by traffic generated from the proposed excavation or mining operations;
  - c. Proposed traffic safety and intensity solutions; and
  - d. Excavation or mining site plan, including parking layout and loading/staging areas.
- 7) List of all hazardous materials, including fuel supplies and chemicals that would be stored on site.
  - 8) Road maintenance agreement as provided in Section 736.11.
  - 9) A scale on location and the weight/amount loaded per truck reported to the Fillmore County Zoning Office quarterly.

### **736.10. Operational Requirements for Excavation and Mining Sites**

All excavation and mining site operators/owners which receive an Industrial Minerals or Metals Conditional Use Permit shall comply with the following requirements:

- 1) Mining operators will not mine vertically closer than a depth of ten (10) feet to an existing groundwater table.
- 2) Mining operators will not cause a significant reduction of surface water within two (2) miles of the mining site which serve as a water supply for agricultural, municipal or recreational uses.
- 3) An approved reclamation plan must be on file in the Zoning Office and it must be fully implemented as required by the County Board.
- 4) An inspection will occur annually and more often if needed and a certification fee in an amount to be set by the County Board must be paid annually.
- 5) All roads used for the transportation of industrial or construction minerals or metals must be maintained to the satisfaction of the local road authority as discussed in 736.11.
- 6) Mining operators will assure that all loading and unloading of trucks and equipment occurs on-site and not on the public road. Trucks and equipment cannot park on the public road, and must park on site. No truck or equipment shall be driven on a public road unless its load is securely covered when loaded and complies with according to Minnesota law and DOT requirements.
- 7) Mining operations times at the site will be restricted to Monday through Friday, 6:00 am to 8:00 pm Central Daylight Time (CDT) and Monday through Friday, 7:00 am to 5:00 pm Central Standard Time (CST). Operations may also occur year-round on Saturdays, 7:00 am to 3:00 pm. Mining operations will not be conducted on federally observed holidays or on Sundays. Hours of operation may be further restricted through the Conditional Use Process.
- 8) All stockpiles will be stored at least fifty (50) feet from the right-of-way of a public road.
- 9) All excavation and mining operators must provide a certification of insurance showing current liability insurance coverage on the premises and operation.
- 10) All operators must work with the SWCD so the site including all stockpiles and overburden piles are maintained so as not to cause erosion.
- 11) Properly guard and maintain the property so that it does not become a danger or nuisance.
- 12) Silent or white noise back-up alarms must be installed on all motorized excavation vehicles.

Any conditions may be added to the conditional use permit that are intended to protect the health, safety, and general welfare of the public and to reduce the adverse impact of the conditional use being permitted.

### **736.11. Road Maintenance Agreement**

All new or expanded excavation and mining operators will be required to enter into road maintenance agreements with Fillmore County. The road maintenance agreements will provide for:

- 1) A roundtrip hauling route for the shipping of industrial minerals and metals from the excavation or mining site to a targeted delivery location.
- 2) Mining operator's agreement to pay a road pavement impact fee, as decided by the County Highway Engineer and County Commissioners, to reimburse Fillmore County for the projected costs of repairing and replacing road pavement damage by the hauling of industrial minerals and metals from an excavation or mining site. If excavation and mining minerals or materials are hauled back to the site the road pavement impact fee will be assessed. The fee established at the time of application will be reviewed every two (2) years.

All excavation and mining site access points must abut a blacktop or concrete road and all haul route trucks must enter and leave at the access point. The use of any gravel or unpaved County or Township roads for the haul route is prohibited, unless an exception is applied for by the operator and approved. The operator must show a lower road impact by use of the gravel or unpaved road without jeopardizing public safety. If an exception is approved, the mining operator must maintain the roads to the satisfaction of the local road authority, provide dust control, and still enter into a road maintenance agreement with the County and/or township.

Any proposed route change requires a new road impact agreement and public hearing through the Planning Commission with recommendation to the Fillmore County Commissioners.

### **736.12. Blasting Activity at Excavation and Mining Sites**

Blasting is the use of explosives and blasting agents to loosen, penetrate, move or shatter masses of solid materials, as a part of excavation and mining operations. No blasting activity will be conducted at excavation and mining sites, unless expressly approved in the conditional use permit that authorizes excavation and mining activity. All blasting activity must comply with the provisions of this section and all applicable federal and state statutes and regulations. The blaster-in-charge of each blasting event must be currently licensed by the Minnesota Department of Public Safety.

**Pre-Blasting Survey.** Any mining operator who intends to conduct authorized blasting at an excavation and mining site will first perform a pre-blasting survey to determine and map the specific location and general condition of all dwellings, buildings, monuments, wells, utilities, and other structures within a ½ mile radius of the blasting site.

**Blasting Notification.** At least 72 hours prior to the initial blasting event at an excavation and mining site, the mining operator shall make a reasonable effort to notify all residents and land occupiers, within a radius of ½ mile of the excavation and mining site, of the impending blasting

event. Thereafter, the mining operator will be required to develop and maintain a blasting call list of adjacent residents and land occupiers, who request that they be notified at least 72 hours prior to a blasting event. At least 72 hours prior to all blasting events at the mining site, the mining operator will use the call list to contact all residents and land occupiers requesting blasting notification by written notice, phone call, email or verbally in person. Prior to any blasting event at the excavation and mining site, the mining operator will also give general public notice of the impending blasting event by displaying a fluorescent flag and legible sign within 100 feet of all public roads bordering the blasting site. Additionally, a distinctive warning signal shall be sounded by horn immediately prior to the blasting event.

Control of Adverse Effects. The mining operator is obligated to take all reasonable actions necessary to control and minimize adverse effects of blasting events, including flyrocks, airblasts, ground vibrations and seismic damage to adjacent wells, dwellings, buildings, monuments and structures. An airblast shall not exceed 133 peak dB at the location of any dwelling, buildings, monuments, wells, utilities or other structures. All flyrocks will remain within the excavation and mining site.

The Zoning Administrator has the authority to investigate complaints that blasting activity is damaging dwellings, utilities, structures, or water wells or injuring people or livestock, and to order the mining operator to suspend blasting activity at the excavation and mining site until (i) the alleged damage is verified, (ii) the blasting activity as the cause of such damage is verified, and (iii) a solution is approved to prevent future blasting damage. The Zoning Administrator's monitoring and investigation of blasting activity relates only to permit enforcement, and not to determining potential civil or criminal liability of the mining operator for the consequences of any blasting activity.

Blasting Log. The mining operator shall maintain an accurate and complete blasting log of each blasting event occurring at an excavation and mining site. The blasting log will be maintained at the excavation and mining site for not less than 5 years, and will be furnished to the Zoning Administrator upon request. Each blasting log shall include the following information: (i) Name and license number of each blaster in charge, (ii) blast location, (iii) date and time of blasting event, (iv) weather conditions at time of the blasting event, (v) diagram and cross section of blast hole layout, (vi) blast hole depth, spacing and diameter, (vii) total pounds and type of explosives used, (viii) distance to nearest ~~inhabited~~ dwelling, and (ix) seismic recordings of vibration and air blast levels.

Storage of Explosives. The mining operator will not store any explosives or blasting agents at the excavation or mining site.

### **736.13. Reclamation of Excavation and Mining Sites**

A property owner and excavation/mining operator applying for an Industrial Minerals or Metals Conditional Use Permit will submit a detailed reclamation plan identifying all proposed steps that will be taken to return the mining site to its natural condition as much as possible and to prevent the occurrence of any adverse environmental effects. No mining or excavation activity shall begin until the County Board has approved the reclamation plan as a condition of issuing a conditional use permit. To the fullest extent possible, the reclamation plan will provide for phased reclamation of the site during and throughout mining operations and immediately

following the end of mining operations. Phased reclamation is best implemented by having no more than twenty-five (25) acres operational at any given time.

The reclamation plan map shall be drawn at a scale of one (1) inch to one hundred (100) feet and shall show the adjacent area within five hundred (500) feet to the proposed excavation. The map shall include (i) final grade of proposed site showing elevations and contour lines at five (5) foot intervals, (ii) location and species of vegetation to be replanted, (iii) location and nature of any structures to be erected as part of the reclamation plan. The reclamation plan shall include the following: (i) a reclamation time schedule, (ii) the method used to plug any exploratory or drill holes, (iii) the method of grading, back filling and contouring the mining site and access road, (iv) the method of waste management and disposal, including liquid and solid wastes and tailings, and (v) the method of re-vegetation of the site. Top soil and overburden must remain at the excavation site to be used for reclamation.

If during excavation or mining operations the operator finds the characteristics of the mining area to be different than what was previously determined, changes may be made in the original reclamation plan by mutual consent of the operator and the Zoning Administrator. Such changes shall preserve, as substantially as possible, the original reclamation plan, and shall also provide for the newly discovered variations in the excavation or mining site.

#### **736.14. Assignment of Conditional Use Permits**

If the property owner and/or mining operator seeks to assign, delegate or transfer their excavation or mining permit rights, duties or responsibilities, the proposed transferee will disclose to the Zoning Administrator the capability of fulfilling all financial, reclamation and operational provisions of the mining permit. The transferee will take over all previous conditional use permit conditions to include, but not limited to reclamation. If any property owner and/or mining operator assigns, delegates or transfers any portion of their excavation or mining permit rights, duties or responsibilities, without first obtaining the written approval of the Zoning Administrator, the excavation or mining permit will be automatically terminated without further action.

#### **736.15. Reclamation Assurance Bond**

Applicant will deliver to the county a reclamation assurance bond issued by an insurance carrier acceptable to the county, in an amount determined by the County Board, to assure that sufficient funds will be available to fulfill all required elements of the reclamation plan. The reclamation assurance bond will be valid and enforceable throughout the excavation or mining operation period and for a period of at least one year following the end or abandonment of excavation or mining. The county will be entitled to claim such reclamation assurance bond at any time when required elements of the reclamation plan are to be performed.

The mining operator will be at all times responsible for paying in full and in a timely manner the full cost or premium of the reclamation assurance bond. The reclamation assurance bond shall provide that it may not be cancelled by the surety or issuer, except after not less than a ninety (90) day notice to the county in writing by registered or certified mail. If the surety or issuer attempts to cancel the reclamation assurance bond, the mining operator shall deliver to the county a replacement proof of reclamation assurance bond. In the absence of this financial replacement assurance, all mining at the site shall cease.



### **736.16. Bonds May Be Required**

The County Board may require either the applicant or the owner or user of the property on which the excavation or mining operation located to post a financial assurance bond, in such form and amount as the Planning Commission or County Board may determine, with sufficient surety running to the County, conditioned to pay the County the cost and expense of repairing, from time to time, any highways, streets, or other public ways where such repair work is made necessary by the special burden resulting from hauling and gravel, in removing materials from any pit, excavation or impounded waters, the amount of such cost and expense to be determined by the County Engineer; and conditioned further to comply with all the requirements of this subdivision and the particular permit, and to pay any expense the County may incur by reason of doing anything required to be done by any applicant to whom a permit is issued.